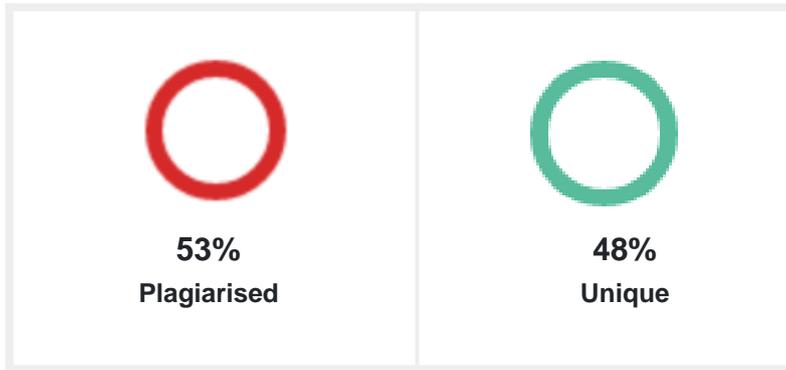


PLAGIARISM SCAN REPORT



Date 2020-04-16

Words 948

Characters 5749

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In a society like ours where the concept of morality and legality is often confused with each other and misinterpreted, more often than not we find the society nailing an accused to the cross even before being given a chance to defend himself. Hence, the prevalence of jungle justice in our society is no longer news, especially the act of “necklace lynching” alleged “thieves” in public places without any form of fair hearing or trial. A clear example of what readily comes to mind is the gory experience of the “Aluu Four Lynching” in the Ikwerre Local Government Area of Rivers State in 2012. It is pertinent to reiterate that by virtue of Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999, an accused or a person standing trial for a criminal offence is presumed to be innocent until proven otherwise. It is needless to say that the burden of proof in a criminal trial is beyond reasonable doubt. A suspect may confess to the commission of a crime and the court has the power to convict based on the weight of such confession. Such confession by the suspect to the commission of the crime is referred to as a “Confessional Statement”. When a confession is free, voluntary, direct, positive and unequivocal about the commission of an offence, the accused person can be convicted based on same alone. In the words of A.D. Yahaya, JCA, “a confessional statement is one that was made voluntarily by an accused person who has been charged for committing an offence, to another person, admitting his guilt. It is relevant and admissible and tends to be the best evidence in the hands of the prosecution”. Section 28 of the Evidence Act, 2011 defines Confession as: “A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime.” In *Silas Ikpo & Anor v. State* the court laid down six factors for determining the veracity or otherwise of a confessional statement. These factors are: 1. Whether there is anything outside the confession to show that it is true. 2. Whether the statement is corroborated. 3. Whether the statement of fact made in the confessional statement can be tested as true. 4. Whether the accused person had opportunity of committing the offence charged. 5. Whether the confession of the accused person was possible. 6. Whether the confession was consistent with other facts which had been ascertained and proved in the matter. In any proceedings a confession made by an accused may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court. Incidentally, the court is often faced with objections to the admissibility of confessional statements based on the ground of retraction or involuntariness. For an accused’s confessional statement to be admissible, prosecution must show that the accused gave the confessional statement voluntarily. Section 29(2) of the Evidence Act, 2011 provides: “If, in any proceedings where the prosecution proposes to give in evidence a confession made by a defendant, it is represented to the court that the confession was or may have been obtained- a. By oppression of the person who made it; or b. In consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section.” Section 29(5) also provides that this includes statement gotten through oppression which has been interpreted as including “torture, inhuman or degrading treatment and the use of threat of violence whether or not amounting to torture.” However, it is no longer news how the Police sometimes employ the use of torture, threat or inducement to obtain confessional statement from suspects in a bid to hastily solve a case. Section 1 (a) of the Anti-Torture Act, 2017 provides that: “Torture is deemed committed when an act by which pain or suffering, whether physical or mental, is intentionally influenced on a person to- (a) obtain information or a confession from him or a third person;” Despite the fact that the act of obtaining confessional statement involuntarily is widely condemned and upon the Anti-Torture Act in 2017 was enacted, this condemnable act is still an open secret within the society. It is important to mention that the issue of involuntary confessional statement is not culture or country specific. The celebrated case of the “Central Park

Five" in Manhattan, United States of America in 1989 wherein prosecution of the five teenage defendants in the rape and assault case was based primarily on confessions which they had made after police interrogations. None had counsel during this questioning. Within weeks, they each withdrew these confessions which they claimed to have been obtained by coercion, pleaded not guilty, and refused plea deals on the rape and assault charges. None of the suspects' DNA matched the DNA collected from the crime scene. No substantive physical evidence connected any of the five teenagers to the rape scene, but each was convicted in 1990 of related assault and other charges ranging from 5 to 15 years sentences. Where an accused person alleges that the confessional statement was obtained involuntarily, the procedure whereby the Court determines the voluntariness or otherwise of a confessional statement is called "Trial-Within-Trial".

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Feb 11, 2017 - A trial -within-trial is a mini trial conducted to find out if the accused person made his confessional statement voluntarily or otherwise .In other ...

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<https://www.facebook.com/lexviventem/posts/efccs-power-to-attach-suspects-assets-and-property-ar-security-solutions-ltd-v-e/1087623244707226/>

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Case law defines 'confession' as an admission made at any time by a person charges with a crime, stating or suggesting the inference that he committed that ...

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1. Whether there is anything outside the confession to show that it is true, 2. Whether the statement is corroborated, no matter how slight. 3. Whether the facts ...

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Jul 31, 2003 - Mr Justice Owen : 1. Michael Mawdesley appeals by way of case stated against the decision of the Warrington Justices who on 25 October ...

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hearsay evidence, i.e. out-of-court statement as evidence for truth of what was said o confession evidence is also technically hearsay evidence (out of court statement by d) o bad character evidence (i.e...

<https://www.studocu.com/ru/document/northumbria-university/principles-of-criminal-evidence/konsepky-lektsiy/criminal-evidence-revision-book/1232766/view>

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incidentally, the court is often faced with objections to the admissibility of confessionalground of involuntariness. a call is made for the abolition of the pro in.13. (underlined for emphasis). this include statements gotten through oppression which has been interpreted.

https://www.researchgate.net/publication/317318143_A_CASE_FOR_THE_ABOLITION_OF_TRIAL_WITHIN_TRIAL_IN_NIGERIAN_CRIMINAL_JURIS

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confession made by a defendant, it is represented to the court that the confession was.manner contrary to the provisions of this section. (3) in any proced motion require the.

https://www.researchgate.net/publication/323228361_IMPACT_OF_THE_UNITED_NATION_CONVENTION_AGAINST_TORTURE_ON_THE_PROTEC

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in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof, the court shalla confession must be excluded if it has been made in consequence of things said or don't that might render it unreliable - s76(2)(b) s76(2)...

https://www.oxbridgenotes.co.uk/revision_notes/law-criminal-procedure-and-evidence/samples/character-evidence

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... reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section, is perceived ...

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(a) obtain information or a confession from him or a third person;. (b) punish hinn for an act he or a third person has committed or is suspected of .

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attacks in central park that night were allegedly committed by a loose group of 30–32 teenagers, and police attempted to apprehend suspects after crimesprosecution of the five remaining defendants in the rape and assault case was based primarily on confessions which they had made after police...

<https://www.youtube.com/watch?v=4fskGu1ata4>

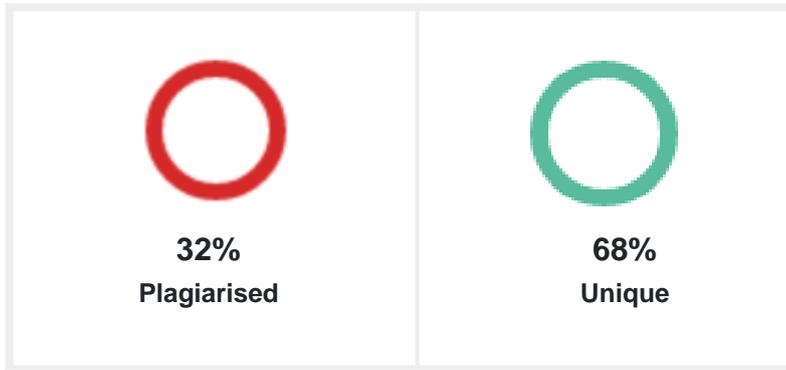
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none of the suspects' dna matched the dna collected from the crime scene: two semen samples that both belonged to one unidentified man. no substantive physical evidence connected any of the five teenagers to the rape scene, but each was convicted in 1990 of related assault and other charges.

<https://www.youtube.com/watch?v=sNyJXMcn4Us>

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Date	2020-04-16
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Words	733
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This simply refers to the procedure whereby the Court determines the question whether a statement should be excluded on grounds of oppression. The right time to raise the involuntariness of a confessional statement is when the statement is tendered in evidence; such objection must be raised timeously. Once objection has been taken to the admissibility of a confessional statement on the ground that it was involuntarily made, or otherwise obtained in an oppressive manner, the court must stop further proceedings and determine the question of voluntariness of the confession before taking any further step by way of admitting or rejecting the statement. It was held in the case of *Dairo v. Federal Republic of Nigeria*, that if the accused person challenges the admissibility of the statement on the basis that he made the statement involuntarily due to certain vitiating elements such as inducement, promise of an advantage, threat, duress etc. the court is expected to determine the veracity of this claim before deciding whether to admit the statement or not. Thus the court must either on the application of parties or suo motu order a trial within trial. The sole purpose of conducting a trial-within-trial is to determine whether in obtaining the statement being challenged, the accused was coerced, induced, threatened, deceived or forced by means of any unnatural intervening factors which would have influenced the making of the statement in question. In *Olabode v. State* the Supreme Court per Muntaka Coomassie JSC held that: "The test for the admissibility of a confessional statement is its voluntariness and once the issue is raised, it must be resolved before its admission." As the name suggests, a trial-within-trial is a trial within the main trial, while the main trial is concerned with determining the guilt or otherwise of the accused, the trial-within-trial is concerned with an interlocutory question of whether a piece of evidence sought to be tendered was obtained according to law. Upon an objection being raised as to the admissibility of a confessional statement on the grounds that it was not made voluntarily, the court may halt the main proceedings and inform the parties that there is going to be a trial-within-trial to determine the voluntariness of the statement. The prosecution may call witnesses to prove voluntariness, each witness called will be sworn and such witness is liable to be cross-examined and re-examined (if necessary), exhibits may be tendered as well. After all prosecution witnesses have testified, the defence is called upon to call its own witnesses as well (if any) who are also liable to being cross-examined and re-examined. Parties are allowed to address the court based on the evidence, the court then delivers a ruling either admitting the statement or rejecting the statement. Consequent upon the ruling being delivered, the main trial continues. At this juncture, there is a need to examine the Judges Rules. According to Wikipedia: "The Judges' Rules are set of guidelines about police questioning and the acceptability of the resulting statements and confessions as evidence in court." These rules were formulated by the Queen's Bench Division in England. The major aim of the rules was to guide the police in taking statement from suspects in order to ensure that such statements are made voluntarily. The applicability of these rules to the Nigerian legal system has been stated in *R v. Anya Ugwuoga* wherein it was held that the Judges' Rules should apply mutatis mutandis to Nigeria so far as is possible and practicable. However, there is a need to emphasize that the Judges' Rules are mere guides the police are admonished to employ, they have no force of law. In *Usman v. The State*, the appellant contended inter alia that the statement made in Hausa as well as the English translation were not read over to the appellant at the time of its taking nor was same signed by him, the court dismissed this by holding that: "... breaches of Judges' Rule do not render a document inadmissible. At best, such breaches might only affect the weight the court attaches to the statement and certainly not its admissibility" The rule as modified: a. Allowed the police to question any person with a view to finding out whether, or by whom, an offence had been committed b. Required the police to give a caution when they had evidence to suspect that a person had committed an offence

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... stop further proceedings and determine the question of voluntariness of the confession before taking any further step by way of admitting or rejecting the ...

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2 Jun 2017 - PDF | A person standing trial for a criminal offence enjoys the presumption of ... See Federal Republic of Nigeria vs Borisade (2015) All FW 227. 4 ... that if the accused person challenges the admissibility of the statement on the basis that he made the statement involuntarily due to certain vitiating factors, the court should not admit the statement unless it is satisfied that the statement was made voluntarily.

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Sep 25, 2019 - ... deceived or forced by means of any unnatural intervening factors which would have influenced the making of the statement in question.

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the law regarding voluntariness any better than it was before Miranda, and is there now ... the admissibility of confessions in criminal cases under the voluntariness ... grave difficulties raised by issues of improper interrogation techniques, ... "[W]e are forced to resolve a conflict between two fundamental interests of society; its.

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Apr 18, 2019 - For example, while a breach of the Judges' Rules in obtaining a confession does not make it inadmissible, the evidence may be excluded at the court's discretion. The second category is 'evidence obtained from the accused after commission of the offence'.

https://link.springer.com/chapter/10.1007/978-3-030-12520-2_9

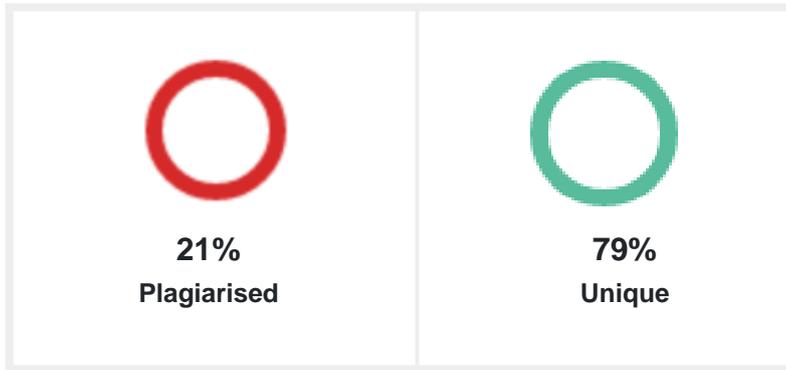
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Title: How to Obtain Confessional Statements and Admissions in ...

Jan 17, 2016 - At best, such breaches might only affect the weight the court attaches to the statement and certainly not its admissibility. Accordingly ...

<http://legalempereors.blogspot.com/2016/01/how-to-obtain-confessional-statements.html>

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c. Required a further caution when a person was charged and prohibited questioning afterwards charging save in exceptional circumstances
d. Required a record of questioning to be kept
e. Gave guidance on the best way to record a formal written statement. Although the Judges' Rules have not been codified, it is important to note that the Administration of Criminal Justice Act and the Administration of Criminal Justice Law of Lagos State have included certain requirements for obtaining confessional statement. Section 3 of the Administration of Criminal Justice (Repeal and Re-enactment) Law 2011 has fortified the Judges' Rules in a bid to ensure that what comes before the court as a confessional statement is truly a confessional statement. Except where the person arrested is in the actual course of the commission of a crime or escapes from lawful custody, the aforementioned section made provisions for the following: a. The person arrested shall be informed of his right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice; b. Consult a counsel of his choice before making or writing any statement or answering any question put to him after arrest. In addition to the above, Section 3 (3) provides that the person making the arrest shall inform the person arrested that he may apply for free legal representation from the Office of the Public Defender, Legal Aid Council or any such agency. Section 9 (3) reinforced the above provisions. It provides that: "Where any person who is arrested with or without a warrant volunteers to make a Confessional Statement, the Police shall ensure that the making and the taking of such statement is recorded on video and the said recording and copies of it may be produced at the trial provided that in the absence of video facility, the said statement shall be in writing in the presence of a legal practitioner of his choice." Against the above background, we may say that if the procedure as provided by the law is strictly followed, employing trial within trial to determine the voluntariness of any statement is needless. Although there is a need to applaud the Nigerian criminal justice system which is constantly evolving and is coming of age, excellent measures and provisions has been put in place in order to ascertain that the confessional statement sought to be tendered to the court was obtained according to law, and a handful of writers have canvassed that with the provisions of the ACJL and ACJA, the age long practice of conducting trial within trial whenever the admissibility of a confessional statement is objected to on the ground of voluntariness should be abolished. However, it is imperative to ask whether the confessional statements obtained in line with the provision of the law are truly obtained voluntarily? Does the fact that a confession was made in front of a camera truly make it free of threat, torture, promise or undue advantage? What if an accused has been mercilessly beaten or blackmailed behind the cameras? How about instances where an accused is being threatened of imminent danger to his family members? We truly do not know what goes on behind the camera or what has been said or done to an accused before his legal representative shows up. It goes without saying that the fact that a legal representative was present while a confession was taken and signed does not prove that such confession was obtained in line with the provisions of the law. An accused might have been threatened, tortured or blackmailed into writing a particular statement before the arrival of his "lawyer". Conclusively, the provisions of the ACJL and ACJA are laudable and an excellent leap in the Nigerian criminal justice system, however we do hope that a re-orientation within the Police force with respect to non-violent means of obtaining confession and also ensuring that an accused is given the opportunity to consult with a legal practitioner or any other person of their own choice before making a confessional statement will also come a long way. There is also the need to intensify awareness to educate the public about their rights during police interrogation and right to free legal representation from the Office of the Public Defender or the Legal Aid Council.

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The Rules required a further caution when a person was charged and prohibited questioning afterwards charging save in exceptional circumstances (rule III(b)).

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3(2)b. consult a counsel of his choice before making or writing any statement or answering any question put to him after arrest. 3(3) the police officer or the person making the arrest shall inform the person arrested that he may apply for free legal representation from the office of the public...

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Where any person who is arrested with or without warrant volunteers to make a confessional statement, the police shall ensure that the making and taking of such statements is recorded on video and the said recordings, and copies thereof ...

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...the said recording and copies of it may be produced at the trial provided that in the absence of video facility, the said statement shall be in writing in.at trial, which occasions undue delay in the administration of criminal justice, ledap collaborated with the nigeria police force zone 2 command...

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Mar 21, 2014 - ... for such recording, the statement shall be in writing in the presence of a legal practitioner of his choice. Oral confessions that are not recorded ...

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