



Examining the Admissibility and Efficacy of Confessions in Uganda: Emerging Trends and Practical Challenges

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ABSTRACT

This article examines the admissibility and efficacy of confessions in Uganda. In analyzing the legal framework provided for the procurement and recording and its admissibility in courts, section 23 of the Evidence Act of Uganda does not require that it is only a police officer above the rank of assistant inspector of police who can procure and record a confession from a suspect. This is an indication any other officer can record a confession as long as he or she is in the immediate presence of the assistant inspector of police or a magistrate. The law here is ambiguous and not clear, leaving a lot to be desired as much as corroboration is required before confession evidence is admitted in court. It is on this note that the article calls for proper training of the officers involved in evidence extraction to act professionally. Protection officers by state from unscrupulous fellow in society who want to get justice at all cost including inducing, forcing and threatening suspect to confess to a crime they didn't commit. More so, there is need for proper sensitization of the populace on the right of the suspects and an accused person, with the suspect being shown when, how and who to make a confession to, and that the confession must be made voluntarily without inducement, promise, threats, violation, force, undue influence and duress.

Keywords: Admissibility, Confession, Emerging trends, Evidence, Suspects

INTRODUCTION

Evidence denotes the means by which any alleged matter of fact, the truth of which submitted to investigation, is proved or disproved and includes statements by accused persons, admissions, judicial notice, presumptions of law, and ocular observation by the court in its judicial capacity [1]. It follows from the above definition that evidence is that information which is used by any competent tribunal or court to prove or disprove facts. Proof is the establishment of the existence or non-existence of such facts by proper legal means to the satisfaction of court [2]. The law of evidence therefore comprises of the rules governing the presentation of facts and proof in any proceedings before a competent court of Law. Hence, it lays down rules which guide the court and other investigative bodies in establishing the facts in disputes [3]. In the words of Crown Prosecution Service [4], The law of evidence further assists the courts in answering the following questions;

1. Is the evidence available? That which is in support of a particular fact to prove or disprove fact in issue.
2. Is the evidence relevant? Relevance of evidence relates to whether or not that particular piece of evidence is important in proving or disproving a fact in issue.
3. Is the evidence admissible? Admissibility of evidence relates to the law allowing a given piece of evidence to be taken or accepted by the court.
4. Is the evidence cogent? This relates to reliability of a particular piece of evidence.
5. Is the evidence sufficient? In any proceeding the onus of proving the existence or non-existence of a fact is on a party asserting, and to discharge that burden such a party must adduce evidence to a given degree for the burden to be discharged. The production of evidence is mainly in three basic forms;
 - Testimonial or oral evidence which is also known as viva voce.
 - Documentary evidence which is in relation to production of documents.
 - Real or material evidence which is in relation to production of exhibits.

The rules of evidence apply to all the types or forms of production of evidence. In all these forms the particular

piece of evidence must be admissible before it can be considered as probative or of value or relevant of an issue in a trial [5], it is indicated that a confession is irrelevant if it appears to court that having regard to the state of mind of the accused in all circumstance surrounding it, the accused made it out of violence, force or threat, inducement, undue influence or promise calculated, the opinion of the court to cause an untrue confession [6]. The Ugandan Evidence Act [7] does not define confessions nor does the Interpretation Act. However the Kenyan Evidence Act [8] indicates that confessions comprises of words or conduct or a combination of words and conduct from which when taken alone or in connection with other words lead to an inference that may reasonably be drawn that the party making the confession has committed an offence. According to the Black's Law Dictionary [9], a confession is a voluntary statement made by a person charged with the commission of a crime or misdemeanor, communicated to another person, wherein he acknowledges himself to be guilty of the offence charged, and discloses the circumstances of the act or the share and participation which he had in it. Confessions should be received with great caution, as they are liable to many objections. There is danger of error from the misapprehension of witnesses, the misuse of words, the failure of a party to express his own meaning, the prisoner being oppressed by his unfortunate situation, and influenced by hope, fear, and sometimes a worse motive, to make an untrue confession. It is important to note that confession have several ingredients. This has been spelt out by courts in different cases. In Uganda under S.24 of the Evidence Act [7], it is indicated that a confession is irrelevant if it appears to court that having regard to the state of mind of the accused in all circumstance surrounding it, the accused made it out of violence, force or threat, inducement or promise calculated, the opinion of the court to cause an untrue confession. In the case of *Pakala Narayana Swami v Emperor* [10], the principle was Confirmed that the confession must either admit in terms of offence or all facts which constitutes the offence An admission of a gravely incriminating or even conclusively by incriminating facts is not in itself a confession. Therefore, a confession must be an unequivocal admission of having committed an act which in law amounts to a crime and must either admit in terms the offence or in any rate substantially all the fact which constitute an offence. This article examines the admissibility and efficacy of confessions in Uganda.

The history of confessions in Uganda

The Laws of ancient Greece and Rome recognized an accused' confession as evidence in criminal cases. In Athens in the 4th century BCE, Magistrates began criminal trials by reading the charge and asking the defendant if he admitted guilt. Such an admission would relieve the defendant of the need to submit a formal statement of denial and would typically result in less than the maximum penalty [11]. Although this emphasis on confession resulted in leniency for some, it was accompanied by the routine use of judicial torture against those thought to be untruthful or insufficiently [12]. The English rejected the inquisitorial methods of other European nations and instead relied upon an accusatorial model in which judges presided over jury trials and had no duty or authority to secure a defendant's confession. They served essentially as referees between the prosecution and the defense [13]. As appointees of the crown, English judges often were partial to the prosecution, but they had no power to initiate case or gather evidence. A defendant's confession, was admissible and powerful evidence, but throughout the middle ages English judges had the authority to reject a confession obtained through the use of torture or other cruel methods of interrogation [14]. To be sure, there were some cases in which English judges, in violation of the common law, bowed to the reigning monarch and permitted the use of the rack, the thumbscrew, and other instruments of torture to elicit a confession [15]. Nevertheless, by the middle of the 17 century, the English had come to believe that it was unfair and generally unlawful to use torture or threats of torture to force confessions from suspected criminals [16]. English legal system and laws are predominant in Uganda as it was governed by England for a longtime. The legal systems is mainly on English common Law. The common Law that provides for confession in criminal justice system was received and imported into Uganda through reception clause of order in council of 1902 and 1920.

Legal framework of the law of evidence

The Constitution of the Republic of Uganda 1995 (as amended)

The constitution [17] is the supreme laws of the land and has a binding force on all authorities and person throughout Uganda. As the primary legal instrument, the constitution contains provisions on measures, concepts and institutions that regulate criminal proceedings in Uganda. The constitution is a single document and that every part of it must be considered as far as is relevant in order to get the true meaning and intent of any particular portion of the enactment [18]. The constitution makes all public offices and those in positions of leadership answerable and accountable to the people of Uganda. The rights of an accused person are stipulated clearly in the determination of civil rights and obligations or any criminal charge. A person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law [19]. The constitution further provides for the institutions and measures followed when conducting criminal proceedings. It also provides for the administration of justice by the judiciary, and further provides for the independence of the judiciary, with the courts of judicature to exercise judicial powers [19]. The

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constitution provides for the office of the DPP according to Article 120, and further empowers the DPP as the key prosecutorial agency with the mandate to institute and control all criminal proceedings in Uganda [19]. The parliament is also provided for by constitution in Article.77, with functions among others to enact laws on any matter, and to protect the constitution [19]. The principle of legality, which is also known as **Nulla poena sine lege** presupposes that no person commits an offence unless the offence is written down or defined and its punishment prescribed under written law. Article 28 (12)[19]. The principle further states that a person cannot be punished for an act that was not an offence at the time when it was committed, that is also entrenched in the constitution Article. 28 (7) and also in the case of Attorney General v Susan Kigula & 417 Ors[20], the court held that no penalty shall be imposed for a criminal offence that is severe in degree or description than the maximum penalty that could have been imposed for that offence at the time when it was committed Article 28(8). The only exemption is contempt of the court. The Police Force is provided for under Article.24 of the Constitution [19]. The police as the key institution with the function of preserving Law and Order according to Article 212 of the Constitution, with no exception to criminal proceedings despite the legal framework in the constitution, the Judiciary and police force are mandated to procure and record confessions. Confessions are admissible in courts of Law when either made before a magistrate (Judicial) or a Police officer of the rank of Assistant Inspector Police (AIP) and above (Extra-Judicial).

The Criminal Procedure Code Act Cap 116

This is the basic legislation providing procedures to be followed in criminal trials in Uganda. Section 2 of the Criminal Procedure Code Act [21] Provides for the procedure of conducting arrests. Section 6 provides for the procedure of conducting search of persons arrested. Section 7 gives any police officer the power to stop, search or detain any vessels, boat, aircraft, or vehicle in or upon there is reason to suspect that anything stolen or unlawfully obtained may be found and also any person who may be reasonably suspected of having in his or possession or conveying in any manner anything stolen or unlawfully obtained and may seize and such thing. With such power given to the police to arrest, search and detain the extra-judicial confessions could have been procured involuntarily; forcefully, with inducement, or even with threats [21].

The Penal Code Act Cap 120

This is an act that establishes a code of criminal law in Uganda. It provides for a range of criminal offences with their ingredients, which in criminal proceedings for one to confess to the commission of an offence, one must also accept to have committed the ingredients of the said offence with each one of them defined and their maximum penalty attached to it[22]. Many criminal offences are defined by the penal code act whereas others are set down in various other acts e.g. anti-corruption act, traffic and road safety act, computer misuse act, etc.

The Magistrates Court Act Cap 16

This is a legislation that regulates proceedings in the Magistrate's Courts in Uganda. Magistrate courts are subordinates courts established under Article 129 (d) [19]. Section 4 of the Magistrate's Court Act [23] categorizes the courts in grades, Grade I Magistrate court; Grade II Magistrate court; and Grade III Magistrate court. In the Magistrate's Courts Act[24] a charge is read or stated to the accused person by the court, and the accused person shall be asked whether he or she admits or denies the truth of the charge. The answer to a charge here is called a plea. The plea is initiated by the accused under this code just like a confession, although a confession comes in before there reading of a charge. According to the magistrate court act the plea must come from the accused, if it is a plea of guilty; it must be; voluntary, an unequivocal, plain, certain, an unambiguous and specific admission by an accused person before a court of competent jurisdiction accepting that he or she committed the crime with which he or she is charged. The accused should admit all the ingredients of the offence to qualify the plea of guilty [24].

The Trial on Indictments Act Cap 23

The Trial on Indictments Act[25] is a legislation which regulates proceedings in the High Court. The High Court is established under Article 129[19] and it is presided over by the principal Judge. It has unlimited criminal and civil jurisdiction. It receives appeal cases from the Chief Magistrates' Courts and has original jurisdiction of capital offences. In Section 63[25], if the accused pleads guilty, the plea shall be recorded and he or she may be convicted on it. The originator of the plea in this act is the accused person like in the case of confession. Section 132 provides for appeal from the High Court to the Court of Appeal by the accused person against conviction and sentence by the High which Confession doesn't provide for. In a confession the conviction or sentence cannot be challenged because it was admitted.

Section 60⁴¹ the accused shall be placed at the bar unfettered and the indictment shall be read over to him or her by the chief registrar or other officer of court and the accused person shall be required to plead instantly to the indictment.

The Judicature Act Cap 13

This provides for the hierarchy of courts, their Jurisdictions, Powers and Composition in Uganda starting

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with the Supreme Court, Court of Appeal and High Court. Section 15 of the Judicature Act[26] provides for the application of customary laws in the High Court as long as they are not repugnant to natural justice, equity and good conscience and compatible either directly or by necessary implication with any written law. Section 39 provides for procedures and practices in the courts of law.

The Uganda Human Rights Commission Act Cap 24

This act establishes the Uganda Human Rights Commission as a body mandated to deal with human rights violation in Uganda by the government. It also clearly outlines the functions of the commission in Section 7 of Uganda Human Rights Commission Act[27], which among others include;

- a) To create and sustain within society the awareness of the provision of the constitution as fundamental law of the people of Uganda according to Section 7 (1) (f), as well as Article 129 (d).
- b) To educate and encourage the public to defend the constitution at all times against all forms of abuse and violation, including defending their constitutional right of a fair trial and hearing before a court of competent jurisdiction instead of making confessions involuntarily.

The UHRC is also tasked with the duty to investigate human rights violations such as torture which in many instances has been used by the security forces most especially the Uganda Police Force to extract and procure confessions from suspects in custody.

The Evidence Act Cap 6

This act provides for judicial proceedings on or before the Supreme Court, the court of appeal, the High court and all courts established under the Magistrates' court act but to affidavits presented to any court or office nor proceedings before an arbitrator. Section 23 (1) (b) of the Evidence Act[8] provides that no confession made by any person while he or she is in the custody of a police officer shall be proved against any such person unless it is made in the immediate presence of;

- a) A police officer of or above the rank of assistant inspector; or
- b) A magistrate.

The wording of the section does not require that it is only a police officer above the rank of assistant inspector of police who can record a confession. The requirement is that the confession should be made in the presence of a police officer who is at least assistant inspector of police. This is an indication that a police officer below the indicated rank may record a confession by an accused person if he is in immediate presence of an officer at the level of inspector of police or of a higher rank [28].

The Extradition Act Cap 117

This act consolidates the law relating to the extradition of persons accused or convicted of crimes committed within the jurisdiction of other countries. Section 10 of the Extradition Act[29] provides for the hearing of a case and presentation of evidence, even in this act the constitutional right of a fair trial is provided for:

- 1) The magistrate shall hear the case in the same manner and have the same jurisdiction and powers, as nearly as may be, as he or she has in the exercise of criminal jurisdiction.
- 2) The magistrate shall receive any evidence including a confession which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted in an offence of a political character or is not an extradition crime.

Prevention and Prohibition of Torture Act, 2012

Section 2(1) Prevention and Prohibition of Torture Act[30] defines torture to mean; any act or omission, by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person whether a public official or private capacity for such purposes as-

- a) Obtaining information or a confession from the person or any other person;
- b) Punishing that person for an act he or she or any other person has committed, or is suspected of having committed or of planning to commit; or
- c) Intimidating or coercing the person or any other person to do, or to refrain from doing, any act.

Section 12 provides for institution of criminal proceedings either through public or private prosecution. Section 14 (1) provides that any information, confession or admission obtain from a person by means of torture is inadmissible in evidence against that person in any proceeding. Section 15 provides that a person who uses information which he or she knows or ought to have reasonably known to have been obtained by means of torture, commits an offence and is liable on conviction to imprisonment not exceeding two years or a fine not exceeding forty-eight currency points or both.

International Legislations

International Covenant on Civil and Political Rights (ICCPR)

ICCPR[31] is United Nations General Assembly resolutions with different charters including the African charter which Uganda is party to.

The African Commission on Human and Peoples' Rights

This commission [32], which Uganda is part to sets out principles and guidelines on the right to a fair trial and legal assistance in Africa and among them are the roles of prosecutors which doesn't include coercion or inducement of confession but proving the guilt of the accused beyond reasonable doubt in criminal case a principle which was upheld in the case of *Woolmington v Director of Public Prosecutions* [33], where is established that the burden of proof falls upon he who alleges the commission of a crime to prove his allegation, in criminal cases it's the prosecution and the proof must be beyond reasonable doubt, this was fortified in the case of *Uganda v Sekitoleko Joseph* [34]. Even when the confession is voluntary for example in the case of; *Kalungi Vs Uganda* [35], where the accused retracted his confession on ground that he had been force to confess to the murder of deceased.

Convention Against Torture

This convention which Uganda is a party to states;

Article 1 (1) [36], the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering arising only from, inherent in or incidental to lawful sanctions. It condemns extraction of information from a person or an accused person through torture including confessions. A confession is a voluntary statement made by a person charged with the commission of a crime or misdemeanor, communicated to another person, wherein he acknowledges himself to be guilty of the offence charged. This too would amount to torture since the accused is coerced to into admitting to having committed an offence.

CONCLUSION

In analyzing the legal frame work provided for the procurement and recording and its admissibility in courts, section 23 of the Evidence Act of Uganda does not require that it is only a police officer above the rank of assistant inspector of police who can procure and record a confession from a suspect. This is an indication any other officer can record a confession as long as he or she is in the immediate presence of the assistant inspector of police or a magistrate. The law here is ambiguous and not clear, leaving a lot to be desire as much as corroboration is a required before confession evidence is admitted in court.

RECOMMENDATIONS

It on this note that the article calls for proper training of the officers involved in evidence extraction to act professionally. Protection officers by state from unscrupulous fellow in society who want to get justice at all cost including inducing, forcing and threatening suspect to confess to a crime they didn't commit. More so, there is need for proper sensitization of the populace on the right of the suspects and an accused person, with the suspect being shown when, how and who to make a confession to, and that the confession must be made voluntarily without inducement, promise, threats, violation, force, undue influence and duress. Finally, there is need for the improvement of wages and salaries of officers involved in evidence extraction to encourage them to follow the laid procedures and processes.

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