

"THE COURT WILL INTERPRET THE WORD "MAY" AS MANDATORY WHEREVER IT IS USED TO IMPOSE A DUTY UPON A PUBLIC FUNCTIONARY TO BE CARRIED OUT IN A PARTICULAR FORM OR WAY FOR THE BENEFIT OF A PRIVATE CITIZEN."

Introduction

In the recent decision of the Supreme Court in **FRN v. Nnajofofor (2024) 10 NWLR (Pt. 1947) 443 S.C**, the apex court held while agreeing with the lower court that the court will interpret the word "May" as mandatory wherever it is used to impose a duty upon a public functionary to be carried out in a particular form or way for the benefit of a private citizen.

Case Background

In a 2-count charge against the Respondent ("Nwakuche Jerry Nnajofofor"), the Respondent was charged with failure to declare the sum of \$102,885 (One Hundred and Two Thousand Eight Hundred and Eighty-Five United States of America Dollars) to the officers and men of the Nigerian Customs Service as required under the provisions of section 2(3) of the Money Laundering (Prohibition) Act, 2011 (as amended by Act No.1 of 2012) and also aiding a Mr. Konja (at large) to commit an offense.

While taking the alleged confessional statement of the Respondent, the officers of the EFCC did not deem it imperative or expedient to use electronically retrievable video compact disc, or such other visual or audio-visual means of recording as envisaged by sections 15(4) and 17(2) of the Administration of Justice Act (ACJA), 2015. During the trial, the prosecution sought to tender the extra-judicial statement of the Respondent via the prosecution witness which the defense Counsel vehemently objected to on the ground of noncompliance with the above law thereby leading to a trial-within-trial.

At the end of the trial-within-trial proceeding, the trial court ruled on November 8, 2016, and admitted the extra-judicial statement in evidence. The Respondent appealed to the Court of Appeal which allowed the appeal and remitted the case to the Chief Judge of the Federal High Court for assignment to another Judge for hearing and determination, hence the Appellant's ("FRN") appeal to the Supreme Court.

Appellant's Argument

The Appellant argued that the court erred in law when it jettisoned the use of the literal rule of interpretation of the statute and rather adopted the mischief rule in interpreting the provision of sections 15(4) and 17(2) of ACJA (supra) in the absence of any manifest absurdity or ambiguity.

The Appellant also contended, that failure to comply with sections 15(4) and 17(2) of ACJA cannot result in rejection of the confessional statements, but should be treated as misconduct by the appropriate authority.

Respondent's Argument

The Respondent argued that sections 15(4) and 17(2) of ACJA, 2015 (supra) require a legal practitioner or any officer of the Legal Aid Council of Nigeria, et al to be present when a suspect is making a confessional statement. Therefore, the sections are a tool to ensure fairness and transparency in taking and recording of accused's statement.

The Respondent further argued that the appellant cannot rely on section 491 of ACJA (that deals with non-compliance with a provision of the Act as misconduct) to deny the Respondent the protection guaranteed him under sections 15(4) and 17(2) of ACJA, for his benefit.

Court's Resolution

The Court held that the provisions of sections 15(4) and 17(2) of ACJA, 2015 have strictly provided for a particular procedure of recording the statement of the defendant. The failure to perform the act following the dictates of those provisions of the law would be deemed to be a flagrant non-compliance with the law and in such a situation, the court would be entitled to invoke its interpretative jurisdiction to hold, that the non-compliance with the law is against the recalcitrant party.

Conclusion

The Court declared that the Courts would interpret the word "may" as mandatory wherever it is used to impose a duty upon a public functionary to be carried out in a particular form or way for the benefit of a private citizen. By this recent decision, although the word "May" when used in a statute is permissive, however, where such a phrase is used in a statute to impose a duty on a public functionary then it would be interpreted as mandatory and not permissive.