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Examining the Importance of Trial within Trial in Nigerian Criminal Justice System: A Critical Assessment of its Implications and Applications

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Abstract
It is quite unfortunate that there are persons who have been wrongfully convicted of crimes they did not commit as a result of extraction of indicting confessional statement under duress. Trial within trial in a criminal proceeding puts to a pause, an ongoing trial in order to determine the voluntariness of a confessional statement presented before the court as evidence against the defendant. This study examined the concept of trial within trial in the context of Nigerian criminal justice system and discovered systemic abuse of the procedures for the extraction of confessional statement. Hence, the study recommended stringent application of the extant procedures and further reforms to improve the effectiveness and fairness of trial within trial in Nigeria.

Keywords: Confessional Statement, Trial, Criminal Law, Jurisprudence, Evidence

1. Introduction

Since the emergence of criminal courts and tribunals in Nigeria, it has been in constant practice that in order to convict a person of a crime, there must be sufficient evidence presented to the court that proves the commission of the crime by the accused person. The court however, must strictly scrutinize whatever evidence brought before it to make sure that a person is not convicted of a crime he did not commit.

Confessional statement is one vital evidence that can independently prove the guilt of the defendant. It is usually obtained from the defendant by the Investigating Police Officer or any other investigative body. It is quite unfortunate that at times, such statement is usually extracted by means of oppression or by duress placed on the defendant. Consequently, affecting the voluntariness of the confessional statement. This vital flavour, is an essential factor that must be proved in order for such statement to be admissible as evidence in court. Where the statement is presented before the court, and the counsel to the accused objects to the voluntariness of such statement, the ongoing trial would have to cease until the voluntariness or otherwise of the statement is proved. Only then can the trial continue.

Trial within trial is one process that has nullified a lot of confessional statements that were acquired from the defendant by involuntary means and its continuous use of this procedure has greatly established its essence in our criminal justice system. Hence, the appraisal of the essence of trial within trial in Nigerian criminal system.

2. Conceptual Framework

Trial within trial is the process of the court determining the voluntariness or otherwise of a confessional statement. It is a procedure in criminal law wherein the alleged confessional statement of an accused person is subjected to trial scrutiny so as to determine whether the said statement was freely and voluntarily made to the police.[1] In this process, a person facing a criminal trial in a court of law raises an objection to the admission of an extra-judicial statement allegedly made by him to the police on the ground that the said statement was not and could not have been voluntarily made by him, same having been obtained under duress or some threats of whatever nature or actual physical torture to his person.[2]

Rhodes-Vivour JSC, as he then was, defined trial within trial in *Adamu Saliu v State*[3] in the following words:

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[1] E Udim, *Trial within Trial in Criminal Proceedings* (Princeton & Associates Publishing Co. Ltd 2016)

[2] Ibid.

[3] (2014)ALL FWLR(Pt. 743) 2051 at 2069

> *A trial within trial is a mini trial conducted to find out if the accused person made his confessional statement voluntarily. If the statement was not made voluntarily, it would be rejected by the court but if found to have been made voluntarily, it would be admitted in evidence and relied on by the court in convicting the accused person.*

It should however be noted that the only reason for trial within trial is to determine the voluntariness or otherwise of a confessional statement. Also, in *Augustine Ibeme v The State*[4],the Supreme Court *per* Chukwuma-Eneh, JSC, stated the rationale for the conduct of trial within trial in the following words:

> *The rationale behind instituting the procedure of trial within trial is to protect an accused person(particularly an illiterate person) from the over bearance of some overzealous Investigating Police Officers bent on securing convictions in their matters at all costs by using all manner of inducements, threats and promises to obtain confessional statement in the prosecution of their cases.*

Rhodes-Vivour, JSC in *Augustine Ibeme (supra,)*[5]also stated the rationale for trial within trial when he held that;

> *a trial within trial, a mini trial ensures that an accused person is treated fairly in a criminal trial. The procedure guarantees equality in the criminal justice system thereby keeping the streams of justice pure. Where the prosecution seeks to tender an extra judicial confessional statement of an accused person and it is challenged on the ground that it was not made voluntarily, a trial within trial is conducted for the sole purpose of finding out if the statement was made voluntarily or whether the confessions were beaten out of the accused person. If at the end of a trial within trial, the trial judge is satisfied that the confessional statement was not voluntary, such a statement is not admissible in evidence. If on the other hand the statement was made voluntarily, it is admitted in evidence. In both cases, the Judge should rule accordingly and bring the trial within trial to an end. The main trial then continues.*

However, most police officers resort to the use of physical violence and oppression just to get confessional statement from the suspect in their custody. It has become rampant and at times, some persons are even denied of their immediate access to a legal practitioner until they must have made their confessions.

3. Legal Framework

Universal Declaration of Human Rights of 1948 (UDHR) outlined the fundamental human rights that all persons are entitled to. This does not exclude the right to fair trial. Article 10[6] states that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him. This provision is not in anyway, discriminatory to any person on the basis of sex, race, gender, nationality. It aims at not just protecting the suspects, but also, making the societies safe and stronger by solidifying confidence in justice and in rule of law[7].

Article 14[8] provides that any country's domestic law, any person alleged to have committed acts of corruption and related offences shall receive a fair trial in criminal proceedings in accordance with the minimum guarantees contained in the African Charter on Human and People's Rights (ACHPR) and any other relevant international human rights instruments recognised by the concerned States Parties. Article

[4](2013) 10 NWLR (Pt. 1362)333 at 373.
[5]Ibid.
[6]Universal Declaration of Human Rights of 1948.
[7] United Nations Human Rights Office of the High Commissioner 'Universal Declaration of Human Rights aat 70: 30 Articles on 30 Articles'<https://www.ohchr.org/en/press-release/2018/11/universal-decleration-human-rights-70-30-articles-30-articles> accessed 17 September 2024.
[8]African Union Convention on Preventing and Combating Corruption.

6[9] provides for the right to a fair and public hearing. It provides that in the determination of his civil rights or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement also shall be pronounced publicly but the press may be excluded from all part of the trial. The convention further provides that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law[10]. In other words, where there is need for trial within trial to clear any atom of doubt concerning the guilt of the accused person, such person must not be deprived of that process.

Article 7(b)[11] has provided that everyone has the right to be presumed innocent until proved guilty by a competent court or tribunal. In other words, where anyone finds it necessary to use the process of trial within trial to prove his innocence, such privilege must not be denied of that person as it would be seen as a violation. The Charter further provides that every individual has the right to be tried within a reasonable time by an impartial court and tribunal[12].

The ICCPR equally made provision for equality before the court and tribunals in its Article 14[13]. It provides that in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. It further states that for reasons of morals, public order or national security in a democratic society or when the interest of the private lives of the parties so requires or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice interests of justice, the press and the public may be excluded from all or part of the trial. Any judgment however, rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children[14].

The 1999 Constitution also made various provisions of fundamental human rights that every citizen of Nigeria is entitled to. These rights are contained in Chapter IV of the Constitution from Sections 33-42. Section 34(1) gives right to every individual to be entitled to respect for the dignity of his person and shall not be subjected to torture or degrading or inhumane treatment[15] while section 36 provides for right to fair hearing[16]. It provides that everyone is entitled to a fair hearing within a reasonable time in court or any other tribunal established by law and constituted in such a manner as to secure its independence and impartiality while in determination of his civil rights and obligations. Subsection (4)[17] further provides that whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal. It also provides in subsection 5 that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty; provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

Section 46(1)[18] goes on to provide for situation where this fair trial has been, is being or likely to be contravened in any State in relation to him may apply to a High court in that State for redress. It can summarily be said by the provisions of the CFRN that no suspect that is to be investigated for the commission of a crime should be subjected to any inhumane or degrading treatment and must be given

[9] Article 6 of the European Convention on Human Rights, 1950.
[10]Article 6(2) ibid.
[11] Article 7(b) of African Charter of Human and Peoples' Right, 1981.
[12]Article 7(d) ibid
[13]International Covenant on Civil and Political Rights, 1966.
[14] Article 14 of the International Covenant on Civil and Political Rights, 1966.
[15]Section 34(1) Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap C23 LFN 2004.
[16]Section 36(1) ibid.
[17]Section 36(4) ibid.
[18]Section 46(1) ibid.

fair hearing. If any of these rights have been contravened with, he can actually seek for a redress in the High Court of the State he is located in.

Furthermore, the Administration of Criminal Justice Act 2015 made several innovations in the Nigerian criminal justice system. The clear aim of the Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crimes and protection of the rights and interests of suspects, the defendant and the victim[19].One of the innovations seen to have been established by the Act is in respect to the procedure of obtaining confessional statements from the accused person.

Section 15(4)[20] provides that where a suspect who is arrested with or without warrant volunteers to make a confessional statement, the police officer shall ensure that the making and taking of the confessional statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio visual means. It has however, been held in a plethora of cases that the word 'may' in the above section has been held to mean mandatory and imperative command[21], mandatory whenever it is used to impose a duty upon a public functionary to be carried out in a particular form for the benefit of a private citizen.[22] In order words, the police officer taking the confessional statement has a mandatory duty to record electronically on a retrievable video compact disc the statement of the suspect. Section 17[23] also provides that where a suspect is arrested on allegation of having committed an offence, his statement shall be taken, if he so wishes to make a statement and such statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of the Peace or any other person of his choice. Provided that the Legal Practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement, except for the purpose of discharging his role as a legal practitioner.

Again, where a suspect does not understand or speak or write in English language, an interpreter shall record and read over the statement as having been made by him and the interpreter shall attest to the making of the statement. The interpreter shall endorse his name, address, occupation, designation or other particulars on the statement. It is important that the suspect endorse the statement with his full particulars.[24]The essence of these two above sections is to curb the excess of power continually deployed by investigating police officers in the course of taking confessional statements from suspects and to avoid the need to conduct a trial within trial which has been observed to be time wasting in the administration of justice[25].

Court of Appeal in *Oguntoyinbo v FRN*[26] held in interpreting the sections above that once any complaint is made concerning the voluntariness of a confessional statement, and it is shown that Section 17(2) is breached rather than enforced by law enforcement agents as required in section 1 of the ACJA, such that the persons mentioned were available and willing to be present in the statement taking exercise but yet prevented by law enforcement agents, the court ought to and should rule such confessional statement as involuntary and therefore, inadmissible as evidence. In *Godwin Elewanna v The State*[27], the Court of

[19] U Chioma 'An Examination Of The Nigerian Laws On Confession: The Evidence Act, 2011 and The Administration of Criminal Justice Act, 2015'<https://thenigerianlawyer.com/an-examination-of-the-nigerian-laws-on-confession-the-evidence-act-2011-and-the-administration-of-the-criminal-justice-act-2015/> accessed 18 September 2024.
[20]Administration of Criminal Justice Act, 2015.
[21]*Nnajiofor v FRN*(2019)2NWLR(Pt.1655)157, Michel v Baker(1800)44 Ch.D 282.
[22]*Akaeze Charles v FRN* (2018) LPELR-43922
[23]Administration of Criminal Justice Act, 2015.
[24]Ibid
[25]*COP v Omordiale* (2021) LPEL-54803(CA)
[26](2018) LPELR-45218(CA)
[27](2019) LPELR-47605 (CA)

Appeal held to the effect that the provisions of sections 15(4), 17(1) and 17(2) do not apply to the admissibility of confessional statements. It is only the Evidence Act[28].

In addition, the Evidence Act has provided for the method by which a confessional statement cannot be obtained. In section 29(2)[29], it provides that if in any proceeding 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; by way of oppression of the person who made it; or in consequence or 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.

Subsection (3)[30] further provides that in any proceeding where the prosecution proposes to give in evidence a confession made by a defendant, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in either subsection (2)(a) or (b) of this section.

Subsection (4)[31] provides where more persons than one are charged jointly with an offence and a confession made by one or more persons in the presence of one or more of the other persons so charged is given in evidence, the court shall not take such statement into consideration as against any of such other persons in whose presence it was made unless he adopted the said statement by words or conduct.

Section 31[32]further provides that if a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practiced on the defendant for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of these questions, or because he was not warned that he was not bound to make such statement and that evidence of it might be given.

4. Implications of Trial within Trial

As observed by Udim, the underpinning motive for the conduct of trial within trial in criminal proceedings is to determine the voluntariness or otherwise of a confessional statement. According to him, a trial within trial is conducted by a court of law to resolve the question, whether an extra-judicial statement sought to be tendered by the prosecution, which said statement has been challenged by the defendant was indeed made freely and voluntarily.[33] In *Augustine Ibeme v The State*[34], the Supreme Court held that "the purpose and aim of a trial-within-trial is to establish the voluntariness or otherwise of a confessional statement ascribed to the accused person". The court per Chukwuma-Eneh, JSC[35], opined the rationale for the conduct of trial-within-trial that:

The rationale behind instituting the procedure of trial-within-trial is to protect an accused person (particularly an illiterate person) from the over bearance of some overzealous investigating police officers bent on securing convictions in their matters at all costs by using all manner of inducements, threats or promises to obtain confessional statements in the prosecution of their cases. The principle of trial-within-trial is one aspect of dispensing equal justice and fairness under the Rule of Law. By this simple

[28]Section 29 & 31
[29]Section 29(2) of the Evidence Act, 2011.
[30]Section 29(3) of the Evidence Act, 2015.
[31]Section 29(4) of the Evidence Act, 2015.
[32]Section 31 ibid.
[33]Udim (n1) p. 7.
[34](2013) 10 NWLR (Pt. 1362) 333 at 373 para. E.
[35]Ibid.

procedure, it is assured that statements of a person charged with a criminal offence obtained by a police officer or anyone in authority, otherwise afflicted by any inducement, threats or promises, being illegal at law, are expunged from the mainstream of the prosecution's case at the trial of his cause or matter; and the court is precluded from acting upon it in dealing with the case. The procedure of trial-within-trial is so much used to exclude involuntary statements of an accused person that is contrary to the law and it has stuck on for good reason.

It has prevented the use of an involuntary made confessional statement to be given as evidence against the maker who is the accused. This however, has benefitted accused persons who were victims of making involuntary confessional statements. It has ensured that confessional statements made involuntarily do not succeed in convicting an accused person. Just as it has been explained, once the prosecution makes move to tender a confessional statement made involuntarily by the accused, the accused must promptly raise an objection to its voluntariness. Then the court orders for a trial within trial to be done. Where the confessional statement has been found to be involuntary, it becomes worthless[36]. This procedure however, ensures to reveal the truth on the voluntariness or otherwise of a confessional statement and where it has been found to be made involuntary, renders it useless and worthless.

Where the court must have heard all arguments made by the parties in proving the voluntariness or otherwise of the confessional statement, and it has come to the conclusion that the confessional statement was indeed made voluntarily, the court would admit such statement as evidence against the accused in the main trial. But where the court finds that the statement was made out of the accused's freewill, the court would reject the statement as evidence against the accused. By virtue of the Evidence Act[37], the court has the power to exclude any evidence obtained improperly or in contravention of the law. The Court of Appeal in *Akpa v State*[38] set aside the conviction of the appellant who had been sentenced to death based on a confessional statement that was obtained through torture and not out of the appellant's freewill by the police.

Trial within trial also ensures maximum protection of the accused person's fundamental rights. Where a confessional statement is taken not out of one's freewill, that persons constitutional right to dignity of human person is automatically breached[39]. Trial within trial also has a deterrent effect on the investigative bodies to abstain from using coercive measures as means of obtaining confessional statements from accused persons. The statutes that establishes these bodies have expressly prohibited the officers from using coercive means of obtaining statements from accused persons. Failure to comply with the provisions of these statutes would warrant these officers to face disciplinary action or if possible, criminal charges.

5. Applications of Trial within Trial

The conduct of trial within trial is a step by step process that must be done accordingly and the defence lawyer must have a special knowledge of this tool in order to destroy the prosecution's case. This mini trial done in court can only be conducted when there is question as to the voluntariness of the confessional statement the prosecution seeks to tender as evidence against the accused[40]. Since it is an auxiliary trial within the main trial, it is the trial court where the main trial is conducted that conducts the trial within trial also.

In the case of *Kayode Babarinde v State*,[41] the supreme court summarized the procedure for trial within trial by stating that the prosecution and defence counsel may call witnesses who would be examined and

[36]Emmanuel Eke v The State(2011)1-2 SC[Pt. 11]219-2700
[37]Section 14 Evidence Act, 2011.
[38](2017)LPELR-425499(CA); Sunday v State(2014) LPELR-23143(CA)
[39]Section 34(1) of the 1999 Constitution of the Federal Republic of Nigeria.
[40]*Adamu v The State*(2014)ALL FWLR(Pt. 743) 2051 at 2069
[41] (2014) All FWLR (Pt. 717) 606 at 622 paras. D-G

cross examined and at the end of the trial, the court would deliver its ruling on whether or not the confessional statement in question should be tendered. It is pertinent to note that where the prosecution counsel wishes to tender a statement, where such statement is marked as "Exhibit", then an objection as to its voluntariness can be raised by the defence counsel but when it is marked an "ID"[42] the defence counsel does not need to object to its admissibility for it has stated that any statement or document, tendered and admitted that has been marked with "ID" has no evidential value in law and cannot be relied by the court when giving its judgement.[43]

Where the statement is marked as exhibit, then the defence counsel can raise an objection at that point without further delay, as to the voluntariness of such statement made by the accused. The court then has a duty to order for trial within trial. It must however, be noted that where a confessional statement is denied by the accused person that he did not make such statement, then there would be no need to conduct a trial within trial[44]. Such statement is referred to as retraction of confessional statement. Agaba[45]noted that "*Confessional statements may be challenged by an accused person(for reason) that he/she did not make the statement. This is otherwise called a retraction."* The Supreme Court, *per* Iguh, JSC in *Alarape v State,*[46]*stated that "retraction of or rescinding from a confessional statement or denial by an accused person of his having made such a statement does not ipso facto render it inadmissible in evidence.*"In order words, where there is retraction of confessional statement, trial within trial does not hold but the court still admits such statement as evidence of the prosecution and then determines the weight to be attached to such statement while constructing its verdict. Also, wherein the defence counsel raises the objection that the confessional statement was written for the accused to copy, then trial within trial cannot be ordered for by the court[47]. Trial within trial can only be ordered for when the accused made the statement himself but his action was against his wish because of the threats he was subjected to. In as much as it is fraudulent for a Policeman to manufacture a statement and present same to an accused person compelling him to copy such in his handwriting and also, affix his signature on it, such statement cannot be subjected to a trial within trial because it was not made by the accused[48]. This is regardless of the fact that the accused was threatened and forced to copy such statement. In this situation, the accused is rejecting the fact that he did make the statement but it was the police who did such and forced him to append his signature.

In *Augustine Ibeme v state*[49] the appellant alleged at the court during a trial within trial that the policeman who interrogated him gave him copy of confessional statement to recopy if not he will not go back home alive. The same was also done for his wife. The Supreme Court Judge *per* Chukwuma-Eneh explained that since there is no admission of the contents of the statements he copied, the issue of voluntariness or involuntariness of the statements which provoked a trial within trial to be conducted cannot be sustained. The court on its part, would admit the statement as evidence of the prosecution but then put careful consideration while giving its final judgment.

When the confessional statement was made on the promise of secrecy, or in consequence of a deception practised on the defendant for the purpose of obtaining it, or when he was drunk, or because it was made in questions which he need not to have answered, whatever may have been the form of these questions or because he was not warned that he was not bound to make such statement and that evidence of it might be given[50], even where the accused claims that he was not in the right frame of mind when he made the

[42] "ID" is short term for "identification"
[43] Udim, (n1) p. 34
[44]*Augustine Ibeme v The State* (2013)10 NWLR (Pt. 1362)333; *Osem v State*(2012)7 NCC pg.132 at 155 para. A-E
[45] J A Agaba *Practical Approach to Criminal Litigation in Nigeria* (2nd edition, LawLords Publications, 2014) p. 84.
[46] (2001) 5NWLR (Pt. 705) 79
[47] Udim, (n1) p. 57.
[48]Ibid.
[49] (2013) 10NWLR (Pt. 1362) 333
[50] Section 31 Evidence Act, 2011.

confessional statement is not a ground for trial within trial. However, such confessional statement is relevant in court as it is admitted as forming part of the evidence of the prosecution and such would be given heavy weight by the court while considering its final judgement.

Where an objection is raised as to the admissibility of a confessional statement for the reason that the statement was not first read out to the accused person at the police station even where such statement was made voluntarily, trial within trial will not be conducted. This issue was raised in *Owie v State*[51]where the Supreme Court considered whether trial within trial should be conducted when the defence raises objection as to the admissibility of the accused person's confessional statement on the ground that the statement was not read out to him but he made the statement voluntarily and signed it himself. It was held that there was no basis for trial within trial to be conducted.

A trial within trial is better conducted when the person alleged to have made the statement is present when the prosecution seeks to tender same. This would make an easier and direct source of evidence as it is the accused person who is in a proper position to recall the exact circumstances that led to him giving the confession out of his own will. The law backs this up where it states that "a defendant shall be present in court during the whole of his trial unless he misconducts himself in such a manner as to render his continuing presence impracticable or undesirable"[52]. Thus in *Lateef v Federal Republic of Nigeria*[53] the Court of Appeal stated that a trial within trial is just like a normal criminal trial where witnesses are called to give evidence and are also subjected to cross examination. It is however, necessary for the defendant to be present during the trial within trial. These instances given above are situations where trial within trial would not be considered to be conducted.

It is legally essential that once a person raises an objection to a confessional statement that is to be tendered by the prosecution on the basis of its voluntariness in its making, the court shall allow for a trial within trial to be held with no further delay. The court would be at fault if it fails to cease the ongoing trial in order to determine the voluntariness of the statement in question. Where a trial court fails to conduct a trial within trial and such confessional statement was relied upon while the judgement was being finalized, it would lead to the wrongful conviction of an innocent person. As it would be that conviction was based on tainted evidence. The means by which it was obtained would have questions that remain unanswered. The public would then wonder whether the Judiciary is actually independent and impartial as it claims to be. Its credibility would remain questioned. It would also be a violation of legal procedures for the court to fail to grant trial within trial even where objection to the voluntariness of a confessional statement is made. It has been followed for years in several judicial precedents that where there is an objection raised by the accused to the confessional statement the prosecutor is to tender, the court must order for a trial within trial. Failure of any court to call for this order would violate legal process. Such final judgement would also be seen to be partial and unfair. It would also be a breach to his constitutional right to fair hearing[54] of the accused person and his right to dignity of human person[55].

Furthermore, where the aggrieved party appeals the case because such statement was relied upon, and the appellate court having gone through the reasons for the appeal, finds it paramount that a trial within trial be conducted, it immediately quashes the decision of the trial court and gives its own judgement not relying of such confessional statement (after its involuntariness must have been proved).

[51] (1985) 1NWLR (PT. 3) 470
[52]Section 266(a) Administration of Criminal Justice Act, 2015.
[53](2010) All FWLR (Pt. 539)1171 at 1190.
[54]Section 36 of the 1999 Constitution of the Federal Republic of Nigeria
[55] Section ibid.

6. Challenges and Limitations

Just like every criminal trial that the burden of proof lies on the prosecution to prove that the accused person committed the crime[56], trial within trial holds the same. The burden of proving the voluntariness of a confessional statement to be given as evidence lies on the prosecution. The standard of proof for proving such is beyond reasonable doubt. The prosecution must prove that the confessional statement it seeks to tender was not gotten as a result of duress or coercion placed on the offender. It has been provided for in the Evidence Act[57] that 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 was not obtained in a manner contrary to the provisions of that section. This section expressly states whom the burden of proof lies on.

In *State v Gwangwan[58],* the Supreme Court *per* Ariwoola JSC, held thus: "generally, in any dispute as to the voluntary nature of any given statement, the onus lies on the prosecution to prove positively and affirmatively beyond reasonable doubt that the statement is voluntary." Similarly, in *Demo Oseni v State[59]*, the Supreme Court *per* Ngwuta JSC reiterated the position of the law on whom the burden of proof lies on in trial within trial when he stated thus: "*the burden of proving affirmatively beyond reasonable doubt that the confession was made voluntarily is always on the prosecution.*" By implication of this, it is the prosecution that calls witnesses and tender documents to prove that the statement in issue was made freely and voluntarily by the accused person. The court would err where it firstly calls upon the accused to prove the involuntariness of the confessional statement he is objecting to. This would be placing of the burden of proof on the wrong party. It is wrong and irregular. Such procedure would be prejudicial to the accused person and would be a denial of his constitutional right to fair hearing[60] and whatever decision that is given as while relying on the statement would amount to a nullity once it goes on appeal. To avoid this, it is always proper for the trial Judge to give direction for the conduct of the trial within trial at the time of the making of the order for the mini trial[61].

In *Ganiyu Gbadamosi v The State[62],* where objection was raised as to the confessional statement to be tendered, the trial Judge ordered the accused person to testify first and prove that the statement was actually made involuntarily by him. The Supreme Court held that the process was indeed defective and irregular procedure. *Per* Ogundare JSC expressed his disapproval to the procedure and stated that "the procedure adopted by the learned trial judge in his conduct of the trial within trial was so highly irregular that his decision to admit that statement in evidence must be set aside."The counsel to the accused must need to exercise patience and not move faster than he ought to by giving evidence to prove involuntariness of the confessional statement before the prosecution proves voluntariness where the court has not asked him to.

Furthermore, in *Lawrence Oguno v State [63]* the accused person called for witnesses to prove involuntariness when the court has not requested him to do so. The trial judge gave his judgement relying on that statement. The case having gone on appeal to the Supreme Court and the issue raised, Muntaka-Coomassie, JSC explained that where a party elected and or consented to an irregular procedure, he cannot, on appeal, challenge the said irregularity. The judge however, did not see any justification for allowing the appellants to raise the issue on appeal. The counsel must ensure to follow due process ordered by the court to avoid trapping himself with his unnecessary haste.

[56]Section 135 Evidence Act, 2011.
[57]Section 29(2) Evidence Act, 2011.
[58](2015) 13 NWLR (Pt. 1477) 600 at 631
[59](2012) 49 NSCQR 1190 at 1213
[60] Udim (n) p.38
[61]Ibid.
[62](1992) 9 NWLR(Pt. 266)465
[63](2013) Vol. 224 LRCN (Pt. 2) 214.

Once the prosecution has given evidence to prove the voluntariness of the defendant in giving the confessional statement, the burden would then shift to the defendant to disprove the facts given by the prosecution. The accused must give evidence to disprove the facts given by the prosecution if not, it would be assumed that that the statement was indeed given voluntarily[64]. Witnesses can be called to support their arguments. The accused himself would be in a better position to explain the atmosphere he was in that made him give the statement out of his own free will. The standard of proof required by the accused is on a balance of probabilities[65]. It can simply be put that the prosecution and the accused person has various roles to play while trying to prove and disprove the voluntariness attached to a given confessional statement. While it is the prosecution that has the legal duty to prove that the statement was obtained in compliance with law, the accused has the duty to prove that he made the confession while he was oppressed[66].

On the other arm, admissibility of a confessional statement refers to the acceptability and legality of such statement as evidence before the court. In order words, it means that the statement has to be reliable and accurate for the prosecutor to tender it as evidence against the defendant. The criteria for a confessional statement to be considered reliable and accurate is where such statement was made voluntarily that is, out of the defendant's free will and where the defendant is aware of his rights as he was arrested.

Jurisprudentially, when a prosecutor seeks to tender a confessional statement as evidence against the defendant which would support his case tremendously, and the circumstances that led to the making of such statement revolved around threats, violence, duress, the defendant must raise an objection to such statement at the point before it is entered into evidence. This is the only opportunity wherein objection can be raised as to the voluntariness of such statement. The counsel of the defendant however, must be alert as not to miss this opportunity, promptly take advantage of it and pray the court not to admit such as evidence. Once it is admitted into evidence, objection should not be raised as to its voluntariness as it would be futile at that point. The court having heard the objection, ought to order for a trial within trial to be conducted. Failure to raise an objection at this point may be deemed to be a waiver of the objection and the court may admit the statement without further inquiry.

The court in *Obinah John v State*[67]where the counsel for the defendant raised an objection as to the voluntariness of the confessional statement for the first time when the case had gone on appeal, the Judge *per* Monica B. Dongbam-Mensem held that "the challenge as to the voluntariness of the statement must be raised at the tendering of the said statement, not after it has been admitted and formed part of the evidence before the court." It is also a fact that an objection to the voluntariness cannot be raised at an appeal, it cannot also be raised for the first time during the defence by the defendant because it is not the duty of the defendant to talk about the confessional statement where it has not been tendered as an exhibit for evidence. Objection can also not be raised at the address stage of the defendant. Such objection would amount to a nullity.

It trite that while raising objection as to the voluntariness of a confessional statement, the accused person must be clear and specific in the tenor and language of his objection in order to leave no doubt as to the reason for his objection.[68] He must state in unambiguous words his objection to the statement because it is as a result of his words that the court would form an opinion whether or not to order for a trial within trial[69]. This position of law was stated in *Sani Abdullahi v State*[70]where the court stated that "*in raising an*

[64]Section 132 Evidence Act, 2011.
[65]Section 137 Evidence Act, 2011.
[66]Nalado v State(2019)13NWLR(Pt.1688) p.8
[67](2013)LPELR-22197(CA)
[68] Ekemini Udim, Trial within Trial in Criminal Proceedings (Princeton & Associates Publishing Co. Ltd 2016)p.30
[69]ibid
[70](2013) Vol. 224 LRCN(Pt. 2) 151 at 176.

objection at trial as to the voluntariness of his confessional statement, being tendered as Exhibit, the accused must be categorical and specific in the tenor of the objection he raises".

It can be clearly understood from this analysis that the counsel of the accused must promptly and timely, raise objection as to the voluntariness of a confessional statement (where necessary) and must bravely state so in clear, precise and unambiguous words when the statement is about to be tendered by the prosecution at the trial court. Where this opportunity is missed, there is no other time objection can be raised.

7. Conclusion and Recommendations

This study has emphasized on conscientious consideration and importance of trial within trial proceedings in Nigeria criminal justice system. Thus, application of this concept will enhance a fairer and more just criminal justice system in Nigeria and will further ensure that the rights of the accused are protected and justice is served.

From findings made concerning the concept of trial within trial in Nigeria's criminal justice system, this study recommends for a review and amendment of relevant laws and regulations that will expressly prescribe clear modality to trial within trial process so as to ensure consistency and integrity in the judicial system. The agencies responsible in obtaining confessions and the judiciary should leverage the use of technological instruments such as audio-visual recording, facial recognition, voice recognition, polygraph testing and other forms of digital evidence management, to enhance the accuracy and efficiency of trial within trial proceedings. Expert testimony from forensic specialists and psychologists are of essence especially on the admissibility of confessional statements.