

**A PAPER ON THE
REVELANCE OR
OTHERWISE OF TRIAL
WITHIN TRIALS VIS A VIS
THE ACJL**

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INTRODUCTION /SCOPE

In a criminal trial, the issue is seldom whether or not an offence was committed, more often than not, the controversy rages over the identity of the person or persons alleged to be actual perpetrators of the offence.¹ It is the duty of the prosecution to prove the guilt of the alleged perpetrators and one of the best ways of doing that is by a confessional statement flowing from such an alleged perpetrator. Generally however, a person standing trial for a criminal offence enjoys the presumption of innocence until his guilt is proved. This presumption of innocence is enshrined in the ground norm of our country per section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Now, in order to safeguard this constitutional right of an accused person, the Evidence Act, among other statutes make provision for the protection of a suspect's rights while under lawful custody when making a statement. The Evidence Act therefore expects and stipulates that every statement made by a suspect or accused must be born of his own free will and where such is not the case, the involuntary statement is discarded during trial. The process of determining the voluntariness of otherwise of a suspect's confessional statement is precisely what is referred to as a trial within trial (mini trial).

Over time however, it has become clear that the continued observance of the age long practice of conducting mini trials in order to ascertain the voluntariness of a suspect's statement has had the unfortunate effect of slow trials. Indeed, it appears that in observing this age long practice, we have sacrificed swiftness of trials at the altar of this particular practice.

This paper examines the relevance or otherwise of trial within trials vis a vis the ACJL as it relates to swift trials. We will begin by considering the concept and origin of trial within trials and then we will examine the ACJL as it relates to time protocols (length of trials) while making a case for the stay of trial within trials. We will finally conclude with recommendations for the maintenance of the practice of trial within trials in Edo State, while discarding the unwanted byproduct of delayed trials by the adherence to the requirements of the ACJL as regards the taking of statements of accused persons in a way that ensures such statements are truly voluntary.

TRIAL WITHIN TRIALS

Trial within trial is a mini trial within the context of a main trial. It is a procedure in criminal law wherein the confessional statement of an accused person is subjected

¹ AICHENABOR V. STATE (2015) ALL FWLR Pt 736, Pg 1986 @1989

to trial scrutiny so as to determine whether or not the statement was freely and voluntarily made by the accused person to the police.

The main advantage of a trial within trial is that it ensures that innocent persons do not slip through the cracks in our highly adversarial litigation system and get convicted on a forcefully obtained confessional statement. Trial within Trials have therefore evolved to arm the trial court with a procedural mechanism for sifting the chaff of involuntary and inadmissible evidence from the wheat of admissible evidence. However, as laudable as the aims of the trial within trial procedure, continued practice of the procedure has notoriously resulted in delayed trials. The question that arises therefore is; how did we get here? Is it impossible to retain the benefits of trial within trials and discard the disadvantage of delayed trials?

The concept trial within the trial in our criminal jurisprudence in Nigeria, is firmly rooted in the abolished Jury system which was applicable under the Common law. Indeed the procedure does not have a foundation in any substantive or procedural statutes in Nigeria.

In **Okaroh v. State**², the Court of Appeal observed that there was no enabling statute either in the Evidence Act or the Criminal Procedure Act (Law) to support trial within trials (ie; the suspension of a main trial and commencement of a mini trial within the main trial with the sole aim of determining the voluntariness of a confessional statement). Indeed the court of appeal noted in that case that with the abolition of the jury system in criminal trials in Nigeria, the trial-within-trial procedure had become rather spent or superfluous. It therefore becomes clear from the foregoing that trial within trials is just a matter of practice adopted by our judges and not a matter of law. The question therefore remains; why is trial within trial still in play, especially considering its notorious effect of delayed trials? Is it impossible to retain the benefits of trial within trials and discard the disadvantage of delayed trials?

ACJL, LENGTH OF TRIALS AND RIGHT TO FAIR HEARING ; A CASE FOR THE STAY OF TRIAL WITHIN TRIALS IN EDO STATE.

The Administration of Criminal Justice Law, Edo State (ACJL) was signed into law in June 2018 by the Executive Governor of Edo State and just like its Federal counterpart, the legislation which has been a breath of fresh air into the somewhat archaic criminal justice system in Edo State, introduced new mechanisms in our criminal justice framework.

Essentially, its purpose as enumerated in Section 1 of the Law is *"to ensure that the system of administration of criminal justice in Edo State promotes efficient management of criminal justice institutions; speedy dispensation of justice,*

² (1990) ANLR 130 @ 137

Upon arraignment, the trial of the defendant shall proceed from day-to-day until the conclusion of the trial. Where day-to-day trial is impracticable, the Law provides that parties shall be entitled to only five adjournments each. The interval between each adjournment, according to the Law, shall not exceed two weeks each. Where the trial is still not concluded, the interval for adjournments will be reduced to seven days each.

c. Assignment of information and issuance of notice of trial [section 382(2)]

By virtue of this section, information filed are to be assigned to courts by the Chief Judge within fifteen days and the Judge in turn, is to issue notice of trial within ten working days of the assignment of the information to his court.

d. Objection to the validity of charge [section 396(2)]

Any objection to the validity of the charge or information raised by the defendant shall only be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgement.

Now, the ACJL also made laudable provisions relating to Denovo trials, but it will be noticed that the law did not make any provisions for trial within trials. I humbly submit that this is proper as the issue of Evidence is not within the realm of what a State can legislate upon, it is in the Federal domain, exclusively for the National Assembly to legislate on.

Curiously however, the ACJ Act 2015, did not also make any provision for the retaining or abolition of the practice of trial within trial. It is argued however that the reason for this is that the provisions of the ACJA as well as the ACJL in relation to the mode of recording statements from an accused by the police, are meant to cure the necessity of trial within trials if they are properly adhered to. In other words, there will be no need for conducting mini trials to ascertain the voluntariness of a statement which was recorded in compliance with the provisions of the ACJL [that such statement should only be taken in the presence of a relative of the accused or the Counsel to the accused or where he is unrepresented, efforts should be made to obtain a Legal Practitioner from the Legal Aid Council of Nigeria, or other agencies or non-governmental agencies performing pro bono services]. Indeed, the list of persons mentioned above imports that the presence of any of them is mandatory anytime the statement of a suspect is taken. The reason for this provision is not far-fetched as it could be found in the Supreme Court decision in *Owhoruke V. C. O. P*³, where it was held as follows :-

"It must be noted that most crimes are committed by

³ (2015) 15 NWLR (pt. 1483) 557 at 576 A - E

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people with little or no education, consequently they are easily led along by the investigating Police officer to write incriminating statements which legal minds find almost impossible to unravel and resolve. Confessional statements are most times beaten out of suspects, and the Courts usually admit such statements as counsel and the accused are unable to prove that the statement was not made voluntarily. A fair trial presupposes that Police investigation of crime for which the accused person stands trial was transparent. In that regard it is time for safeguards to be put in place to guarantee transparency. It is seriously recommended that confessional statement should only be taken from suspect if, and only if his counsel is present, or in the presence of a legal practitioner. Where this is not done such confessional statement should be rejected by the Court".

In practice however, most police officers are yet to comply with the above provisions, thus making room for the necessity of trial within trials to prove that the statements were taken voluntarily.

It is my humble submission that the practice of trial within trials should not be expressly abolished as it was done in the practice direction made pursuant to the ACJL of Edo State, rather the practice should be maintained in order to ensure that defendants have fair trial when they raise the issue of involuntariness by way of objection to the admissibility of a confessional statement. This will compel the prosecution and the police to ensure strict compliance with the ACJL in taking statements of defendants and we will eventually get to a point where the procedure of trial within trials will no longer be needed.

It is noteworthy that the trial with trials are still being conducted in states which have been operating under the ACJL long before Edo State and this includes the Federal Capital Territory Abuja where trial within trials are still being conducted despite the fact that the ACJA is in force.^{4, 5, 6}

⁴ An FCT High Court sitting at Bwari, Abuja, delivered ruling on trial within trial on 14th March 2018 in CHARGE NO. FCT/HC/CR/42/2016 Between: COP V. EZEKIEL JOHN.
[https://www.google.com.ng/url?sa=t&source=web&rct=j&url=http://www.fcthighcourt.gov.ng/download/main%20ruling/2018-ruling/1st-quarter/court 17 hon. justice o. a. musa/COMMISSIONER-OF-POLICE-VS-EZEKIEL-JOHN-EVIDENCE-TRIAL-WITHIN-](https://www.google.com.ng/url?sa=t&source=web&rct=j&url=http://www.fcthighcourt.gov.ng/download/main%20ruling/2018-ruling/1st-quarter/court%2017%20hon.%20justice%20o.%20a.%20musa/COMMISSIONER-OF-POLICE-VS-EZEKIEL-JOHN-EVIDENCE-TRIAL-WITHIN-)

In *COP V. ALOZIE*⁷ the Supreme Court held;

"My lords, I think it is not out of place to restate the law on procedure of determining the voluntariness of a confessional statement. Where in the course of criminal proceedings, a confessional statement of an accused person is tendered in evidence by the prosecution and question is raised by the defense with regards to whether it was made or obtained voluntarily, the trial court has a duty and in fact must suspend the main trial and conduct a trial within trial to determine its voluntariness or otherwise. At the end of the mini trial, the trial court must make up its mind in the light of the evidence adduced before it by both the prosecution and the defense...." (underlining mine)

It is also important to point out that since the constitutional rights of liberty and life of suspects/ Defendants are at stake in a Criminal trial, it is recommended that the provisions of the Administration of Criminal Justice Law as regards the recording of accused persons statements be complied with in totality, and it is my humble submission that until this is done, the procedure of trial within trials should not be abolished in Edo State. Although none compliance with the law cannot render the confessional statement inadmissible because the provisions of Section 17 (1) and (2) of the ACJL are not compulsory but commendable..

TRIAL.pdf&ved=2ahUKEwjDvffi2IjeAhXKB8AKHQs6BZ0QFjACegQICRAB&usg=AOvVaw1UN1brmAl7ItfiWB2339Z8 ,
(accessed 15th October, 2018)

⁵ FCT High Court sitting at Maitama, Abuja, ordered trial within trial on the 13th of March 2018 in respect of the confessional statements of the defendants in Commissioner Of Police V. Ademola Akaka, Kelvin Terkura, Michael Exe, Kelvin Okafor, Emmanuel Onoja, And Abdullahi Aliyu.
<https://www.google.com.ng/url?sa=t&source=web&rct=j&url=https://dailynigerian.com/court-orders-trial-within-trial-armed-robbery-case/amp/&ved=2ahUKEwjDvffi2IjeAhXKB8AKHQs6BZ0QFjAlegQIBhAB&usg=AOvVaw2AAVEFtLzr5OwkqgXOggi&cf=1> (accessed 15th October, 2018)

⁶ On 19th February 2018, An FCT High Court in Maitama, Abuja ordered trial within trial in a culpable homicide charge against one Mathew Ankyoor, who allegedly killed his wife. Justice Peter Affen, who gave the order, said it was necessary to ascertain the veracity of the statements made by the accused.
https://www.google.com.ng/url?sa=t&source=web&rct=j&url=https://www.vanguardngr.com/2018/01/court-orders-trial-within-trial-hubby-allegedly-beat-pregnant-wife-death/amp/&ved=2ahUKEwjDvffi2IjeAhXKB8AKHQs6BZ0QFjAlegQIAxAB&usg=AOvVaw3vJr0tikh8YbV6no-v_wl&cf=1 (accessed 15th October, 2018)

⁷ (2017) NWLR (PT 1565) 368, PARA B-E,

Now, the point has been made that trial within trials occasion delays. Indeed a trial within trial is a complete trial on its own and for the court to hold a trial within trial, it will put the main trial on hold and call on both parties to prove whether the statement is voluntarily obtained, thus, the parties call witnesses, examine them, tender exhibits (where available), address the court based on the evidence tendered after which the court will deliver a ruling in which it will determine whether or not the challenged statement will be admitted by the court. While admitting that all these could be time consuming, it is suggested that the time expended can be bridged by adopting the method of witness depositions wherein a defendant is required to file and adopt his evidence as to the manner in which the statement being objected to was taken and upon the adoption of the said deposition, the prosecution will be required to cross examine the defendant on the contents of the adopted deposition, and the court delivers a swift ruling on the admissibility or otherwise of the contested statement. Surely, this will reduce the amount of time spent in the mini trial and thus promote speedy trials.

It is therefore my humble submission in line with the Supreme Court decision in **Owhoruke v. Cop (Supra)** that a fair trial presupposes that Police investigation of crime be transparent and as such, the safeguards put in place by the ACJL as regards the recording of confessional statements must be complied with and until that happens, the procedure of trial within trial should be retained in Edo State in order to accord defendants their rights to fair hearing.

RECOMMENDATION FOR STEPS THAT WILL REPLACE TRIAL WITHIN TRIALS IN EDO STATE ON THE LONG RUN.

We have hitherto looked at the concept and origin of Trial within Trial in Nigeria, as well as its effect of slow dispensation of Justice. This paper has also examined some of the many innovative provisions of the ACJL as regards speedy trials and have advocated for the stay of the trial within trial procedure. In this segment, I will highlight three main measures that can be taken to retain the benefits of trial within trials while doing away with the unwanted effect of delayed trials in the long run in Edo State. They are;

- a. Laying proper foundation by the prosecution at the stage of the examination in chief of the investigating officer, before the statement is sought to be tendered in evidence.
- b. Enforceability of the judges rules

c. Compliance with the ACJL

Firstly, it is recommended that in every criminal trial where the prosecution intends to tender a confessional statement of a defendant, the prosecution diligently takes steps during the examination in chief of the investigating police officer or whoever recorded the confessional statement to lay a proper foundation as to the way and manner in which the confessional statement was made. Indeed, if at that stage, the prosecution adduces sufficient evidence from its witness disclosing how the statement of the defendant was made by the free will of the defendant, without any form of duress, the requirement of the Evidence Act would have been complied with, without having to stop the main trial and conduct a mini trial, thus achieving the advantage of the trial within trial procedure, but doing away with the disadvantage of delays.

Secondly, it is recommended that the judges rules be given legal backing.⁸ Indeed, If the Judges' Rules are given the force of law and adequately enforced, it will be unnecessary to resort to trial within trial to determine the admissibility of a confessional statement.

The Judges rules are rules formulated in England by the Judges of the Queen's Bench Division in 1912.⁹

The rules stipulate that a Police Officer is expected to caution the accused, record the time and place the questioning was held, parties present, allow the accused to write his own statement without prompting, and where the Police Officer writes for him, the Officer should write down the exact words of the accused person, the statements should be read and interpreted to him, signed by accused person and the police officer. Finally, the accused and the confessional statement should be taken before a superior police officer for countersigning.

In **Dairo v FRN**,¹⁰ it was held that the Judges rules are made for the efficient administration of justice. The aim is to ensure that where a confession is voluntary, it is really voluntary. Despite this noble intention however, the Courts have

⁸ Adekunle C.O., "A Case for the Abolition of Trial within Trial in Nigerian Criminal Jurisprudence" (2017) in "The Legal Insight" International Journal of The Law Students' Society, Bowen University, Iwo, Nigeria. Essays in Honour of Late Mr. Oluwasegun Isaac Aderibigbe (The Legal Insight, Vol 1, 2017, Pg 179 – 187).

⁹ Agaba, J. A. (2015). *Practical Approach to Criminal Litigation in Nigeria*. (3rd ed.). Abuja, Nigeria: Bloom Legal Temple Publishers. Pg 105

¹⁰ (2012) 16 NWLR (pt. 1325) 129.

consistently held that the judges rules are mere administrative guidelines that do not have force of law¹¹.

In **Usman v The State**¹² the court held 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.¹³

It is recommended however that the Judges' rule be reproduced in our practice directions and the police officers made to comply with the stipulations while obtaining the statement from the accused person. If these cautionary steps are made condition precedent for the admissibility of a confessional statement, and the courts are given the power to *suo motu* or on the application of counsel to the defendant reject such statement whenever the prosecution cannot prove that the conditions have been satisfied beyond reasonable doubt, it will go a long way in compelling the police to comply with the ACJL ultimately as well as sift the chaff of involuntary and inadmissible evidence from the wheat of admissible evidence and achieving speedy trials.

Thirdly, it is recommended that the police be impressed upon to comply with the innovations in the ACJL especially in relation to the recording of statements.

The Administration of Criminal Justice Law of Edo State has innovatively added the requirement for a video coverage into the process of how the statement of an accused person should be obtained.¹⁴ Furthermore, such statement should only be taken in the presence of the Counsel to the accused or where he is unrepresented, efforts should be made to allow him access to a relation, a Legal Practitioner from the Legal Aid Council of Nigeria, or other agencies or non-governmental agencies performing pro bono services.¹⁵ Efforts should also be taken to ensure that the process is transparent. If this procedure is diligently complied with, it will be needless to resort to a trial within trial to determine the voluntariness of any statement obtained from such transparent process.

¹¹ See **Oladipupo vs The State** (2013) 1 NWLR (pt 1334) 68, where the Court of Appeal noted that the Police have fallen behind in the application of the Judges' Rules in the investigation of criminal offences especially in obtaining statements from accused persons.

¹² (2014) All FWLR (pt 713) 1917 per Muhammad JCA at p. 1701

¹³ See also **Aiarape v The State** (2001) 2 SCNJ 162 the court held that this is merely a commendable practice and its absence does not ipso facto render any statement inadmissible.

¹⁴ See sec 15(4) ACJL

¹⁵ See sec 17(2) ACJL

Hence it is recommended that the police be sensitized to meet up with the requirement of complying with these provisions of the law.

CONCLUSION

This paper has examined the concept and origin of Trial within Trial in Nigeria, as well as its effect of slow dispensation of Justice. We have also looked at some of the many innovative provisions of the ACJL as regards speedy trials and have advocated for the stay of the trial within trial procedure until the police fully complies with the provisions of the ACJL as regards the recording of statements of from defendants. We have also made some recommendations for the subsequent replacement of the trial within trial procedure, which will ensure speedy trials, while reducing delays in trials.

However, Hon. Justice R. K. Nwokedi, Chief Judge of Anambra State (as he then was), had this to say:-

"Personally, I have often wondered what is the necessity of a trial within trial before the admission of an alleged confessional statement in our courts. In England, where trial is by jury, it may be said that the jury may be prejudiced by the controversy as to whether the same had been made voluntarily or not. In this country, where the court is the judge and jury, it seems to me that the judge can as well resolve the issue as to voluntariness, with other issues, in his judgment. The prosecution, if challenged as to the voluntary nature of a confession, should lead all evidence at its disposal to establish same. The accused in his defense may lead rebuttal evidence. The judge makes his findings at the conclusion of evidence. The same judge who conducts the mini-trial, conducts the main trial. The issue of being prejudiced would not arise. Even if wrongfully admitted, the same may be expunged from the record while writing the judgment. The issue of mini-trial as far as this country is concerned, is an unnecessary, and at the same time, cumbersome adjunct to our criminal trial."

¹⁶

It is important to note however that although personal convictions of judges and counsel may see no need for trial within trials, the Supreme Court is yet to give that direction and until such a directive/judgment or ruling is delivered by the Supreme Court, the proper thing to do will be to continue with the procedure of trial within trials, in line with the decision of the Supreme court which is case law binding on all courts.

¹⁶ Justice R. K. Nwokedi, C.J., (then) of Anambra State, "Admissibility of Confessional and other Statements", Unpublished.

Conclusively, it is submitted that the practice of trial within trial may be a needless appendage and thus irrelevant if we are to achieve the spirit and purpose of the ACJL as regards quick dispensation of justice. However, where the statement of a defendant was alleged not to have been made voluntarily, it is my submission that the court ought to opt for a trial within trial. The court must not be seen to shut down a defendant who claims his statement was made under duress. The use of trial within trials should be at the discretion of the court and as each case's facts determine.

Thanks for your attention.