



**TRIAL WITHIN TRIAL AS A CLOG TO
FOSTERING SPEEDY TRIALS**

BY

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BACKGROUND

- Jury system
- practice

LEGAL FRAMEWORK

- CRFN 1999
 - Presumption of innocence
 - Right to remain silent
 - Right to trial within a reasonable time

Sections 35(2), 36 (2) and (4)

LEGAL FRAMEWORK CONTD.

- EA 2011

- If, in any proceeding where the prosecution proposes to give in evidence a confession made by a defendant it is represented to the court that the confession was or may have been obtained –
 - (a) by oppression of the person who made it, or
 - (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him except **in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section.** Section 29 EA 2011

WHEN TO CONDUCT TRIAL WITHIN TRIAL

- When the prosecution seek to tender the purported statement
- It should be raised timeously - *Alo v The State* [2015] All FWLR (pt. 775) 262 (SC)
- The purpose of conducting trial within trial is to test whether the statement of the accused was made voluntarily, or he was coerced, induced, threatened, deceived, or forced by means of any unnatural intervening factors which would have influenced the making of the statement. - *Ibeme v State* [2013] 10 NWLR (pt. 1362) 333 (SC)

PROCEDURE IN NIGERIA, SOUTH AFRICA, BOSTWANA, UGANDA AND KENYA

- The prosecution seek to tender confessional statement of the defendant as exhibit before the court (usually through the IPO)
- the defence raises an objection that it was not made voluntarily
- The court orders a trial within trial to ascertain the voluntariness or otherwise of the statement
- Research has shown that that the countries shares similar procedure, the difference is that their laws have incorporated it, while in Nigeria is a mater of practice

PROCEDURE CONTD.

- The countries unanimously alluded to the fact that trial within trial is an off-shoot of jury system.
- It is evident that all these countries had put some precautions in place to avoid involuntary confessions, yet they allow the old jury system of trial within trial to still surface while admitting the confessional statements.

EFFECT OF TRIAL WITHIN TRIAL ON SUBSTANTIVE TRIAL

1. It consumes the time of the court and the prosecution.
2. It affects the neutrality of the judge
3. It elongates the detention of defendants.
4. It is an additional cost for the government/prosecution as witnesses will still be produced during the substantive trial.

The ACJA 2015 has provided for alternative to trial within trial – section 15(4) and 17(1) &(2)

EFFECT CONTD.

- The ACJA also provided for day-to-day trial from arraignment until the conclusion of the trial and where it is impracticable, not more than five adjournments shall be allowed provided that the interval between each adjournment shall not exceed 14 working days.
 - Section 396(3) – (6) of the ACJA 2015

EFFECT CONTD.

- without going through the rigorous process of trial within trial, those excess can still be checked through:
- examination-in-chief, cross-examination and re-examination of law enforcement agents and defendant.
- The duration of the time the defendant spent in police custody before he “volunteered” to make the statement on electronic records.
- Calling those person in whose presence the statement was made as witnesses

CONCLUSION AND RECOMMENDATIONS

- It is evident that trial within trial is time consuming for the court, prosecution and the defendant therefore a clog on speedy trial.
- It is recommended as follows
- To ensure speed dispensation of justice the ACJA/L should be strictly adhered to, and the old practice gotten from jury system should be abandoned.

CONCLUSION AND RECOMMENDATIONS

- That the judges should see that the provisions of the ACJA particularly sections 15, 17 and 396 are strictly adhered to enhance the criminal Justice system
- That the ACJA/L be implemented in states that have domesticated it, and for states yet to domesticate it, they should do so.

CONCLUSION AND RECOMMENDATIONS

- That the ACJA monitoring committee should, as a matter of urgency, be inaugurated in states that do not have the committee. For those that have it, they should be up and doing in seeing that the ACJA as well as the ACJL is fully implemented.
- NGOs are also called on to keep an eye on the committee and assist in discharging their duties where necessary.

