COMPLIANCE WITH THE PROVISIONS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015; A PANACEA FOR TRIAL WITHIN TRIAL

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DECLARATION

I, **Osaro Wisdom ISAAC** with MAT NO **PG/LAW1504343** hereby declare that apart from references made to other people's work and duly acknowledged herein, this work is the product of my personal research efforts under the supervision of Dr. (Mrs) Elizabeth Iyamu-Ojo and has neither in part nor in whole been presented elsewhere for the award of a degree or certificate.

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CERTIFICATION

We the undersigned, do hereby certify that the research work for this dissertation and the subsequent preparation for this dissertation is project work was submitted by Osaro Wisdom ISAAC, with the Matriculation Number PG/LAW1504343, in partial fulfillment of the requirement for the award of the Bachelor of Laws (LL.B) Degree

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DEDICATION

I dedicate this work to Almighty God, the author of wisdom, the giver of knowledge, the hope of the hopeless, the power of the weak, and mouthpiece of the oppressed, my ever present help in times of need.

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Jury Law, Cap 58, Laws of Lagos State of Nigeria, 1973

Money Laundering (Prohibition) Act, 2012

Police Act, 2020.

ABBREVIATIONS/ACRONYMS

ACJA	-	Administration of Criminal Justice Act
ACJL	-	Administration of Criminal Justice Law
CFRN	-	Constitution of the Federal Republic of Nigeria
NWLR	-	Nigeria Weekly Law Report
SC	-	Supreme Court
CA	-	Court of Appeal
LPELR	-	Law Pavilion Electronic Law Report
EFCC	-	Economic and Financial Crimes Commission
IPO	-	Investigating Police Officer
DPP	-	Department of Public Prosecution

ABSTRACT

The administration of criminal justice system in Nigeria has been bedevilled with numerous challenges, but of serious concern is the avoidable delay confronting the system. This delay, more often than not, results from technicalities employed by the defence simply by recourse to the right to object to the voluntariness of confessional statement even when in fact, the defendant may have voluntarily made such statement being objected to. Where such objection is raised, the proper order the court should make in such circumstances is to order trial within trial which usually stalls the substantive case until the voluntariness or otherwise of the said confessional statement is determined. The passage of the Administration of Criminal Justice Act 2015 by the then President Goodluck Ebele Jonathan's administration has been viewed as a major breakthrough especially in the area of promoting efficient management of criminal justice institutions as well as speeding dispensation of justice in the criminal justice system in Nigeria. The study finds that the Administration of Criminal Justice Act 2015 makes a conscious effort at reducing delays in the system of administration of criminal justice in Nigeria as well as ensuring that the rights of defendants are adequately protected as expressly captured in section 1(1) of the Administration of Criminal Justice Act 2015 (the Act). It is the writer's view that if the law enforcement agents can strictly adhere to the provisions of the Act which was enacted with a view to curbing the avoidable delays inherent in the system, the issue of trial within trial may become unnecessary in Nigeria courts. The resultant effect of reducing or (in extreme case) eradicating the avoidable trial within trial is that there will be speedy dispensation of justice. The research therefore aims at improving awareness on the need to compel the institutions, authorities and persons involved in criminal justice procedure and administration in Nigeria to comply with the provisions of the Administration of Criminal Justice Act 2015 as enjoined in section 1(2) of the Act, if the objectives of the Act must be realised. In examining in *extensio* the causes of delay in the administration of criminal justice in Nigeria, this research work employed the doctrinal methodology. For the purpose of this study, the form of data collection would encompass both primary and secondary data taking into cognizance both judicial and extra-judicial sources. In effect, sources such a relevant statutes and regulations, law reports, journals, articles, textbooks, conference papers, published legal and relevant internet materials etc. shall be utilized in the course of this work. The study recommends that there should be conscious effort on the part of the courts in ensuring that law enforcement agents adhere strictly to the provisions of the Act with a view to bridging the disparity between the law and practice, eleven years after its enactment. It is the writer's view that if the relevant authorities can be committed to strictly enforcing the provisions of the Act, the avoidable delays inherent in Nigeria criminal justice system would be curbed and the objective of speedy dispensation of justice would be realised.

CHAPTER ONE

INTRODUCTION

1.0. Introduction

The administration of criminal justice system in Nigeria has been characterised with numerous and multifaceted challenges, but of serious concern is the avoidable delay inherent in the system. This delay in the dispensation of justice is not only worrisome but also inimical to the effective attainment of substantial justice.[1] This delay, more often than not, results from technicalities employed by the defence counsel who simply exercise his right to object to the voluntariness of confessional statement even when in most cases, the defendant may have made such statement without coercion, threat or intimidation.

It is trite that where such objection is raised as to the voluntariness of alleged confessional statement of a defendant, the proper order the court will make in such circumstances is to order trial within trial. This order willy-nilly usually stalls the substantive case until the voluntariness or otherwise of the said confessional statement is determined.

The passage of the Administration of Criminal Justice Act 2015 by the then President Goodluck Ebele Jonathan's administration is viewed as a major breakthrough especially in the area of promoting efficient management of criminal justice institutions and speedy dispensation of justice in the administration of criminal justice system in Nigeria.

A close consideration of the provisions of the Act reveals that there is a conscious effort at reducing delays in the system of administration of criminal justice in Nigeria as well as ensuring that the rights of defendants are adequately protected as expressly provided in section 1(1) of the Administration of Criminal Justice Act 2015.[2] However, there appears to be a gap between the

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[1] Agbonika John and Alewo Musa, 'Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint' [2014] (26) *Journal of Law, Policy and Globalization*. 130

[2] Hereinafter in this work referred to as the Act.

provisions of the Act and the practice as the level of compliance with the provisions of the Act among law enforcement agencies has been very low.

It is the writer's view that if the law enforcement agents can strictly adhere to the provisions of the Administration of Criminal Justice Act 2015 which was enacted with a view to curbing the avoidable delays inherent in the system, the issue of trial within trial may become unnecessary in Nigeria courts. The resultant effect of reducing or (in extreme case) eradicating the avoidable trial within trial is that there will be speedy dispensation of justice.

Despite, many presidential commissions and committees recommending reforms in the criminal justice system in Nigeria, and the attendant legislations geared toward enhancing efficiency and speedy dispensation of criminal justice in Nigeria, the system has continued to perform below expectation. It is against this backdrop that writers have asserted that delay in the dispensation of criminal justice, arguably remains the most disturbing aspect of criminal justice administration in Nigeria. It is also argued that no matter how good the intention of the law maker may be, without adequate safeguards for the enforcement of the provisions of such legislation, they will at best be tantamount to mere wishes.

This research therefore examines in *extensio* the delay in the administration of criminal justice system in Nigeria, taking into account both judicial and extra-judicial causes with the aim of improving awareness on the need to compel the institutions, authorities and persons involved in criminal justice procedure and administration in Nigeria to comply with the provisions of the Administration of Criminal Justice Act 2015 as enjoined in section 1(2) of the Act, if the objectives of the Act must be realised. The court can do this simply by rejecting alleged confessional statement obtained in defiance to the relevant provisions of the Act. In other words, any confessional statement not obtained in compliance with the provisions of the Act should be rejected by the court instead of ordering trial within trial which occasion delay in the criminal justice system and thereby defeating the essence of the enactment of the Act.

This research work will ultimately proffer recommendations which are expected to enhance the effectiveness of Nigerian courts in the area of prosecution of crimes.

1.1. Background to the Study

It is an incontrovertible fact that the Nigerian criminal justice system is characterised by undue delay. It be equally believed that one of the factors causing this delay is the practice of trial within trial. Consequently, there has been debate over whether trial-within-trial adjudication should be abolished so as to enhance speedy dispensation of criminal justice in the administration of justice system in Nigeria. As a matter of fact, this debate has continued to resonate among experts.[3]

Trial within trial refers to the practice where the voluntariness or otherwise of a confessional statement sought to be tendered by the prosecution is ascertained. When a defendant is arrested on allegation of crime and he is alleged to have made a confessional statement, the prosecution will usually rely on such extra-judicial statement for the purpose of proving the guilt of the defendant in the court. Most often, the defence will raise objection to the admissibility of such extra-judicial statement on the ground that it was not obtained voluntarily. Where this happens, the court will order trial within trial to ascertain the voluntariness or otherwise of the confessional statement sought to be tendered by the prosecution. The implication of this practice is that the substantive trial is suspended pending the determination of the voluntariness or otherwise of the said confessional statement. This practice is known to occasion delay in the system of administration of criminal justice in

[3] Yetunde Ayobami Ojo, Experts back judicial reforms as remedy for trial within trial flaws' Vanguard Newspaper, 17 May, 2022. <Available at https://guardian.ng/features/law/experts-back-judicial-reforms-as-remedy-for-trial-within-trial-flaws> accessed 13 May, 2024

Nigeria and it is for this reason that some legal experts are advocating for its abolition on the ground that it is delay tactics employed by some defence teams to either delay trial or frustrate it ultimately.[4]

The advocates of the abolition of trial within trial are of the view that the Nigerian criminal justice system has come of age and can do away with the age long practice of conducting trial within trial whenever the admissibility of a confessional statement is objected to on the ground of voluntariness. One of their justifications for the call for the abolition of the practice is hinged on the ground that trial within trial wastes the time of the court as it is a complete trial on its own.[5]

More so, when the issue of involuntariness is raised, the court will have to consider other surrounding circumstances before it can act on the confessional statement of the defendant, the mere fact that the court even admits the statement as being made voluntarily during the trial within trial doesn't automatically translate to the fact that the court will convict the defendant based on such admitted confessional statement. Hence, the whole process of calling witnesses, examining, cross-examining and re-examining them, tendering exhibits and delivering addresses in order to determine the sole issue of voluntariness is needless, as the time expended on such processes can be effectively utilized by the court in hearing the elements of the case. This is much more so, as the witnesses will repeat almost all what they have informed the court in the trial within trial when they are put in the witness box to testify

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[4] Ibid. See also O.M. Atoyebi, The Trial Within Trial Procedures and Its Purpose in a Criminal Proceeding. Available at https://omaplex.com.ng/the-trial-within-trial-procedures-and-its-purpose-in-a-criminal-proceeding. Accessed 20 August 2025.

[5] **Adekunle C.O,** "*A Case for the Abolition of Trial within Trial in Nigerian Criminal Jurisprudence.*" "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).

in the main case. It is argued therefore that if the trial within trial is jettisoned, it will lead to faster dispensation of justice and reduce the numerous years that such cases spend in court.[6]

To these set of scholars advocating for the abolition of trial within trial, the innovative Administration of Criminal Justice Act, 2015 which was designed to achieve speedy dispensation of justice may be hampered by the retention of the practice.[7]

One major resultant effect of these delays is the overcrowding of prisons across the country. A statistic summary of report released by the National Correctional Service on 13th of May, 2024 puts the total inmate population in Nigeria at **80,858** with about 55,411 representing 69% of the innates awaiting trial.[8]

One of the purposes of the Act is to enhance speedy administration of criminal justice. Delay in the administration of justice has been identified as a major challenge facing the Nigerian Judiciary.[9] Delay has over the years no doubt been a major impediment to effective and speedy dispensation of criminal justice in Nigeria. The Act was therefore enacted to address this concern amongst others.

The ACJA made some innovative provisions aimed at solving the problem of delays in criminal trials. These provisions have been put in place to ensure amongst others, speedy trial and quick disposal of criminal cases in the interest and as a right of a suspect, the defendant, the victim and in fact the society at large.[10]

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[6] Christian Ogbodo, Trial-Within-Trial As A Road Block To Speedy Adjudication Of Criminal Trial In Nigeria. Available at https://www.mondaq.com/nigeria/crime/1648444/trial-within-trial-as-a-road-block-to-speedy-adjudication-of-criminal-trial-in-nigeria. Accessed 20 August 2025.

[7] **Adekunle C.O,** "*A Case for the Abolition of Trial within Trial in Nigerian Criminal Jurisprudence.*" "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)

[8] https://www.corrections.gov.ng/statistics_summary. Accessed 14 May, 2024.

[9] Justice Walter Onnoghen, 'Nigeria's major challenge is delay in administration of Justice.' Vanguard Newspaper 24th July, 2017. Available at <http://www.vanguardnewspaper.com> accessed 14 May, 2024.

[10] The role of the Administration of Criminal Justice in Speedy Dispensation of Justice in Nigeria. Available at <https://hurilaws.org/the-role-of-the-administration-of-criminal-justice-act-in-the-speedy-dispensation-of-justice-in-nigeria/> Accessed 14 May, 2024.

It is pertinent to mention that a defendant can challenge a confessional statement by either denying ever making the statement, in which case, he is said to have retracted the statement, or by accepting to have made the statement but not voluntarily, in which case, trial within trial would be conducted to ascertain the voluntariness or otherwise of the said statement.[11]

From the above, it is obvious that there is a marked difference between objection to a confessional statement on ground of voluntariness and retraction of confessional statement. The question that will arise from the above is whether these two grounds have the same legal implication? The answer to this poser is in the negative. These two grounds have their separate legal implications.

In the first instance, the defendant raises an objection and says that "I did not make the statement", the court will admit the statement and later, based on evidence, determine whether he made it or not. In effect, retraction does not render a confessional statement inadmissible; it merely goes to the weight the court will attach to the statement.[12]

The effect of a retracted confessional statement is that the Judge is at liberty to admit the confessional statement and determine the probative value to be attached to it in his judgement. This assertion was judicially affirmed in ***Godwin Ikpasa v Bendel State***[13] where the Supreme Court held that where a confession is retracted at the trial by an accused person, the question of whether or not he made it is to be decided at the end of the trial by the judge himself. Going further, the court held that retraction does not affect the admissibility of the statement and should therefore be admitted in evidence as voluntariness or otherwise of the statement does not arise for consideration in such circumstances.

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[11] F.E. Ojeih, D.O. Okanyi, J.N. Egemonu, 'Criminal Litigation in Nigeria: Practice and Procedure' (Chenglo Limited, 2019) 76.
[12] See Godwin Ikpasa v Bendel State (1981) 9 SC (Reprint) 5; Ogunye v The State [1999] 5 NWLR (Pt 604) 518.
[13] (1981) 9 SC

In the second scenario, the defendant accepts to have made the statement but not voluntarily, in which case, he is saying that he was compelled or induced (by oppression, intimidation, threat, inducement, promises, etc.) to make the statement.[14] In that case, the court will adopt a procedure which enables it to pronounce on the admissibility of the confession which is alleged to have been made involuntarily. This procedure is known in law as trial within trial. In *Yusuf v State*[15]*,* the apex Court stated the principle of trial within trial when it held thus: "The principle of trial within trial is one aspect of dispensing equal justice and fairness under the rule of law. By this simple procedure, it is assured that statements of persons charged with a criminal offence obtained by a police officer or anyone in authority otherwise afflicted by any inducement, threat or promises, being illegal in law, are expunged from the mainstream of the production's case at the trial of his cause or matter and the court is precluded from acting upon them in dealing with the case. The procedure is so much used to exclude involuntary statement of a defendant that are contrary to law. The concept of this trial or trial within trial is a design to safeguard the interest of the defendant. It also strengthens the constitutional presumption of innocence, until the guilt of the defendant is proved beyond reasonable doubt.

Delay in the Administration of justice has become a very worrisome feature of Nigeria justice delivery system. It is more worrisome when the case is a criminal matter because of the likelihood that the defendant might be in detention, where he is not granted bail, pending the determination of the suit. This is despite the provisions of section 36(4) of the Constitution of the Federal Republic of Nigeria, *1999 (as amended)*, which provides that whenever any person is charged with a criminal offence, he is entitled to a fair hearing in public within a reasonable time by a court or tribunal.

[14] Ibid. 77

[15] [2019] NWLR (Pt 1680) 269 (SC)

In Nigerian courts, trials may last for as long as ten years or more, causing congestions in the courts and prisons. The case keeps being adjourned *ad infinitum,* sometimes the adjournments are orchestrated by the defendant through his counsel who raises objection over every document sought to be tendered by the prosecution.[16] A survey of cases completed by the Supreme Court between 1999 and 2005 revealed that it took an average of 10 years for criminal cases to be completed, from filing at the trial court to final disposal at the Supreme Court.[17]

Delay is quite detrimental considering the fact that it can be quite tormenting for the suspects/Defendants. The painful aspect of this is that in such situations most of the cases, the suspect is remanded under unfavourable condition. Some of the suspects even die before the case is concluded or spend more time than the term of imprisonment they would have served if they had been convicted.

The problem of delay in trial is a direct outcome of so many other problems confronting the agencies involved in criminal justice administration.

The following have been identified as some of the problems that contribute to delays in trials: The practice of remand; requests for adjournment and delays by the police in investigation and by the Ministry of Justice in filling information and proofs of evidence; shortage of personnel and underutilization of available staff; personnel transfer; delay tactics, indifference and laziness of lawyers; inadequate funding, poor conditions of service; shortage and obsoletism of equipment; staff shortage and inadequate utilization of available staff, trial within trial, etc.[18]

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[16] Ani Comfort Chinyere**, '**Towards Eradicating the Problem of Delay in Criminal Justice Administration in Nigeria'. Available at <https://legalpediaonline.com/eradicating-the-problem-of-delay-in-criminal-justice-administration-in-nigeria> Accessed 20 August, 2025.

[17] See Background Paper prepared by the Lagos State Ministry of Justice at the 4th National Summit of Stakeholders in the Administration of Justice 11-12 July, 2006.

[18] Ani Comfort Chinyere, 'Towards Eradicating the Problem of Delay in Criminal Justice Administration in Nigeria' Available at <https://legalpediaonline.com/eradicating-the-problem-of-delay-in-criminal-justice-administration-in-

The need to address these delays, especially the delay connected to trial within trial, motivated this writer to embark on this study even though some have argued that justice should not be sacrificed on the altar of speed, in which case, the delay is sometimes justified. It is however the writer's view that given that trial within trial is one of the factors responsible for the delay in the administration of criminal justice system in Nigeria, adherence to the provisions of the Administration of Criminal Justice Act, 2015 can serve as a panacea for trial within trial which will in turn bring about speedy dispensation of justice.

1.2. Statement of the Research Problem

The administration of criminal justice system in Nigeria has become a subject of continuous concerns amongst stakeholders and the general public. It is characterised with age-long challenges which are both procedural and substantive. But of most concern to this writer is the concept of trial within trial in the country's criminal procedure which arises when the voluntariness of a confessional statement of a defendant is questioned[19].

Assessments conducted in 2018 in Adamawa, Anambra, Kano, Lagos, and the FCT showed that the administration of criminal justice was overwhelmed by paucity of resources and capacity constraints, institutional weakness and poor criminal justice delivery by the actors in the criminal justice system. Although many states had passed administration of criminal justice laws to promote efficient, speedy, and transparent dispensation of justice, the provisions were largely not being implemented.[20]

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nigeria> accessed 5 June, 2024.

[19] Rouk & Co., 'Trial Within Trial: A Recurring Problem with Administration of Criminal Justice in Nigeria.' Available at https://roukco.com/trial-within-trial-a-recurring-problem-with-administration-of-criminal-justice-in-nigeria> accessed on 5 June, 2024

[20] Impact report, strengthening the administration of criminal justice, available at <www.justice-security.ng> accessed on 6 June, 2024.

The criminal justice system was lethargic; courts and prosecutors' dockets bulged; and custodial facilities overflowed with awaiting trial inmates. Awareness of criminal justice services was low, and many people did not believe the system could or would deliver just outcomes. Agencies focused on their own duties; coordination and collaboration were minimal and inconsistent, usually only occurring when an agency felt there was no other option.

The initial priority of some writers and stakeholders including Rule of Law and Anti-Corruption in Nigeria (RoLAC) as reported by Impact report was focused on ensuring that there was a suitable legal framework to implement a criminal justice reform agenda. At the federal level, the passage of the Administration of Criminal Justice Act in 2015 was prioritised and States were encouraged to domesticate same.

With the right legal framework now in place, focus should now shift to implementing the provisions of the ACJA, particularly, ***section 15(4) ACJA 2015*** which requires confessional statement to be recorded electronically on a retrievable video compact disc or such other audio visual means and ***section 17(2) ACJA 2015*** which requires suspect's statement to be taken in the presence of a legal practitioner of his choice, or where the suspect 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.

This writer submits that the judiciary has a lot to do with regard to compliance with the said provisions. The study posits that if confessional statements which did not comply with the aforementioned provision are no longer admitted in evidence by the court, the security agencies will have no option but to begin to ensure compliance with the said provisions. The effect of this judicial attitude is that issue of trial within trial will become technically abolished, thereby promoting speedy dispensation of justice in the administration of criminal justice system in Nigeria. In effect, good coordination between agencies is critical to effective and sustained implementation of the provisions of the Administration of Criminal Justice Act, 2015.

1.3. Research Questions

This study will be guided by the following research questions:

1. Has the court been efficient and effective in the administration of criminal justice in Nigeria?
2. What are the factors responsible for the delays in the administration of criminal justice system in Nigeria?
3. Does trial within trial cause delay in the system of administration of criminal justice in Nigeria?
4. Can trial within trial be eradicated in the Nigerian criminal justice system?
5. Is compliance with the provisions of the Administration of Criminal Justice Act 2015 a panacea to trial within trial?
6. Is there a relationship between non-compliance with the provisions of the Administration of Criminal Justice Act 2015 and delay in the system of administration of criminal justice in Nigeria?

1.4. Aims and Objectives of the study

This study shall be guided by the following objectives:

1. To determine whether the court has been efficient and effective in the administration of criminal justice in Nigeria.

2. To ascertain the factors responsible for the delays in the administration of criminal justice system in Nigeria.
3. To find out whether trial within trial contributes to the inherent delay in the system of administration of criminal justice in Nigeria.
4. To find out whether trial within trial can be eradicated in the Nigerian criminal justice system.
5. To examine whether compliance with the provisions of the Administration of Criminal Justice Act 2015 is a panacea to trial within trial.
6. To ascertain whether there is a relationship between non-compliance with the provisions of the Administration of Criminal Justice Act 2015 and the inherent delay in the system of administration of criminal justice in Nigeria.

1.5. Scope of the Study

Given that no research is expected to be comprehensive and exhaustive in terms of coverage of the subject matter to the point of ending all research therein and to literally says everything about the subject matter, this study will attempt to analyse the findings, methodologies and conclusions of previous studies, synthesise same by identifying areas of controversy and summarize the results by bringing out the gaps that exist in those works and address same.

Basically, this research work shall centre on the meaning of trial within trial, theoretical framework including short historical foundation to the practice of trial within trial in Nigerian courts, the enactment and the innovations brought about by the Administration of Criminal Justice Act, 2015.

1.6. Limitations of Study

Hardly would a research study of this nature be concluded without constraints. In a country like Nigeria where the flow of information is bedevilled with bureaucratic rules and where there is inaccurate data and statistics, some of the shortcomings, difficulties, challenges or constraints the writer anticipates to encounter in designing and conducting this research will include paucity of data and finances to carry out the research extensively. This may lead to delay in the completion period of this research work.

1.7. Significance of the Study

The study has both theoretical and practical significance. Theoretically, this study will be useful to both students and scholars who wish to advance their knowledge on the meaning of trial within trial, historical foundation to the practice of trial within trial in Nigerian courts, the enactment and the innovations brought about by the Administration of Criminal Justice Act, 2015. It will also help researchers to understand whether trial within trial contributes to the inherent delay in the system of administration of criminal justice in Nigeria.

On the other hand, it also has a practical significance especially to Magistrates and Judges in the determination to admit or reject alleged confessional statement purportedly obtained in violation of the provision of the Administration of Criminal Justice Act, 2015. The study posits that one of the ways the court can compel law enforcement agencies to adhere to the provisions of the Administration of Criminal Justice Act, 2015 is to insist that confessional statements which does not comply with the relevant provisions of the ACJA are no longer being admitted in evidence by the court. The study posits that the effect of this judicial attitude is that the issue of trial within trial will become a thing of the past, thereby promoting speedy dispensation of justice in the administration of criminal justice system in Nigeria.

1.6. Research Approach/Methodology

In examining in *extensio* the causes of delay in the administration of criminal justice in Nigeria, this research work shall employ the doctrinal methodology. For the purpose of this study, the form of data collection would encompass both primary and secondary data taking into cognizance both judicial and extra-judicial sources. In effect, sources such a relevant statutes and regulations, law reports, journals, articles, textbooks, conference papers, published legal and relevant internet materials etc. shall be utilized in the course of this work.

CHAPTER TWO

CONCEPTUAL, THEORETICAL FRAMEWORKS AND LITERATURE REVIEW

2.0. Introduction

The Administration of Criminal Justice System in Nigeria witnessed a radical change with the enactment of the Administration of Criminal Justice Act (ACJA) 2015, which all States in the Federation are expected to domesticate into Administration of Criminal Justice Law of their respective States with modification where necessary, to suit the peculiarity of their environment. Unarguably, the Administration of Criminal Justice Act, 2015 brought about comprehensive reforms of the Criminal Justice System of Nigeria. The now repealed Criminal Procedure Act (applicable in the Southern Nigeria) and Criminal Procedure Code (applicable in the Northern Nigeria) that hitherto regulated the administration of criminal justice had its plethora of challenges, which ultimately occasioned delay in justice administration.[21]

In criminal trial, the question 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 the actual perpetrator of the offence.[22] It is the duty of the prosecutor to prove the guilt of the alleged perpetrator or perpetrators and one of the best ways of doing this is by a confessional statement flowing from such an alleged perpetrator.

Generally, however, a defendant standing trial for a criminal offence enjoys the presumption of innocence until his guilt is proved.[23] In order to safeguard this constitutional right of a defendant, the Administration of Criminal Justice Act, 2015, the Evidence Act, 2011 as amended in 2023, among other statutes, make provision for the protection of an alleged

[21] John Ishaku Mantu, the administration of criminal justice in Nigeria and A call for amendment of the Administration of Criminal Justice Act, 2015. Available at <https://ssrn.com/abstract=4698078>

[22] Aichenabor v The State [2015] FWLR (Pt 736) 1986 @ 1989

[23] Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2023).

offender.[24] The presumption of innocence must protect even an accused whose guilt would appear apparent but for a fundamental breach of the rules of the criminal process. This was the holding of the Court of Appeal in *George v. State*[25]

Consequently, in order to ensure that such a suspect, whom under the law is still presumed innocent, is not incriminated by a desperate law enforcement officer into forcefully or unwillingly admitting to a crime he did not commit, the provisions of some statutes have stipulated rules of extracting the confessional statement of every suspect. These statutes range from The Constitution, the Administration of Criminal Justice Act, 2015, and the Evidence Act 2011 (as amended). These statutes all, in the ultimate knowledge of their draftsmen, provide for the safeguard of a suspect's rights while under lawful custody when making a statement. These statutes so stipulate that every statement made by a suspect must be voluntary. Where such is not the case, upon trial, the involuntary statement ought not to be admitted in evidence and conviction on such statement made under duress is enough ground for appeal. This was the position of the court of Appeal in *George v. State*[26] where the Court held that where a confessional statement was not voluntarily made by the accused person in that it was obtained under duress or fear, such confessional statement is not admissible in evidence; and where wrongly admitted, it ought to be expunged from the evidence before the court. It was for this reason that the appeal was allowed by the Court of Appeal as having merit. In the instant case, the confessional statements were made not only under duress but under imminent fear of death. They were wrongly admitted and should not have been admitted, and if admitted should have been expunged. They were accordingly expunged by the Court of Appeal having been wrongly admitted in evidence by the trial court.

[24] For example, section 135(1) of the Evidence Act, 2011 as amended imposes a duty on the prosecution to prove the guilt of a defendant beyond reasonable doubt. In effect, a defendant has no duty to prove his innocence.

[25] [2009] 1 NWLR (Pt 1122) 325

[26] [2009] 1 NWLR (Pt 1122) 325 at 393

However, to establish the veracity of a claim by a Defendant that the statement sought to be tendered by the prosecution was made under duress, undue influence or intimidation, and to be sure that such a Defendant is not just trying to take advantage of the law, it has become a practice in our criminal proceedings to, in such situation, conduct a thorough and independent probe on whether or not the statement was made without coercion, known as trial within trial (also called mini-trial) is usually conducted by the court.[27]

In the course of this research, a summary attention shall be paid to the concept trial within trial: its historical foundation; rationale for the conduct of trial within trial, circumstances when it is expected to be used; condition precedent to the conduct of trial within trial, its procedure and consequences that may arise when it is failed to be conducted, the desirability or otherwise of the practice in the light of the provisions of sections 15(4) and 17(2) of the Administration of Criminal Justice Act, 2015.

2.1. 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.[28] 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.

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[27] Chinedum Gregory Ike-Okafor, The Concept of Trial Within Trial. Available at https://ansu-edu.academia.edu. Accessed 27 December, 2024.

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

Rhodes-Vivour JSC, as he then was, defined trial within trial in *Adamu Saliu v State*[29] in the following words: 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.[30] Also, in *Augustine Ibeme v The State*[31], 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,)[32] 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

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[29] (2014) ALL FWLR(Pt 743) 2051 at 2069

[30] Chidimma Stella Nwakoby, 'Examining the Importance of Trial within Trial in Nigerian Criminal Justice System: A Critical Assessment of its Implications and Applications' Nnamdi Azikiwe University, Awka Journal of Commercial and Property Law (2024) 11(4) ISSN: 2736-0342 NAU.JCPL. Available at <journals.unizik.edu.ng/index-php/jcpl> Accessed 25 April, 2025.

[31] [2013] 10 NWLR (Pt 1362) 333 at 373.

[32] Ibid.

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.

2.1.1 Compliance

The term compliance can be defined as a set of processes and procedures within a specific program to ensure adherence to government regulation and laws.[33] In the legal context, "compliance" means adhering to and following all applicable laws, regulations, and rules, ensuring that an organization or individual acts in accordance with legal requirements. It is the act of complying with a command, desire, wish, order, or rule. It can also mean adhering to requirements, standards, or regulations.

Webster's New Dictionary of the English Language defines compliance as the act of complying to a demand or proposal: a disposition to yield.[34] Also, Oxford Advanced Learner's Dictionary defines compliance as the practice of obeying rules or requests made by people in authority; procedures that must be followed to ensure full compliance with the law.[35]

Compliance within the context of criminal justice system comes from the English verb 'to comply with', which can be translated as 'to comply with', 'in accordance with', i.e. it is to be understood as doing what is legally due. Hormazábal Malarée sees compliance in criminal law to mean that a certain activity is in accordance with the legal norms that regulate it.[36] Compliance encompasses various aspects, including adherence to the Constitution, court judgments, and legal requirements for judicial proceedings.

[33] https://link.springer.com
[34] Webster's New Dictionary of the English Language, 107.
[35] Oxford Advanced Learner's Dictionary, 7th Edition, 296.
[36] Available at https://chambers.com/articles/criminal-compliance-from-a-criminal-law-point-of-view Accessed 26 December, 2024.

Speaking on the importance of compliance with statute, the Supreme Court in ***Kalu Mark & Anor v Gabriel Eke,***[37] stated that non-compliance with the rules of court which requires originating processes to be served so as to validly invoke the jurisdiction of a court is fatal to the case of the claimant. Thus, these processes form the foundation without which there could be no action before the court in respect of which it can properly in law assume jurisdiction to conduct proceedings or adjudicate. It also means that where there is non-compliance with the provisions of the Rules of Court or statute guiding the issuance, endorsement or service of the process, this non-compliance may adversely affect the jurisdiction of the court.[38]

Compliance is crucial for maintaining the integrity of the legal system, ensuring fairness, and upholding the rule of law. Compliance with the Administration of Criminal Justice Act, 2015 is aimed at preventing miscarriage of justice which will inevitably result from non-compliance.

2.1.2. Criminal Justice

Criminal justice refers to the system by which justice is dispensed onto those who have committed a crime. It includes the crime a defendant allegedly committed, the law enforcement officers who arrested him, the court system that prosecutes and defends him, and how the defendant is punished if he is convicted.[39] Put simply, criminal justice can be defined as the system through which crimes and criminals are identified, apprehended, judged, and punished.[40] This is different from criminal justice system. Whereas criminal justice refers to the delivery of justice to those who have been accused of committing crimes, on the other hand, the criminal justice system refers to a series of government agencies and institutions. Put differently,

[37] (2004) LPELR-1841 (SC); (2004) 5 NWLR (Pt. 865) P.54.

[38] Chijioke Collins ANI and Chinwe Patricia ILOKA, *The Nigerian Supreme Court Decision in Kalu Mark & Anor v. Gabriel Eke: A Call for Review. Available at* <ezenwaohaetorc.org> Accessed 18 March, 2025.

[39] Available at https://libguides.heinonline.org/criminal-justice-and-criminology. Accessed 26 December, 2024.

[40] Available at https://www.internationalstudent.com/study-criminal-and-forensic-science Accessed 26 December, 2024.

the *criminal justice system* is the network of government and private agencies intended to manage accused and convicted criminals. The criminal justice system consists of three main parts:

1. Law enforcement agencies, usually the police

2. Courts and accompanying prosecution and defence lawyers

3. Agencies for detaining and supervising offenders, such as prisons and probation agencies.

In effect, in the criminal justice system, these distinct agencies operate together as the principal means of maintaining the rule of law within society.[41]

The two-fold aim of criminal justice as stated by the Supreme Court in the case of *Offor v State*[42] is that the guilty shall not escape or the innocent suffer. Or put differently, by the avowed spirit of the presumption of innocence guaranteed to an accused person under section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria, as amended, the policy of the courts, is that it would be better to discharge ten criminals than to convict one innocent person, by mistake or error of law. Human justice has to depend on evidence and inferences. Dealing with the irrevocable issues of life and death, she has to tread cautiously, lest she sends an innocent man to an early and ignoble death.[43]

The Court of Appeal in *Ugheneyovwe v State*[44] has identified this two-fold aim of criminal justice and added that human justice depends on evidence and inferences. It is desirable therefore that the trial court in dealing with issues of life and death must tread cautiously so that an innocent man is not sent to an early and ignoble death.

The basic tenet of criminal justice as stated by the Supreme Court in *Ntita v State*[45] is that the benefit of the doubt is always given to an accused person.

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[41] Available at https://en.wikipedia.org/wiki/Criminal_justice. Accessed 26 December, 2024.
[42] (2012) 18 NWLR (Pt 1333) 421 at *451, para. F. See Berger v. United States 295 US 78 (1935).*
[43] Ukwunneyi v State [1989] 5 NWLR (Pt114) 131 at 367, paras. A-E.
[44] (2004) 12 NWLR (Pt. 888) 626 at 661, paras. B-D.
[45] (1993) 3 NWLR (Pt. 283) 505 at 516 paras. B-C.

On the right connotation of justice in criminal trial, the Nigeria Apex Court has this to say: "Justice is often described as two-way, and even three-way traffic; namely: justice for the accused, justice for the prosecution and even justice for the society.[46]

The fundamental principle guiding the administration of criminal justice as stated in *Egboghonome v State*[47] is that an accused person is presumed innocent until his guilt is proved. This presumption of innocence is enjoyed until the final determination of the case. The onus is thereby placed on the prosecution to prove the guilt of the accused beyond reasonable doubt, and the accused person is indeed entitled, after his plea of "not guilty," to remain silent until the conclusion of the trial, if he so desires.

On the nature of Nigerian Criminal Justice System, the Court of Appeal in *Oladotun v State*[48] stated that the Nigerian criminal justice is accusatorial in nature. Trials are initiated and sustained by accusation rather than by inquisition. That explains why such trials are conducted secundum *allegate at probata*. Hence, no matter the gravity of the charge, it remains an allegation until it is proved. The Supreme Court supported the position in Oladotun v. State[49] in *Saraki v F.R.N.*[50]. xUnder it, trials are initiated and sustained by accusation rather than by inquisition. Consequently, the prosecution has the duty to prove its case against an accused person beyond reasonable doubt.

On the nature of proof in Nigerian criminal justice system, the Supreme Court in *Ibrahim v State*[51] held that under Nigeria's criminal justice system, proof in criminal trials is attained against the background of the burden codified in section 138(1) of the Evidence Act, 2011 as amended in 2023.

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[46] Kalu v State [2017] 14 NWLR (Pt 1586) 522, Para. G.
[47] (1993) 7 NWLR (Pt. 306) 383 at 428, Paras. F-G.
[48] (2010) 15 NWLR (Pt. 1217) 490 at 520, paras. G-H. see also [Uso v. C.O.P. (1972) 1 All NLR 390
[49] Supra
[50] (2018) 16 NWLR (Pt 1646) 405 at 452, paras. G-H. See also Bello v State [2007] 10 NWLR (Pt 1043) 564; Oladele v Nigerian Army [2004] 6 NWLR (Pt 868) 166; Uso v C.O.P. (1972) 11 SC 37.
[51] [2015] 11 NWLR (Pt. 1469) 164 at 192, paras. A-B. See also Ebeinwe v State [2011] 7 NWLR (Pt 1246) 402; Jua v State [2010] 4 NWLR (Pt 1184) 217; Alabi v State [1993] 7 NWLR (Pt 307) 511; Otukpo v John [2012] 7 NWLR (Pt 1299) 357.

2.1.3. Trial within trial

Trial-within-trial is exactly what it implies. The Supreme Court defines it in *Sale v State*[52] as a mini trial within the main trial, wherein the confessional statement of an accused is subjected to a closer scrutiny to determine whether or not the statement was freely and voluntarily made by him to the police.

The purpose of a trial-within-trial as aptly captured by the Court of Appeal in *Mustapha v F.R.N.*[53] is to determine whether or not statement made by an accused to the police was voluntarily made. Where the authorship of the statement is denied, the question of voluntariness and ipso facto a trial-within-trial will be irrelevant. In effect, trial- within-trial is by no way automatic in all situations and circumstances. The purpose is to call evidence to determine the voluntariness or otherwise of a confessional statement. The trial-within-trial is only required where the accused person objects to the admissibility of the confession on the ground that it was not voluntary, but was obtained by threat, intimidation or duress. In effect, a trial within trial is not necessary in every case. It is only necessary where the voluntariness of the making of a confessional statement by an accused person is in issue or raised by an accused person. In other words, where a Defendant admits making the statement but contends or asserts that he did not make it voluntarily but under duress or some other alleged influence, then a trial within trial will be conducted in order to determine whether the statement was voluntary or made under duress or otherwise.[54] Where the contention is that the defendant never made the statement in question and not that he was forced to make it under duress, a trial within trial will not be necessary.[55]

[52] (2020) 1 NWLR (Pt. 1705) 205 at 228, paras. B-C.
[53] (2020) 14 NWLR (Pt. 1743) 26
[54] See Akpa v State [2008] 14 NWLR (Pt 1106) 72
[55] Auta v State (1975) 4 SC 125; Gbadamosi v State [1992] 9 NWLR [Pt.266] 465; Effiong v State [1998] 8 NWLR (Pt. 562) 362.

The purpose of trial-within-trial as stated in *Eke v State*[56]is that trial-within-trial is designed to determine if a confessional statement was voluntary. Still on the purpose of trial-within-trial, the Supreme Court in *Adebanjo v State*[57] stated that trial within trial is only used to test the voluntariness of a confessional statement and not what value or weight to attach to the evidence. It is essential that the issue of voluntariness should be kept clearly distinct from the issue of guilt.

2.2. Theoretical Framework

Learned authors and scholars when confronted with the issues of trial within trial in Nigerian criminal justice system have embarked on varieties of theories[58] in dealing with such issues. In embarking on such theories, authors and scholars seek to harness opinions and views expressed by the theorists on the issue with a view to knowing how realistic those opinions or views are to the understanding of the concept of trial within trial.[59]

The legal framework for the admissibility or otherwise of confessional statements in criminal trials in Nigeria is section 29 of the Evidence Act 2011 as amended. It is the section that empowers the court to subject confessional statements to scrutiny by way of trial within trial once the voluntariness of such statement is put in issue. Consequently, it has been argued that trial within trial stems from *Section 29(2) and (3) of the Evidence Act* 2011 (as amended in 2023).

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[56] (2011) 3 NWLR (Pt. 1235) 589 at 609, Para. C.

[57] (2019) 13 NWLR (Pt. 1688) 121 at 133-134 Paras. H-A. See also Ifaramoye v State [2017] 8 NWLR (Pt 1568) 457.

[58] Theories are sets of assumptions, propositions or accepted facts that attempt to provide a plausible or rational explanation of cause–and-effect relationships among a group of observed phenomena. A theory is a statement that states the relationship between phenomena and the environment. They are set of propositions or principles that are logically put together or use to investigate and explain phenomena. A theory is a way of making sense out of a disturbing situation. According to Frey et al (1991), theory is a generalization about a phenomenon, an explanation of how or why something occurs.

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It may be argued that trial within trial stems from *Section 29(3) of the Evidence Act* 2011 (as amended in 2023). Subsection (2) (a) and (b) of this section provides that: *"*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."

Subsection (3) provides: *"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."*

Generally, the theoretical foundation of trial within trial is based on several legal principles and doctrines, including:

a. **The Rule Against Involuntary Confessions:** This principle ensures that only confessions made voluntarily by an accused person can be admitted as evidence. The Nigerian Evidence Act 2011 as amended stipulates that a confessional statement must be given freely and voluntarily before it can be admissible in court. It is provided thus: *"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 by oppression of the person who made it, or 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."*[60]

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.[61]

The word "oppression" is defined under the section to include torture, inhuman or degrading treatment. and the use or threat of violence whether or not amounting to torture.[62]

b. **The Principle of Fair Hearing (Natural Justice):** The Nigerian Constitution guarantees the right to a fair trial.[63] Conducting a trial within trial allows the court to uphold this right by ensuring that evidence against a defendant was not obtained unfairly or illegally. The Supreme Court emphasized the importance of fair hearing when it held in *Yusuf v U.B.N. Ltd*[64] that the rule of fair hearing is not a technical doctrine but one of substance. The question is not whether there has been a miscarriage of justice occasioned by lack of hearing, but whether a party entitled to be heard before a decision was taken had in fact been given an opportunity to be heard. Consequently, when an appellate court comes to the conclusion that the party who was entitled to be heard before a decision was reached was in fact not given the opportunity to be heard, the order/judgment reached is bound to be set aside[65].

[60] Section 29(2) (a) and (b) Evidence Act 2011 as amended in 2023
[61] Section 29(3) Evidence Act 2011 as amended in 2023
[62] Section 29(5) Evidence Act 2011 as amended in 2023
[63] Section 36 of the Constitution of the Federal Republic of Nigeria 1999 as amended
[64] [1996] 6 NWLR (Pt 457) 632 @ 646, Paras. F-G.
[65] See also *Kotoye v C.B.N. [1989] 1 NWLR (Pt 98) 419 at 448.*

c. **The Doctrine of Due Process:** trial within trial aligns with the due process requirement, which mandates that legal procedures must be followed to ensure justice. It prevents the State from using illegally obtained confessions to secure convictions. The Court of Appeal in *Okoreaffia v Agwu*[66] defines due process as the conduct of legal proceedings in accordance with laid down rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a court of law or tribunal with the jurisdiction to determine the case. The term is also usually referred to as due process of law. See also *Akande v Jegede*[67]. Speaking on what due process entails, the Supreme Court in *Onnoghen v F.R.N.*[68] stated that the court is the home of due process. Due process demands that legal proceedings are conducted according to rules and principles. The notion of justice is justice according to law and not justice that is tailored to sentiments, whims and caprices of individuals. On the effect where action is not properly constituted by due process, the Supreme Court in *Braithwaite v. Skye Bank Plc*.[69] Stated that the breach of substantive law renders an action not having been properly constituted by due process of law a nullity ab initio. The nullity of the initiating processes is very fundamental and goes to the root of the action.[70] As to whether action not initiated by due process is competent, the Court of Appeal in *L.S.J.S.C. v Kaffo*[71] held that where an action is not initiated by due process of law, condition precedent to the exercise of jurisdiction by a court is absent.

a. **The Burden of Proof:** in a trial within trial, the burden of proof lies on the prosecution to establish beyond reasonable doubt that the confession was voluntarily made.[72] If the prosecution fails, the confession is excluded, and the main trial proceeds without it. This has been affirmed in

[66] [2008] 12 NWLR (Pt 1100) 165 @ 194, Paras. A-B.
[67] *[2022] 14 NWLR (Pt 1849) 125 @ 155, paras. B-G*
[68] [2020] 12 NWLR (Pt 1738) 289 @ 336, Paras. D-E.
[69] [2013] 5 NWLR (Pt 1346) 1 @ 18, Para. E-F.
[70] See also *Okafor v Nweke [2007] 10 NWLR (Pt 1043) 521; S.L.B. Consortium Ltd. v. N.N.P.C. [2011] 9 NWLR (Pt 1252) 317; Madukolu v Nkemdilim (1962) 2 SCNLR 341*
[71] [2008] 17 NWLR (Pt 1117) 525 @ 552-553, Paras. F-A.
[72] See Sections 131 and 135 of the Evidence Act 2011 as amended.

plethora of cases. In *Borishade v F.R.N.*[73], the Court of Appeal held that from the components of section 28 of the Evidence Act, once a statement is challenged on grounds of involuntariness under the section, the burden of proving the voluntariness falls first on the prosecution. And the disputant in refuting the prosecution's case, has to lead evidence to show that either by inducement, threat or promise, having regard to the charge, he had reason to believe that he would gain advantage by making the statement and avoid the evil confronting him at that time. In other words, the prosecution has the first burden of proof in criminal trial where trial-within-trial is ordered to establish the voluntariness of the extra-judicial statement made by an accused person. Still on the onus of proof on parties in trial-within-trial, the Supreme Court held in *State v. Gambo*[74] that when a trial-within-trial is to be conducted upon the allegation by the accused that his statement was not voluntary, it is the duty of the prosecution to lead evidence to show that the statement was made voluntarily, while the accused person and his witnesses are to prove the opposite. In *State v Gwangwan*[75], 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*[76], 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." Trial within trial is a trial where the credibility of witnesses and their demeanour are very important. In such a trial, credibility of witnesses is based on demeanour. It is during a trial-within-trial that the defence counsel must ensure that the confessional statement is not admitted in evidence and not on appeal. If at the end of the trial-within-trial, the court is

[73] [2012] 18 NWLR (Pt 1332) 347
[74] [2019] 2 NWLR (Pt 1655) 117
[75] [2015] 13 NWLR (Pt 1477) 600 at 631
[76] (2012) 49 NSCQR 1190 at 1213

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. This principle of law was equally affirmed in *Nalado v. State*[77] where it was held by the Supreme Court that where an accused person objects to the admissibility of his confessional statement, the prosecution has the first burden of proof, where trial-within-trial is ordered, that the confessional statement was voluntarily made by the accused.

1. **The Adversarial System of Justice:** Nigeria operates an adversarial legal system where the prosecution and defense argue their cases before an impartial judge. Trial within trial follows this adversarial model, allowing both parties to present evidence and cross-examine witnesses to determine the admissibility of the confession.

In conclusion, the theoretical framework of trial within trial in Nigeria is rooted in protecting the rights of the Defendant, ensuring procedural fairness, and upholding the integrity of the judicial system. It serves as a safeguard against forced confessions and reinforces the principles of justice and human rights in criminal trials.

It must be noted that to completely understand the opinions or views expressed on the concept of trial within trial, judicial decisions on the issue and the theories which the court rely on in deciding issues of trial within trial are very apt. Whereas the concept of trial-within-trial is rooted in common law and the abolished jury system, it's not explicitly codified in Nigerian statutes like the Evidence Act, 2011 or the Administration of Criminal Justice Act, 2015.

However, the Courts in Nigeria are nonetheless favourably disposed to the practice of trial within trial. The Supreme Court stated in *F.R.N. v Borisade*[78] that the raison d'etre of the evolution of the mini trial or voire dire procedure is to arm the trial court with a procedural mechanism for sifting

[77] [2019] 13 NWLR (Pt 1688) 1
[78] (2005) 5 NWLR (Pt. 1451) 155. See also Ogudo v State [2011] 18 NWLR (Pt 1278) 1; Ibeme v State [2013] 10 NWLR (Pt 1362) 333; Auta v State [1975] 4 SC 125; Effiong v State [1998] 8 NWLR (Pt 562) 362; Lasisi v State [2013] 9 NWLR (Pt 1358) 74; State v Rabiu [2013] 8 NWLR (Pt 1357) 585; Nwangbonu v State [1987] 4 NWLR (Pt 67) 748; Ogunye v State [1999] 5 NWLR (Pt 604) 548.

the chaff of involuntary and, hence, inadmissible evidence from the wheat of admissible evidence whose cogency and probative value are indubitable.

In *Kazeem v State,*[79] the Supreme Court held that where an accused person alleges that a confessional statement was obtained under duress, the trial court must conduct a trial within trial to determine its voluntariness before admitting it into evidence. In *Owhoruke v COP*[80], the Supreme Court reiterated that trial within trial is mandatory whenever the voluntariness of a confession is challenged by the defense. In *Nsofor v State*[81], the Supreme Court emphasized that failure to conduct a trial within trial when an objection is raised against a confessional statement amounts to a breach of fair trial rights.

These cases illustrate how Nigerian courts have consistently upheld the principle that involuntary confessions must be excluded, and trial within trial is the proper mechanism for determining their admissibility.

Although the Administration of Criminal Justice Act, 2015 did not make 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 relevant provisions of the ACJA 2015 in relation to the mode of recording statement from a suspect by the law enforcement agents are meant to cure the necessity of trial within trial if they are properly adhered to. In other words, there will be no need for conducting mini-trial to ascertain the voluntariness or otherwise of a statement which was recorded in compliance with the provisions of section 17(1) and (2) of the ACJA 2015. Where such claim is raised, it is easy for the police to prove the contrary?

For the purpose of emphasis, the above section 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

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[79] [2009] 1 NWLR (Pt 1123) 1

[80] (2015) 15 NWLR (Pt. 1483) 557

[81] (2004) 18 NWLR (Pt. 905) 292

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.

In practice however, most law enforcement agents are yet to comply with the above provisions, thus making room for the necessity of trial within trial to prove that the statement was taken voluntarily. G.E. Adekanbi[82] conclusion that trial within trials which seems unnecessary and cumbersome should be retained until full compliance with ACJL provisions is achieved is an admission that trial within trial will become necessary if there is full compliance with the provision of section 15(4) and 17(1) and (2) of the ACJA 2015.

The reason for this provision is not far-fetched as it could be found in the Supreme Court decision in Owhoruke v COP[83] where RHODES-VIVOUR, J.S.C. at page 576, ratio 11, paras. A-D: stated thus: "The Court of Appeal described the defence of the appellant as confused. This is true.

> The reason is simple. The appellant did not have the service of a legal practitioner when he wrote exhibits E, a day after the incident. It must be noted than most crimes are committed by 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 statements should only be taken from suspect if, and only if his counsel is present, or in the presence of a legal

[82] G.E. Adekambi, The Relevance or Otherwise of Trial Within Trial Vis-à-vis the ACJL of Edo State.
[83] [2015] 15 NWLR (Pt 1483) 557 @ 576, Paras. A-E.

> practitioner. Where this is not done, such a confessional statement should be rejected by the court."

Following the dictum above, while addressing the effect of non-compliance with the provisions of Sections 15(4) and 17(2) of the ACJA, 2015, the Court of Appeal held in *Charles v F.R.N.*[84] thus:

> Unlike the case with the Judges' Rules, which were cautionary, the provisions of ACJA have the force of law. Non-compliance with these provisions would automatically throw a purported confessional statement out of the window.[85]

In a more recent Court of Appeal decision on the effect of non-compliance with the provisions of section 15(4) and 17(2) of the ACJA, 2015, the Court of Appeal in *Nnajiofor v. F.R.N.*[86] reiterated the above position.

If the decisions above are anything to go by, it follows that compliance with the provisions above are condition precedent for the admissibility of any purported confessional statement. Where there is non-compliance with this procedural law by the preconditions, the court should reject the said confessional statement. It is the rule that where the law prescribes the doing of a thing as a condition for the performance of another, failure to do such thing renders the subsequent act void.[87]

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[84] [2018] 13 NWLR (Pt 1635) 50, Paras. B-C.
[85] See also *Zhiya v People of Lagos State (2016) LPELR 40562.*
[86] [2019] 2 NWLR (Pt 1655) 157 at 177, Para. C.
[87] Saude v Abdullahi [1989] 4 NWLR (Pt 116) 387 @ P. 319, paras. E-H. See also FCMB v Abiola & Sons Ltd. [1991] 1 NWLR (Pt 165) 14.

2.3. **Historical Foundation to the Practice of Trial Within Trial in Nigerian Courts**

It is pertinent to mention here that there is no provision in the Evidence Act or any other Nigeria legislation providing for the practice of trial within trial or clearly stipulating for trial-within-trial and calls it by that name. Although the Evidence Act, 2011, by implication and not explicitly, under Section 29(2) (a-b) has paved way for what can be interpreted to mean trial within trial; it however can also mean several other things. There is also no provision in the Administration of Criminal Justice Act 2015 on the issue. Further, the practice is also missing even in the Judges Rules of England, 1964, applicable to the Southern States and the Criminal Procedure (Statement to Police Officers) Rules 1960, applicable to the Northern States.

As the practice is lacking in all the practice directions in Nigeria criminal laws, it is equally safe to add that the procedure is not contained in the substantive laws of Nigeria. By substantive laws we mean the Criminal Code and the Penal Code. Of course, it is not expected that the codes which deal with substantive offences should make provisions for a trial within trial, which is procedural in nature. The salient questions at this point are: why is trial within trial a part of Nigerian law; where lies its source; which law stipulates for it and which law regulates it?

In giving an historical perspective of the usage of trial within trial, the Court in *Gbadamosi v State*[88], per Ogundare JSC re-emphasized the absence of trial within trial in any Nigerian law when he said:

> "A trial within the trial is an off-shoot of the jury system. In this country, the jury system having been on in Lagos in the 1930's if not before that time… As I said before, trial within the trial is firmly rooted in the jury system. Put differently, the procedure of a trial within trial is basically necessary in respect of jury trials.[89] Remove the jury, off goes trial within trial".

[88] (1992) NWLR (Pt. 266) 465

[89] See Section 67, Jury Law, Cap 58, Laws of Lagos State of Nigeria, 1973.

In line with Ogundare JSC's submission, some scholars have argued that we do not need a statute here to abolish trial within trial when it was just a matter of practice and not law adopted by our judges in the days when English Law and Practice held sway in our land.

Historically as we all know, Nigeria was a British colony from 1861, until 1960 when she became independent. Being a British colony, English law was made applicable to Nigeria, with restrictions. Section 45 of the Interpretation Act[90] made the reception of English law possible in Nigeria.[91] Since one aspect of the laws received by Nigeria was the English Common Law, the English Procedure of a trial within trial was received. The courts in Nigeria therefore used the English Common law procedure whenever there was a denial by a Defendant that he made a confessional statement voluntarily.[92]

But then, a trial within trial is an off-shoot of the jury system in this country, the jury system having been in practice in Lagos as early as 1930's. In 1945, an ordinance relating to jurors and trial with a jury was enacted for the whole of Nigeria.[93] By Legal Notice No. 47 of 1955, the 1945 Ordinance was applied to Northern, Western and Eastern Regions, and to Lagos and the Southern Cameroons.

By the Adaptation of Law Legal Notice 112 of 1964, the Jury Ordinance was applicable only in Lagos. When Lagos became a State on its own, it then enacted Jury law.[94]

By Section 67, Laws of Lagos State of Nigeria, 1973, statutory recognition was given to the fact that jury must withdraw during a trial when certain legal arguments are being unfolded before the

[90] Interpretation Act, Chapter 192, Laws of the Federation of Nigeria 1990

[91] Section 45(1) of the Interpretation Act which is now equivalent to section 32(1) of the Interpretation Act of 1990 provides thus "subject to the provisions of this section and except in so far as other provisions is made by any Federal law, the common law of England and the doctrines of equity together with the statutes of general application that were in force in England on the 1st day of January 1900, shall be in force in Lagos and so far as they relate to any matter within the exclusive legislative competence of the federal legislature shall be in force elsewhere in the federation"

[92] See Auta v The State (1975) 1 ALL NLR (Pt 1) 165; Owei v The State [1985] 1 NWLR (Pt 3) 470; Ogbodu v The State [1986] 5 NWLR (Pt 41) 294; Okaroh v The State [1988] 3 NWLR (PT 1) 214.

[93] see Cap. 90, Laws of the Federation of Nigeria and Lagos 1958

[94] See Cap. 58 Laws of Lagos State of Nigeria, 1973.

court. The section read thus: "Where an argument or certain evidence takes place or is likely, to be about to take place and the judge is of the opinion that the accused must be unfairly prejudiced if such argument is heard in the presence of the jury, the judge may direct the jury to retire to their room during evidence."

Edict No. 1 of 1975 abolished the jury law, Cap. 58, Laws of Lagos State of Nigeria. The purport of the above is that as far as Lagos is concerned, there is no law that gives statutory powers for a judge to conduct a trial within the trial in determining the admissibility of evidence which may be regarded as prejudicial to a Defendant during a trial. Also, the rest of Nigeria has indirectly banished the jury law, since each of the regions of the Federation then had the legislative competence by the Constitution of the Federation 1963 No.20 and the Adaptation of Laws (Miscellaneous Provisions) Order 1964, to enact a Law about juror and trial by jury. To conclude further, the absence of a jury in the new and revised Laws of the Federation of Nigeria 2004 confirms the writer's view that there is no Jury Act which operates today in Nigeria. The question now is, why is trial within trial still in play? Do we need a statute here to abolish it when it was just a matter of practice and not law adopted by our judges in the days when English law and Practice held sway in our land?

2.4. Rationale for conduct of trial within trial

The underlying rationale for the conduct of trial within trial in criminal proceedings is the determination of the voluntariness or otherwise of confessional statement.[95] In effect, in many occasions, trial within trial is used to prove the reasonable doubt that a confessional statement was indeed made by the free-will of the maker. It follows that the only circumstance in our criminal trials where the procedure is used is for the test as to the voluntariness of the confessional

[95] Ekemini Udim, *Trial Within Trial in Criminal Proceedings*, (Princeton and Associates Publishing Co. Ltd. Lagos 2016.) 7.

statement made by a Defendant. In effect, once the voluntariness of a confessional statement is objected to, its admissibility is determined by a trial within trial.

This assertion was given judicial notice in the case of *Ibeme v The State*[96] where the Supreme Court of Nigeria per Ogunbiyi, JSC held that "The purpose and aim of trial within trial is to establish the voluntariness or otherwise of a confessional statement ascribed to the accused person."

In *Abdullahi v The State*[97], the Supreme Court stated that the rationale for the conduct of trial within trial is to determine the voluntariness of a confessional statement.

A verdict, upon the trial within trial, enjoys presumption of regularity under section 168(1) of Evidence Act, 2011 as amended. Once the trial court ruled that the extra judicial statement was made voluntarily and it is admitted in evidence, the defendant, subsequently in his appeal, cannot be heard to argue he did not make the confession voluntarily without impugning the trial within trial. The trial court can convict in such confessional statement admitted in evidence upon trial within trial even without any corroborative evidence so long as the court is satisfied of the truth of the confession. The logic in this reasoning is that every decision of a court of competence jurisdiction remains valid until set aside. In the instant case, the learned counsel for the appellants, in both appeals, never complained that either the appellant in SC. 166/2012 or the appellant in SC. 168/2012 were denied fair hearing in the trial within trial. No aspect of the mini trials, culminating in the trial court admitting exhibit P11 (in appeal SC. 166/2012) or exhibit P8 (in appeal SC. 168/2012) had occasioned any miscarriage of justice to the makers of the two statements."

On the nature of trial within trial, the Court stated that trial within trial is a separate and distinct trial from the main trial. It is conducted majorly to determine the voluntariness of an extra judicial

[96] (2013) 224 LRCN (Pt 2) 151 at 179 Para. JJ.
[97] [2013] 10 NWLR (Pt 1362) 333 @ 373 Para. E.

statement allegedly made by an accused person on trial. The prosecution in the mini trial, calls evidence to establish that the statement was made voluntarily. The accused person has every opportunity to cross examine whosoever the prosecution calls as a witness. Upon the prosecution's case, the defence also calls evidence to establish the allege involuntariness of the making of the statement. The prosecution is also given opportunity to cross examine the defence witness. Upon the close of evidence both sides are given an opportunity, each, to make final address. Thereafter, the court delivers its decision or ruining on the issue whether the statement was or was not voluntarily made".[98]

The sole purpose of a trial within the main trial is to test whether the confessional statement to be tendered by the prosecution was made voluntarily by the defendant or whether he was forced or induced to make it.

Consequently, trial within trial is therefore not applicable where the objection is:

1. That the statement was not read to the defendant before he signed it.

2. That the signature or thumb print of the defendant is not that affixed on the confession.

3. That the defendant is not the maker of the statement.

4. That the statement was written by the prosecution for which the defendant merely endorsed.[99]

During the course of the mini trial, all the rules of criminal proceedings apply to it. The burden of proof of the voluntariness of a statement of a Defendant yet lies on the prosecution who is duty bound to prove to the court beyond reasonable doubt that the confession was not obtained in a manner specified in Section 29(2) Evidence Act, 2011 as amended.

Also, by virtue of Section 135 Evidence Act, 2011, the burden of proof continuously lies on the prosecution since the prosecution is the person who asserts that the Defendant committed the offence. It is until such burden has been discharged beyond reasonable doubt that the burden of

[98] P. 278-279, paras. H-B.
[99] See Omit v The State [1985] 1 NWLR (Pt 3) 470; Nwangeomu v The State [1994] 2 NWLR (Pt 327) 380.

proving reasonable doubt is shifted on the defendant.[100] Even when this burden eventually shifts to the Defendant, the latter is only required to discharge the burden on the scale of probability. Section 137 Evidence Act, 2011 has clearly stated that: "Where in any criminal proceeding the burden of proving the existence of any fact or matter has been placed upon a defendant by virtue of the provisions of any law, the burden shall be discharged on the balance of probabilities."

It will therefore be wrong to hold that since it is the Defendant who probes the alleged oppressive manner as to which the statement was extracted, then such position must be proved by the Defendant. The onus of proof does not shift from the prosecution to the Defendant at any stage in criminal proceedings. It would be wrong for the court to conduct a trial within trial by calling on the accused to prove the claim of absence of free-will when making the confession sought to be tendered by the prosecution against such a Defendant. OMO J.S.C (as he then was) in the case of *Gbadamosi v The State*[101] while deciding on which party should commence first in a trial within trial and ruling against the error committed by the trial judge, stated that:

> "The learned trial judge therefore was obliged to conduct a trial within a trial. It is agreed by counsel for both sides that his conduct of this "trial within trial" was irregular. He called upon 1st appellant to give evidence first instead of the prosecution. It is argued that by so doing he shifted the onus of proof from the prosecution to the defense. It is submitted that this is prejudicial to the appellant and denied him a fair trial. I agree with counsel that the trial within trial conducted by the learned trial judge was irregular and that calling on the appellant to first testify, in an enquiry whether or not the statement he is alleged to have made is voluntary, does suggest a shift of the onus of proof from prosecution to the defense (appellant)."

[100] See Section 135 (2) & (3) Evidence Act, 2011.
[101] (1992) 3NSCC 439

After the prosecution builds its proof and evidence by showing that the confession was, to the contrary, made with the voluntariness of the Defendant, the latter shall then in turn open its defense by leading its own witness and evidence to prove that the cry of duress upon the confessional statement during the main trial is, in fact, the correct position of affairs. Thus, in the procedure of a trial within trial, the prosecution still bears the burden to call evidence to prove, beyond reasonable doubt, that the Defendant made a voluntary confession. The court does not go fishing for evidence of voluntariness. It is the responsibility of the prosecution to prove its case. The court's role is only to convene the trial so the prosecution can have the opportunity to disprove the Defendant's assertions.

Usually, the trial within trial commences with the state calling witnesses, usually police officers who would be examined under oath by the prosecution and cross-examined by the defence. The witnesses for the prosecution are to satisfy the court that the Defendant made the confessional statement voluntarily while the defence counsel is to show the contrary i.e. that the Defendant was forced or induced to make the statement. After the prosecution concludes its evidence, the Defendant goes into the witness box to explain to the court how he was forced, or induced to make the statement. He may call witnesses, but they can only be called after he has given evidence.[102]

2.5. Condition Precedent to the Conduct of Trial Within Trial

The rule with respect to conducting a trial within trial operates only in cases questioning the voluntariness or otherwise of confessions. In effect, trial within trial is not conducted as a matter of course. It must be predicated on certain conditions. These conditions are as follows:

1. There must be a main trial in a court of competent jurisdiction
2. The defendant must be present in the court and in the dock for his trial

[102] The State v Abdullahi Sani [2018] 9 NWLR (Pt 1624) 278.

3. The prosecution must seek to tender a confessional statement of the defendant as an exhibit.
4. The defendant must identify the alleged confessional statement as his
5. The defendant must have objected to the admissibility of the confessional statement on ground of involuntariness.[103]

The rule that trial within trial is not conducted as a matter of course was rightly upheld by the Supreme Cout in *Ibeme v State*[104] where the Court Per CHUKWUMA-ENEH, J.S.C. held thus:

> "There can be no doubt that a trial-within-trial has to be conducted in order to determine the voluntariness of an accused person's confessional statement, but in raising the objection to its voluntariness he has firstly to acknowledge the statement as his, as it is on this important premise that the whole exercise of a trial-within-trial is rested. In the instant case, the appellant's counsel simply objected to the statements going in as evidence saying they had been obtained by force, thus prima facie putting in issue the voluntariness of the statements which led to the trial court ordering a trial-within-trial and taking evidence from the prosecution and defence witnesses to determine the voluntariness of the statements without the appellant having even owned up the statements as his."

What can be deduced from the above decision is that trial-within-trial can only be conducted where the defendant has firstly acknowledged the statement as his but he is objecting to it admissibility on the ground that it was not made voluntarily.

The above position was equally upheld in *Ibeme v State*[105] where the Supreme Court emphasized the condition precedent to conduct of trial-within- trial. The Court stated thus: "This case has brought to the fore the need for court to be vigilant where an accused is objecting to the tendering

[103] Ekemini Udim, *Trial Within Trial in Criminal Proceedings*, (Princeton and Associates Publishing Co. Ltd. Lagos 2016.) 9-10.
[104] [2013] 10 NWLR (Pt 1362) 333 @ 360-361, paras. F-A

[105] (2013) 10 NWLR (Pt. 1362) 333

of his confessional statement so as to warrant a trial-within-trial. In that regard, he has to make it abundantly certain at the time of raising the objection to the statement's admissibility in evidence that he also owns up the statement as his; otherwise the trial court labours in vain where, as in this case, the statement has been disowned belatedly at the hearing in the trial-within-trial. Thus, the voluntariness of the statement as challenged must be predicated on the appellant having firstly owned up as the maker of the confessional statement as otherwise the inquiry could be on another person's statement.

The import of the above dictum is that as a condition precedent to conducting trial within trial, the defendant must first accept the statement being challenged as his.

2.6. Literature Review

The criminal justice system in Nigeria has become a subject of continuous concerns amongst stakeholders and the general public. It is riddled with age-long challenges which are both procedural and substantive and one of such challenges is the undue delay in the system which more often than not, is caused by the practice of trial within trial in the country's criminal procedure which arises when the voluntariness of a confessional statement of a defendant is questioned.

The Evidence Act, 2011 defines a confession as an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.[106]

A confession made in judicial proceedings is of greater force or value than all other proofs. It occupies the highest place of authenticity when it comes to proving beyond reasonable doubt.[107] Due to its relevance to proving a crime beyond reasonable doubt, a confessional statement must be given voluntarily. The Supreme Court has held that no statement by a

[106] Section 28 of the Evidence Act 2011 as amended in 2023.
[107] See Osung v State [2012] 18 NWLR (Pt 1332) 256.

defendant should be admissible in evidence against him unless it is shown by the prosecution that the alleged confessional statement was a voluntary statement.[108]

The Evidence Act stipulates however that 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.[109]

While the usage of trial within a trial may be termed as a best approach in resolving the voluntariness or otherwise of a confessional statement, there have been calls from some quarters advocating for its abolition as such writers consider the practice as needless. For example, Adekunle C.O, shares this view.[110]

As far as the issue of trial within trial is concerned, there are two schools of thought. While one school of thought argues in favour of the concept, the other argues otherwise. Scholars who argue in favour of the concept see trial-within-trial as a way to ensure fair trials by allowing the defendant to challenge the admissibility of a confession and to protect against coerced statements. G.E. Adekanbi[111] submits in her essay that while trial within trials may seem unnecessary and cumbersome, they should be retained until full compliance with ACJL provisions is achieved. She then mentioned that the Supreme Court's direction on this matter is

[108] See Godwin Ikpasa v State (1981) 9 SC 7

[109] Section 29 (2) of the Evidence Act 2011 as amended in 2023.

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

[111] G.E. Adekambi, *The Relevance or Otherwise of Trial Within Trial Vis-à-vis the ACJL* (A paper presented by Mrs. G. E. Adekanmbi, Director of Public Prosecutions, Edo State, discussing the relevance of trial within trials in relation to the Administration of Criminal Justice Law (ACJL) in Edo State).

awaited, and until then, trial within trials should continue to ensure fair hearings. It is pertinent to mention that at the time Adekambi presented her paper and made the submission there, there was no Supreme Court judgment yet as touching this relevant provision.

On the other hand, scholars who argue against the concept based their arguments on the ground that trial-within-trial can lead to delays in the main trial and that the procedure is not necessary given the Evidence Act's provisions on admissibility of confessions as well as the requirement to ensuring the presence of legal practitioner or relative in the course of obtaining confessional statement from a defendant. This writer is in favour of the latter school of thought.

Those who advocate for the abolition of trial within trial have submitted that the Nigerian criminal justice system has come of age and can do away with the age long practice of conducting trial within trial whenever the admissibility of a confessional statement is objected to on the ground of voluntariness. The reasons adumbrated to support this argument include the fact that a trial within trial wastes the time of the court as it is a complete trial on its own and the main case can suffer several adjournments in order to procure witnesses[112] while the accused person will be languishing in prison[113], except if he has been granted bail. The ruling of the Judge on the admissibility of the statement is also appealable, even to the Supreme Court.[114] More so, the court will have to consider other surrounding circumstances before it can act on the confessional statement of the accused, the mere fact that the court even admits the statement as being made voluntarily during the trial within trial doesn't automatically translate to the fact that the court will convict the accused based on such admitted confessional statement.

Hence, the whole process of calling witnesses, examining, cross-examining and re-examining them, tendering exhibits and delivering addresses in order to determine the sole issue of

[112] Such as the superior police officer and other people who witnessed the processes employed in obtaining the statement from the accused.

[113] Consideration should also be had to the conditions of prisons and cells in this country. The agonizing condition which defendants are made to face despite the fact that they have not been tried is enough to force out of them statement that cannot be said to have been voluntarily made, probably hoping that this may hasten their discharge.

[114] See Sections 233, 241 and 242 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

voluntariness is needless, as the time expended on such processes can be effectively utilized by the court in hearing the elements of the case. This is much more so, as the witnesses will repeat almost all what they have informed the court in the trial within trial when they are put in the witness box to testify in the main case.[115] Consequently, it is argued that if trial within trial is jettisoned, it will lead to faster dispensation of justice and reduce the numerous years that such cases spend in court.[116] Adekunle emphasized the need for compliance with the relevant innovative provisions of the Administration of Criminal Justice Act 2015 particularly the requirement for a video coverage as well as ensuring that a legal practitioner is present when recording confessional statement of a suspect at the police station, or where he is unrepresented, efforts should be made to obtain a Legal Practitioner from the Legal Aid Council of Nigeria as required by the Act.[117]

Still on the need to abolish trial within trial, Hon. Justice R. K. Nwokedi, Chief Judge of Anambra State (as he then was), submitted thus:

> "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 confessional statement, 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,

[115] The proper foundation that the prosecution has initially laid when it attempted to tender the confessional statement prior to the objection will usually be repeated in the trial within trial.
[116] Adekunle C.O, 'A Case for the Abolition of Trial within Trial in Nigerian Criminal Jurisprudence' [2017] (1) *International Journal of The Law Students' Society, Bowen University, Iwo, Nigeria*. Essays in Honour of Late Mr. Oluwasegun Isaac Aderibigbe. 179 – 187.
[117] See sections 15(4) and 17(2) of the Administration of Criminal Justice Act, 2015.

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. It is carry-over from the English legal system which operates under a different background."[118]

Similarly, a senior lawyer, Mr. Kemi Pinheiro (SAN), has also called for the abolition of the 'trial within trial' system of determining the value of confessional statements in Nigerian criminal justice system, arguing that the system has no basis in the Evidence Act. Pinheiro also contends that trial within trial is one of the major causes of delay in criminal trials. In his words, "Trial within trial being foreign to our existing non-jury system law and having contributed immensely to the delay in justice delivery in criminal matters ought not to be conducted anymore in our legal system,'' Rather, Pinheiro advocates that extraction of statements should be taken away from the police, and given to Magistrates or other judicial officers who must not only study the demeanor of a defendant, but also ensures that defendants are completely free while making the statement voluntarily. This way, controversies surrounding confessional statements will be completely eradicated. He said that trial judges should then be entitled to from the totality of the evidence led by parties, deliver judgments and expunge the confessional statement from their records, where found to be involuntarily made and, or act on same if found to be voluntarily made. Pinheiro argued that Section 29 (2) (a) – (b) of the Evidence Act, 2011 which governs admissibility of confessional statements and sets out the circumstances under which statements qualify as confessions will be admitted makes no mention of the phrase "trial within trial". He argued that the phrase "trial within trial" does not exist in Nigeria statutory lexicon.[119]

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[118] R. K. Nwokedi, Admissibility of Confessional and other Statements, Unpublished.

[119] Kemi Pinheiro, Abolish trial within trial, SAN says, *The Guardian,* (Lagos, 1 Oct 2019) 2.

The Supreme Court in *Gbadamosi v State* has held that trial within trial lacks a specific legal basis in the Evidence Act or Criminal Procedure Act, suggesting it's a matter of practice rather than law. Some other scholars have equally based their argument on the ground that judges may develop preconceived notions about the accused during the trial within a trial, potentially influencing their assessment of evidence in the main trial. Apart from the issue of delay occasioned by the present system of trial within trial, there is also a risk that the trial Judges being human, would have taken some set positions with respect to the Defendant as for instance when the Court in the Ruling on the trial within trial finds that the Defendant is not a witness of truth, etc. This may willy-nilly affect the assessment of the integrity of the witness and his evidence by the Court during the main trial.[120]

Another problem associated with trial within trial as identified by some scholars include the fact that trial within trial consumes judicial time as it is conducted like the main trial i.e. the procedure applicable to the substantive trial, applies to same. In a case with more than a defendant, there is a likelihood of all defendants wanting a bite from the cherry.

Trial within trial is equally argued to elongate the continuous detention of defendants who cannot access bail. With the recurring problem of adjournments in the Nigeria court system, defendants that are not admitted to bail, may continue to stay in detention throughout the period trial within trial is concluded with a decision on their acquittal or conviction not happening a in a time soon.

A mini trial in a substantive one also add to the burden placed on judges. Nigeria judges are swamped with cases, and timelines of giving quarterly reports to the Nigerian Judicial Council. More often than not, these mini trials, due to their nature, takes the time that should be expended on other substantive matters. A learned scholar, Farouk recommends that Sections 15(4) and 17(1) – (2) in the Administration of Criminal Justice Act 2015 be adhered to strictly. The Courts should

[120] Kemasuode Wodu, Trial Within Trial: Regulation By Means Of Practice Direction. Available at <https://edojudiciary.gov.ng/wp-content/uploads/2019/05/SEVENTH-SESSION-Trial-Within-Trial-Regulation-by-Means-of-Practice-Direction.pdf> Accessed 24 April, 2025.

not in any manner allow the prosecution the laxity of non-compliance, thus, causing objections as to the voluntariness of the confessional statement. He submitted and this writer aligns with his submission that the extant laws on recording confessional statements have come to displace the continuous practice of conducting a trial within trial. Consequently, trial within trial should be expunged.[121]

Thus, by tendering the video recording of the confessional statement as exhibit in the trial, the accused would find it almost impossible to object that the confession was extracted by force. Even when the objection is raised, all the judge need do is to watch the video recording and decipher for himself whether or not the confession is voluntary. With this, the need for trial within trial will be dispensed with.

Other legal experts have equally argued that trial within trial is no longer relevant in criminal proceedings. To them, it works against speedy adjudication of cases. Speakers at the first C.O. Anah (SAN) memorial colloquium suggested ways around the "time-wasting" mini-trial. To him, a criminal charge is filed against a defendant. Trial begins, and the prosecution moves to tender a statement made by the defendant while in custody. The defence counsel raises an objection, claiming that the statement was not obtained voluntarily. The judge orders a trial within trial to determine whether or not the defendant was forced to make the statement. A new set of witnesses are required to give evidence while the main trial is put on hold. This is a common occurrence in most criminal proceedings, but some legal experts believe it should end. He notes that it has become a delay tactic by certain defence counsel and contributes to unending trials at a time effort is being made to speed up criminal justice administration. However, given that some security agencies use torture to obtain confessions from suspects, how can a balance be found to ensure that such statements are not relied on to secure convictions? These issues and more were

[121] Farouk Obisanya, Trial Within Trial: A Recurring Problem with Administration of Criminal Justice in Nigeria, available at https://roukco.com/team/ Accessed 25 April, 2025.

examined at the first C.O Anah (SAN) Memorial Colloquium in Abuja. Its theme was: *Trial within trial: an incongruity with speedy administration of criminal justice.*

Justice Senchi, a former judge of the High Court of the Federal Capital Territory, noted that a trial within trial was a complete trial on its own, during which the main case is put on hold, and parties are called upon to prove whether a statement was voluntarily obtained. He believes there has been a blind and slavish adherence to the practice though the fundamental right to personal liberty under Section 35(2) of the Constitution requires that any statement made by a person upon lawful arrest must be voluntarily. He noted that the law allowed the court to *suo motu* (without prompting) raise the issue of unreliability of a confessional statement and order a trial within trial. To him, the innovative Administration of Criminal Justice Act (ACJA) 2015, designed to achieve speedy dispensation of justice, may be hampered by the retention of the practice. Pointing out the irrelevance of trial within trial, he noted that the Evidence Act 2011 and the ACJA did not provide that it must be conducted to determine the voluntariness of a statement. He added that the laws appear to be silent as to the procedure to be adopted in determining the voluntariness of a confessional statement. In his words, "Happily, there are voices raised calling for a stop to conducting a trial within the trial. It is absolutely obsolescent and we should say no in no uncertain language." He believes the only factor sustaining the practice is the principle of judicial precedence.[122]

In Justice Senchi's view, instead of mandatorily conducting a separate trial, there are better approaches to determining the voluntariness of a statement. He recommended that having been served with the proof of evidence containing a copy of the defendant's statement, his counsel could file a notice before trial indicating his intention to object to the statement on the ground that it was not obtained voluntarily. In calling evidence to prove its entire case against the defendant at

[122] Danlami Senchi, Case for abolition of trial within trial, The Nation (Lagos, 26 October, 2021) Available at <https://thenationonlineng.net/case-for-abolition-of-trial-within-trial> Accessed 25 April, 2025

the trial, the prosecution will also call evidence to prove that the defendant's confessional statement was obtained voluntarily. The defence, Justice Senchi said, will have opportunity to cross-examine the prosecution witness and lead evidence in rebuttal when presenting its defence. At the close of evidence and after hearing arguments from both the prosecution and defence, the court shall, in its final judgment, rule on the issue of voluntariness of the defendant's statement. "Where the court finds that the statement was obtained voluntarily, the court may proceed to rely on and use same in the rest of its judgment. "Where the court finds that the statement was obtained by means of oppression or inducement and thus not given voluntarily, the court shall discountenance such statement and expunge it from the records.

On his part, Professor Akinseye-George (SAN) noted that one reason prosecutors often placed heavy reliance on confessional statements was the lack of resources to conduct forensic investigations. He agreed with Justice Senchi that the Evidence Act allows the use of confessional statement but does not spell out the procedure for admitting it. He pointed out that over the years, the courts have developed the practice of trial within trial as a means of ensuring that confessional statements are obtained voluntarily. The SAN believes the practice has outlived its usefulness as it offends the provisions of the Administration of Criminal Justice Act, 2015. He advocated that rather than conducting a trial within trial, the procedure for admitting or rejecting a confessional statement should be part and parcel of the main trial. According to him, a trial within trial protracts the judicial process. He said it was a matter of experience that a criminal trial can be prolonged for weeks and months because of a trial within trial. Also, in most cases, the exercise is not realistic because the issue of admissibility of the evidence is being tried by the same court that determines the guilt of an accused. Akinseye-George underscored the psychological effect the inadmissibility of the evidence has on the court in the subsequent determination of the case. In his view, the procedure of a trial within trial is an unnecessary duplication in the criminal process as it wastes valuable trial time and does not necessarily work in favour of the accused person, who is presumed innocent until proved guilty. To him, a trial within trial goes against the constitutional provision guaranteeing a fair trial within a reasonable time to a defendant, and the ACJA 2015 stipulations for speedy dispensation of justice.[123] Besides, the SAN said the plethora of judicial decisions from the appellate courts mandating trial within trial on the admissibility of confessional statements must, henceforth, be read subject to the statutory provisions of the state criminal justice laws. He added that the courts are, therefore, bound to give effect to the provisions, which he believes will promote speedy trial without compromising the rights of defendants to a fair hearing. "There is no doubt that the practice of trial within trial in criminal proceedings is archaic and has outlived its usefulness," Akinseye-George said.

Advocating for an end to the practice, Moneme said: "A trial within trial is an archaic procedure which ought to be jettisoned since the mini-trial can also be subsumed in the main trial where the judge makes his findings on the voluntariness or otherwise of the statement in his judgment, thereby saving precious judicial time and expense(s) that would otherwise have been incurred in conducting a trial within trial."[124]

To Simon Lough[125], the idea of a trial within trial is to ensure fairness and promote the cause of justice by giving the court the confidence to rely on a confessional statement. The negative consequences, the chief police prosecutor said, include delay in the speedy conclusion of cases; the negation of Section 36 (1) and (4) of the 1999 Constitution and Section 1 of the ACJA 2015, and the likelihood of the main case being frustrated. The longer a trial within trial lasts, he said, the likelier victims of crime will be denied the justice they deserve, as they or the accused may die before the case ends. Lough was also of the view that the practice places a financial burden on

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[123] Akinseye-George, Case for abolition of trial within trial, The Nation (Lagos, 26 October, 2021) Available at <https://thenationonlineng.net/case-for-abolition-of-trial-within-trial> Accessed 25 April, 2025

[124] Chinyere Moneme, Case for abolition of trial within trial, The Nation (Lagos, 26 October, 2021) Available at <https://thenationonlineng.net/case-for-abolition-of-trial-within-trial> Accessed 25 April, 2025

[125] Simon Lough was an Assistant Commissioner of Police in charge of prosecution at the Force Headquarters, Abuja

parties and wastes judicial time. He believes the procedure should be abolished and a better system of determining the voluntariness of confessional statement deployed.[126]

On his part, Justice R. K. Nwokedi, former Chief Judge of Anambra State said in an unpublished paper, ***Admissibility of Confessional and other Statements,*** thus: "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 refutal 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. It is carry-over from the English legal system which operates under a different background."

Those who favour the retention of trial within trial in Nigeria criminal justice system argue that there is logic in this trial within trial rule. To them, when evidence is tendered and objection is taken to it, as a matter of law, a judge decides on the admissibility of that evidence before allowing it to go in and the trial to continue. To allow evidence objected to go in first and decide at the end of the trial on its admissibility might most likely result in some miscarriage of justice

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[126] Simon Lough, Case for abolition of trial within trial, The Nation (Lagos, 26 October, 2021) Available at <https://thenationonlineng.net/case-for-abolition-of-trial-within-trial> Accessed 25 April, 2025.

for it would be impossible to say that the mind of the Judge, as a Judge of fact, would not be poisoned or affected by the contents of that evidence. Whether a piece of evidence is admissible or not, is an Issue-of law for a judge to decide at the time the evidence is offered either after taking arguments from counsel or after taking evidence as in the case of a confession.[127]

In all, this writer is of the firm view that trial within trial which has occasioned delay in the criminal justice system can be done away with simply by giving effect to the provisions of the Administration of Criminal Justice Act, 2015 particularly section 15(4) and 17(2) respectively.

As earlier submitted, by tendering the video recording of the confessional statement as exhibit in the trial, the defendant would find it almost impossible to object that the confession was extracted by force. Even when the objection is raised, all the judge needs do is to watch the video recording and decipher for himself whether or not the confession is voluntary. With this, the need for trial within trial will be dispensed with and the objective of the Administration of Criminal Justice Act, 2015 as encapsulated in section 1(1) of the Act would be fully realised.

[127] Chinedum Gregory Ike-Okafor, The Concept of Trial Within Trial. Available at https://ansu-edu.academia.edu. Accessed 27 December, 2024.

CHAPTER THREE

THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015

5.0. Introduction

The Administration of Criminal Justice System in Nigeria witnessed a radical change with the enactment of the Administration of Criminal Justice Act, (ACJA) 2015, which all States in the Federation have domesticated into Administration of Criminal Justice Law of their respective States with necessary modification. The Administration of Criminal Justice Act, 2015 brought about comprehensive reforms of the Nigeria Criminal Justice System. The moribund Criminal Procedure Act and Criminal Procedure Code of States that hitherto regulated the administration of criminal justice had its plethora of challenges, which ultimately occasioned delay in justice administration. This chapter critically examined some of the notable provisions of the Administration of Criminal Justice Act such as Sections 15(4) and 17(2) of the ACJA which impose a duty on public functionaries (police officers and other officers of any law enforcement agency established by an Act of the National Assembly and this include the EFCC) to record electronically on retrievable video compact disc or such other audio-visual means, the confessional statements of suspects in the presence of the person(s) set out in Section 17(2) of ACJA 2015. Some of the decisions of the courts which have given judicial interpretations to the above sections are equally examined in this chapter. Equally, the chapter examines some of the innovative and revolutionary provisions in the Act which are geared toward addressing the several ills and lacunae contained in the repealed procedural legislations on the administration of criminal justice with a view to bringing Nigeria's criminal legislation more in tune with international Criminal law. This subhead reviews the innovative provisions of the Administration of Criminal Justice Act, 2015 with particular emphasis on its provisions relating to speedy dispensation of justice.

5.1. Enactment of the Administration of Criminal Justice Act, 2015

The Administration of Criminal Justice Act (ACJA) 2015 is a watershed legislation that radically transformed the administration of criminal justice in Nigeria. The Criminal Procedure Code (CPC), which was applicable in the Northern States, and Criminal Procedure Act (CPA), which was applicable in Southern States of Nigeria, became outdated, inefficient and irrelevant. By the express provisions of section 493 of the ACJA, the Criminal Procedure Act CAP. C41 Laws of the Federation of Nigeria, 2004, Criminal Procedure (Northern States) Act Cap. C42 Laws of the Federation of Nigeria, 2004, and the Administration of Justice Commission Act Cap. A3 Laws of the Federation of Nigeria, 2004 have now been repealed.[128] The ACJA 2015 was a legislative intervention to address the lacunas in the administration of criminal justice in Nigeria. As clearly defined in Section 1(1) of the ACJA, 2015, the purpose 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 crime and protection of the rights and interests of the Suspect, the Defendant, and the Victim. The above provision was given judicial notification by the Court of Appeal in the case of *Charles v. F.R.N*[129] where the Court stated held inter alia that one of the objects and reasons for the Act is to protect the rights and interest of suspects and defendants because the suspect or defendant is presumed by the Constitution of Nigeria to be innocent until proved to be guilty.[130]

[128] See section 493 of the Administration of Criminal Justice Act, 2015
[129] (2018) 13 NWLR (Pt. 1635) 50 at 65, Paras. B-D.
[130] See section 36(5) Constitution of the Federal Republic of Nigeria, 1999 as amended in 2023.

It is worth noting that all the 36 States of the Federation have passed into Law the Administration of Criminal Justice Law (ACJL), which is a domestication of the Administration of Criminal Justice Act, 2015[131].

The ACJA remains a watershed legislation in the administration of criminal justice. Since the Act has come to stay, there is need for continuous reviews towards ensuring the effectiveness of its provisions.

The writer shall be examining the ACJA to highlight the innovations of the Act and its achievements ten years after.

5.2. Innovations of the ACJA 2015.

Nigeria's Administration of Criminal Justice Act, 2015 (ACJA) enacted in May, 2015 is a progressive piece of legislation due to its innovative and revolutionary nature. It has been commended by scholars, legal minds and commentators for its novel provisions, progressive nature and its ability to fulfill its major aim, which is, quick dispensation of justice. Several ills and lacunae contained in the previous enactments on the administration of criminal justice are addressed in the Act bringing Nigeria's criminal legislation more in tune with international Criminal law.

Some of the several innovative provisions in ACJA 2015 are:

1. Limited number of adjournments;[132]
2. Abolition of stay of proceedings;[133]
3. 14 days timeline for Legal Advice;[134]

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[131] John Ishaku Mantu, The Administration of Criminal Justice in Nigeria and A Call for Amendment of the Administration of Criminal Justice Act, 2015. Available at <https://ssrn.com/abstract=4698078> Accessed 28 April, 2025.

[132] See section 396(4) of the Administration of Criminal Justice Act, 2015

[133] See section 306 of the Administration of Criminal Justice Act, 2015

[134] See section 376(2) of the Administration of Criminal Justice Act, 2015

4. Recognizing women as competent witnesses: The ACJA affirms women's right to testify in court, ensuring they are not excluded from providing evidence.
5. Allowing women to act as sureties: Women can now be sureties for accused persons, promoting their full participation in the criminal justice system.
6. Elimination of trial starting Denovo;[135]
7. Electronic Recordings of proceedings and evidence;[136]
8. Compensation for Victims of Crime;[137]
9. Prohibition of Arrest in lieu;[138]
10. Monthly inspection of detention facilities by Chief Magistrate;[139]
11. Registration and licensing of corporate bodies or persons to act as bondspersons;[140]
12. Prohibition of Arrest in Civil and Contractual Cases;[141]
13. Video Recording of confessional Statement of Suspect;[142]
14. Recording of statement in the presence of a legal practitioner, or where the suspect 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;[143]
15. Express provision for plea bargain;[144]

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[135] See section 396(7) of the Administration of Criminal Justice Act, 2015.although the Supreme Court in Udeogu v F.R.N. [2022] 3 NWLR (Pt 1816) 41 voided this provision for its inconsistency with Section 290(1) of the 1999 Constitution of the Federal Republic of Nigeria (as mended), there is a need to revisit the provision.
[136] See section 364 of the Administration of Criminal Justice Act, 2015
[137] See section 319 of the Administration of Criminal Justice Act, 2015
[138] See section 7 of the Administration of Criminal Justice Act, 2015
[139] See section 34 of the Administration of Criminal Justice Act, 2015
[140] See section 187 of the Administration of Criminal Justice Act, 2015
[141] See section 8(2) of the Administration of Criminal Justice Act, 2015
[142] See section 15(4) of the Administration of Criminal Justice Act, 2015
[143] See section 17(2) of the Administration of Criminal Justice Act, 2015
[144] See section 270 of the Administration of Criminal Justice Act, 2015

16. Probation and non-custodial sentences;[145]
17. Release of prisoner before completion of sentence[146]
18. Victim-Offender Mediation
19. Administration of Criminal Justice Monitoring Committee[147]
20. Trial of corporation[148]
21. Witnesses and Victim Protection[149]
22. Time limit of 180 days for trial in lower Courts[150]
23. Penalty for witness who refuses or neglects to attend Court[151]
24. Award of Cost for adjournment where witnesses are brought to Court and did not testify[152]
25. Establishment of the Central Criminal Records Registry[153] (Section 16);
26. Grant of bail in capital offences[154] (Section 161);
27. The right of the Court to raise the issue of "no-case submission" *suo motu*. Prior to the enactment of the ACJA 2015, only a defence Counsel has the right to make a "no-case submission" after which the court would rule on same. However, by the provision of section 302 of the ACJA, the court on its own can record a finding of not guilty in respect of a defendant without calling an accused person to enter defence and based on this, the defendant shall be discharged.[155]

[145] See sections 453 to 466 of the Administration of Criminal Justice Act, 2015
[146] See sections 468 of the Administration of Criminal Justice Act, 2015
[147] See sections 469 to 476 of the Administration of Criminal Justice Act, 2015.
[148] See sections 477 to 484 of the Administration of Criminal Justice Act, 2015
[149] See section 232 of the Administration of Criminal Justice Act, 2015
[150] See section 110(4) of the Administration of Criminal Justice Act, 2015
[151] See section 246 of the Administration of Criminal Justice Act, 2015
[152] See section 253 of the Administration of Criminal Justice Act, 2015
[153] See section 16 of the Administration of Criminal Justice Act, 2015
[154] See section 161 of the Administration of Criminal Justice Act, 2015
[155] section 302 of the ACJA, 2015

28. Compensation of victims of crimes[156]. Unlike what obtained in the repealed CPA and CPC, victims of crimes can now obtain compensation/damages/restitution/cost in a criminal trial without the institution of a civil matter.

29. Day-to-day trial until conclusion of trial.[157] Criminal matters are to be tried on a daily basis upon arraignment until the conclusion of the matter. Parties are only entitled to 5 adjournments each from arraignment to final judgment.

30. Cost for frivolous adjournment – the Act now makes provision for award of reasonable cost where the leave for adjournment is frivolous[158].

5.3. Understanding sections 15(4) and 17(2) of the Administration of Criminal Justice Act, 2015

It is imperative to mention that since the enactment of the Act, section 17(2) of the Administration of Criminal Justice Act, 2015 has received judicial interpretation even by the Supreme Court.

Section 15(4) of the Act provides that where a suspect who is arrested with or without a warrant volunteers to make a confessional statement, the police officer shall ensure that the making and taking of the statement "SHALL" be in writing and "MAY" be recorded electronically on a retrievable video compact disc or such other audio-visual means.

Section 17(1) 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.

Section 17(2) of the Act provides that 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

[156] Section 319 of the ACJA, 2015
[157] See section 396(3) of the Administration of Criminal Justice Act, 2015
[158] Section 394(6) ACJA 2015.

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.

By way of judicial interpretation, the Court in *Edewor v Uwegba*[159], held thus, "Generally the word 'may' always mean 'may'. It has long been settled that may is a permissive or enabling expression."

In *Messy v Council of the Municipality of Yass*[160], it was held that the use of the word "may" prima facie conveys that the authority which has power to do such an act has an option either to do it or not to do it.

However, it has been conceded that the word 'may' could acquire a mandatory meaning from the context in which it is used. The word may also acquire a mandatory meaning from the circumstances in which it is used. Thus, in *Akaeze Charles v FRN*[161], the Court held that "it has been established by a long line of decided cases 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.

Sections 15(4) and 17(2) of the ACJA impose duties on public functionaries (police officers and other law enforcement agencies established by an Act of the National Assembly and this include the EFCC) to record electronically on retrievable video compact disc or such other audio visual means.

[159] (1987) 1 NWLR (Pt. 50) 313, 338
[160] (1922) 222 SRNSW 494 *per Cullen, C.J. at pp 497, 498. See also Cotton, L.J. in Re Daker, Michel v Baker (1800) 44 Ch.D 282.* Johnson's Tyre Foundary Property Ltd. v Shire of Maffra (1949) ALR. 88
[161] (2018) LPELR-43922(CA),

These provisions are for the benefit of private citizens who are suspected of committing crimes so that the enormous powers of the police or other law enforcement agencies will not be abused by intimidating them or bullying them in the course of taking their statements.

Those provisions also have another side to it, viz; to protect law enforcement agents from false accusation of coercion in taking statements from suspects. The use of the word "may" in those provisions are in those circumstances mandatory and not permissive.[162]

This study finds that sections 15(4) and 17(2) of the ACJA impose duties on law enforcement agencies and if strictly adhere to, will displace the age long practice of conducting a trial within trial especially as the practice does not have any legal backing except for judicial precedent.

As a matter of judicial interpretation in *Nnajiofor v FRN*[163], the word "may" which appears in Section 15(4) as regards recording of the confession in a video format has been held not to confer a discretion on the police, but a directory, mandatory, imperative command. The Court held that Sections 15(4) and 17(2) of the ACJA, 2015 are procedural rules for the benefit of a suspect and therefore must be construed as being imperative. Enactments regulating the procedure in courts are usually construed as imperative; and that is a cardinal principle of interpretation of statutes especially where procedural provisions are inserted for the protection of the accused person. Procedural sections are usually mandatory and are often inserted for the benefit of accused persons. Given the foregoing, to hold that the word "may" in the said provisions carry a discretionary or permissive meaning would not suppress the mischief the provisions are aimed at curing nor would it advance the remedy for it. It would also not add force and life to the cure; rather it would add strength to the mischief and that would not be *pro bono publico* given the objective of the provisions, to give a permissive colouration to

[162] Farouk Obisanya, trial-within-trial-a-recurring-problem-with-administration-of-criminal-justice-in-nigeria. Available at https://roukco.com. Accessed 5th May, 2025.

[163] [2019] 2 NWLR (Pt 1655) 157

the provisions would mean that the legislature gave a cure to the mischief with one hand and also took away the cure with the other hand. That would reduce the provisions to futility and defeat their purpose. Courts are to adopt construction that would bring out the purpose of legislation.[164]

On when 'may' used in a statute must be construed as mandatory, it was held 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. In the instant case, sections 15(4) and 17(2) of the ACJA impose a duty on public functionaries (police officers and other officers of any law enforcement agency established by an Act of the National Assembly and this includes the EFCC) to record electronically on retrievable video compact disc or such other audio visual means, the confessional statements of a suspect and to take statements of suspects in the presence of the person/s set out in section 17(2). The provisions are for the benefit of private citizens who are suspected of committing crimes so that the enormous powers of the police or other law enforcement agencies may not be abused by intimidating them or bullying them in the course of taking their statements. The provisions also protect law enforcement agents from false accusation of coercion in taking statements from suspects. Therefore, the use of the word "may" in those provisions are in these circumstances mandatory and not permissive.[165]

The word 'may' as used in the above provisions was given judicial interpretation in the recent Court of Appeal case of *Charles v F.R.N*[166]. in that case, the appellant and two other persons

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[164] See Coca Cola (Nig.) Ltd v.Akinsanya (2017) 17 NWLR (Pt.1593) 74 at p. 123.

[165] Mokelu v. Federal Commissioner for Works and Housing (1976)3 SC 35; Ude v. Nwara (1993) 2 NWLR (Pt.278) 638; Ogualaja v. A.-G., Rivers State (1997) 6 NWLR (Pt.508) 209; Adesolav. Abidoye (1999) 14 NWLR (Pt. 637) 28; John v. Igbo-Etiti LGA (2013) 7 NWLR (Pt. 1352) 1; Galaudu v. Kamba (2004)15 NWLR (Pt.895) 31; Corporate Affairs Commission v. Regd.Trustees, C.C.C. [Nigeria Diocese) (2009) 11 NWLR (Pt.1151)40 referred to.] (Pp. 169-170, paras. H-D)

[166] (2018) 13 NWLR (Pt. 1635) 50

were arraigned and charged for conspiracy while a charge of failure to declare a sum of USD 102,885 to the officers of the Nigerian Custom Service was proffered against the appellant alone at the Federal High Court, Lagos. At the trial of the appellant and in the course of the evidence-in-chief of the second witness for the prosecution, one Hakeem Lasisi, the prosecution sought to tender through him several documents including appellant's statement and further statement made on 9/10/2015 and 9/11/2015 respectively. The appellant's counsel raised objection to the admissibility of the statements on the premise that the statements were involuntarily made by the appellant. The trial court thereafter directed a trial-within-trial wherein the appellant contended that the respondent did not comply with Sections 15(4) and 17(2) of the Administration of Criminal Justice Act (ACJA) 2015 in taking the statement of the appellant. In response, the respondent argued that the provision by virtue of the word "may" used therein was directory and not mandatory. The trial court agreed with the submission of the prosecution and accordingly admitted the statements of the appellant in evidence. Dissatisfied with the ruling of the trial court, the appellant filed an interlocutory appeal at the Court of Appeal which unanimously allowed the appeal. The Court held that unlike the case with the Judges' Rules, which were cautionary, the provisions of ACJA have the force of law. Non-compliance with the provision of sections 15(4) and 17(2) of the Administration of Criminal Justice Act (ACJA) 2015 would automatically throw a purported confessional statement out of the window. The provisions of the sections as well as section 9(3) of the Act which are for the benefit of a suspect are therefore mandatory.[167] On Effect of failure to record confessional statement in the presence of accused's legal practitioner or video recording of confessional statement, the Court held that failure to comply with section 9(3) of the ACJL, 2007 (the equivalent of section 15(4) ACJA 2015, which requires video recording of the making of a confessional statement or, in its absence, the presence of the

[167] See also *Zhiya v People of Lagos State* (2016) LPELR 40562

suspect's legal practitioner, during the writing of such statement, render such statements impotent and inadmissible.[168]

The Court of appeal in the case above also discussed the need to construe enactments regulating procedural rules as imperative. The Court pointed out that sections 15(4) and 17(2) of the ACJA, 2015 are procedural rules for the benefit of a suspect and therefore must be construed as being imperative. Enactments regulating the procedure in courts are usually construed as imperative; and that is a cardinal principle of interpretation of statutes especially where procedural provisions are inserted for the protection of the accused person. Procedural sections are usually mandatory and are often inserted for the benefit of accused persons.[169]

On the principles governing construction of statutes, the Court held that in the discharge of its interpretative function, courts are concerned with finding the intention of the legislature and giving effect thereto. In doing so, the court may consider the object and scope of the statute. This is so when the words used in the statute are not plain or are capable of various interpretations or the literal interpretation would result in injustice. For the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1. What was the common law before the passing of the Act;
2. What was the mischief and defect for which the common law did not provide;
3. What remedy the Parliament has resolved and appointed to cure the disease of the common law,
4. The true reason of the remedy.

[168] See also *Mathew v State* CA/L/1126/2011 delivered on 11/12/2015, *Akhabue v State* CA/L/1056/2011 delivered on 11/12/2015; *Zhiya v The People of Lagos State* (2016) LPELR 40562.

[169] See also *Okegbu v. State* (1979) 11 SC 1

Judges are to ensure that construction shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for the continuance of the mischief and *pro privato commodo*[170], and to add force and life to the cure and remedy according to the true intent of the makers of the *Ad pro bono publico*[171]. That has formed the basis of the mischief rule of statutory interpretation which considers the state of the law before the enactment, the defect which the statute sets out to remedy and/or prevent, the remedy adopted by the legislature to cure the mischief and the true reason of or behind the remedy.[172]

As already noted by EKANEM, J.C.A. who delivered the Leading Judgment in *Charles v. F.R.N.*[173], Sections 15(4) and 17(2) of the ACJA 2025 also have another side to it, viz; to protect law enforcement agents from false accusation of coercion in taking statements from suspects. It follows therefore that if the law enforcement agents comply with the relevant provision of the Act while taking statement from suspect, the issue of involuntariness of confessional statement which often leads to trial within trial will not arise any more.

The issue in *F.R.N. v Akaeze*[174] as settled by the appellant was whether the Court of Appeal was wrong in holding that the extra-judicial statements of the respondent should be rejected in evidence for failure to comply with sections 15(4) and 17(2) of Administration of Criminal Justice Act, 2015 without having regard to the general provisions of the Act and the particular provisions of sections 492(3) and 491 of the Act. On the other hand, one of the respondent's briefs, settled by counsel to the respondent was whether having regards to the provision of sections1, 15(4) and 17(2) of ACJA the lower court was not right in interpreting the Word "may" to be mandatory. SAULAWA, J.S.C. in delivering the Lead Judgment set aside the ruling of the trial court which erroneously admitted the extra-judicial statements of the

[170] For private benefit
[171] For the public good
[172] See Ugwu v. Ararume (2007) 12 NWLR (Pt.1048) 367
[173] Supra, @ 63-64
[174] [2024] 12 NWLR (Pt. 1951) 1

appellant which was obtained in contravention of section 15(4) and 17(2) of the ACJA 2015. The alleged confessional statement was therefore rejected in evidence and was so marked. Instructively, the kernel of the appellant's issue I in the appeal was whether the provisions of sections 15(4) and 17(2) of the Administration of Criminal Justice Act (ACJA) 2015 (supra) are rather permissive and not mandatory. The apex Court than applied the Mischief Rule of interpretation, which considers the state of the law prior to the enactment, the defect which the statute sets out to eradicate or prevent, the remedy adopted by the legislature to cure the mischief, and the actual reason behind the remedy.[175] After examining the fundamental purpose necessitating the enactment of the Administration of Criminal Justice Act (ACJA) supra, as unequivocally provided in section 1 of the Act itself, the Apex Court held that courts, law enforcement agencies and other authorities or persons involved in this Criminal Justice Administration shall ensure compliance with the provisions of this Act for the realization of its purposes. In the language of the Court, the combined effect of the provisions of sections 1, 2 and 3 of ACJA (supra) under-score the fundamental importance of preserving the sanctity of the lives, dignity and property of persons under the Rule of Law. In the instant case, as aptly found by the court below; the provisions of sections 15(4) and 17(2) of ACJA/2015 have strictly provided for recording the statement of the defendant. Thus, there is no gainsaying the fact, that failure to perform the act in accordance with the dictates of those provisions of the law would be deemed to be a flagrant non-compliance with the law. 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.[176]

There is no doubt that the word "may" as used in Sections 15(4) and 17(2) of the ACJA 2025 is not used in the permissive sense of it but in a mandatory sense. There is therefore no reason

[175] See *Ugwu v Ararume* [2007] 12 NWLR (Pt 1048) 365; *Savannah Bank of Nigeria Ltd. v Ajilo* [1989] 1 NWLR (Pt 97) 305

[176] See *Adesanoye v Adewole* [2006] 14 (Pt 1000) 242 @ 269 paragraphs C-E.

why the law enforcement agents should be allowed to deliberately and flagrantly violate the provisions without legal penalty. The penalty should include the refusal to admit any purported confessional statement obtained in violation of the relevant provisions of the Act.

5.4.Achievements of ACJA 2015 after Ten Years of its Enactment

As already stated, the purpose of the ACJA 2015 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 crime and protection of the rights and interests of the suspect, the defendant and the victim.

The Administration of Criminal Justice Act, 2015 has repealed and replaced the Criminal Procedure Act Cap. C41, Laws of the Federation of Nigeria, 2004, Criminal Procedure (Northern States) Act Cap. C42 Laws of the Federation of Nigeria, 2004, and the Administration of Justice Commission Act Cap. A3, Laws of the Federation of Nigeria 2004[177] and virtually all the States in Nigeria have adopted Administration of Criminal Justice Act and made them into state Laws. For instance, Lagos State also has its own ACJL which governs the Criminal Justice system in Lagos[178], ACJL of Edo State 2016, ACJL of Kano State, 2019, ACJL of Ebonyi State, 2019, etc.

While these Act/Laws are right steps in the right direction, one cannot but worry at the lack of implementation and continuous perpetration of crime in the Country ten (10) years after the enactment of the Act. As a matter of fact, the Act is good in theory (especially considering the innovations above), it is pathetic that little or nothing has been achieved in practice due to some inadequacies inherent in the Act which range from lack of proper awareness and publicity of the laws, lack of adequate Training for stakeholders, lack of monitoring, lack of

[177] Section 493 ACJA 2015
[178] ACJL, 2015, amended by Lagos State Administration of Criminal Justice (Amendment) Law 2021, No.14

proper funding, corrupt and inefficient officers, lack of technology adaptation and the resort to force, etc.

If the Act must achieve its purposes, there is the need for amendment of some of the provisions that are in conflict with other existing law[179]. Reforms should be considered to ensure that the Act is not only good on paper but also effective too. It should go beyond the writings on a paper but to implementation. It has been ten (10) years of passing the ACJA in Nigeria with little or nothing to show for it.

[179] See section 396(7) ACJA 2015. See the case of Udeogu v FRN [2022] 3 NWLR (Pt. 1816) 41.

CHAPTER FOUR

COMPLIANCE WITH THE PROVISIONS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015

4.0. Introduction

The machinery for criminal justice administration consists principally of rules of Criminal Law, Administration of Criminal Justice Act, 2015 and the law of evidence. Whilst criminal law lays down the basic rights and corresponding obligation within the society, Administration of Criminal Justice Act, 2015 seeks to provide machinery for the enforcement of rights and duties as laid down by various rules of criminal law. In spite of the various machineries for criminal justice administration, the problems of delays have rendered the quick dispensation of criminal justice more of a myth than a reality.[180]

A preliminary point which must be borne in mind is the fact that some kinds of delay are inevitable in the criminal justice system. Consequently, the distinction between avoidable and unavoidable delays must be borne in mind. Thus, while the Criminal Justice System disapproves unnecessary delays, it condones delays which are necessary and desirable since justice should not be sacrificed on the altar of speed. Against this backdrop, it has been held that even where the grant of request for adjournment will result in delayed trial, such request should at least in the interest of fair trial be granted. Mbanefo JSC (as he then was) admirably expressed this view thus, "it is necessary in dealing with matters of this kind to bear in mind the justifiable anxiety of the Magistrate to see that the cases are disposed of with minimum delay."

[180] Dr. Agbonika John, Alewo Musa, '*Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint*' [2014] 26, Journal of Law, Policy and Globalization. Available at <www.iiste.org> Accessed 22nd May, 2025.

Generally, a person standing trial for a criminal offence enjoys the presumption of innocence until his guilt is proved[181], the proof of which must be beyond reasonable doubt.[182] Nonetheless, the suspect can confess to the commission of the crime and the court is empowered to convict, based on the weight of such confession.

Incidentally, the court is often faced with objections to the admissibility of confessional statements based on the ground of retraction or involuntariness. Essentially, where such objections are raised, the proper order the court will make in such circumstances is to order trial within trial which usually stalls the substantive case until the voluntariness or otherwise of the said confessional statement is determined. This procedure willy-nilly contributes to the delay in the administration of criminal justice in Nigeria. It is against this backdrop that some writers are advocating the abolition and abandonment of the requirement of conducting trial within trial which is meant to determine the sole issue of whether to admit the confessional statement when such admission is challenged on the basis that the accused person did not make the statement voluntarily.[183]

Ani Comfort Chinyere in her work entitled "*Towards Eradicating the Problem of Delay in Criminal Justice Administration in Nigeria*" identified several reasons for the delays in the system of administration of criminal justice in Nigeria.[184]

This chapter will attempt to answer the question as to whether trial within trial is one of the factors causing delay in in the administration of criminal justice system in Nigeria. It will also examine the level of compliance by the law enforcement agencies with the provisions of the

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[181] Section 36(5) Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[182] Section 135(1) Evidence Act, 2011 (as amended).
[183] Adekunle C.O, "*A Case for the Abolition of Trial within Trial in Nigerian Criminal Jurisprudence"* [2017] 1 "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) 179 – 187.
[184] See Ani Comfort Chinyere, Towards eradicating the problem of delay in criminal justice administration in Nigeria. Available at <https://legalpediaonline.com/eradicating-the-problem-of-delay-in-criminal-justice-administration-in-nigeria> accessed 22nd May, 2025.

Administration of Criminal Justice Act, 2015 and whether substantial compliance with the provisions of the Act is a remedy for trial within trial and the attendant delay inherent in the administration of criminal justice system in Nigeria.

4.6 Factors causing delay in in the administration of criminal justice system in Nigeria

Delay in the Administration of justice has become a very worrisome feature of Nigeria justice delivery system. It is more worrisome when the case is a criminal matter because of the likelihood that the Defendant might be in detention, where he is not granted bail, pending the determination of the suit.

As already defined in chapter two of this work, delay is a period of time when somebody or something has to wait because of a problem that makes it slow or late or a situation in which something does not happen when it should. In a legal context, "delay" generally refers to the act of postponing or hindering an action, obligation, or process, or the time during which something is delayed. It can also involve the failure to perform an obligation on time. Black's Law Dictionary defines delay as the act of postponing or slowing, an instance at which something is postponed or slowed, the period during which something is postponed or slowed.[185]

Delay in the dispensation of justice *perse* is perceived as inimical to the attainment of substantial justice. But the seemingly balance between delayed justice and hurried justice remains the cornerstone of any civilized legal system. There is therefore the need to balance between hurried justice and delayed justice in the face of the peculiarity of the Nigeria justice

[185] Black's Law Dictionary, (10th Edition) Page 518

system whilst striking a moderate balance that would ultimately minimize delay in the annals of criminal justice in Nigeria.[186]

Section 36(4) of the *Constitution of the Federal republic of Nigeria, 1999 as amended,*[187] provides that whenever any person is charged with a criminal offence, he is entitled to a fair hearing in public within a reasonable time by a court or tribunal. Section 35(4) also provides again for a trial within a reasonable time, failing which the person should be released. Subsection (5) goes on to explain the meaning of the expression a *reasonable time:* (a) In the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day; and (b) In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.[188]

Despite the provisions in section 35(4) (a) and (b) abhorring long detention without trial, long detentions without trial still persists. These detentions may last for as long as ten years or more, causing congestions in the courts and prisons. The case keeps being adjourned *ad infinitum,* sometimes the adjournments are orchestrated by the accused persons. A survey of cases completed by the Supreme Court between 1999 and 2005 revealed that it took an

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[186] AGBONIKA John, Alewo Musa, *Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint*. [2014] (26) Journal of Law, Policy and Globalization Vol.26, 2014. Available at www.iiste.org Accessed 22nd May, 2025.

[187] See Article 10 *Universal Declaration of Human Rights;* Article 14(1) *of the International Covenant on Civil and Political Rights* and Article 7 (1) *African Charter.* See also the *African Charter on Human and Peoples' Rights Ratification and Enforcement Act, Cap A 9 Laws of the Federation of Nigeria, 2004.* Section 35 (4) provides that a person who is arrested or detained by the police should be brought to court within a reasonable time. Where such an arrested person is not tried within a period of: Two months from the date of his arrest or detention, in the case of a person who is in custody or is not entitled to bail: or Three months from the date of arrest or detention in the case of a person who has been released on bail, he should (without prejudice to any further proceedings that may be brought against him), be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears.

[188] See also Article 9 *International Covenant on Civil and Political Rights*; Article 7 (1) (d) of the *African Charter.*

average of 10 years for criminal cases to be completed, from filing at the trial court to final disposal at the Supreme Court.[189]

The problems confronting Nigeria criminal justice system would be greatly ameliorated if a proper solution were found to the problem of delay in trial. Delays in trials constitute a grave impediment to the right to fair hearing and due process, as justice delayed is justice denied. Delay is quite detrimental bearing in mind the fact that it can be quite tormenting for the suspect. The painful fact is that in such situations most of the time, the suspect is incarcerated and languishes. Some of the suspects even die before the case is concluded or spend more time than the term of imprisonment they would have served if they had been convicted.

On March 16th 2006, the then Nigerian president, Olusegun Obasanjo inaugurated a presidential commission on the reform of the Administration of Justice headed by Justice Akintole Ejiwunmi, amongst others, the commission proposed the following bills: the community service bill, the administration of justice bill, the victims of crime remedies bill, the prison act amendment bill and the national human rights commission amendment bill. The bills never saw the light of day. Despite, many presidential commissions and committees recommending reforms, the recommendations have not been implemented. Instead, the government has set up new committees and commissions to study review and harmonize the previous recommendations. It is against this backdrop that this writer asserts that delay in the quick dispensation of criminal justice, arguably remains the most perturbing aspect of criminal justice administration. Faultless criminal rules are destined to become redundant unless adequate safeguards exist for substantial minimization of delays in the criminal justice system.

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[189] See Background Paper prepared by the Lagos State Ministry of Justice at the 4th National Summit of Stakeholders in the Administration of Justice 11-12 July, 2006

The problem of delay in trial is a direct outcome of so many other problems confronting the agencies involved in criminal justice administration. The following are some of the problems that contribute to delays in trials: The practice of remand; requests for adjournment and delays by the police in investigation and by the Ministry of Justice in filling information and proofs of evidence; shortage of personnel and underutilization of available staff; personnel transfer; delay tactics, indifference and laziness of some lawyers; inadequate funding, poor conditions of service; shortage and obsoletism of equipment; staff shortage and inadequate utilization of available staff, etc.

The following factors have been identified as responsible for the delay in in the administration of criminal justice system in Nigeria.

1. **The Practice of Remand.**

Remand is a term used to describe a situation where a suspect who is charged with an indictable offence is ordered by a court of law, to be kept in prison custody, pending his bail, ultimate trial or release on the advice of the DPP.

The police practice of charging cases to incompetent courts and prosecuting by incompetent prosecutors often leads to remand. By section 66 of the *Police Act*, 2020, the police officer may conduct in person all prosecutions before any court whether or not the information or complaint is laid in his name. However, this is subject to the provisions of sections 174 and 211 of the Constitution of the Federal Republic of Nigeria, 1999 as amended. From the wordings of section 66 of the *Police Act*, a police officer can prosecut*e* cases in the High Court. This issue was the bone of contention in the case of *Olusemo v Commissioner of Police*[190] where the court held *inter alia* that by the provisions of section 23 of the *Police Act*[191], the police officer may conduct in person all prosecutions before any court in Nigeria, provided that such a police officer

[190] [1988] 11 NWLR (Pt 575) 557. See also *Osahon v Federal Republic of Nigeria* (2003) 43 WRN, 69
[191] Now section 66 of the Police Act, 2020.

is a lawyer. However, even where such police officer is a lawyer, his power to conduct such prosecutions is subject to the provisions of sections 174 and 211 of the Constitution of the Federal Republic of Nigeria.

Basically, the following situations may give rise to remand by a court.

1. Where the court refuses to grant the suspect bail, even though it has the jurisdiction to grant the bail.
2. Where the court had granted a suspect bail, but he fails to fulfill the bail conditions.
3. Where the court lacks jurisdiction to hear and determine the case.

The first situation stated above is possible, where the court does not feel comfortable enough to grant the suspect bail for various reasons, which might include,

1. The likelihood of the accused committing some other offence while on bail.
2. The criminal antecedent of the accused.
3. The likelihood of the accused interfering with the investigations.[192]
4. The likelihood of further charges being brought against the accused;
5. The probability of guilt;
6. Detention for the protection of the accused[193]

The second situation may arise where the court imposes very stringent bail conditions.[194] Some judges and magistrates give outrageous bail conditions with the effect that the bail is as good as not having been granted.

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[192] Tobi, N., "Police Bail in Nigeria, [1983] xix (2) the *Nigerian Bar Journal"*, 26.
[193] *Ishaya Bamaiyi v State*, [2001] 8 NWLR (Pt 715) 270 at 291.
[194] *Eyu v The State* [1988] 2 NWLR (Pt 780) 502.

The third situation giving rise to *remand* usually occurs as a result of the police practice of charging cases to incompetent courts and prosecuting by incompetent prosecutors. The police often take suspects who have committed serious offences to the magistrate courts, which have no jurisdiction to try such serious offences, on a *holding charge* to be remanded in prison custody, pending the outcome of the legal advice by the DPP, or his ultimate prosecution at the High Court. The result is that people remain in custody for years[195], abandoned in dreadful conditions, with abysmal food, very poorly ventilated and extremely congested cells and without basic amenities. Some of the suspects even stay longer than the period they would have spent if they were actually convicted. The courts have had course to state on several occasions that the *holding charge* is not known to our criminal laws, and have gone ahead to declare it illegal.[196]

Even where the prosecuting agencies decide to go to the High Court, in most cases, they choose to come under the provision of sections 293 and 296 of the Administration of Criminal Justice Act, 2015, wherein they ask for detention order instead and even though the sections stipulate time limit for such remand, the courts do not usually automatically vacate such order even where the prosecuting agency fail to renew same or show good cause why there should be an extension of the remand period. As case in point was the one handled by this writer in one of the courts in Edo State where the defendant was remanded in June 2024 under section 296 of the Administration of Criminal Justice Act, 2015 and remined in custody until March 2025 when we were able to secure his release even though there was no further application for the police to further detain him after the initial 14 days period granted. The Edo State Ministry of Justice kept claiming that legal advice from the Attorney General of the State was still being awaited.

[195] See *Garba v The State* (1972), 4 SC. 118, where the suspect stayed 25 months in detention without trial.
[196] *Onagoruwa v State*, [1993] 6 NWLR (Pt 299) 333. See also the case of *Evangelist Bayo Johnson v. Lufadeju & Anor* [2002] 8 NWLR (Pt. 768) 192 at 217-218. See also Article 9 (3) of the *International Covenant on Civil and Political Rights* which provides that it shall not be the general rule that persons awaiting trial shall be detained in custody, but that their release may be subject to guarantees to appear for trial.

The use of *remand* appears to be a necessary evil within the *criminal process*, and no complete and satisfactory substitute has been found presently. It is equally a worldwide practice.

2. **Requests for Adjournment by the Prosecution and Delays by the Police in Investigation and by the Ministry of Justice in Filling Information and Proofs of Evidence.**

Most of the time the prosecution request for adjournments for various reasons. Notable among such adjournments are the requests to enable completion of the investigation or for the production of witnesses. The police usually arrest the suspects based on a complainant's report without any investigation. The suspect is thenceforth made an indefinite guest of the police, while the investigation goes on and on.

Lack of funds and vehicles to transport officers to distant places, and the problem of absconding witnesses are some of the factors that hinder police investigations.

Poor investigation could lead to difficulty in producing the suspects or witnesses. Commenting on this fact, Mr. Frank Odita, retired Police Commissioner, observed that poor investigation might not be due to failure, but inability of the police to obtain valid information either from relatives, neighbours or family members at the scene of crime. Sometimes witnesses give wrong addresses or may change addresses without any notice, making it difficult or impossible for summons to be served. Even where the summons is served, the average Nigerian is unwilling to be involved in the *criminal process*. It is common knowledge that once an offence is committed, most people prefer to keep aloof and deny that they ever witnessed the incident. This culture is as a result of lack of trust in our *criminal process* generally and the police in particular, whom they believe, could make them to become suspects in the case, and detain them if they volunteered any information. Other reasons why people do not get involved as witnesses, might be borne out of fear that they could be attacked if they said what they knew. This apathy on the part of the public, coupled with the fact that it is not an easy task to keep attending court in our system that is bedeviled by constant adjournments, makes some witnesses attend irregularly, or not at all.

Apart from delay in investigation by the police, inefficient and improper police investigation is a contributory factor to the delay in filling information by the DPP. Where the police fail to investigate a case properly, the DPP might require some cogent evidence, which the police have to produce in other to go ahead with the case. When such evidence is lacking, the DPP might have no other option than to wait for police to provide such evidence.

Other causes of delay that affect the prosecution, include delays in receiving reports from handwriting or forensic experts. Sometimes, the prosecution might require analysis of physical evidence, to establish whether there is a linkage between the suspect and the scene of the crime, or object used in the crime. These evidence obtained as a result of the expert analysis, are supposed to be made known to the suspect, so that they can employ their own expertise to examine the evidence, after obtaining the relevant permission. The services rendered by the forensic expert includes: finger printing, ballistic investigation, and enquiries on pathology. There are very few qualified personnel in these areas and their services are in very high demand. The dearth of such experts and facilities causes regrettable delays.

3. **Delay Tactics, Indifference and Laziness of some Lawyers.**

Some lawyers do not prepare well ahead of the trial before going to court and because of this reason, they give all sorts of excuses just to obtain adjournments. Sometimes when they know that their client has got a bad case, they file all sorts of interlocutory applications just to delay or thwart the trial. This attitude of some lawyers, prompted the late Attorney General and Minister of Justice, Chief Bola Ige while decrying the congestion of the courts and long delays in the trial process, to comment thus: *"Today, all of us are familiar with the interminable delays in the legal* *system…. In busy jurisdictions such as Lagos, determining the length of trial is like a shot in the dark. Many young lawyers after a few years of going to court have still not had the benefit of a full trial. At best, all the experience that many have, are a few motions and countless adjournments. It appears that the expertise required now for practice especially when you are a party with a bad case is how to ensure that the case is not heard. Over time, we are coming to a part where many cannot rely on the courts anymore"*[197]

It is a common phenomenon for the defence counsel to flood the adjudicatory system with unnecessary adjournments and various forms of applications to cause delay. Instead of following the case to a logical conclusion, the counsel might decide to start by filling an application challenging the jurisdiction of the court. When the judge makes a ruling on the application, this might be followed up with an application for stay of proceedings pending interlocutory appeal on the decision. A notable case on such delays is the case of *Abacha v. State*[198]. Such delays are ultimately not in the interest of the accused person. The accused person can still be re-arrested and charged on additional grounds if the first charge is quashed at that stage.

The quest to be appointed to the exalted position of Senior Advocate of Nigeria, has also been identified as one of the reasons why lawyers file frivolous appeals to the Court of Appeal, thereby clogging the court and causing avoidable delay.[199]

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[197] Keynote Address at the Administration of Justice in the Twenty First Century: 1st Summit of Stakeholders held in Lagos on the 16th of October 2000, Pp. 12-13

[198] [2002] 11 NWLR (Pt 779) 437

[199] Eradicating-the-problem-of-delay-in-criminal-justice-administration-in-nigeria. Available at <https://legalpediaonline.com> Access 22nd May, 2025.

4. **Shortage of Personnel and Underutilization of Available Staff**

The shortage of judges is not only felt in the High Courts, but is also the problem in the Court of Appeal and the Supreme Court. The shortage of judges leads to congestion of cases in the courts and delay in trials.[200]

Apart from shortage of judges, there is also the aspect of laziness on the part of some judicial officers. Some of the judicial officers sometimes start sitting very late or absent themselves entirely from court for various reasons. Some of the reasons include power failure and illness. Absenteeism and short working hours put more pressure on the already congested courts. A legal scholar, G. Ezejiofor, recognized this fact when he observed that the laziness and incompetence of a few judicial officers are key contributory factors to the delays. These categories of judicial officers mask their inadequacy in the following manner: *"They cause 30 or more cases to be put on the cause list. They routinely commence sitting at about 11.30am and spend the next one-hour adjourning the cases on the cause list and rise at about 1.00pm. The result is that such judicial officers conclude only a handful of cases in one year".*[201]

5. **Personnel Transfer.**

Transfer of police officers/prosecutors and judicial personnel has a negative impact on speedy disposal of cases. Investigating police officers and police prosecutors are constantly being transferred from their stations to other stations, either within or outside the State. When this happens, they are no longer available in the court to give first hand evidence or continue with prosecution of ongoing matters or even to trace the witnesses whom they had earlier interacted with. Sometimes, matters are struck out for non-appearance of the police in court. Magistrates

[200] Adeyemi, A. A. 'The Challenge of Administration of Justice in Nigeria for the Twenty First Century' Available at <https://legalpediaonline.com/eradicating-the-problem-of-delay-in-criminal-justice-administration-in-nigeria> Accessed 22nd May, 2025.

[201] Ezejiofor, G. 'The Common Man's Concept of Justice and the Nigerian Judiciary", in *The Judiciary and Democracy in Nigeria*, page 57 in Eresha Z. C. & Ogunseye O. A. "The Judiciary Under the Present Democratic Dispensation", paper presented at the 2000 Law Teachers Conference, held at Benue State University, Makurdi.

also suffer the same faith. Once a magistrate is transferred, he or she automatically ceases to adjudicate over matters in his former court. A magistrate can only continue handling a part heard matter only if he receives authority in writing to do so from the Chief Registrar of the State High Court, otherwise, such matter starts de novo.

The problem of judicial officers abandoning their part heard matters when transferred to another judicial division is not constitutional and not backed up by any law. The Court of Appeal in *Qua Steel Product Ltd v Bassey,*[202] held that the High Court of a State is bestowed with unlimited jurisdiction in any proceedings involving a legal right, and that the issue of judicial division is only a matter of convenience and one of venue and not one of jurisdiction. This decision also applies to the Magistrate Courts. The following are the problems caused by transfer of personnel:

1. Incomplete investigation.
2. Delay and congestion of courts
3. Inability to locate witnesses
4. Loss of case file and exhibits
5. Unduly long detentions and death.
6. Increase in the cost of litigation.
7. Miscarriage of justice.

[202] [1992] 5 NWLR (Pt 239) 67.

6. **Inadequate Funding, Inadequate Facilities and Poor Conditions of Service.**

The various sections of the justice agencies have over the years, suffered from the problem of inadequate facilities and poor conditions of service which are the aftermath of inadequate funding, resulting from insufficient allocation of funds to the agencies.

Inadequate funding is the precursor of poor salaries and lack of or inadequate physical facilities. Commenting on the issue of under-funding of the justice agencies, Professor Adeyemi said: *"It should be realized that the persistent deliberate under funding of the judiciary and the other justice agencies, has resulted in the low morale of their respective personnel, dilapidation of their physical facilities, obsoletism and critical shortages of their equipment (including stationery, typewriters, and vehicles)".*

It is a recognized reality that for a judge to live up to his judicial pledge and effectively administer justice without fear or favor, he must be liberated from pecuniary humiliation. This fact was attested to when Justice Akanbi, said *"…A good judgment flows from a mind that is not bogged by the thought of where do I get my next meal or where do I get the money to pay my sons school fees. Poor conditions of service disturb the mind. It is an obstacle to clear and positive thinking…"*[203]

The salary structure for the judicial staff in Nigeria has always been poor when compared to that of their counterparts in developed countries. Under the *1999 Constitution*, the National Judicial Council is empowered to collect, control, and disburse all monies, capital and recurrent, for the judiciary.[204] This provision, flows from the provision in section 162(9) of the *Constitution*, that

[203] Akanbi, M., "The Main Obstacles of Justice According to Law", in Saulwa, I. M. "Congestion of cases in the Nigerian Courts: Problems and Solutions", being a paper presented at the Common -Wealth Legal Education Association Conference, held at Abuja, in November 2000, at page 7. Available at <<https//legalpediaonline.com/eradicating-the-problem-of-delay-in-criminal-justice-administration-in-nigeria>> Accessed 23rd May, 2025.

[204] See Third Schedule, Part 1, paragraph 21 (e) of the *1999 Constitution*

states that any amount standing to the credit of the judiciary in the Federation Account shall be paid directly to the National Judicial Council for disbursement to the heads of courts established for the Federation and the States under section 6 of the *Constitution.*

Though the National Judicial Council was saddled with the responsibility of funding the judiciary, for both capital and recurrent expenses, sadly, this is not the case presently. Only the recurrent expenditure of State judiciaries is catered for, while capital expenditure, still remains the responsibility of State governments.[205]

The police and the prison also suffer from inadequate facilities and poor conditions of service. The police is the pillar of criminal justice administration in every country, and sets the ball rolling in the criminal process. To carry out their onerous functions, they require to be well trained, well equipped, computerized, and well paid. Notwithstanding efforts taken by the police authorities, towards improving the welfare of its members, complaints still pervade the force. Police stations and barracks are still in shambles. Police stations still lack vehicles and the available ones are fast deteriorating and lack proper maintenance. As for their salaries, it is still far from what could prevent them from looking for illegal ways of supplementing their salaries.

The prison service which is directly under the Ministry of Internal Affairs has also not received any major boost in its funding. The prison is now in item 10A on the concurrent legislative list inserted by Fifth Alteration Act, (No. 15) of 2025. Therefore, the administration, funding, management and control of the prisons are the responsibility of the both the federal government and the State government. Dr. Etannibi Alemika and Emily Alemika in an article noted that prisons are expensive, and due to the lack of political and economic clout of prison inmates and

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[205] Keynote Address at the Administration of Justice in the Twenty First Century: 1st Summit of Stakeholders held in Lagos on the 16th of October 2000, at 12-13.

staff, the Nigerian prisons service is often grossly under-funded and rarely receives special grants.[206]

The production of prison inmates in court is the responsibility of the prison authorities. Unfortunately, most of the Black Marias are very old and often breakdown at critical moments. Lamenting on the inadequacy of Black Marias, the Lagos State DPP, Mrs. Bola Okikuolu–Ighile, said: "The inadequacy of the Black Marias presently in use has created a situation where criminal courts in most instances sit only on Tuesdays and Thursdays being days accused persons are conveyed to court. Accused persons usually do not get to Ikeja High Court on such days before 10:30am because the same Black Maria goes from Kirikiri to Lagos High Court and then to Ikeja High Court. A situation therefore arises where the judges and counsel are made to wait"[207]

7. **Shortage and Obsoletism of Equipment.**

All the agencies involved in criminal justice administration, suffer adversely from the problems posed by obsolete equipment. Despite the fact that the equipment are obsolete, they are equally in short supply. Lack of modern information technology such as telephones, fax machines, computers and photocopies, have very dire negative effect on the quality of performance of staff of the agencies involved in the criminal process. Most of the telephones in some of the courts and police stations have become obsolete and malfunctional. The officers rely mostly on their personal mobile telephones, which expenses are not subsidized.

Judges and magistrates still record verbatim in long hand. This situation is very arduous and tiring and impacts so heavily on judges, resulting in stress and other serious avoidable health complications.

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[206] Etannibi Alemika, Penal Crisis and Prison Management in Nigeria", [1994] 2(2) *Lawyers' Biannual Journal of Nigeria*. 6

[207] Ighile, 'Criminal Process and System Congestion – Causes and practical Methods of Decongestion', a paper delivered at the 3rd Summit on Reform of the Justice System held on 16th and 17th June 2004, at page 14.

The efforts of some State government to computerize the courts have not gone beyond the High Courts, a typical example is Edo State. The Magistrate Courts are yet to be computerized. The Courts in most of the states are not connected to the internet and therefore are not linked to any network to access the position of cases filed or pending. This fact was recognized by Chief Bola Ige SAN who commented: *"Perhaps a few years ago, it could have been excusable to say that we are still debating the pros and cons of the use of information technology in our courts, ministries of justice and even private chambers. Today, the question you are likely to be asked is 'how far have you gone in computerization?' …We must automate as much as possible, all stages of the judicial process. Court registries must be computerized. A judge sitting at his desk should be able to tell what new processes have been filed in the registry at the touch of a key in his computer. The Chief Judge from his table, as well as other judges ought to be able to find out in a minute which judge has the conduct of a case. Judges should be provided with the cases and statute the both local and foreign on CD Rom. At the touch of a key, a judge should be able to find the full report of a case or principles to which he has been referred or upon which he is researching. These facilities are now in use all over the world".*[208]

Prosecution would be significantly improved if experts should be employed to prosecute cases involving specialized areas such as taxation, bank frauds, cyber crimes, money laundering and forensics.[209] The case of *FRN v. Kingsley Ikpe*[210] is an example of a case that was speedily and expertly handled because of the involvement of experts in stock trade.

[208] Ighile, 'Criminal Process and System Congestion – Causes and practical Methods of Decongestion', a paper delivered at the 3rd Summit on Reform of the Justice System held on 16th and 17th June 2004*,* at page 17.

[209] See paper presented by Hon. Justice J. O. K. Oyewole on Delay in Criminal Trials at the 4th Summit of Stake holders in the Administration of Justice, 11th -12th July, 2006, p. 3. Available at <https//legalpediaonline.com/eradicating-the-problem-of-delay-in-criminal-justice-administration-in-nigeria> Accessed 23rd May, 2025.

[210] Suit No. ID/143c/2004. This case was a case of stock market fraud and was investigated by experts in stock market.

8. **Problems of Trial Within Trial**

Apparently, trial within trial consumes judicial time. It is conducted like the main trial i.e. the procedure applicable to the substantive trial, applies to same. In a case with more than a defendant, there is a likelihood of all defendants wanting a bite from the cherry.

Trial within trial also elongates the continuous detention of defendants who cannot access bail. With the recurring problem of adjournments in the Nigeria court system, defendants that are not admitted to bail, may continue to stay in detention throughout the period trial within trial is concluded with a decision on their acquittal or conviction not happening a in a time soon. A mini trial in a substantive one adds to the burden placed on judges. Nigeria judges are swamped with cases, and timelines of giving quarterly reports to the Nigerian Judicial Council. More often than not, these mini trials, due to their nature, takes the time that should be expended on other substantive matters.[211]

As the writer has argued in chapter two of this work and as also corroborated by other scholars who argued that trial within trial works against speedy adjudication of cases. Speakers at the first C.O. Anah (SAN) memorial colloquium suggested ways around the "time-wasting" mini-trial. To him, a criminal charge is filed against a defendant. Trial begins, and the prosecution moves to tender a statement made by the defendant while in custody. The defence counsel raises an objection, claiming that the statement was not obtained voluntarily. The judge orders a trial within trial to determine whether or not the defendant was forced to make the statement. A new set of witnesses are required to give evidence while the main trial is put on hold. This is a common occurrence in most criminal proceedings, but some legal experts believe it should end.

[211] trial-within-trial-a-recurring-problem-with-administration-of-criminal-justice-in-nigeria. Available at https://roukco.com Accessed on 26 December, 2024.

He notes that it has become a delay tactic by certain defence counsel and contributes to unending trials at a time effort is being made to speed up criminal justice administration.

Justice Senchi, a former judge of the High Court of the Federal Capital Territory, noted that a trial within trial was a complete trial on its own, during which the main case is put on hold, and parties are called upon to prove whether a statement was voluntarily obtained. He believes there has been a blind and slavish adherence to the practice though the fundamental right to personal liberty under Section 35(2) of the Constitution requires that any statement made by a person upon lawful arrest must be voluntarily. He noted that the law allowed the court to *suo motu* (without prompting) raise the issue of unreliability of a confessional statement and order a trial within trial. To him, the innovative Administration of Criminal Justice Act (ACJA) 2015, designed to achieve speedy dispensation of justice, may be hampered by the retention of the practice. Pointing out the irrelevance of trial within trial, he noted that the Evidence Act 2011 and the ACJA did not provide that it must be conducted to determine the voluntariness of a statement. He added that the laws appear to be silent as to the procedure to be adopted in determining the voluntariness of a confessional statement. In his words, "Happily, there are voices raised calling for a stop to conducting a trial within the trial. It is absolutely obsolescent and we should say no in no uncertain language." He believes the only factor sustaining the practice is the principle of judicial precedence.[212]

In Justice Senchi's view, instead of mandatorily conducting a separate trial, there are better approaches to determining the voluntariness of a statement. He recommended that having been served with the proof of evidence containing a copy of the defendant's statement, his counsel could file a notice before trial court indicating his intention to object to the statement on the ground that it was not obtained voluntarily. In calling evidence to prove its entire case against the

[212] Danlami Senchi, Case for abolition of trial within trial, The Nation (Lagos, 26 October, 2021) Available at <https://thenationonlineng.net/case-for-abolition-of-trial-within-trial> Accessed 25 April, 2025

defendant at the trial, the prosecution will also call evidence to prove that the defendant's confessional statement was obtained voluntarily. The defence, Justice Senchi said, will have opportunity to cross-examine the prosecution witness and lead evidence in rebuttal when presenting its defence. At the close of evidence and after hearing arguments from both the prosecution and defence, the court shall, in its final judgment, rule on the issue of voluntariness of the defendant's statement. "Where the court finds that the statement was obtained voluntarily, the court may proceed to rely on and use same in the rest of its judgment. "Where the court finds that the statement was obtained by means of oppression or inducement and thus not given voluntarily, the court shall discountenance such statement and expunge it from the records.

On his part, Professor Akinseye-George (SAN) noted that one reason prosecutors often placed heavy reliance on confessional statements was the lack of resources to conduct forensic investigations. He agreed with Justice Senchi that the Evidence Act allows the use of confessional statement but does not spell out the procedure for admitting it. He pointed out that over the years, the courts have developed the practice of trial within trial as a means of ensuring that confessional statements are obtained voluntarily. The SAN believes the practice has outlived its usefulness as it offends the provisions of the Administration of Criminal Justice Act, 2015. He advocated that rather than conducting a trial within trial, the procedure for admitting or rejecting a confessional statement should be part and parcel of the main trial. According to him, a trial within trial protracts the judicial process. He said it was a matter of experience that a criminal trial can be prolonged for weeks and months because of a trial within trial. Also, in most cases, the exercise is not realistic because the issue of admissibility of the evidence is being tried by the same court that determines the guilt of an accused. Akinseye-George underscored the psychological effect the inadmissibility of the evidence has on the court in the subsequent determination of the case. In his view, the procedure of a trial within trial is an unnecessary duplication in the criminal process as it wastes valuable trial time and does not necessarily work in favour of the accused person, who is presumed innocent until proved guilty. To him, a trial within trial goes against the constitutional provision guaranteeing a fair trial within a reasonable time to a defendant, and the ACJA 2015 stipulations for speedy dispensation of justice.[213] Besides, the SAN said the plethora of judicial decisions from the appellate courts mandating trial within trial on the admissibility of confessional statements must, henceforth, be read subject to the statutory provisions of the state criminal justice laws. He added that the courts are, therefore, bound to give effect to the provisions, which he believes will promote speedy trial without compromising the rights of defendants to a fair hearing. "There is no doubt that the practice of trial within trial in criminal proceedings is archaic and has outlived its usefulness," Akinseye-George said.

Advocating for an end to the practice, Moneme said: "A trial within trial is an archaic procedure which ought to be jettisoned since the mini-trial can also be subsumed in the main trial where the judge makes his findings on the voluntariness or otherwise of the statement in his judgment, thereby saving precious judicial time and expense(s) that would otherwise have been incurred in conducting a trial within trial."[214]

To Simon Lough[215], the idea of a trial within trial is to ensure fairness and promote the cause of justice by giving the court the confidence to rely on a confessional statement. The negative consequences, the chief police prosecutor said, include delay in the speedy conclusion of cases; the negation of Section 36 (1) and (4) of the 1999 Constitution and Section 1 of the ACJA 2015, and the likelihood of the main case being frustrated. The longer a trial within trial lasts, he said, the likelier victims of crime will be denied the justice they deserve, as they or the accused may die

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[213] Akinseye-George, Case for abolition of trial within trial, The Nation (Lagos, 26 October, 2021) Available at <https://thenationonlineng.net/case-for-abolition-of-trial-within-trial> Accessed 25 April, 2025

[214] Chinyere Moneme, Case for abolition of trial within trial, The Nation (Lagos, 26 October, 2021) Available at <https://thenationonlineng.net/case-for-abolition-of-trial-within-trial> Accessed 25 April, 2025

[215] Simon Lough was an Assistant Commissioner of Police in charge of prosecution at the Force Headquarters, Abuja

before the case ends. Lough was also of the view that the practice places a financial burden on parties and wastes judicial time. He believes the procedure should be abolished and a better system of determining the voluntariness of confessional statement deployed.[216]

On his part, Justice R. K. Nwokedi, former Chief Judge of Anambra State said in an unpublished paper, ***Admissibility of Confessional and other Statements,*** thus: "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 refutal 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. It is carry-over from the English legal system which operates under a different background."

Those who favour the retention of trial within trial in Nigeria criminal justice system argue that there is logic in this trial within trial rule. To them, when evidence is tendered and objection is taken to it, as a matter of law, a judge decides on the admissibility of that evidence before allowing it to go in and the trial to continue. To allow evidence objected to go in first and decide

[216] Simon Lough, Case for abolition of trial within trial, The Nation (Lagos, 26 October, 2021) Available at <https://thenationonlineng.net/case-for-abolition-of-trial-within-trial> Accessed 25 April, 2025.

at the end of the trial on its admissibility might most likely result in some miscarriage of justice for it would be impossible to say that the mind of the Judge, as a Judge of fact, would not be poisoned or affected by the contents of that evidence. Whether a piece of evidence is admissible or not, is an Issue-of law for a judge to decide at the time the evidence is offered either after taking arguments from counsel or after taking evidence as in the case of a confession.[217]

In all, this writer is of the firm view that trial within trial which has occasioned delay in the criminal justice system can be done away with simply by giving effect to the provisions of the Administration of Criminal Justice Act, 2015 particularly section 15(4) and 17(2) respectively.

As earlier submitted, by tendering the video recording of the confessional statement as exhibit in the trial, the defendant would find it almost impossible to object that the confession was extracted by force. Even when the objection is raised, all the judge need do is to watch the video recording and decipher for himself whether or not the confession is voluntary. With this, the need for trial within trial will be dispensed with and the objective of the Administration of Criminal Justice Act, 2015 as encapsulated in section 1(1) of the Act would be fully realised. The court should not be seen encouraging non-compliance with the provisions of the Act by law enforcement agencies and other authorities or persons involved or concerned in criminal justice administration. The objective of section 1(2) of the ACJA 2015 which expressly stipulates that the courts, law enforcement agencies and other authorities or persons involved in criminal justice administration shall ensure compliance with the provisions of this Act for the realisation of its purposes should be vigorously pursued.

[217] Chinedum Gregory Ike-Okafor, The Concept of Trial Within Trial. Available at https://ansu-edu.academia.edu. Accessed 27 December, 2024.

4.7 Compliance with the provisions of the Administration of Criminal Justice Act, 2015

From judicial authorities, it is obvious that there has been minimal level of compliance by the law enforcement agencies with the provisions of the Administration of Criminal Justice Act, 2015, particularly sections 15(4) and 17(2) respectively.

In *F.R.N. v Akaeze*[218] where the respondent and two other persons were arraigned before the trial Federal High Court on a two count charge of conspiracy and failure to declare the sum of $102,885 (One Hundred and Two thousand and Eighty Five United States of America Dollars) to the Nigeria Customs Service at the Murtala Muhammed International Airport, Lagos, contrary to sections 2(3), 8(5) and 18 of the Money Laundering (Prohibition) Act, 2011 (as amended) by Act No. 1 of 2012. The law enforcement agents obtained the respondent's alleged confessional statement in utter disregard for the provisions of sections 15(4) and 17(2) of the Administration of Criminal Justice Act, 2015. In the course of the trial, the prosecution sought to tender the extra-judicial statements of the respondent through the prosecution witness. But the appellant objected to the admissibility of the statements on the ground that the extra-judicial statements were confessional statements made involuntarily and without complying with sections 15(4) and 17(2) of the Administration of Criminal Justice Act, 2015. The trial court therefore ordered a trial-within-trial. After the trial-within-trial proceedings, the trial court delivered its ruling. It found that the respondent wrote his extra-judicial statements on the first day he was taken into custody, and that there was no evidence the respondent was tortured, forced, or coerced to make the statements as he alleged. The trial court also held that the extra-judicial statements were relevant, voluntarily made in line with the law. Therefore, the trial court admitted the extra-judicial statements in evidence. The respondent appealed to the Court of Appeal against the ruling of the trial court. The Court of Appeal held that the extra-judicial statements of the respondent should be rejected in evidence

[218] [2024] 12 NWLR (Pt 1951) 1

because the provisions of sections 15(4) and 17(2) of Administration of Criminal Justice Act 2015 were not complied with in taking the statements. The Court of Appeal allowed the appeal, set aside the ruling of the trial court, and remitted the case to the Chief Judge of the Federal High Court for re-assignment to another Judge for hearing and determination. The appellant appealed to the Supreme Court. In determining the appeal, the Supreme Court considered the provision of sections15(4) and 17(2) of the Administration of Criminal Justice Act of2015 and unanimously dismissed the appeal and upheld the decision of the Court of Appeal.

From the above case, it is obvious that the law enforcement agents do not always comply with the relevant provisions of the Act. also, from the provision, the conduct of trial within trial was not necessary. All the trial court ought to have done was to reject the confessional statement for non-compliance with sections 15(4) and 17(2) of Administration of Criminal Justice Act, 2015.

In an earlier sister case of *F.R.N. v Nnajiofor*,[219] the Supreme Court had held that sections 15(4) and 17(2) of the ACJA, 2015 imposes a duty on public functionaries (police officers and other officers of any law enforcement agency established by an Act of the National Assembly and this includes the EFCC) to record electronically on retrievable video compact disc or such other audio visual means, the confessional statements of a suspect and to take statements of suspects in the present of the person/s set out in section 17(2). The provisions are for the benefit of private citizens who are suspected of committing crimes so that the enormous powers of the police or other law enforcement agencies may not be abused by intimidating them or bullying them in the course of taking their statements. In the instant case, in the course of taking or recording the alleged confessional statement of the respondent herein, the officers of the EFCC did not deem it imperative or expedient to use electronically

[219] [2024] 10 NWLR (Pt. 1947) 443

retrievable video compact disc, or such other visual or audiovisual means of recording as envisaged by the law. There is equally no doubt, that the purported respondent's statements were not recorded in the presence of the respondent's legal practitioner; even though he asked for a legal practitioner of his choice as guaranteed under the Constitution. The Supreme Court held that the failure is a flagrant non-compliance with the provisions of the law.

"In the instant case, as aptly found by the court below, the provisions of sections 15(4) and 17(2) of ACJA, 2015 (supra) have strictly provided for a particular procedure of recording the statement of the defendant. Thus, there is no gainsaying the fact, that failure to perform the act in accordance with the dictates of those provisions of the law would be deemed to be a flagrant non-compliance with the law. 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".

There are countless number of cases that didn't have the privilege of being reported in the law reports to show that there is high level of non-compliance with the provision of the ACJA 2015 by law enforcement agencies in the process of obtaining statement from defendants.

The cases of *F.R.N. v Nnajiofor*,[220] and *F.R.N. v Akaeze*[221] cited above are just a few among numerous cases of non-compliance with the provisions of the ACJA 2015 by law enforcement agencies in criminal trials.

In *Alanamu v F.R.N.*[222], a trial-within-trial was conduct in order to determine whether or not a confessional statement allegedly made by an accused was made voluntarily. Obviously, there was apparent non-compliance with the provisions of sections 15(4) and 17(2) of ACJA, 2015 (supra) in the process of obtaining confessional statements from defendants.

[220] [2024] 10 NWLR (Pt. 1947) 443
[221] [2024] 12 NWLR (Pt 1951) 1
[222] [2020] 4 NWLR (Pt. 1713) 19

It suffices to state that in every case where trial within trial is conducted, there is obviously non-compliance with the relevant provisions of the ACJA 2015, otherwise there would be no basis for objecting to the confessional statements attempted to be tendered by the prosecution.

4.8 Possible Reasons for Non-compliance

The non-compliance with the provisions of the Administration of Criminal Justice Act 2015 may have some underlying factors making it desirable by the law enforcement agents in Nigeria.

Law enforcement agencies may sometimes fail to fully adhere to the Administration of Criminal Justice Act (ACJA) due to a variety of factors, including resource constraints, lack of training, and inadequate infrastructure.

Below are some suggested potential reasons for on-compliance with the provisions of the ACJA, 2015:

1. **Resource Constraints:** this encompasses funding as well as staffing. Insufficient funding can hinder the ability of law enforcement agencies to implement the ACJA effectively. This can include limitations on training programs, technology, and personnel. This writer was in Federal High Court in Benin City on the 27th of May, 2025 where a lawyer from the Economic and Financial Crime Commission argued that the provisions of the ACJA which requires video recording of confessional statement is not achievable as there is no such facility made available to the Commission at the moment. Whether or not this is tenable is a different question altogether. Also, lack of adequately trained and experienced personnel can lead to errors in procedures and a failure to comply with the ACJA's provisions.

2. **Lack of Awareness:** in some cases, law enforcement personnel may not be fully aware of the ACJA's requirements or the specific procedures they must follow. Even when aware, officers may lack the necessary skills and knowledge to implement the ACJA effectively. A recent study by CLEEN Foundation highlights the implications of Nigeria's inadequate compliance with the Administration of Criminal Justice Act, 2015 revealing systemic weaknesses and threats to the rule of law. The study, funded by the MacArthur Foundation, revealed gaps in stakeholders' awareness and understanding of ACJA provisions. Presenting findings from the report at a media parley, the Director of Programmes at CLEEN Foundation, Salaudeen Hashim, noted that inadequate infrastructure, skills deficits within the police force, and political interference, hinder effective justice delivery. Mr Hashim stated that the study, conducted across eight states, surveyed 1,658 respondents within the criminal justice system, assessing compliance among key actors, including police, judiciary, and correctional services. The selected states are Edo, Delta, Bauchi, Sokoto, Katsina, Jigawa, Kwara, and Cross River, with respondents from Nigeria Police Force, Nigeria Correctional Service, Economic and Financial Crimes Commission, and Civil Society Organisations, among others.[223]
3. **Complex Procedures:** the ACJA can be complex, with numerous detailed procedures and requirements.
4. **Misinterpretation:** Lack of clarity or ambiguity in the ACJA's provisions can lead to misinterpretations and incorrect application.
5. **Inadequate Infrastructure:** insufficient technology (e.g., electronic case management systems) can hinder the efficient implementation of the ACJA's requirements.
6. **Facilities:** Lack of proper facilities (e.g., holding cells that meet the ACJA's standards) can also contribute to noncompliance.

[223] Mariam Ileyemi, **Study highlights inadequate compliance with Nigeria's criminal justice act.** Premium Times December 13, 2024. Available at https://www.premiumtimesng.com Accessed 1st July, 2025.

7. **Internal Factors within the Agency:** some law enforcement agencies may be resistant to the changes brought about by the ACJA, leading to a reluctance to comply. Also, individual officers may have their own biases or beliefs that conflict with the ACJA's principles, leading to noncompliance in specific cases.
8. **External Factors:** inadequate oversight and accountability mechanisms can allow for noncompliance to occur without detection or correction.[224]

4.9 Possible Benefits of Compliance with the Provisions of the Administration of Criminal Justice Act 2015

Given the objective of the Administration of Criminal Justice Act, 2015 as contained in section 1 of the Act, the possible benefit of compliance with the provisions of the Administration of Criminal Justice Act 2015 will include among others, promoting efficient management of criminal justice institutions, safeguarding the rights of suspects, defendants, and victims speedy dispensation of justice especially as the issue of trial within trial which has been identified as one of the causes of delay in the criminal justice system will no longer arise. of course, this can only be made possible if there is substantial compliance with the provisions of the Act.

Some of the key benefits of compliance with ACJA are briefly discussed hereunder:

a. **Efficient Criminal Justice System:** the ACJA streamlines procedures, promotes clear guidelines, and reduces delays in the criminal justice process as encapsulated in section 1(1) of the Act.

[224] Possible reasons for noncompliance with the administration of criminal justice act by law enforcement agencies. Available at https://www.google.com/search Accessed 1 July, 2025.

b. **Speedy Trials:** the Act emphasizes daily trials upon arraignment, limiting adjournments and ensuring cases are concluded promptly.[225] This laudable provision will only remain a letter except there is deliberate effort to comply with same by law enforcement agencies.

c. **Protection of Rights:** the Act safeguards the rights of suspects, defendants, and victims, including ensuring fair treatment, access to legal representation, and the right to bail.[226] This can only translate to reality if there is compliance with the provisions of the Act by law enforcement agencies.

d. **Enhancement of Access to Justice:** the Act aims to make the legal system more accessible and equitable for all, particularly for those who may lack resources or legal representation.[227] Regretfully, this will remain a mirage in the absence of compliance with the provisions of the Act by law enforcement agencies

e. **Prevention of Unlawful Detention:** the Act includes provisions to prevent unlawful detention, ensuring that individuals are not held for extended periods before trial and prohibiting arrest in lieu of a suspect. This provision notwithstanding, there are reported case of arrest in lieu of suspects and this practice undermine the very essence of the Act and a flagrant disregard of its provisions. What a wonderful society Nigeria will be if there is absolute compliance with the provisions of the Act.

4.10 Threat/Implication of non-compliance with the ACJA, 2015

ACJA was signed into law by former President Goodluck Jonathan in 2015 to reform Nigeria's criminal justice system. Some of the key provisions of ACJA include the protection of human rights during investigation and trial, timely trial and resolution of cases, enhanced

[225] See section 396(3) and (4) ACJA, 2015
[226] See section 1(1) ACJA, 2015
[227] See section 376(9) ACJA, 2015

investigative techniques and evidence handling. It also provides support and protection for victims and witnesses.

However, nine years after its enactment, Nigeria's compliance with the law remains a concern, hindered by limited resources, infrastructure gaps, skills shortages, and corruption.

No doubt, with the enactment of the Administration of Criminal Justice Act 2015, few changes have been noticed as far as the system of administration of criminal justice system in Nigeria is concerned.

Non-compliance with the Administration of Criminal Justice Act (ACJA) 2015 can lead to several negative implications, particularly regarding the admissibility of evidence and the fairness of trials. Specifically, failure to adhere to the ACJA's provisions, especially regarding the recording of confessional statements, can render those statements inadmissible in court.

Key implications of non-compliance:

1. **Inadmissibility of confessional statements:** If a confessional statement is not recorded in accordance with Sections 15(4) and 17(2) of the ACJA, it may be deemed inadmissible in court. This means the statement cannot be used as evidence against the accused person. This was the situation in the cases of *F.R.N. v Nnajiofor*,[228] and *F.R.N. v Akaeze*[229] where it took the intervention of the Supreme Court to hold that the trial court erred in law for admitting the alleged confessional statements which were obtained in gross violation of the provisions of the Administration of Criminal Justice Act, 2015. Unfortunately, the time spent by the trial court in conducting trial within trial was all a waste thereby extending the trial period of the case. Law enforcement officers and prosecutors must therefore be compelled to strictly adhere to the provisions of the ACJA to ensure that confessional statements are admissible and that fair trial rights are upheld.

[228] [2024] 10 NWLR (Pt. 1947) 443
[229] [2024] 12 NWLR (Pt 1951) 1

2. **Violation of fair trial rights:** Non-compliance with the ACJA can also violate the accused person's right to a fair trial, as it can undermine the voluntariness and reliability of confessional statements. The ACJA aims to safeguard the rights of suspects, including the right to not incriminate oneself without proper legal oversight during the making of extra-judicial statements. These provisions protect against coercion or undue influence by law enforcement officers. Non-compliance is a violation of the right of the Defendant.
3. **Potential for delay in justice:** Non-compliance with the ACJA can also lead to delays in the justice process, as the prosecution may have to re-investigate the case or seek to obtain a fresh confession. Even the time spent on trial within trial also lead to delay. In most cases, after the conclusion of trial within trial, the defendant will challenge the process where the process does not favour him. This is exactly what happened in the two cases of Akaeze and Nnajiofor. The time spent on appeal to appellate court also cause undue delay in the criminal justice system.
4. **Frustration of the ACJA's objectives:** The ACJA was enacted to improve the administration of criminal justice by streamlining procedures and promoting transparency. Non-compliance undermines these objectives.[230]

Conclusion

Having consider inter alia the factors causing delay in in the administration of criminal justice system in Nigeria which has become a very worrisome feature of Nigeria justice delivery system, a critical examination of the level of compliance with the provisions of the Administration of Criminal Justice Act, 2015 wherein the writer submits that there has been minimal level of compliance by the law enforcement agencies with the provisions of the Administration of Criminal Justice Act, 2015, particularly sections 15(4) and 17(2)

[230] <https://www.google.com/search/implication+of+non-compliance+with+acja> Accessed 8 June, 2025.

respectively, an examination of the factors making compliance with the provisions of the Administration of Criminal Justice Act 2015 undesirable by the law enforcement agents in Nigeria which vary from resource constraints, lack of training, and inadequate infrastructure, the possible benefits of compliance with the provisions of the Administration of Criminal Justice Act 2015 and the threat/implication of non-compliance with the ACJA, 2015 which the writer argues can lead to several negative implications, particularly regarding the admissibility of evidence and the fairness of trials, it is safe to conclude that compliance with the ACJA provisions will enhance speedy dispensation of justice especially as the issue of trial within trial which has been identified as one of the causes of delay in the criminal justice system will no longer arise.

CHAPTER FIVE

CONCLUSION

5.1. Summary of Findings

This study has examined in *extensio* the delay in the administration of criminal justice system in Nigeria. It took into account both judicial and extra-judicial causes with the aim of improving awareness on the need to compel the institutions, authorities and persons involved in criminal justice procedure and administration in Nigeria to comply with the provisions of the Administration of Criminal Justice Act 2015 as enshrined in section 1(2) of the Act, if the objectives of the Act must be realised. The work submits that the court may compel compliance simply by rejecting alleged confessional statement obtained in defiance to the relevant provisions of the Act. In other words, any confessional statement not obtained in compliance with the provisions of the Act should be rejected by the court instead of ordering trial within trial which occasion delay in the criminal justice system and thereby defeating the essence of the enactment of the Act.

Even though the passage of the Administration of Criminal Justice Act 2015 by the then President Goodluck Ebele Jonathan's administration was viewed as a major breakthrough especially in the area of promoting efficient management of criminal justice institutions and speedy dispensation of justice in the administration of criminal justice system in Nigeria, the study posits that there is lack of compliance with some provisions of the Act by law enforcement agents particularly in the area of video-recording of confessional statement.

The study finds that non-compliance with the relevant provisions of the ACJA 2015, particularly sections 15(4) and 17(2) of the Act, remains one of the most disturbing aspects of criminal justice administration in Nigeria. It is submitted that no matter how good the intention of the law maker may be, without adequate safeguards for the enforcement of the provisions of such legislation, they will at best be tantamount to mere wishes.

The writer therefore advocates that trial-within-trial should be abolished so as to enhance speedy dispensation of criminal justice in the administration of justice system in Nigeria. The study posits further that with the enactment of the Administration of Criminal Justice Act 2015 and the decisions of the Supreme Court on sections 15(4) and 17(2) of the said Act, Nigeria does not need a statute to abolish the practice of trial within trial and if the aforementioned provisions of the Act are strictly adhered to, there will be no need for trial within trial. As already stated in chapter two of this work, whereas the concept of trial-within-trial is rooted in common law and the abolished jury system, it's not explicitly codified in Nigerian statutes like the Evidence Act, 2011 or the Administration of Criminal Justice Act, 2015. In giving an historical perspective of the usage of trial within trial, the Court in *Gbadamosi v State*[231], per Ogundare JSC re-emphasized the absence of trial within trial in any Nigerian law when he said:

> "A trial within the trial is an off-shoot of the jury system. In this country, the jury system having been on in Lagos in the 1930's if not before that time… As I said before, trial within the trial is firmly rooted in the jury system. Put differently, the procedure of a trial within trial is basically necessary in respect of jury trials. Remove the jury, off goes trial within trial".

In line with Ogundare JSC's submission, some scholars have argued that Nigeria does not need a statute to abolish trial within trial when it was just a matter of practice and not law adopted by our judges in the days when English Law and Practice held sway in our land.

[231] (1992) NWLR (Pt. 266) 465

5.2 Recommendations

In order to minimise or eradicate the practice of trial within trial in the administration of criminal justice system and its attendant delay and thereby promoting speedy dispensation of justice, this study makes the the following recommendations:

1. To address the issue of avoidable remand, since magistrates lack jurisdiction to try cases like armed robbery, murder, etc., it is suggested that such cases should be taken straight to the High Court for trial, instead of the current practice, where the suspect is taken initially to the Magistrate Court on a *holding charge*, pending DPP's advice and preparation of information. The second measure would be to adhere strictly to the time frame for the *remand*. It is suggested that where the police fail to come with an application for extension of the initial 14 days detention period, the court should admit the defendant to bail without delay. The court should not continue to wait for legal advice from the Attorney General who may not even have the time to render such advice, until perhaps one year after. Since the police lawyers can prosecute in the High Courts, more lawyers should be recruited into the police to advice the police and prosecute the cases directly at the High Courts. Besides the provisions of sections 174 and 211 of the *Constitution* on powers of the Attorney General to prosecute, there is no law requiring the police to send the case files to the DPP for legal advice. This practice may partly be attributed to inadequate prosecutorial capacity within the police legal system. There are few lawyers in the police legal departments. If more lawyers are employed in the police legal departments, delays occasioned by remands by Magistrates due to lack of jurisdiction, would be a thing of the past. It is also desirable that police lawyers should take over the prosecution of cases in the Magistrate Courts to give prosecution the decorum and finesse it requires, which only proper legal training can offer.

2. The issue of incessant requests for adjournment by the prosecution and delays by the Police in investigation and by the Ministry of Justice in filing information and proof of evidence can be addressed simply by training investigating police officers to be more diligent in their investigations. To ensure this speedy trial, there should be a proper checking and reporting system in the police, whereby investigating police officers would be required to make weekly reports that would be examined by their superiors so as to monitor the investigations and the movement of case files. It is also necessary to create a workable liaison between the police and the Ministry of justice for purposes of assisting the Ministry in search and production of case files.
3. To address the issue of lack of funds and vehicles to transport officers to distant places, and the problem of absconding witnesses which hinder police investigations, there is the need for adequate funding of the police. If the police are well funded, there would be no moral grounds for them to claim that they lack funds to carry out their investigations promptly. It is desirable that corporate organizations and private individuals should support the new Police Trust Fund initiative and donate generously, so as to adequately equip the police.
4. Delays in receiving reports from handwriting or forensic experts can be addressed if the government, both at the Federal and State levels can ensure that forensic experts, finger printing experts, pathologists and ballisticians do not go extinct in the country. To ensure this, Government should sponsor the training of police officers or other persons either within or outside the country, to perform these duties. In addition to this, State Governments should establish their own forensic laboratories.
5. To discourage the issue of lack of preparation by some lawyers, the Nigerian Bar Associations should enlighten the public and encourage them to report lawyers who

abandon their cases or engage in unethical conduct, for punishment by the Legal Practitioners' Disciplinary Committee. To put an end to incessant requests for adjournments, it is suggested that a provision in the ACJA which stipulates that no party shall be entitled to more than five adjournments from arraignment to final judgment should be strictly adhered to.[232]

6. The issue of shortage of judicial officers as well as the aspect of laziness on the part of some judicial officers can be addressed by appointing more judges and magistrates by the governments where necessary, especially where there are existing vacancies. Absenteeism and lateness needs to be addressed, as they are both serious problems that consume valuable judicial time. By training, and practice, lawyers generally and judicial officers in particular, are trained to be time conscious and honourable, who would require no monitoring. In as much as absenteeism and lateness remains a clog in the wheel of speedy trial, then we recommend the introduction of the electronic clocking in system in our courts. This device records the time an officer arrives for work and when he closes for the day. This would go a long way in checking truancy for both the judicial officers and other staff.

7. The issue of incessant transfers of police officers/prosecutors and judicial personnel should be reduced to the barest minimum. Where this is inevitable, investigating police officers that are posted outside their former station, should be well funded and given the time to help out in the cases they left unfinished and to appear in court when they are required to do so. It is also recommended that the police records be computerized with ample information as to the respective postings of IPOs. A database of persons with criminal records should also be created and made accessible to judges and magistrates to

[232] See section 396(4) of the Administration of Criminal Justice Act, 2015.

enable them ascertain the previous records (if any) and other information of a Defendant standing trial before them. There is need for sanctions to be put in place for non-appearance of Investigating Police Officers to give evidence in court. There is no legal basis why magistrates or judges should not continue with the cases they were handling hitherto. It would also be good if judicial officers were given up to one-year notice to clear up all outstanding and delicate cases prior to their transfer.

8. On the issue of inadequate funding, inadequate facilities and poor conditions of service, it is believed that if the justice institutions are well funded, the problems of inadequate funding and facilities would be a thing of the past. Good salaries and allowances for staff of the justice agencies are of utmost importance. This measure, is not guaranteed to eliminate corruption, but it would at least, reduce it. Since the police and the correctional centers are still not yet under the state control, it therefore behooves the Federal government to address the issue of poor salaries and allowances for these agencies. If these agencies are well remunerated, the more responsibility for uprightness, honour and judicial integrity is cast on them, while the disciplinary machinery for erring members would then be sharpened. These measures will equally restore the public confidence in the system and its personnel.[233]
9. The challenge of shortage and obsoletism of equipment can be addressed by prioritizing the need for computers and the use of information technology. This can help to mitigate the delays and inefficiency in the criminal justice system. The global trend is to employ information technology in every conceivable aspect of human endeavour, how much

[233] Adeyemi, A. A. "The Challenge of Administration of Justice in Nigeria for the Twenty First Century", Available at <https//legalpediaonline.com/eradicating-the-problem-of-delay-in-criminal-justice-administration-in-nigeria> Accessed 23rd May, 2025.

more, such a crucial area like criminal justice administration, which requires accurate and technologically updated information management systems

10. To improve compliance with the law, the writer emphasises the need for a change in the funding system to address resource inadequacy across all service portals of the criminal justice system. There is the need for public education campaigns to foster a better understanding of the ACJA among Nigeria's law enforcement officers and its citizens. It also suggested that the court should create implementational protocols around novel policies introduced by the ACJA. For instance, trial courts should reject confessional statement obtained in defiance to the provisions of section 15(4) and 17(2) of the ACJA, and save the parties the stress and expenses of appealing to appellate court as were the cases of *F.R.N. v Nnajiofor*,[234] and *F.R.N. v Akaeze*[235] where the Supreme Court held that the trial courts erred in law when it admitted in evidence the alleged confessional statements obtained in utter disregard to the provisions of the ACJA 2015 by law enforcement agencies. There is also the need to create a system of institutional engagement that allows collaboration and feedback across all service points. There must be developed in the security agents a culture of due process compliance and respect for human rights. Training can help to achieve this and reduce human rights abuses by security agencies, restore public confidence in the criminal justice system, and improve police community relations and crime intelligence.
11. Beyond the oversight visit by Magistrates, there should also be support for the federal Administration of Criminal Justice Monitoring Committee (ACJMC) to enable it to monitor and promote compliance with the provisions of the ACJA.

[234] [2024] 10 NWLR (Pt. 1947) 443
[235] [2024] 12 NWLR (Pt 1951) 1

12. The ACJA remains a watershed legislation in the administration of criminal justice. Since the Act has come to stay, there is need for continuous reviews towards ensuring the effectiveness of its provisions.

5.3 Contributions to Knowledge

The study has both theoretical and practical significance. Theoretically, this study will be useful to both students and scholars who wish to advance their knowledge on the meaning of trial within trial, historical foundation to the practice of trial within trial in Nigerian criminal jurisprudence, the enactment and the innovations brought about by the Administration of Criminal Justice Act, 2015. It will also help researchers to understand whether trial within trial contributes to the inherent delay in the system of administration of criminal justice in Nigeria.

On the other hand, it also has a practical significance especially to Magistrates and Judges in the determination to admit or reject alleged confessional statement purportedly obtained in violation of the provision of the Administration of Criminal Justice Act, 2015 even as the writer submits that one of the ways the court can compel law enforcement agencies to adhere to the provisions of the Administration of Criminal Justice Act, 2015 is to insist that confessional statements which do not comply with the relevant provisions of the ACJA will no longer be admitted in evidence by the court. The effect of this judicial attitude in the opinion of this writer is that the issue of trial within trial will become a thing of the past, thereby promoting speedy dispensation of justice in the administration of criminal justice system in Nigeria.

It is the writer's view that trial within trial can be done away with if the law enforcement agencies can be compelled to comply with the provision of the ACJA when taking confessional statement of Defendant. This will not only guarantee speed in the administration of criminal justice in Nigeria, this will equally make the provision of the ACJA in this regard to be operative and worth the effort of the legislature in making the law in the first place.

It is submitted that if the relevant provisions of the ACJA are 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. Deliberate efforts should also be made to ensure that legal practitioners involved in the process maintain professional independence and ethical standards and not do the bidding of police officer. The writer therefore recommends that the various States of the federation should amend their respective criminal procedure laws to incorporate these beneficial provisions.[236]

5.4 Areas for Further Studies

Basically, this research work centred on the meaning of trial within trial, theoretical framework including short historical foundation to the practice of trial within trial in Nigerian courts, the enactment and the innovations brought about by the Administration of Criminal Justice Act, 2015. The study attempts to answer the question as to whether trial within trial is one of the factors causing delay in in the administration of criminal justice system in Nigeria and whether substantial compliance with the provisions of the Administration of Criminal Justice Act 2015 is a remedy for trial within trial and the attendant delay inherent in the practice.

Even though the Administration of Criminal Justice Act (ACJA) 2015 was regarded as a significant reform, ushering new hopes and reiterating existing rights and principles in the Nigerian Criminal Justice System which before now, had attracted widespread criticisms from within and outside Nigeria, about eleven (11) years after its enactment, it will be necessary to take stock of the gains as well as the shortcomings of the Act; with a view to evaluating the extent of its achievements in relation to its objectives. This is an area recommended for further research which is not within the scope of this work.

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

5.5 Conclusion

Nigeria can make significant strides towards achieving the goals of the Administration of Criminal Justice Act, foster a more just, efficient, and equitable criminal justice system by strict compliance with the provisions of the Act as well as reviewing the provisions of the ACJA/ACJLs and addressing identified gaps.

In view of the foregoing, the writer submits that the practice of trial-within-trial proceedings have increasingly become procedurally burdensome which, in the view of the writer, should be abolished in the Nigerian legal system, as there are other viable parameters that have been put in place to achieve the goal of justice while ensuring a faster system of justice dispensation.[237] Delay in concluding cases defeats the goal of the enactment of the ACJA and may defeat justice. Trial courts should do their best to enhance the dispensation of justice by expeditious conclusion of cases and one of the ways to do this is by abolition of trial within trial. Speedy trial is a very desirable ingredient of fair trial and due process. The task to enhance speedy dispensation of justice should not be left to the courts alone. All the stakeholders in the country's justice system (lawyers, the police, prison officials, judicial officers, witnesses, prosecutors, registrars, clerks of court and all persons or agencies), should as a matter of necessity do their work diligently in order to minimize the incidents of delay in the Nigerian criminal justice system. If everybody cooperates and discharges whatever duty falls to him or her, efficiently and with commitment, delay of cases would not only be a thing of the past, but may also contribute significantly to the decongestion of prisons and police cells.

[237] The provisions of sections 15 and 17 of the ACJA 2015 are the answers to trial within trial.

The court should not be seen to encourage non-compliance with the provisions of the Act by law enforcement agencies and other authorities or persons involved or concerned in criminal justice administration. The objective of section 1(2) of the ACJA 2015 which expressly stipulates that the courts, law enforcement agencies and other authorities or persons involved in criminal justice administration shall ensure compliance with the provisions of this Act for the realisation of its purposes should be vigorously pursued.

This research work has presented the problems hindering the speedy dispensation of justice within the Nigeria criminal justice system and has identified trial within trial as one of the causes of delay in the criminal justice system. Some solutions have been proffered, towards solving the hydra-headed problem of delay and one of them is the necessity for compliance with the relevant provisions of the Administration of Criminal Justice Act, 2015 particularly sections 15(4) and 17(2). It is hoped that if the recommendations made in this work are implemented, the problems discussed here would be solved to a great extent, if not fully eradicated.

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