

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU - ABUJA**  
**ON TUESDAY THE 17<sup>TH</sup> DAY OF MAY, 2022.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI**  
**SUIT NO. CR/16/2019**

COMMISSIONER OF POLICE ----- COMPLAINANT  
AND

1. BATURE IBRAHIM "M" 35 YEARS ----- DEFENDANTS
2. ISAH SANI 'M' 20 YEARS

**RULING**

The Defendants are standing trial on a two-count charge of criminal conspiracy under **Section 97 of the Penal Code Law** and Culpable Homicide under **Section 221 (b) of the Penal Code Law**. The prosecution in the course of the testimony of the PW1 sought to be tendered in evidence the confessional statement of the Defendants dated 19<sup>th</sup> June, 2019 and 23<sup>rd</sup> August, 2019. Learned counsel to the defendants objected to the admissibility of the statement positing that it was not obtained voluntarily in compliance with the law and that the court should order a trial within trial to ascertain the veracity of the statements. That a statement that Defendants were induced to make by beating raises a question of authenticity. He cited **Sections 28 and 29 of the Evidence Act**. In response the Prosecutor submitted that in the absence of good reasons why the statement should not be admitted they urge the court to admit same. He cited **Sections 4, 5, 6, 7 & 28 of the Evidence Act** and the case of **Egboghonone v. State (1993) 7 NWLR**, where the Supreme Court emphasized that for the criminal statement not to be admitted it should be able to show an act of inducement. He further submitted that the Defendants have not said anything other than what their lawyer said, he also cited **STATE V. ALARAPE (2001) FWLR Pt. 41 @ 1872**.

A confessional statement however recorded whether in writing, by audio or video mechanism must be relevant in order for it to be

admissible. A confessional statement that is not made voluntarily is not relevant and must be rejected. The vitiating elements of involuntarily as indicated in **Section 29(2) of the Evidence Act** includes torture or any other form of oppressive conduct brought to bear on the accused person by the investigator. Where a Defendant made a statement, but not voluntarily, such as that he was tortured, cajoled or otherwise unduly influenced to make it, then an issue of voluntariness has arisen calling for further investigation. This further investigation is carried through by means of a miniature trial called the voir dire or trial within-trial. I think it is very important to point out at this stage that a trial within trial is not to be convened as a matter of course. It can only be convened where there are concrete and valid allegations of involuntariness.

Counsel to the Defendants in objecting to the statements being admitted submitted that the Defendants did not make this statement of their own freewill, that they were induced to make the statement by beating. Prosecuting counsel while opposition the objection stated that the Defendants have not said anything other than what their lawyer said. The Court of Appeal has held in **ACHAMA V. STATE (2018) LPELR-46416 (CA)** that:

“...The law is well settled that the only time a trial within trial is conducted in respect of a confessional statement of an accused is where there is allegation of involuntariness of the confessional statement”.

And in **MUSTAPHA vs. FEDERAL REPUBLIC OF NIGERIA (2020) LPELR-30037 (CA)**.

“...Put in another way, a 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. The objection must be raised at the point when the prosecution seeks to tender the confessional statement in evidence. If the Appellant raises no objection and the confessional statement is admitted in evidence, the issue of a trial-within-trial cannot subsequently arise...”

On when is the proper time to raise an objection to the admissibility of a confessional statement the Court of Appeal in **USMAN V. STATE (2015) LPELR-40855 (CA)** held that;

"The proper time to object to the admissibility of a confessional statement on the ground of involuntariness is when it is about to be tendered in evidence so as to allow the issue of voluntariness to be determined by a trial within trial and where it is not so raised, it is too late to raise it in the defence -

Consequently, the purpose of a trial-within-trial is certainly not to determine whether the accused made a statement or the provisions of Sections 4,5,6 and 7 of the Evidence Act cited by the Prosecutor, but to ascertain the voluntariness or otherwise of the confessional statement. Consequently, in the circumstance application for a trial within trial to be conducted is hereby granted.

**Parties:** both Defendants are present.

**Appearances:** UmohInah appearing for the prosecution. Patience Peter appearing for both Defendants.

**HON. JUSTICE M. OSHO-ADEBIYI  
JUDGE  
17<sup>TH</sup> MAY, 2022**