

**SUPREME COURT OF NIGERIA**  
4TH FEBRUARY, 2011. SC. 364/2009  
**CORAM:- M. MOHAMMED, J. A. FABIYI, O. O. ADEKEYE,**  
**S. GALADIMA, B. RHODES-VIVOUR, JJSC**

EMMANUEL EKE ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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CRIMINAL PROCEDURE - Trial within trial - When to hold - When admissibility of a statement is challenged - On ground that it was not made voluntarily - Trial within trial must be conducted - To ascertain whether it was voluntary (H1)

CRIMINAL PROCEDURE - Trial within trial - Failure to conduct - Effect - Where trial court fails to conduct trial within trial - Such failure will not be fatal - Unless it occasioned miscarriage of justice (H2)

EVIDENCE - Testimonies - Contradictions - Existence - Testimonies of witnesses can only be said to be contradictory - When they give inconsistent accounts - Of the same event (H3)

EVIDENCE - Words & phrases - Contradictions - Meaning - The word 'contradiction' traces its lexical roots to two Latin words - Namely 'contra' and 'dictum' - Which means the opposite (H3)

JUDGMENTS - Evidence - Contradictions - Effect - For contradictions in evidence to vitiate a decision - They must be material and substantial - Which is not the case herein (H4)

CRIMINAL PROCEDURE - Armed robbery - Ingredients - proof - The essential ingredients of the offence are - That there was robbery - In which the robbers were armed - And the accused person one of the robbers (H5)

CRIMINAL PROCEDURE - Alibi - Plea - When to raise - Accused person who relies on defence of alibi - Must raise it at time of investigating - Not during trial - Else it equates to an after thought (H6)

CRIMINAL PROCEDURE - Proof beyond reasonable doubt - Burden - Discharge of - When all the essential ingredients of the offence charged have been proved - The burden has been discharged (H7)

### **FACTS**

The appellant was arraigned and tried before the Kaduna State Armed Robbery and Firearms Tribunal on a charge of armed robbery. The case for the prosecution was that appellant and another (at large) had on 10th February, 1995, at Kurmin Iya village, Kaduna State, robbed PW1 and PW2 while armed with a gun. The story of the two prosecution witnesses was that while they were on their way to Kurmin Iya village to buy things on the fateful day, there was gun shot from behind following which PW1 and PW2 stood still as appellant and his partner removed their money from them. However, PW1 and PW2 did not employ the same words in narrating the story of what happened though their stories were in essence the same. Moreover, PW3 testified that he had rushed to the scene upon hearing the shouts of PW1 and PW2.

The matter was subsequently reported to the village chief to whom the victims, who knew the appellant prior to the incident, identified appellant as one of the robbers. On the directive of the chief, appellant was arrested and handed over to the police before whom he made a confessional statement. But at the trial, appellant not only denied that he made the statement voluntarily but also set up a plea of alibi in his testimony in court. Notwithstanding appellant's denial of the voluntariness of his statement to the police, the trial tribunal admitted same without conducting a trial within trial ditto to ascertain the voluntariness thereof. Eventually, it convicted appellant of the offence of robbery as opposed to armed robbery and sentenced him accordingly. Aggrieved, appellant appealed to Court of Appeal but the appeal was dismissed. Court of Appeal held that the admission of the confessional statement - Exhibit 5 in the circumstance, though wrong, did not occasion any miscarriage of justice. Still dissatisfied, appellant has come on a further and final appeal to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*“(a) Whether the learned (sic) Court of Appeal was right to hold that*

*the admissibility of Exhibit 5 in the face of the objection by the defence has not occasioned a miscarriage of justice.*

*(b) Whether the learned (sic) Court of Appeal was right to hold that the prosecution proved its case against the appellant before the Armed Robbery Tribunal sufficient enough to sustain the conviction and sentencing of the appellant for the offence of robbery.*

**HELD** (Unanimously dismissing the appeal per **FABIYI JSC**)  
**CRIMINAL PROCEDURE - Trial within trial - When to hold**

1. It is now settled, as pronounced by this court in *Nwamgbomu v. The State* (supra) at page 395, per Wali JSC, that when admissibility of a statement is challenged on the ground that it was not made voluntarily, it is incumbent on the judge to call upon the prosecutor to establish that it was voluntarily made by conducting a trial-within-trial. Such a procedural step must be taken at the point when the objection is raised.

It is clear to me that the trial judge at the Tribunal goofed in failing to carry out the mandatory trial within trial to determine the voluntariness of the statement credited to the appellant. To my mind, Exhibit 5 was admitted to no avail. (p. 415 F)

**Trial within trial - Failure to conduct - Effect**

2. The saving grace was that without Exhibit 5, the evidence adduced by PW1 and PW2, the victims of the offence of armed robbery assisted by PW3 and PW4 who got the appellant arrested sufficiently put the appellant in a tight corner where he failed to extricate himself. It is basic that a court can convict upon the evidence of one witness without more if the witness is not an Accomplice in the commission the offence and his evidence is sufficiently probative of the offence with which an accused is charged.

The conviction of the appellant, even without the employment of Exhibit 5 was in order as affirmed by the court below. In short, the failure to conduct the mandatory trial within trial that was warranted by the trial Tribunal and upheld by the court below did not occasion a miscarriage of justice.

The issue is resolved against the appellant and in favour of the respondent. (p. 415 B)

**Testimonies - Contradictions - Meaning & Existence**

3. Learned counsel for the appellant made a heavy weather of surmised contradictions pin pointed by him. The word ‘contradiction’ traces its lexical roots to two Latin words, namely ‘contra’ and ‘dictum’ which means ‘to say the opposite’.

B It is basic that testimonies of witnesses can only be said to be contradictory when they give inconsistent accounts of the same event.  
(p. 417 C)

**JUDGMENTS - Evidence - Contradictions - Effect**

C 4. For contradictions in the evidence of witnesses to vitiate a decision, they must be material and substantial. Such contradictions must be so material to the extent that they cast serious doubts on the case presented as a whole by the party on whose behalf the witnesses D testified, or as to the reliability of such witnesses. In sum, minor and inconsequential contradictions, which do not seriously relate to the ingredients of the offence charged, should not vitiate the case of a party.

E A careful perusal of the surmised contradictions, shows that they are not material and substantial to such a degree as to affect the case of the prosecution. (p. 417 D)

**Armed robbery - Ingredients - proof**

F 5. The essential ingredients of the offence of armed robbery, as listed in the case of *Bello v. The State* (2007) 10 NWLR (Pt. 1043) 564, are as follows:-

- (a) that there was a robbery or series of robbery.
- (b) that each of the robbery was an armed robbery.
- G (c) that the accused was one of those who robbed.

H There is no iota of doubt in my mind that after reading the evidence adduced in the Records of Proceedings, the above stated ingredients were clearly established. PW1 and PW2 were robbed of their money on their way to Kaduna, Iya village. The appellant was in the gang of two boys who shot gun into the air to scare the two women. PW2 lost her money as same was removed in the process of the appellant’s action and that of his cohort who was said to be at large. (p. 418 E)

***Alibi - Plea - When to raise***

6. The appellant, in his oral evidence attempted to put up the defence of alibi. This means that he was not at the scene of crime. Alibi means ‘elsewhere’. It is the duty of the police to investigate same. But it is the duty of the accused to furnish the particulars of alibi to the police at the earliest opportunity. He must furnish his whereabouts and those present with him. It is then left to the prosecution to disprove same. Failure to investigate will lead to acquittal. The appellant who did not put up his defence of alibi at the time of investigation cannot be taken seriously. Making the plea in his evidence at the trial is a ploy which equates to an after thought. It was to no avail in the circumstance. (p. 418 H)

***Proof beyond reasonable doubt - Burden - Discharge of***

7. Proof beyond reasonable doubt is not proof beyond all iota of doubt or proof to the hilt.

I wish to once more observe that when all the essential ingredients of the offence charged have been satisfactorily proved by the prosecution, as in this matter, the charge is proved beyond reasonable doubt. I have no hesitation in resolving issue (b) against the appellant and in favour of the respondent. (p. 419 D)

***NOTABLE POINTS OF INTEREST***

***RHODES-VIVOUR JSC***

*1. Denied confessional statement is admissible - Involuntary one attracts trial within trial*

My lords, where a confessional statement is challenged on the ground that the accused person did not make the statement, the statement should be admitted since its admissibility is not affected. That the statement was made voluntary or otherwise does not arise for consideration. But where a confessional statement is objected to on the ground that it was not voluntary. That is to say the accused person says he was forced or induced to make it, then a trial within trial must be held. (p. 421 E)

*2. Trial within trial - Accused person must testify*

The trial within the main trial is designed to determine if the confession was voluntary. At the trial, the accused person must give evi-

dence before witnesses called by him give evidence. At the end of the trial within trial if the court is satisfied that the confessional statement was not voluntary, the said statement would not be admissible in evidence as an exhibit and the trial judge should rule accordingly. (p. 421 G)

B

**REPRESENTATION**

A. T. Kehinde, with T. Ngoladi and A. Olawuyi (Miss) for Appellant.  
T. E. Taiwo with E. M. Igbokwe for the Respondent.

C

**CASES REFERRED TO**

Onuoha v. The State (1989) 2 SC 124

Auta v. The State (1975) NNLR 60 at 65

Oforlete v. The State (2000) 7 SC (Pt. 1) 80

D Paul Ashake v. The State (1968) 2 All NLR 198

Olabode v. The State (2009) 5-6 SC (Pt. 11) 29

Ojegele v. The State (1988) 1 NWLR (pt. 71) 414

Eguobor v. Queen (No. 1) (1962) 1 SCNLR, 409

Ogoala v. The State (1991) 2 NWLR (Pt. 175) 509

E The State v. Aibangbee (2007) 2 NCC 648 at 696-697

Nwangbomu v. The State (1994) 2 NWLR (Pt. 326) 380

Ofoke Nwambe v. The State (1995) 3 NWLR (Pt. 384) 385 at 407

Joshua Adekanbi v. Attorney-General Western Nigeria (1966) 1 All NLR 47

F

Agholor v. Attorney-General Bendel State (1990) 6 NWLR (Pt. 155) 141 at page 151

**STATUTES REFERRED TO**

G Robbery and Firearms (Special Provisions) Act, Cap. 398, LFN, 1990, s. 1 (2) (a)

Constitution of the Federal Republic of Nigeria, 1999, s. 36 (5)

Evidence Act, Cap. 112, LFN 1990, s. 227

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**LEAD JUDGMENT BY FABIYI JSC**

This is an appeal against the judgment of the Court of Appeal, Kaduna Division ('the court below' for short) delivered on 15th December, 2009. Therein, the court below affirmed the decision of the Kaduna State Armed Robbery and Fire Arms Tribunal which was

delivered on 24<sup>th</sup> October, 1997.

The appellant was arraigned before the above stated tribunal on a single charge which reads as follows:-

*“That you EMMANUEL EKE and one other (at large) on or about the 10<sup>th</sup> day of February, 1995 at Kurmin Iya Village, Kaduna State, committed armed robbery to wit robbed (sic) one Mrs. Talatu Silas and Felicia Moses of cabout (sic) the sum of Five Thousand, Nine Hundred and Seventy Naira (N5,970.00) at gun point (i.e. by pointing a gun at them) and thereby committed an offence of armed robbery contrary to section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act Cap. 398, Laws of the Federation of Nigeria 1990 and triable by the Robbery and Firearms Tribunal of Kaduna State.”*

The appellant pleaded not guilty to the above charge read to him on 27<sup>th</sup> June, 1996. To prove its case, the prosecution called five witnesses and tendered five exhibits. The appellant thereafter testified in his defence in a bid to extricate himself.

In its judgment handed out on 24<sup>th</sup> October, 1997, the Tribunal convicted the appellant for the offence of robbery simpliciter instead of the offence of armed robbery for which he was arraigned and sentenced him to twenty one (21) years imprisonment. The appellant appealed to the court below which dismissed the appeal and affirmed the judgment of the Tribunal on 15<sup>th</sup> December, 2009.

In the exercise of his constitutional right, the appellant has further appealed to this court. He formulated two issues from the three grounds of appeal contained in his Notice of Appeal filed on 22<sup>nd</sup> December, 2009. The said two issues contained on page 5 of the appellant’s brief of argument filed on 18<sup>th</sup> January, 2010 read as follows:

*“(a) Whether the learned (sic) Court of Appeal was right to hold that the admissibility of Exhibit 5 in the face of the objection by the defence has not occasioned a miscarriage of justice (GROUND ONE)*

*“(b) Whether the learned (sic) Court of Appeal was right to hold that the prosecution proved its case against the appellant before the Armed Robbery Tribunal sufficient enough to sustain the conviction and sentencing of the appellant for the offence of robbery. (GROUNDS TWO AND THREE).”*

On behalf of the respondent, the three (3) issues decoded for determination of the appeal contained on page 3 of its brief of argument filed on 25<sup>th</sup> February, 2010 read as follows:-

B *“(i) Whether the Court of Appeal was right in affirming the decision of the trial court having regard to the totality of evidence adduced before the tribunal.*

*(ii) Whether the Court of Appeal was wrong in its decision that the failure by the trial court to conduct a trial within trial before admissibility of Exhibit 5, the confessional statement did not occasion a miscarriage of justice.*

C *(iii) Whether the procedure of trial within trial on the issue of voluntariness before the admissibility of a confessional statement is unconstitutional and unobtainable in the absence of jury system of trial and should be abolished.”*

D On 11<sup>th</sup> November, 2010 when the appeal was heard, learned counsel for the respondent, in his oral submission, decided to jettison the 3rd issue reproduced above. In a rather subtle manner, he stated as follows:-

E *“We drop our invitation to the court to depart from earlier decisions on trial within trial and to abolish the procedure.”*

No comment should be made in respect of issue (iii). For now, I keep my opinion on the point intact to my self. Without much ado, the issue is discountenanced as same is hereby struck out.

F With regard to issue (a) formulated by the appellant, it was submitted that the court below was wrong when it affirmed the decision of the Trial Tribunal which failed to conduct the mandatory procedure of trial within trial to determine whether the statement - Exhibit 5 was voluntary before its admission despite the objection of G counsel on the ground of torture. Learned counsel for the appellant submitted that the failure to conduct the desired trial- within-trial constituted a breach of the appellant’s fundamental right as provided under Section 36 (5) of the 1999 Constitution of the Federal Republic of Nigeria and Section 227 (1) of the Evidence Act. He observed H that the lower court was wrong when it held that the trial court did not place reliance on Exhibit 5 to convict the appellant. He felt that since the appellant denied the voluntariness of Exhibit 5, the trial court was duty bound to conduct a trial-within-trial. He cited the case of Ojegele v. The State (1988) 1 NWLR (pt. 71) 414.

Learned counsel for the respondent was at one with the stance of the appellant on this point. He pointed it out that what is material for the appellant's contention is his objection at the point of tendering the statement and admissibility of same before he was called upon to put in his defence. Learned counsel submitted that it is trite law based on a plethora of judicial authorities that when there is an objection to the admissibility of a confessional statement on the basis that it was not voluntarily obtained either by inducement, threat or promise then the procedure known as trial within trial is mandatory to determine its admissibility. He cited *Nwangbomu v. The State* (1994) 2 NWLR (Pt. 326) 380. B  
C

Learned counsel however maintained that failure to conduct trial-within-trial did not occasion a miscarriage of justice as the evidence of PW1, PW2 and PW3 was enough to convict the appellant. He asserted that a court can convict upon the evidence of one credible witness if he is not an accomplice and his evidence has sufficient probative value regarding the ingredients of the offence charged. He referred to *Ofoke Nwambe v. The State* (1995) 3 NWLR (Pt. 384) 385 at 407. D

It should be stated clearly that the test for admissibility of a confessional statement is its involuntariness. Once the issue is raised as done at the trial court, it must be resolved or settled one way or the other before its admission or otherwise. See: *Agholor v. Attorney-General Bendel State* (1990) 6 NWLR (Pt. 155) 141 at page 151; *Eguobor v. Queen* (No. 1) (1962) 1 SCNLR, 409; *Olabode v. The State* (2009) 5-6 SC (Pt. 11) 29. E  
F

***It is now settled, as pronounced by this court in Nwangbomu v. The State (supra) at page 395 per Wali, JSC, that when admissibility of a statement is challenged on the ground that it was not made voluntarily, it is incumbent on the judge to call upon the prosecutor to establish that it was voluntarily made by conducting a trial-within-trial. Such a procedural step must be taken at the point when the objection is raised.*** See: *R. V. Francis and Murphy* (1959) 43 Cr. App R. 174; *R. v. Omokaro* 7 WACA 146; *Ogoala v. The State* (1991) 2 NWLR (Pt. 175) 509; *Joshua Adekanbi v. Attorney-General Western Nigeria* (1966) 1 All NLR 47; *Paul Ashake v. The State* (1968) 2 All NLR 198 and *Auta v. The State* (1975) NNLR 60 at 65. G  
H

***It is clear to me that the trial judge at the Tribunal goofed in failing to carry out the mandatory trial within trial to determine the voluntariness of the statement credited to the appellant. To my mind, Exhibit 5 was admitted to no avail.*** However, the conviction of the appellant was not based solely on Exhibit 5.

***The saving grace was that without Exhibit 5, the evidence adduced by PW1 and PW2, the victims of the offence of armed robbery assisted by PW3 and PW4 who got the appellant arrested sufficiently put the appellant in a tight corner where he failed to extricate himself. It is basic that a court can convict upon the evidence of one witness without more if the witness is not an Accomplice in the commission the offence and his evidence is sufficiently probative of the offence with which an accused is charged.*** [See: again Ofoke Nwanbe v. The State (supra) at page 408; Odili v. The State (1977)4 SC 1.

***The conviction of the appellant; even without the employment of Exhibit 5 was in order as affirmed by the court below. In short, the failure to conduct the mandatory trial within trial that was warranted by the trial Tribunal and upheld by the court below did not occasion a miscarriage of justice.***

***The issue is resolved against the appellant and in favour of the respondent.***

Issue (b) is whether the Court of Appeal was right to hold that the prosecution proved its case against the appellant before the Armed Robbery Tribunal sufficient enough to sustain the conviction and sentencing of the appellant for the offence of robbery.

Learned counsel for the appellant submitted that the lesser offence of robbery was not proved beyond reasonable doubt. He felt that the evidence of prosecution witnesses are full of material contradictions. He cited the cases of Onuoha v. The State (1989) 2 SC 124; The State v. Aibangbee (2007) 2 NCC 648 at 696-697; Oforlete v. The State (2000) 7 SC (Pt. 1) 80.

Learned counsel submitted that the contradictions in the evidence of the prosecution witnesses are very material as alleged exact amount of the sum of money stolen is in doubt and same should be resolved in favour of the appellant. He stressed that there must be certainty in the sum of money stolen. He felt that the charge was not proved beyond reasonable doubt both by the quality and quantity

of the evidence adduced. He urged that the appeal be allowed.

Learned counsel for the respondent felt that there were no material contradictions in the evidence of the prosecution witnesses to warrant the resolution of same in favour of the appellant. He observed that the evidence of PW1 and PW2, victims of the robbery was positive and direct as to the appellant's guilt. He further maintained that the evidence of PW3 and P. W. 4 corroborated the evidence adduced by PW.1 and PW2 - the victims of the offence of armed robbery for which the appellant was charged. He submitted finally that the case was proved beyond reasonable doubt and urged that the appeal be dismissed.

***Learned counsel for the appellant made a heavy weather of surmised contradictions pin pointed by him. The word 'contradiction' traces its lexical roots to two Latin words, namely 'contra' and 'dictum' which means 'to say the opposite'. See: Ikemson v. The State (1989) 3 NWLR (Pt. 110) 455.***

***It is basic that testimonies of witnesses can only be said to be contradictory when they give inconsistent accounts of the same event. For contradictions in the evidence of witnesses to vitiate a decision, they must be material and substantial. Such contradictions must be so material to the extent that they cast serious doubts on the case presented as a whole by the party on whose behalf the witnesses testified, or as to the reliability of such witnesses. In sum, minor and inconsequential contradictions which do not seriously relate to the ingredients of the offence charged should not vitiate the case of a party.*** See: Enahoro v. Queen (1965) NMLR 265; Emiator v. The State (1975) 9-11 SC 107; Afolalu v. The State (2009) 3 NWLR (Pt. 1127) 160; Nasiru v. The State (1999) 2 NWLR (Pt. 589) 87; Okoziebu v. The State (2003) 11 NWLR (Pt. 831) 327.

***A careful perusal of the surmised contradictions shows that they are not material and substantial to such a degree as to affect the case of the prosecution.*** PW1 and PW2, the victims of the offence of armed robbery stated how they were pursued on their way to Kurmin Iya village to buy some things by two boys of which the appellant was one of them PW1 and PW2 said they heard gun shot and their money was removed. PW1 stated her own amount of money to be N7,600.00. That PW1 and PW2 did not employ the

use of same words in relating what happened did not, to my mind, touch on inconsistency. The minor variations in their testimonies merely imbue their evidence with imprimatur of truth. See: Abogede v. The State (1996) 5 NWLR (Pt. 488) 270; Ogun v. Akinyelu (2004) 18 NWLR (Pt. 905) 362.

- B PW3 and PW4 stated the assistance rendered by them to PW1 and PW2. PW3 said he rushed to the scene on hearing the shout of PW1 and PW2. PW3 and PW4, on the directive of the village chief, got the appellant arrested and taken to the chief who handed the appellant to the police. The appellant was a known person to the witnesses prior to the incident. The trial Tribunal pin pointed all these facts. The court below confirmed same. I cannot trace any material and substantial contradictions in the evidence of the prosecution witnesses that caused any miscarriage of justice in this appeal. See: C Omisade v. Queen (1964) 1 All WLR 233; Queen v. Ekanem (1960) 5 FSC 14 and Queen v. Iyanda (1960) 5 FSC 263.

In effect, armed robbery simply means stealing plus violence, used or threatened. See: Aruna v. The State (1990) 9-10 SC 87; (1990) 6 NWLR (Pt. 155) 125; Aminu Tanko v. The State (2009) 1-2 SC (Pt. 1) 198 at 223.

***The essential ingredients of the offence of armed robbery, as listed in the case of Bello v. The State (2007) 10 NWLR (Pt. 1043) 564, are as follows:-***

- F (a) *that there was a robbery or series of robbery.*  
 (b) *that each of the robbery was an armed robbery.*  
 (c) *that the accused was one of those who robbed.*

***There is no iota of doubt in my mind that after reading the evidence adduced in the Records of Proceedings, the above stated ingredients were clearly established. PW1 and PW2 were robbed of their money on their way to Kaduna Iya village. The appellant was in the gang of two boys who shot gun into the air to scare the two women. PW2 lost her money as same was removed in the process of the appellant's action and that of his cohort who was said to be at large.***

***The appellant, in his oral evidence attempted to put up the defence of alibi. This means that he was not at the scene of crime, Alibi means 'elsewhere'. It is the duty of the police to investigate same. But it is the duty of the accused to furnish***

***the particulars of alibi to the police at the earliest opportunity. He must furnish his where about and those present with him. It is then left to the prosecution to disprove same. Failure to investigate will lead to acquittal.*** See: Yanor v. The State (1965) NMLR 337; Queen vs. Turner (1957) WRNLR 34; Bello v. Police (1956) SCNLR 113; Gachi v. The State (1973) 1 NMLR 33; Odu & Anr. v. The State (2001) 5 SCNJ 115 at 120; (2001) 10 NWLR (Pt. 772) 668. B

***The appellant who did not put up his defence of alibi at the time of investigation cannot be taken seriously. Making the plea in his evidence at the trial is a ploy which equates to an after thought. It was to no avail in the circumstance.*** C

Finally, I wish to make a brief comment on the point made on behalf of the appellant that the case was not proved beyond reasonable doubt. This is a ready tool for most defence counsel. ***Proof beyond reasonable doubt is not proof beyond all iota of doubt or proof to the hilt.*** See: Woolmington v. Director of Public Prosecutions (1933) AC 462; Nasiru v. The State (supra) at page 98; Akalezi v. The State (1993) 2 NWLR (Pt. 273) 1 at page 13. D

***I wish to once more observe that when all the essential ingredients of the offence charged have been satisfactorily proved by the prosecution, as in this matter, the charge is proved beyond reasonable doubt.*** See: Alabi v. The State (1993) 7 NWLR (Pt. 307) 511 at page 523. E

***I have no hesitation in resolving issue (b) against the appellant and in favour of the respondent.*** F

In conclusion, I find that this appeal is devoid of merit. It is hereby dismissed. The conviction and sentence of the appellant by the trial Tribunal as affirmed by the court below is hereby confirmed. G

### MOHAMMED JSC

The Appellant was convicted and sentenced to 21 years imprisonment for the offence robbery on 1<sup>st</sup> October, 1997 by the Kaduna State Robbery and Fire Arms Tribunal. The Appellants appeal to the Kaduna Division of the Court of Appeal was heard and ultimately dismissed on 15<sup>th</sup> December, 2009 to give rise to the present appeal in this Court. H

From the evidence of the five witnesses called by the prosecution and exhibit 5 being the confessional statement of the Appellant, it is quite clear that the prosecution had proved its case against the Appellant beyond reasonable doubt. With the evidence of the two eye witnesses who were also victims of the act of the robbery, even  
 B without confessional statement of the Appellant, the prosecution was still on strong ground in discharging its burden of proof. I am therefore completely with my learned brother Fabiyi, JSC in his leading judgment dismissing this appeal. Thus, the appeal being devoid of  
 C merit is hereby dismissed by me. The conviction of the Appellant and the sentence passed upon him by the trial Court which were affirmed by the Court below, are hereby further affirmed by me.

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D **ADEKEYE JSC**

I read in advance the judgment just delivered by my Learned Brother John Afolabi Fabiyi JSC.  
 I am in agreement with his reasoning and conclusion that the appeal lacks merit and I also dismiss it.  
 E I abide by all the consequential orders made in the lead judgment including orders as to costs.

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F **GALADIMA JSC**

I have had the opportunity of reading in draft the judgment delivered by my learned Brother, FABIYI JSC. I agree with him in his conclusion that the appeal is lacking in merit and I too hereby dismiss it.  
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**RHODES-VIVOUR JSC**

I have had the privilege of reading in draft the judgment delivered by my learned brother, Fabiyi JSC. I am in full agreement with  
 H his Lordships reasoning and conclusions. I propose to add a few observations on when a trial within trial is conducted. I hope it will be of assistance to judges who have the ask of applying the law in this area. Relevant extracts from the proceedings in the trial court can be found on pages 15 and 16 of the Record of Appeal. It runs as follows:

PW5 ( a Police Officer) I recorded the statement of the accused in English. I cautioned him. I read over the words of caution to the accused, he understand and signed. I recorded the statement of the accused and read over to the accused his statement. He said is correct and signed. The statement is confessional. I take him before my Boss, MR. Dauda and endorsed the statement. He confirmed that the statement is confessional. I can recognize the statement by my handwriting and signature. This is the statement. B

MR. Michael: I seek to tender the statement.

MR. Jerome: I oppose the admissibility of the statement. Accused was force by writing statement the accused alleged to have been beaten. I am applying for Trial within trial. C

MR. Micheal: I am opposing the application for Trial within Trial, the accused did not give particular of Trial within Trial.

Court: No sufficient and concrete ground to order for trial within Trial the accused made statement this is not denied what ever recorded from the accused person is relevant and could be admitted. I hereby overrule the objection and the statement is hereby admitted and marked exhibit 5. D

My lords, where a confessional statement is challenged on the ground that the accused person did not make the statement, the statement should be admitted since its admissibility is not affected. That the statement was made voluntary or otherwise does not arise for consideration. But where a confessional statement is objected to on the ground that it was not voluntary. That is to say the accused person says he was forced or induced to make it then a trial within trial must be held. E F

See. Queen v. Igwe 1960 5 F.S.C. P. 55

Ikpasa v. Bendel State 1981 NSCC vol. 12 p.300 G

The trial within the main trial is designed to determine if the confession was voluntary. At the trial the accused person must give evidence before witnesses called by him give evidence. At the end of the trial within trial if the court is satisfied that the confessional statement was not voluntary, the said statement would not be admissible in evidence as an exhibit and the trial judge should rule accordingly. H

In this case at the point of tendering the confessional statement the accused claimed that he was beaten up and forced to write the

statement. The trial court ought to have ordered a trial within trial to find out if the accused person's contention that he did not write the statement voluntary was true. Failure to conduct a trial within trial was wrong. The Court of Appeal fell painfully into the same error when it said on page 91 of Record of Appeal that the learned trial  
B judge was right to admit the document as exhibits 5 without having to conduct a trial within trial.

A confessional statement found not to have been voluntary is worthless. I must observe that not conducting a trial within trial  
C is this case does not affect the judgment of the trial court, affirmed by the Court of Appeal. This is so since evidence led and accepted is so overwhelming and conviction was easily sustained without the confessional statement.

There is no merit in this appeal. It is accordingly dismissed.  
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