

SUPREME COURT OF NIGERIA
FRIDAY 30TH JANUARY, 2015. SC. 230/2012
CORAM:- M. U. PETER-ODILI, O. ARIWOOLA,
M. D. MOHAMMAD, K. B. AKA'AH, C. C. NWEZE, JJSC

FEDERAL REPUBLIC OF NIGERIA APPELLANT
V.
BABALOLA BORISHADE RESPONDENT

UNIVERSITY - Confession - Objection - 3rd accused being a University graduate - Ought to know the import of the claim that a statement was made involuntarily (H1)

CROSS EXAMINATION - Trial within trial - Confession - Validity of - Responses got from 3rd accused during cross examination at the mini trial - Show that his statement was voluntarily made (H2)

EVIDENCE - Admission - Weight - Prosecution need not prove voluntariness - As 3rd accused admission of having voluntarily signed the statement was tantamount to a confession (H3)

APPEALS - Evidence - Evaluation - Interference - Judgment of trial court on matters of credibility is binding - Hence CA was in error when it expunged exhibit AX from the records (H4)

FACTS

Accused/respondent and four others were arraigned before the High Court of the Federal Capital Territory Abuja on allegation of having committed various offences under the Penal Code and the Independent Corrupt Practices & other related Offences Act 2000. During the trial, prosecution/appellant met stiff objection when it attempted to tender the extra judicial statement of 3rd accused person. The objection was on the ground that the statement was not voluntarily made. In the circumstance, the court commenced a trial within trial proceeding.

At the mini trial, 3rd accused person testified before the court and was equally cross-examined. At the end of the mini trial, the court having observed the demeanour of the 3rd accused, found the

statement to have been voluntarily made. The statement was therefore admitted in evidence. Respondent was not satisfied with the ruling of the court. Hence, he appealed to the Court of Appeal Abuja Division. The court allowed the appeal and expunged the statement from the records. Aggrieved, appellant appealed to Supreme Court.

ISSUE FOR DETERMINATION

Whether or not the Lower Court was right to have discounted the appellant's contention that the third accused person admitted at the trial within trial that he voluntarily made the statement in issue?

HELD (Unanimously allowing the appeal per **NWEZE JSC**)

EVIDENCE - Confession - Objection

1. Counsel for the appellant drew attention to the fact that the said third accused person was not in doubt as to the nature of the judicial process which the objection had prompted, namely, that the mini trial was embarked upon for the sole purpose of ascertaining whether he made the said statement voluntarily. At page 296 of Volume 1 of the records, he described himself as a Chemistry graduate from the University of Lagos and a civil servant since 1987. We entirely agree with senior counsel for the appellant that a person, such as the third accused person, a University graduate, knew or ought to know the import of the claim that a statement was made involuntarily. (p. 91 H)

CRIMINAL PROCEDURE - Trial within trial - Confession - Validity
2. Notwithstanding the fact that the mini trial was, indeed, prompted by the claim that the said statement was not made voluntarily and, as such, the essence of the said trial was to ascertain its voluntariness, under the heat of cross examination, he [the third accused person] admitted that he, actually, signed it. The responses elicited from him during cross examination at the mini trial underscore the futility of the gallant attempts which learned counsel made in their submissions to

rescue him from the consequences of his own admission. On our part, we find considerable merit in the proposition by the appellant's counsel that *"if a witness is asked 'you voluntarily signed the statement' and he answered 'I signed it,' that clearly is an unequivocal admission that the signing was voluntary,"* [paragraph 4. 8, page 7 of the appellant's brief]. In this particular instance, the context of the above responses cannot be wished away. As indicated earlier, the very essence of the mini trial was to determine the voluntariness of the said statement. (pp. 92 C/93 C)

EVIDENCE - Admission - Weight

3. We thus, endorse the forceful submission of the appellant's counsel that *"having admitted that the confession was voluntary - when the third accused person fully knew that the voire dire was being conducted to test the same voluntariness, the prosecution [appellant] needed not prove voluntariness again,"* [paragraph 4.2t, page 9 of the appellant's brief]. We, entirely, agree with this submission.

It could not have been otherwise since under the Evidence Act [in force at the material time], a confession and an admission enjoyed the same ranking in equipollence.

As such, the third accused person's admission of having voluntarily signed the said statement was tantamount to a confession which case law characterizes as the best form of evidence in a criminal trial. (p. 94 A)

Evidence - Evaluation - Interference

4. The error of the Lower Court stemmed from the fact that it did not advert to a point which is well established in a long line of cases that a finding of fact based on demeanour is one of those exclusive prerogatives of a trial court which appellate courts do not make the habit of interfering with.

The reason for this is simple: the trial Court saw the witnesses, heard them, and watched their demeanour in the witness-box. It was, thus, in a very peculiar vantage position to believe or disbelieve them. That advantage can never be recaptured by an appellate Court which, accordingly, is thus

bound to accept the judgment of the trial Court on matters of credibility.

Against this background, we hold that the Lower Court was in error when it expunged exhibit AX from the records. We, hereby, vacate the said order of the Lower Court expunging AX. In its place, we order a reinstatement or restoration of the said exhibit as part of the record. We, therefore, resolve this issue in favour of the appellant. (p. 95 F)

C NOTABLE POINTS OF INTEREST

NWEZE JSC

1. Supreme Court – Power to reformulate issues

Even then, the power of this court to reformulate issues is not in doubt in so far as the issues so re-formulated are within the grounds of appeal. The court, usually, embarks on this option for the purpose of clarity and precision when it observes that the issues, which the parties distilled, are clumsy; imprecise or are proliferated.

It can, also, do this for a more judicious and proper determination of the appeal or to narrow the issue or issues in controversy in the interest of brevity. (p. 89 B)

2. Trial within trial – Purpose of

Indeed, the *raison d'être* of the evolution of the mini trial or *voire dire* procedure is to arm the trial court with a procedural mechanism for sifting the chaff of involuntary, and, hence, inadmissible evidence from the wheat of admissible evidence whose cogency and probative value are indubitable. The cases on this point are legion: they are countless. (p. 93 E)

3. Courts do not determine academic issues

In our view, this conclusion obviates the need for the dissipation of judicial energy on the other issues which, by reason of our restoration of exhibit AX in the records, have become otiose or, at best, academic. As this court re-iterated very, recently, in *Mamman v. FRN* (2013) LPELR-20082 - (SC) 11-12, paragraphs G-A, courts should, on no account, spend precious judicial time on issues that are academic. They should determine live issues, and those are issues that

would meet the ends of Justice. (p. 96 D)

4. Interlocutory appeal - Not meant to frustrate proceedings at trial court

Before concluding this judgment, we observe that the interlocutory appeal of the third accused person against the ruling of the trial court epitomizes the frustration of trials at first instance which our adversarial system of criminal justice, unwittingly, perpetuates. It actually speaks ill of our criminal jurisprudence. The trial of the accused persons, which commenced in 2008, had to abide the Lower Court's determination of the said interlocutory appeal: a decision that prompted the appellant's appeal to this court. In effect since 2008, that is, seven years ago, proceedings at the trial court had been stalled to await the outcome of the appeal against its ruling.

We find it curious that the third accused person could not exercise a little restraint even when the trial court was emphatic that though it found in favour of the admissibility of the said statement, the "*weight to be attached to it is a matter for determination at the conclusion of this trial,*"[page 317 of the record].

Prudence, therefore, ought to have dictated to him to await the conclusion of the trial; thenceforth, he would, if dissatisfied with the judgment in the substantive case, proceed to appeal against it.

We shall continue to look with askance at situations, such as those engendered by the said interlocutory appeal, which occasion the frustration of proceedings at trial courts. They should no longer be condoned or brooked. They scandalize the integrity of the judicial process! In all, this appeal succeeds in Part. (p. 96 H)

REPRESENTATION

S. T. Hon. SAN, with D. O. Pendo and G. T. Iorver, for the Appellant
S. A. Awomolo SAN, with F. Folorunso and Jude Daniel Odi for the
1st Respondent

Kehinde Ogunwumiju, with B. Adulodun and J. Agbe, for the 2nd
Respondent

Olumuyiwa Akinbor with K. Iweka; C. Ezenwafor, B. Lawan; T.
Arowolo; J. Adamu and E. Nwali for the 3rd Respondent.

Olusegun Jolaawo with F. C. Ani for the 4th and 5th Respondents

CASES REFERRED TO

- Egbe v. Onogun (1972) 1 All NLR 95
 Akuma Ind. Ltd v. Ayman Enter. Ltd (1999) 13 NWLR (pt. 633) 68
 Agip (Nig) Ltd. v. Agip Petro. Intn'l [2010] 5 NWLR (pt. 1187) 348
 B MILAD of Ekiti State v. Aladeyelu (2007) 14 NWLR (pt. 1055) 619
 Ominia (Nig.) Ltd v. Dyktrade Ltd (2007) 15 NWLR (pt. 1058) 576
 Ojukwu v. Governor of Lagos State (1986) 2 NWLR (pt. 26) 39
 Iweka v. SCOA (Nig) Ltd. (2000) 7 NWLR (pt. 664) 325
 C Orji v. Zaria Industries Ltd. (1992) 1 NWLR (pt. 216) 124
 Unity Bank Plc v. Bouari (2008) 2 SCM 193
 Nwana v. FCDA (2004) 7 SCM 25
 Agbakoba v. INEC (2008) 12 SCM (pt. 2) 159
 Shar Jnr. v. Da Rapkwan (2000) 8 NWLR (pt. 670) 585
 D Okoro v. State (1988) 12 SC 191
 Latunde v. Lajunfin (1989) 5 SC 59
 Okonji v Njokanma (1991) 7 NWLR (pt. 202) 131

STATUTES REFERRED TO

- E Independent Corrupt Practices & Other Related Offences Act 2000
 Penal Code
 Evidence Act Cap E14 LFN 2004, s. 28

LEAD JUDGMENT BY NWEZE JSC

- F Way back in November, 2009, the respondent in this appeal
 and four others, [as accused persons], were arraigned before the
 High court of the Federal Capital Territory, Abuja. Precisely, by an
 Amended Charge of fifteen counts, dated and filed on November
 G 19, 2009, they were alleged to have committed various offences
 under the Penal Code and the Independent Corrupt Practices and
 Other Related Offences Act, 2000 [ICPC Act, for short].

- Sequel to their due arraignment, trial commenced before High
 Court Number 12 (hereinafter, referred to as “trial Court”). It would
 H appear that there were no procedural hitches when the first nine
 witnesses were examined in chief; duly cross examined and discharged,
 accordingly. However, the prosecution’s attempt to tender the extra
 judicial statement of the third accused person [I. A. Dairo] was stoutly
 resisted by his counsel and indeed, counsel for the other accused

persons.

PW10 was one Reuben Omosigbo, the principal Investigating Officer. The prosecution sought to tender the said third accused person, T. A. Dairo's statement of July 25, 2008, through him. His counsel, and counsel for the other accused persons, greeted this attempt with firm disapprobation. They predicated their objection on the ground of the involuntariness of the said statement. On his part, counsel for the third accused person hinged his agitation on the fact that the said statement was elicited from a question and answer session and on its involuntary origin. In the circumstance, the trial court was constrained to order a trial-within-trial or mini trial (otherwise, known as *voire dire*). B
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At the mini trial, the prosecution's witness [who obtained the said statement] testified and was cross examined. The third accused person before the trial court testified and was cross examined. The trial court found in favour of the voluntariness of the said statement, partly, anchoring its reasoning on its observation of the demeanour of the said third accused person and the prosecution's sole witness at the said mini trial. Consequently, it admitted the statement as exhibit AX. Aggrieved by the said court's ruling, the respondent lodged an appeal at the Abuja Division of the Court of Appeal (henceforth, referred to as "the Lower Court." In its judgment dated April 25, 2012, the Lower Court allowed the appeal. It proceeded to expunge the said exhibit AX from the records. This appeal is the prosecution's expression of dissatisfaction against the judgment of the Lower Court. D
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ISSUES FOR DETERMINATION

In the brief of argument filed on July 11, 2012, the appellant raised only four issues from its twelve grounds of appeal. They were framed thus: G

1. Whether in view of the express admission on the record by the third accused person that the disputed confessional statement was voluntary, coupled with his failure to cross-examine the only prosecution witness in the *voire dire* on vital issues, the Court of Appeal was right to have relied merely on alleged 'circumstances' and 'state of mind of the first respondent and the failure of the prosecution to call evidence which the Court of Appeal held was vital, to hold that the confessional statement was not voluntary? H

2. Whether the Court of Appeal was right when it held that the

learned trial Judge placed the burden and standard of proof on the third accused person and that the learned trial Judge circumscribed or limited the grounds of objection of the defence against the admissibility of the confessional statement.

B 3. Whether the Court of Appeal judgment was contradictory in material particular, resulting to adverse findings against the appellant?

C 4. Whether the Court of Appeal had jurisdiction to make findings on the applicability of section 28 of the repealed Evidence Act and or correctly applied its provisions to the facts of this appeal given that there was no appeal on that to the Court of Appeal and also whether it was correct in its findings on allegations of threat to life and inducement or promise of advantage.

D The respondent opted to recast the above issues in a more precise phraseology. He condensed them into three issues couched in the following manner:

E 1. Whether or not the Lower Court was right to have discounted the appellant's contention that the third accused person admitted at the trial within trial that he voluntarily made the statement in issue?

2. Whether or not the Lower Court was right when it found that the trial court misplaced the burden and standard of proof on the accused persons at the trial within trial?

F 3. Whether or not the Lower Court was right to have expunged the confessional statement in issue having regard to the clear provision of section 28 of the Evidence Act Cap E14 of LFN 2004, and the totality of the evidence adduced at the trial within trial?

G On our part, upon our intimate reading of the twelve grounds of appeal, we are satisfied that the crux of the appellant's complaint against the judgment of the Lower Court is woven around its expunction of exhibit AX from the records. As such, we have taken liberty, as we are, eminently, entitled to do, to compact the above issues and reformulate them. In opting for this approach, we are H guided by the salutary and wholesome prescription that, in an interlocutory appeal such as this, the court, while endeavouring to deal with the justice of the complaint, should be circumspect enough not to overreach itself by prejudicing the ultimate outcome of any aspect of the substantive matter still pending at the trial court, *Egbe v. Onogun*

(1972) 1 All NLR 95; Akuma Industries Ltd v. Ayman Enterprises Ltd [1999] 13 NWLR (pt.633) 68; Agip (Nig) Ltd. v. Agip Petroleum International and Others [2010] 5 NWLR (pt.1187) 348; Mil Admin of Ekiti State v. Aladeyelu [2007] 14 NWLR (Pt.1055) 619; Ominia (Nig.) Ltd v. Dyktrade Ltd [2007] 15 NWLR (Pt.1058) 576; Ojukwu v. Governor of Lagos State [1986] 2 NWLR (pt.26) 39; Iweka v. SCOA (Nig) Ltd. [2000] 7 NWLR (Pt.664) 325; Orji v. Zaria Industries Ltd. [1992] 1 NWLR (pt.216) 124.

Even then, the power of this court to reformulate issues is not in doubt in so far as the issues so re-formulated are within the grounds of appeal. The court, usually, embarks on this option for the purpose of clarity and precision when it observes that the issues, which the parties distilled, are clumsy; imprecise or are proliferated. *Reptico S. A. Geneva v Afribank Nig Plc* (2013) LPELR -20662 (SC) 35, A-D; *Unity Bank Plc v. Bouari* [2008] 2 SCM 193; [2008] All FWLR (pt.416) 1825; [2008] 7 NWLR (pt.1086) 372; *Emeka Nwana v. FCDA and Ors* [2004] 7 SCM 25; *Agbakoba v INEC* [2008] 12 SCM (pt.2) 159; [2008] All FWLR (pt.410) 799; [2008] 18 NWLR (pt.1119) 489.

It can, also, do this for a more judicious and proper determination of the appeal or to narrow the issue or issues in controversy in the interest of brevity. *Musa Shar Jnr. and Anor v. Da Rapkwan and Ors* [2000] 8 NWLR (Pt.670) 585; [2000] 5 SCNJ 101; *Okoro v. The State* [1988] 12 SC 191; *Latunde and Anor v Lajunfin* [1989] 5 SC 59; *Unity Bank Plc v Edward Bouari* [2008] 7 NWLR (pt.1086) 372, 401; [2008] 2 SCM 193.

In the interest of brevity, therefore, we have embarked upon a concretion of only one issue for the determination of this appeal. It is, in the phraseology of the respondent's first issue:

Whether or not the Lower Court was right to have discounted the appellant's contention that the third accused person admitted at the trial within trial that he voluntarily made the statement in issue?

As will be seen in the course of this judgment, the resolution of this issue would, even, obviate the need for the dissipation of judicial energy in the consideration of the other issues which the appellant put forward. Due to their inextricable linkage with the Lower Court's adverse findings against the appellant, the other issues are subsumed

in the complaint that the said court, improperly, expunged exhibit AX from the record. Thus, the determination of the grievance ingrained in the above lone issue would suffice. *Okonji v Njokanma* [1991] 7 NWLR (pt 202) 131; *Oro v Falade* [1995] 5 NWLR (pt.396) 385. As already pointed out, his main agitation is against the Lower Court's expunction of exhibit AX from the record. Put differently, therefore, a finding in favour of the restoration of the said exhibit as part of the record would, unarguably, douse the complaints in these other issues.

C **ARGUMENTS ON THE LONE ISSUE**

Whether or not the Lower Court was right to have discounted the appellant's contention that the third accused person admitted at the trial within trial that he voluntarily made the statement in issue?

D When this appeal came up for hearing on November 13, 2014, S. T. Hon, SAN, who appeared with D. O. Pendo and G. T. Iorver, adopted the appellant's Brief of argument filed on July 11, 2012. He drew attention to the express admission which the first respondent made to the effect that he made and signed the disputed statement E [exhibit AX] voluntarily. He impugned the Lower Court's refusal to endorse the said statement as a voluntary admission.

In his view, if the Lower Court had considered the admission of the third accused person that he had voluntarily signed it that would have been the end of the inquiry on the voluntariness or otherwise of that statement. Learned senior counsel cited *Oforlete v. State* [2000] 7 SCNJ 162, 179; *Adeosun v Governor of Ekiti State* [2012] All FWLR (pt 519) 1044, 1059; *Jolasun v Bamgboye* [2011] All FWLR (pt 595) 203, 222; *Jua v State* [2010] All FWLR (pt 521) F 1427, 1445 in support of his proposition on the importance of evidence elicited under cross-examination.

He maintained that the said admission of the voluntariness of the statement was comparative to a confession which is acclaimed as the best evidence of guilt, *Solala v State* [2005] All FWLR (Pt.269) H 1751, 1732. He re-iterated the third accused person's admission of the voluntariness of the said statement, citing page 276 of Vol 1 of the record. He referred to page 315 of the record where the trial court disclosed part of what informed its decision in favour of the voluntariness of the said statement. He urged the court to resolve this

issue in favour of the appellant.

On his part, Kehinde Ogunwumiju, counsel for the second respondent, appearing with B. Adulodun and J. Agbe, adopted the brief filed on October 3, 2012. He took the view that the decision of the Lower Court was right. He contended that the third respondent did not admit the voluntariness of the statement, citing *Orji v Dorji Textile Mills (Nig) Ltd* [2009] 18 NWLR (pt 1173) 467, 500; *Eigbe v. N.U.T.* [2008] 5 NWLR (Pt.1081) 608; *Narindex Trust Ltd v. Nig Intercontinental Merchant Bank Ltd* [2001] 10 NWLR (Pt.721) 321; *Rector, Kwara Poly v. Adefila* [2007] 15 NWLR (pt 1056) 42, 112. In his submission, the fact that the third accused person admitted signing the said statement does not mean that he made it voluntarily. B
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He re-iterated the distinction between the retraction of a statement and an allegation of involuntariness in signing the said statement, *Akpa v. State* [2008] 14 NWLR (pt.1106) 72, 97-98. He canvassed the view that a holistic consideration of the third accused person's testimony would reveal that he never admitted that he signed it voluntarily, *UNIFE Development Co. Ltd v. Adeshingbin and Ors* [2001] 4 NWLR (pt.704) 609, 626; *Agbareh v Mimra* [2008] 2 NWLR (pt.1071) 378; *Ojokolobo and Ors v Alamu and Anor* [1987] 3 NWLR (pt.61) 377. D
E

He noted that the appellant incompletely, raised the issue of admission at the Lower Court, citing *Aderibigbe v Abidoye* [2009] 10 NWLR (Pt.1150) 592, 617 etc. He urged the court to resolve the issue in favour of the respondent by holding that the Lower Court, rightly, discountenanced the appellant's submission with regard to the voluntariness of the said statement. F

RESOLUTION OF THE ISSUE

As already stated above, counsel for the appellant pointed out that the third accused person at the trial court, expressly, admitted that he made and signed the disputed statement voluntarily. He drew attention to several pages of the record. Now, what prompted the trial-within-trial at the trial court was the objection of counsel for the third accused person that his statement was not made voluntarily. In other words, the whole essence of the said mini trial was to find out whether, indeed, the said statement was made voluntarily. G
H

Counsel for the appellant drew attention to the fact that the said third accused person was not in doubt as to the na-

ture of the judicial process which the objection had prompted, namely, that the mini trial was embarked upon for the sole purpose of ascertaining whether he made the said statement voluntarily. At page 296 of Volume 1 of the records, he described himself as a Chemistry graduate from the University of Lagos and a civil servant since 1987. We entirely agree with senior counsel for the appellant that a person, such as the third accused person, a University graduate, knew or ought to know the import of the claim that a statement was made involuntarily.

Notwithstanding the fact that the mini trial was, indeed, prompted by the claim that the said statement was not made voluntarily and, as such, the essence of the said trial was to ascertain its voluntariness, under the heat of cross examination, he [the third accused person] admitted that he, actually, signed it. The responses elicited from him during cross examination at the mini trial underscore the futility of the gallant attempts which learned counsel made in their submissions to rescue him from the consequences of his own admission. Listen to this:

Question; Is that your signature on the statement?

Answer: Yes [it] is my signature.

Question: You voluntarily signed the document? [Italics supplied for emphasis]

Answer: I signed it. [see, page 276 of Volume I of the Records]

That is not all. Two further responses at page 291 of Volume 1 of the Record expose the poverty of the fallacious contention that the said statement was made involuntarily. Hear his responses to other questions under cross examination during the trial-within-trial:

Question: When did you start writing the statement in issue?

Answer: I started writing the statement at about 8.30 pm.

Question: Have you signed the statement?

Answer: Yes I signed but the officer did not allow me to put time.

[Page 291 of Volume 1 of the Records, italics supplied for emphasis]

Finally, the response elicited from him at 294 of Volume 1 of the Records put paid to any insinuations as to the involuntariness of

the said statement:

Question: You signed the statement page by page...?

Answer: Yes I signed.

[Italics supplied for emphasis]

Even in the face of these crystal responses, Mr. Ogunwumiju, for the respondent contended that *“even if he admitted that he signed it voluntarily..., it still does not mean that he made the statement voluntarily,”* paragraph 4. 08, page 10 of the respondent’s brief. The Lower Court, equally, found *“no admission on any of the pages referred to by learned senior counsel for the first respondent that the appellant admitted the statement was voluntary.”*

On our part, we find considerable merit in the proposition by the appellant’s counsel that *“if a witness is asked ‘you voluntarily signed the statement’ and he answered ‘I signed it,’ that clearly is an unequivocal admission that the signing was voluntary,”* [paragraph 4. 8, page 7 of the appellant’s brief]. In this particular instance, the context of the above responses cannot be wished away. As indicated earlier, the very essence of the mini trial was to determine the voluntariness of the said statement.

Indeed, the *raison d’être* of the evolution of the mini trial or voire dire procedure is to arm the trial court with a procedural mechanism for sifting the chaff of involuntary, and, hence, inadmissible evidence from the wheat of admissible evidence whose cogency and probative value are indubitable. The cases on this point are legion: they are countless. Only one or two of them will be cited here, *Ogudo v The State* [2011] 12 SC (pt.1) 71; *Ibeme v The State* (2013) LPELR -20138 (SC); *Auta v State* [1975] 4 SC 125; *Effiong v. State* [1978] 8 NWLR (Pt.562) 362; *Lasisi v. State* (2013) LPELR-20183 (SC) 29; *The State v Rabi* (2013) LPELR - 19982 (SC); *Ogudu v. The State* (2011) LPELR-860 (SC); *Nwangbonu v. State* [1987] 4 NWLR (Pt.67) 748; *Ogunye v. State* [1999] 5 NWLR (pt.664) 548, 570.

Scholars are, also, unanimous on this issue, I. H. Dennis, *The Law of Evidence* [Second Edition] (London: Sweet and Maxwell, 2001) 184; L. O. Aremu, *“The Voluntariness of Confessions in Nigerian Law,”* in 1977-1980 Nigerian Law Journal, 32; J. Amadi, *Contemporary Law of Evidence in Nigeria* [Vol 1] (Port Harcourt: Pearl Publishers, 2011) 324; M. A. Owoade, *“Voluntariness of Confes-*

sions in Nigerian Law - Need for Reform,” in 1987 Nigerian Current Law Review 179.

We thus, endorse the forceful submission of the appellant’s counsel that “having admitted that the confession was voluntary - when the third accused person fully knew that the voire dire was being conducted to test the same voluntariness, the prosecution [appellant] needed not prove voluntariness again,” [paragraph 4.2t, page 9 of the appellant’s brief]. We, entirely, agree with this submission.

It could not have been otherwise since under the Evidence Act [in force at the material time], a confession and an admission enjoyed the same ranking in equipollence. Saidu v The State (1982) LPELR -2977 (SC) 18, paragraphs B-D; Ibeme v. The State (2013) LPELR -20138 (SC); Bright v. The State (2012) LPELR -7841 (SC) 20, paragraphs B-C; Kasa v. The State [1994] 5 NWLR (pt 344) 269; Nwachukwu v The State (2007) LPELR -8075 (SC) 36, paragraphs E-F; Gira v State [1996] 4 NWLR (pt.443) 375; Sam v. State [1991] 2 NWLR (pt.176) 699; Dogo v. The State (2013) LPELR-20175 (SC; Lasisi v The State (2013) LPELR -20183 (SC) 50-51, paragraphs G-B; Odeh v FRN [2008] 13 NWLR (pt 1103) 1; Chiokwe v. The State (2012) LPELR-19716 (SC) 32-33, paragraphs G-B; T. A. Aguda, Law and Practice Relating to Evidence in Nigeria [2nd Edition] (Lagos: MIJ Professional Publishers Ltd, 1998) p. 73.

As such, the third accused person’s admission of having voluntarily signed the said statement was tantamount to a confession which case law characterizes as the best form of evidence in a criminal trial. Musa v State (2013) LPELR -19932 (SC); Nwachukwu v State [2008] WRN (Pt.4) 1, 9-10; 32-33; (2007) LPELR -8075 (SC) 37, paragraphs A-B; Adebayo v. AG Ogun State [2008] 7 NWLR (pt.1085) 221; (2008) LPELR -80 (SC) 23, paragraphs C-E; Chiokwe v State; Solola v State [2005] All FWLR (pt.269) 1751; Jimoh Yesufu v The State [1976] 6 SC 167, 173; Queen v. Obiasa [1962] 1 SCNLR 137; Nwaebonyi v The State (1994) LPELR -2090 (SC) 25-27; Timothy v FRN (2012) LPELR -936 (SC); Edamine v. The State (1996) LPELR -1002 (SC) 12, paragraph B.

We must quickly observe, however, that, in this judgment, we are not concerned with the issue of the desirability or otherwise of having some corroborative evidence, outside the confession, no matter

how slight, of circumstances which make it probable that it is true and correct as the courts are not, generally, disposed to act on a confession without testing the truth thereof. Onochie and Ors v The Republic (1966) NMLR 307; Jafiya Kopa v. The State (1971) 1 All NLR 150; R. v. Sykes (1913) 8 C.AR 233, 236; Ejinima v The State [1991] 5 LRCN 1640, 1671; Arthur Onyejekwe v The State [1992] 4 SCNJ 1, 9; [1992] 3 NWLR (Pt.230) 444. B

Equally, the issue before us is not the question of the rules to be complied with before deciding the weight to be attached to such a confession, Rex v. Sykes (supra); Kanu v The King (1952) 14 WACA 30; Dawa v The State [1980] 8 -11 SC 236; The Queen v. Obiasa (1962) 1 All NLR 651; [1962] 1 SCNLR 137; Obosi v The State (1965) NMLR 129; Onochie v The Republic (supra). C

It would even appear that counsel for the respondent and the Lower Court lost sight of one major factor which prompted the trial court's said finding in favour of the voluntariness of the said exhibit AX. There were only two witnesses at the mini trial. They were Pw1, who testified for the prosecution and the third accused person, who testified as Dw1. In effect, at that forensic ring of the mini trial, the testimonies of these two witnesses squared up in a contest for the distillation of the truth or falsity of the allegation of the involuntariness of the said statement. As the umpire, whose sole duty was to ascertain the victor in that contest for the determination of the voluntariness or otherwise of the said statement, the very cause of the dispute, the trial court, after watching "*the demeanour of witnesses in the instant case*," [page 315 of the records], found in favour of the admissibility of exhibit AX. D E F

The error of the Lower Court stemmed from the fact that it did not advert to a point which is well established in a long line of cases that a finding of fact based on demeanour is one of those exclusive prerogatives of a trial court which appellate courts do not make the habit of interfering with. Olarenwaju v Governor of Oyo State; Sokwo v. Kpongbo; Woluchem v. Gudi [1981] 5 SC 319, 326; Fatoyinbo and Ors v Williams (1956) 1 FSC 87; Kodilinye v. Mbanefo Odu 2 W.A.C.A 336, 338; Ramonu Atolagbe v Olayemi Shorun [1985] 1 NWLR (pt.2) 360; Mogaji v. Odofin [1978] 4 SC 91; Obisanya v Nwoko [1974] 6 SC 69; Okuoja v Ishola [1982] 7 SC 31. G H

The reason for this is simple: the trial Court saw the witnesses, heard them, and watched their demeanour in the witness-box. It was, thus, in a very peculiar vantage position to believe or disbelieve them. That advantage can never be recaptured by an appellate Court which, accordingly, is thus bound to accept the judgment of the trial Court on matters of credibility. Adelumola v The State (1988) LPELR -119 (SC); Ebba and Ors v. Ogoto and Ors [1984] 4 SC 84; [1984] 1 SCNLR 372; Motunwase v. Sorungbe [1988] 5 NWLR (Pt.92) 90; Akpakpuna and Ors v. Obi Nzekwa II [1983] 2 SCNLR 1; Nzekwu v. Nzekwu [1989] 2 NWLR (Pt.104) 373, 393.

Against this background, we hold that the Lower Court was in error when it expunged exhibit AX from the records. We, hereby, vacate the said order of the Lower Court expunging AX. In its place, we order a reinstatement or restoration of the said exhibit as part of the record. We, therefore, resolve this issue in favour of the appellant.

In our view, this conclusion obviates the need for the dissipation of judicial energy on the other issues which, by reason of our restoration of exhibit AX in the records, have become otiose or, at best, academic. As this court re-iterated very, recently, in Mamman v. FRN (2013) LPELR -20082 - (SC) 11-12, paragraphs G-A, courts should, on no account, spend precious judicial time on issues that are academic. They should determine live issues, and those are issues that would meet the ends of Justice. Oyeneye v Odugbesan [1972] 4 SC 244; Bakare v. A.C.B. Ltd [1986] 3 NWLR (pt.26) 47; Nzon v Iinadu [1987] 1 NWLR (pt.51) 537; Lawal v Morohunfola [1998] 1 NWLR (pt.532) 111; Badejo v Federal Minister of Education [1996] 9-10 SC 51; [1996] 8 NWLR (Pt.464) 15.

The only issue that meets the ends of justice in this appeal, that is, the impropriety of the Lower Court's expunction of exhibit AX from the record, having been resolved in favour of the appellant' the other issues which are subsumed in the complaint in the lone issue, as pointed out above, have become otiose or, at best, academic.

Before concluding this judgment, we observe that the interlocutory appeal of the third accused person against the ruling of the trial court epitomizes the frustration of trials at first instance which our adversarial system of criminal justice, unwittingly, perpetuates. It ac-

tually speaks ill of our criminal jurisprudence. The trial of the accused persons, which commenced in 2008, had to abide the Lower Court's determination of the said interlocutory appeal: a decision that prompted the appellant's appeal to this court. In effect since 2008, that is, seven years ago, proceedings at the trial court had been stalled to await the outcome of the appeal against its ruling. B

We find it curious that the third accused person could not exercise a little restraint even when the trial court was emphatic that though it found in favour of the admissibility of the said statement, the *"weight to be attached to it is a matter for determination at the conclusion of this trial,"* [page 317 of the record]. C

Prudence, therefore, ought to have dictated to him to await the conclusion of the trial; thenceforth, he would, if dissatisfied with the judgment in the substantive case, proceed to appeal against it. International Agric Ind. (Nig) Ltd and Anor v. Chika Brothers Ltd D [1990] 1 NWLR (Pt.124) 70, 81; Dairo v. Union Bank of Nigeria Plc and Anor [2007] All FWLR (Pt.392) 1846, 1906, D-F.

We shall continue to look with askance at situations, such as those engendered by the said interlocutory appeal, which occasion the frustration of proceedings at trial courts. They should no longer be condoned or brooked. International Agric Ind. (Nig) Ltd and Anor v. Chika Brothers Ltd (supra); Dairo v union Bank of Nigeria Plc and Anor (supra). They scandalize the integrity of the judicial process! In all, this appeal succeeds in Part. E

We hereby, set aside the order of the Lower Court expunging exhibit AX from the record of the trial court. In its place, we order its restoration in the records. Appeal allowed. The trial court shall continue, post-haste, with the hearing and determination of the charges before it. F G

PETER-ODILI JSC

I am in total agreement with the judgment just delivered by my learned brother, Chima Centus Nweze JSC, which judgment I had the privilege of reading in draft. There is nothing more to add as the views expressed by my learned brother represent exactly my own opinion on the matter. I too allow the appeal and abide by the consequential orders made. H

ARIWOOLA JSC

My learned brother C. C. Nweze, JSC obliged me with the draft of the leading judgment he just delivered. I am in agreement with the procedure adopted in resolving the issues on the said appeal. I also agree with the reasoning in the said leading judgment and the conclusion arrived thereat. Indeed, the appeal succeeds in part. The Lower Court was in error when it expunged the statement, Exhibit AX from the record of the trial court.

I abide by the order contained in the leading judgment that the expunged Exhibit AX be restored for the trial court to continue the trial of the charge.

Accordingly, appeal is allowed.

D

MUHAMMAD JSC

Having read his lead judgment in draft, I agree with my learned brother Nweze, JSC that the appeal has merit and succeeds in part. I abide by his lordship's consequential orders in the said judgment.

E

AKA'AH S JSC

I read before now the illuminating judgment of my learned brother, Nweze JSC, and I am in full agreement with his reasoning and conclusion that the appeal has merit and therefore should be allowed.

The 1st respondent to this appeal was the 3rd accused person and personal assistant to Professor Babalola Borisade, erstwhile Minister of Aviation in Charge No.CR/09/08. The main issue in the appeal has to do with the admissibility of the extra judicial statement of the said 3rd accused (now 1st respondent), T. A. Dairo to which objection was taken by all the counsel appearing for 1st, 2nd, 3rd and 4th accused persons which led to the holding of a trial within trial. At the conclusion of the mini trial, the learned trial Judge admitted the statement in evidence as Exhibit "AX". The 1st and 3rd accused persons were dissatisfied with the ruling and each of them appealed against it to the Court of Appeal, Abuja. The appeal by the 3rd accused/appellant was numbered CA/A/164C/2011. In the judgment of

the Court of Appeal delivered on 25th April, 2012, the appeal was allowed and the statement which had been admitted as Exhibit AX was ordered to be expunged from the record and this prompted the Complainant/appellant to appeal to this Court.

The learned trial Judge in his ruling found that there was no threat to life or promise which propelled the 1st respondent to make the statement. In his objection to the admissibility of the statement learned counsel to the 3rd accused said at pages 225 of the record-

"I am objecting because from the statement of the witness, as the procedure, it is not voluntary. Where a statement is obtained in the processes of question and answer, we urged (sic) the Court to reject. It is the duty of prosecution to prove it (sic) voluntariness".

The issue which was hotly contested by learned counsel was the style in which the statement was obtained. If learned counsel had alleged that the accused was threatened with death or made promises of release from prosecution, it is then that the prosecution would have been required to prove that there was no threat to life or promise of an advantage made to the 3rd accused before he made the statement. It was sufficient for the purposes of admissibility that the maker signed the statement; moreso since the question whether he signed it voluntarily was put to him and he answered that he signed it.

The order made by the Lower Court expunging Exhibit AX is hereby set aside. The statement by the 3rd accused which was admitted as Exhibit AX is restored to the records and the trial which has been stalled since 15th March, 2011 should proceed and be heard expeditiously by the FCT High Court.

G

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