

**SUPREME COURT OF NIGERIA**  
FRIDAY 30TH JANUARY, 2015. SC. 229/2012  
**CORAM:- M. U. PETER-ODILI, O. ARIWOOLA,**  
**M. D. MUHAMMAD, K. B. AKA'AH, C. C. NWEZE, JJSC**

FEDERAL REPUBLIC OF NIGERIA ..... APPELLANT  
V.  
1. T. A. DAIRO  
2. BABALOLA BORISADE  
3. ROLAND IYAYI ..... RESPONDENTS  
4. GEORGE EDER  
5. AVSATEL COMMUNICATIONS LTD

---

APPEALS - Notice of appeal - Double filing - It is permissible to file two notices of appeal within time - And appellant who does so is not blameworthy on the side of caution (H1)

APPEALS - Notice of appeal - Double filing - Options - Where validly filed - Appellant would be right to apply for leave to either consolidate such notices - Or to withdraw all except one (H2)

APPEALS - Notices of appeal - Consolidation of - CA having granted 1st respondent leave to consolidate - The contention that reliance was placed on the two notices in same appeal is of no moment (H3)

APPEALS - Issues - Determination of - There is no doubt that from the records - CA dealt with the complaint of appellant - Hence it pronounced on all issues raised (H4)

CRIMINAL PROCEDURE - Confession - Voluntariness of - 1st respondent admission of having voluntarily signed the statement - Was tantamount to a confession which is the best form of evidence (H5)

APPEALS - Court - Findings of fact - Based on demeanour is an exclusive prerogative of trial court - Which appellate courts do not make the habit of interfering with (H6)

**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 be 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.

**ISSUES FOR DETERMINATION**

1. Whether the Court of Appeal was right when it held that it was regular and permissible for the first respondent to have argued his appeal upon two Notices of Appeal without withdrawing one?

2. Whether [the] appellant's right to fair hearing was breached when the Court of Appeal failed, neglected or refused to rule one way or the other on the submissions of the appellant that the first respondent abandoned the case he presented at the trial while arguing his appeal at the Court of Appeal?

3. Whether in view of the express admission on the record by the first respondent 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?

# **HELD** (Unanimously allowing the appeal in part per **NWEZE JSC**)

*APPEALS - Notice of appeal - Double filing*

**1. Although, counsel for the parties to this appeal expended considerable energy in their arguments on this issue, the question here is, really, a very narrow. In the first place, all counsel is unanimous in their interpretations of the decisions of this court on the propriety of filing two Notices of Appeal. We entirely endorse their contention on the first limb of this issue. The rationale of all decisions of this court on this is that it is permissible to file two Notices of Appeal within time. The cases are many indeed.**

**The prescriptions that crystallize from such cases may be summed up thus: the Rules of the lower court do not prohibit the filing of two or more notices of appeal. An appellant who, like the first respondent, files two such notices is not blameworthy for erring on the side of caution. The reason is simple: the ancient maxim - *abundantia cautela non nocet* [meaning “great caution does no harm”], first, endorsed in *Heydon’s Case* 11 Co. Rep. 5a at 6b, has been endorsed by this court. (p.224 B)**

*APPEALS - Notice of appeal - Double filing - Options*

**2. Where validly filed, an appellant would be right to apply for leave to either consolidate such notices into one or to withdraw all except one of them.**

**Thus, where such an appellant, timeously, withdraws one of the two notices which are of the same nature, his process would not be an abuse of process. In effect, an appellant can, validly, withdraw one of two notices of appeal and then proceed to argue his appeal on the outstanding notice of appeal. As a corollary, the notice of appeal, which was withdrawn, would be deemed abandoned. (p. 224 G)**

*APPEALS - Notices of appeal - Consolidation of*

**3. In our view, therefore, the lower court was in the good com-**

**pany of this court when it, stoutly refused to make the first respondent in this appeal [appellant at the lower court] “to incur the wrath of the law at the expense of hearing the merits of the case,”**

**B the indulgence to consolidate the said two Notices of Appeal, the contention that the said first respondent relied on “two Notices of Appeal in the same appeal without withdrawing one,” [paragraph 4.18, page 9 of the appellant’s brief] would seem to miss the import of the libertarian interpretation of Obaseki JSC in *Tukur v. Government of Gongola State*. (p. 228 A)**

*APPEALS - Issues - Determination of*

**D 4. We do not find any merit in the appellant’s contention that the lower court failed, neglected or refused to make a pronouncement on the submission that the first respondent abandoned the case he presented at the trial court while arguing his appeal at the appeal court. From the above excerpts, we entertain no doubts that the lower court, actually, dealt with the said complaint of the appellant. Against this background, we agree with counsel for the respondents that the lower court pronounced on all the issues raised. We find no merit in the complaints in this issue. (p. 232 H)**

*CRIMINAL PROCEDURE - Confession - Voluntariness of*

**G 5. We thus endorse the forceful submission of the appellant’s counsel that “having admitted that the confession was voluntary - when the first respondent fully knew that the voire dire was being conducted to test the same voluntariness, the prosecution [appellant] needed not prove voluntariness again,” [paragraph 4.68, page 24 of the appellant’s brief]. We, entirely, agree with this submission.**

**H 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 first respondent’s admission of having voluntarily signed the said statement was tantamount to a confession**

**which case law characterises as the best form of evidence in a criminal trial.** (pp. 235 E/236 B)

*Court - Findings of fact*

**6. 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.** B

**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.** C D

**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. 237 D) E

## NOTABLE POINTS OF INTEREST F

### **NWEZE JSC**

#### ***1. Notice of appeal – Competence of***

Put differently, the Notice [actually, a competent notice of appeal] is the foundational process that triggers off an appeal from a High Court to the lower Court, and sustains it, G

As such, any virus in this process would, invariably, corrode or taint the entire appeal thereby rendering it incompetent.

The effect of such a viral corrosion is, usually, far-reaching as it nibbles at the jurisdiction of the appeal court which must, as of necessity, strike out such a process. H

In effect, the absence of a competent Notice of Appeal, simply, translates to the non-existence of an appeal.

This must be so for it is a condition precedent to any valid

exercise of appellate jurisdiction. (p. 222 H)

***2. Technicality not to defeat interest of justice***

We are therefore compelled to re-iterate the point that this court and indeed any other court for that matter will not brook the practice where technical justice is accorded such free rein that is capable of overwhelming the substance of justice.

Simply put, the wheels of justice must be at liberty, just like the chariot of juggernaut, to coast on their course, unbridled by such disingenuous maneuvers, deliberately, programmed to clog their majestic movement. (p. 227 D)

***3. Rights of appeal under the Constitution***

In the appeal before the lower court, the first respondent herein [as appellant] exercised two rights of appeal recognised by the Constitution, namely, appeal as of right [by his first Notice of Appeal] and an appeal with leave on grounds of mixed law and facts. See the second Notice of Appeal dated. (p. 228 F)

***4. Abuse of court process – Features of***

Even then, the concept of abuse of process applies only to proceedings which are bereft of good faith; which are not only frivolous, but also vexatious or oppressive; which, almost always, have an element of malice in them, having been commenced mala fide, to irritate or annoy the opponent.

They include instances where there are a multiplicity of actions on the same subject matter against the same opponent on the same issue.

Such abuse lies more in the multiplicity of the actions rather than in the exercise of the right. (p. 228 G)

***5. Intermediate court to pronounce on all issues***

By way of preliminary observations, we note that, except in such recognised exceptions as established in cases like *Okonji v Njokanma* [1991] 7 NWLR (Pt 202) 131; *Oro v Falade* [1995] 5 NWLR (Pt 396) 385, the long established rule is that an intermediate court has a duty to pronounce on all material issues placed before it. (p. 231 B)

### ***6. Trial within trial – Purpose of***

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. (p.235 A) B

### ***7. Courts do not determine academic issues***

In our view, this conclusion obviates the need for the dissipation of judicial energy on the appellant's issues four and five, 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 *Mmaman 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. C

They should determine live issues, and those are issues that would meet the ends of Justice. (p. 238 A) E

### ***8. Interlocutory appeal - Not meant to frustrate proceedings at trial court***

Before concluding this judgment, we observe that the interlocutory appeal of the first respondent against the ruling of the trial a court epitomises the frustration of trials at first instance, which our adversarial system of criminal justice, unwittingly, perpetuates. It, actually, speaks ill of our criminal jurisprudence. F

The trial of the respondents, which commenced in 2008, G 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. H

We find it curious that the first respondent 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. (p. 238 E)

### **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 first respondent;

Kehinde Ogunwumiju, with B. Adulodun and J. Agbe, for the second respondent;

Olumiyiwa Akinboro, with K. Iweka; C. Ezenwafor; B. Lawan; T. Arowolo; J. Adamu and E. Nwali, for the third respondent;

Olusegun Jolaawo, with F. C. Ani, for the fourth and fifth respondents

E

### **CASES REFERRED TO**

Okonji v. Njokanma (1991) 7 NWLR (pt. 202) 131

Oro v. Falade (1995) 5 NWLR (pt. 396) 395

Dingyadi v. INEC (2010) LPELR 952 (SC) 60

Adelekan v. ECU-Line NV (2006) 12 NWLR (pt. 993) 331

Uwazurike v. A-G Federation (2007) All FWLR (pt. 367) 834

Okotie v. Olughor (1995) 5 SCNJ 2171

FBN Plc v. T. S. A. Ind. Ltd (2010) LPELR 1283 (SC) 49

G Amadi v. Okoli (1977) 7 SC 57

Okolo v. UBN Ltd. [2004] 3 NWLR (pt. 859) 87

Ikweki v. Ebele (2005) 11 NWLR (pt. 936) 397

Akpan v. Bob (2010) 17 NWLR (pt. 1224) 421

General Electric Co. v. Akande (2010) 18 NWLR (pt. 1225) 596

H Thor v. FCMB Ltd (2002) 2 SCNJ 85

Agu v. Odofin (1992) 3 SCNJ 161

### **STATUTES & RULES REFERRED TO**

Penal Code



ICPC Act 2000

Evidence Act 2011, ss. 28, 29, 233

Court of Appeal Rules 2011, O. 7, 17 rr. 1 & 2, O. 18 r. 1, O. 6 r. 2(1)

### **LEAD JUDGMENT BY NWEZE JSC**

Way back in November, 2009, the respondents in this appeal, [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 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 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 first respondent was, stoutly, resisted by counsel for all the accused persons.

PW10 was one Reuben Omosigbo, the principal Investigating Officer. The prosecution sought to tender the first respondent, T. A. Dairo’s statement of July 25, 2008, through him. Counsel for all the 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 [now, first respondent] 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*).

At the mini trial, the prosecution’s witness [who obtained the said statement] testified and was cross examined. The first respondent herein [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 first respondent and the prosecution’s sole witness at the said mini trial. Consequently, it ad-

mitted the statement as exhibit AX.

Aggrieved by the said court's ruling, the said first 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.

#### ISSUES FOR DETERMINATION

In the brief of argument, filed on July 11, 2012, the appellant raised only five issues from its seventeen grounds of appeal. No issues were woven around the ninth and tenth grounds of the Notice of Appeal.

The respondents, rightly, urged this court to deem the said grounds nine and ten, from which no issues were formulated, as having been abandoned. We, entirely, agree with counsel. We accordingly, order as prayed. The said grounds nine and ten are hereby struck out, as having been abandoned.

The implication is that there are only five issues for the determination of this appeal. They were framed thus:

1. Whether the Court of Appeal was right when it held that it was regular and permissible for the first respondent to have argued his appeal upon two Notices of Appeal without withdrawing one?

2. Whether [the] appellant's right to fair hearing was breached when the Court of Appeal failed, neglected or refused to rule one way or the other on the submissions of the appellant that the first respondent abandoned the case he presented at the trial while arguing his appeal at the Court of Appeal?

3. Whether in view of the express admission on the record by the first respondent 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?

4. Whether the Court of Appeal was right when it deliberately shut its eyes to the cold contents of the record of appeal before

it and it then went ahead to make findings on facts not contained on the said record - to the prejudice of the appellant?

5. Whether the Court of Appeal judgment was contradictory in materials particular, resulting to adverse findings against appellant?

While the first and second respondents adopted the above issues, the third respondent, on the one hand; and the fourth and fifth respondents, on the other hand, re-phrased the said issues, although their gravamen remains the same. Although, the issues which the appellant put forward are somewhat woolly in their tenor, we shall, like the first and second respondents, adopt them for the determination of this appeal. After all, it is their appeal. We shall however deal with issues two and three together.

As will be seen in the course of this judgment, the resolution of issue three would, even, obviate the need for the dissipation of judicial energy in the consideration of issues four and five. Due to their inextricable linkage with the lower court's adverse findings against the appellant, these two 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 said issue three would suffice. *Okonji v Njokanma* [1991] 7 NWLR (Pt 202) 131; *Oro v Falade* [1995] 5 NWLR (Pt. 396) 395. All said the main agitation of the appellant 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 issues three, four and five.

## ARGUMENTS ON THE ISSUES

### ISSUE ONE

Whether the Court of Appeal was right when it held that it was regular and permissible for the first respondent to have argued his appeal upon two Notices of Appeal without withdrawing one?

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. Learned senior counsel disagreed with the lower court's approach to the interpretation of Orders 7 and 17 Rules (1) and (2) and 18 Rule (1) of the Court of Appeal Rules 2011, [paragraphs 4.2 - 4.17, pages 5-9 of the said brief].

He cited and relied on a host of decisions of this court on the impropriety of reliance on two Notices of Appeal in the same appeal without withdrawing one of them, [paragraphs 4.19 - 4.22, pages 9-11 of the said brief]. He maintained that the utilization of two such Notices of Appeal amounted to an abuse of process. He urged the court to resolve this issue in favour of the appellant.

Adegboyega S. Awomolo, SAN, learned senior counsel for the first respondent, who appeared with F. Folorunso and Jude Daniel Odi, adopted the first respondent's brief of argument filed on September 18, 2012.

Expectedly, he disagreed with the appellant's challenge of the lower court's approach, [paragraphs 3.0 -3.1 of the said brief]. He invited the court's attention to its deliberate shift from technicalities to substantial justice. On his part, Kehinde Ogunwumiju, the ebullient counsel for the second respondent appearing with B. Adulodun and J. Agbe, adopted the brief filed on October 3, 2012.

He canvassed the view that two Notices of Appeal could be consolidated and relied upon, [paragraphs 4. 03 - 4.05; and paragraphs 4.08-4.14].

In his submission, the two Notices, which the first respondent filed, did not amount to an abuse of court process, [paragraphs 4.06 -4.07]. Both Olumuyiwa Akinboro, who appeared for the third respondent and Olusegun Jolaawo, for the fourth and fifth respondents adopted their respective briefs. Their arguments tallied with the effervescent contentions of counsel for the first and second respondents.

#### RESOLUTION OF ISSUE ONE

It would appear that the proximate impulsion to the appellant's objection to the competence of the appeal before the lower court was its zeal to preserve the sanctity and integrity of the architecture of the appeal process. As it is well known, it is a Notice of Appeal that initiates an appeal from a High Court to the lower Court, [see Order 6 Rule 2 (1) of the Court of Appeal Rules, 2011], *Dingyadi v INEC* (2010) LPELR 952 (SC) 60. Put differently, the Notice [actually, a competent notice of appeal] is the foundational process that triggers off an appeal from a High Court to the lower Court, *Adelekan v. ECU-Line NV* [2006] 12 NWLR (Pt. 993) 331 *Uwazurike v AG Federation* [2007] All FWLR (Pt 367) 834,835, paragraphs E-F, and

sustains it, *Okotie v Olughor* [1995] 5 SCNJ 2171.

As such, any virus in this process would, invariably, corrode or taint the entire appeal thereby rendering it incompetent. *First Bank of Nigeria Plc v T. S. A. Ind Ltd* (2010) LPELR -1283 (SC) 49, paragraphs A-D; *Okeke Amadi v. Okeke Okoli* [1977] 7 S C 57, 58; *Adelekan v. ECU-Line NV* [2006] 12 NWLR (Pt.993) 33; *Okolo v UBN Ltd.* [2004] 3 NWLR (Pt.859) 87; *Ikweke v Ebele* [2005] 11 NWLR (Pt. 936) 397; *Akpan v Bob* [2010] 17 NWLR (Pt. 1224) 421; *General Electric Co. v Akande* [2010] 18 NWLR (Pt.1225) 596; *Thor v FCMB Ltd* [2002] 2 SCNJ 85; *Ebokam v Ekwenibe and Sons Trading Coy Ltd* [1977] 7 SCNJ 77. B  
C

The effect of such a viral corrosion is, usually, far-reaching as it nibbles at the jurisdiction of the appeal court which must, as of necessity, strike out such a process. *A.G. Fed v. Guardian Newspapers Ltd* [1999] (Pt.618) 187; *Odunze v Nwosu* [2007] 13 NWLR D (Pt.1050) 1; *Agu v Odofin* [1992] 3 SCNJ 161, 172 - 173; *Ibeto v Aminu* [2007] 5 NWLR (Pt. 1028) 446; *Danmusa v Inuwa* [2007] 17 NWLR (Pt.1063) 391; *Clev Josh Ltd. v Tokimi* [2008] 13 NWLR (Pt.11-4) 422.

In effect, the absence of a competent Notice of Appeal, simply, translates to the non-existence of an appeal. *Anadi v. Okoti* [1972] 7 SC 57; *CBN v. Okojie* [2004] 10 NWLR (Pt. 882) 488; *Olanrewaju v. BON Ltd* [1994] 8 NWLR (pt.364) 622; *Olowokere v African Newspapers Ltd* [1993] 5 NWLR (pt. 295) 583; *Erisi v Idika* [1987] 4 NWLR (pt.66) 503; *Josiah Cornelius Ltd v Ezenwa* [1996] 37 LRCN F 618; *Tukur v Government of Gongola State* [1988] 1 NWLR (Pt. 68) 391; *First Bank of Nig Plc v Maiwada* (2012) LPELR -9713 (SC) 187. This must be so for it is a condition precedent to any valid exercise of appellate jurisdiction. *Okeke Amadi v. Okeke Okoli* (supra); *Okotie v Olughor* (supra). E  
F  
G

As noted earlier, in its ruling of March 1, 2011, the trial court found in favour of the voluntariness of the extra-judicial statement of the first respondent. Aggrieved, he filed a Notice of Appeal on grounds of law alone. Pursuant to the leave of that court, he filed another Notice of Appeal on grounds of mixed law. This was what prompted the present appellant's objection at the lower court. H

He contended that the appeal before the lower court was incompetent on the ground that the first respondent [who was the

appellant before that court] filed and relied on two notices of appeal without withdrawing one. Specifically, at paragraph 4.3 of the appellant's brief, learned senior counsel submitted that the lower court was *"in grave error when it held that the first respondent was right in law to have filed and relied on two notices of appeal without withdrawing one."*

**Although, counsel for the parties to this appeal expended considerable energy in their arguments on this issue, the question here is, really, a very narrow. In the first place, all counsel is unanimous in their interpretations of the decisions of this court on the propriety of filing two Notices of Appeal. We entirely endorse their contention on the first limb of this issue. The rationale of all decisions of this court on this is that it is permissible to file two Notices of Appeal within time. The cases are many indeed.**

**The prescriptions that crystallize from such cases may be summed up thus: the Rules of the lower court do not prohibit the filing of two or more notices of appeal.** Abba Tukur v Government of Gongola State [1988] All NLR 42, 49; Ogboru v Uduaghan [2012] 11 NWLR (Pt 1211) 357. Although it may "look a bit awkward," Akeredolu and Ors. v. Akinremi and Ors. [1986] 2 NWLR (Pt 25) 710, or "somewhat too technical," Hariman v Hariman (1987) 3 NWLR (Pt 60) 244], see, per Oputa JSC in Tukur v Government of Gongola State (supra). **An appellant who, like the first respondent, files two such notices is not blameworthy for erring on the side of caution. The reason is simple: the ancient maxim - *abundantia cautela non nocet* [meaning "great caution does no harm"], first, endorsed in Heydon's Case 11 Co. Rep. 5a at 6b, has been endorsed by this court.** Tukur v Government of Gongola State (supra).

**Where validly filed, an appellant would be right to apply for leave to either consolidate such notices into one or to withdraw all except one of them.** Tukur v Government of Gongola State (supra).

**Thus, where such an appellant, timeously, withdraws one of the two notices which are of the same nature, his process would not be an abuse of process.** Diamond Bank Ltd v P. I. C. Ltd [2010] All FWLR (Pt 512) 1098, 1126, C-F. **In effect, an**

***appellant can, validly, withdraw one of two notices of appeal and then proceed to argue his appeal on the outstanding notice of appeal.*** Savannah Bank of Nigeria Plc v CBN [2009] All FWLR (Pt 481) 939, 969. ***As a corollary, the notice of appeal, which was withdrawn, would be deemed abandoned.*** Diamond Bank Ltd v P. I. C. Ltd (supra) at 1126 C-F. B

The Constitution of the Federal Republic of Nigeria (as amended) creates categories of rights of appeal from the trial court to the lower court. While section 241 consecrates appeals as of right from the Federal High Court or a High Court, section 242 ordains rights of appeal with the leave of the Federal High Court; High Court or the Court of Appeal. In effect, the exercise of each category of a right of appeal would warrant the filing of a Notice of Appeal. Thus, an appellant, desirous of exercising both rights, could file two Notices of Appeal within time. As Oputa JSC put it in Tukur v Government of Gongola State (supra): C D

To utilize and exercise any right of appeal, an appellant is obliged and obligated by the Rules to file a Notice of Appeal. Where therefore the Constitution gave one and the same Appellant in one and same case, two rights of appeal - one as of right, without leave, and the other qualified by and limited to the grant of leave - there and then it is logical to conclude that for each right of appeal being exercised one Notice of Appeal is required so that for the exercise of the two constitutional rights two Notices of Appeal will technically be required. E F

It would seem obvious that this was what guided the first respondent's approach in filing two Notices of Appeal against the said ruling of the trial court the first notice, on grounds of law alone; and the second notice on grounds of mixed law and facts. It is instructive to note that, having filed two notices of appeal as aforesaid, the first respondent, as the lower court explained at page 542 of Vol 2 of the record- G

*"...in his brief of argument ...filed on 07/04/2011 in paragraph 3.01 seeks [sic, sought] the permission of the court to consolidate the two notices of appeal as one and rely on the seven Grounds of appeal by numbering them serially as Grounds 1-7 in the two Notices of appeal..."* H

At page 545 of the record, the lower court noted that *"the*

*germane point is whether the appellant can make an application for consolidation in his brief of argument.*”It acknowledged that: “...applications in a brief of argument as in the instant appeal, for consolidation is (sic) irregular...”Nevertheless, it took the view that:

“...since this is a criminal appeal and the nature of irregularity will not prejudice the respondent who objected to the procedure of the application in the brief not the merit of the application for consolidation. (sic) It is my firm view that it is just in the circumstances to allow the consolidation of the two notices.”[Italics supplied]

As pointed out above, it was the contention of the learned senior counsel for the appellant that the lower court was in grave error when it held that the first respondent was right to have filed and relied on two Notices of Appeal. The question then would be: did the first respondent utilize the two notices of appeal in the appeal? In order to answer this question, we shall re-iterate the point we had made earlier in this judgment. In the appeal before the lower court, the first respondent herein [as appellant] exercised two rights of appeal recognised by the Constitution, namely, appeal as of right [by his first Notice of Appeal] and an appeal with leave on grounds of mixed law and facts [see the second Notice of Appeal]. However, he failed to apply for the consolidation of the two Notices prior to the filing of his brief of argument. It was in the brief that he applied for consolidation.

As noted already, the lower court characterized this approach as irregular. All the same, it still granted the entreaty for consolidation. In effect, the two Notices, by the order of the lower court, were consolidated into one resulting in the re-numbering of the grounds. Thus, of the two options which Obaseki JSC outlined in *Tukur v Government of Gongola State* (supra), namely, either to apply for the consolidation of the two Notices into one or to apply to withdraw one of the Notices, the appellant opted to apply for the consolidation of the said two Notices into one. The lower court granted him the indulgence.

Citing order 17 Rule 2 and Order 8 Rule 1 of the Rules of the lower court, [paragraphs 4.8-4.13 of the appellant’s brief], learned senior counsel for the appellant urged the court to invalidate the first respondent’s Notice of Appeal filed at the lower court. With due respect, this entreaty to invalidate the said Notice of Appeal is, simply,



an invitation to enthrone technicality over the substance of justice. We entirely agree with the lower court that in the circumstances, it was just to allow the application for consolidation.

In our view, it would have been, utterly, unfair to strike out the appeal just because, as learned senior counsel for the present appellant argued, “*Order 18 [of the Court of Appeal Rules, 2011]* <sup>B</sup> *has made provisions for contents of Briefs of Arguments and there is no provision therein that ‘applications’ should also be contained in such Briefs,*” paragraph 4.11, page 7 of the appellant’s Brief].

True, indeed, this interpretation of the ambit of the above <sup>C</sup> Rule of the lower court, actually, typifies one of those ironies of the law. Rules of court, particularly, provisions apropos Brief writing, were prompted by the philosophical quest for speedy trial and expeditious disposal of matters.

Somehow, legal practitioners have managed to nibble at this <sup>D</sup> objective by resorting to their inexhaustible arsenal of forensic theatrics designed to filibuster proceedings.

We are therefore compelled to re-iterate the point that this court and indeed any other court for that matter will not brook the practice where technical justice is accorded such free rein that is capable of overwhelming the substance of justice. *Hamba v Hueze* <sup>E</sup> (2001) 12 WRN 64; (2001) 4 NWLR (Pt 703) 373, 389-391; *Aderounmu v Olowu* (2000) 4 NWLR (Pt 652) 252, 256-266.

Simply put, the wheels of justice must be at liberty, just like <sup>F</sup> the chariot of juggernaut, to coast on their course, unbridled by such disingenuous maneuvers, deliberately, programmed to clog their majestic movement. *Military Administrator of Benue State v Ulegede* (2001) 51 WRN 1, 15-16; (2001) 17 NWLR (Pt.74) 194; (2001) 91 LRCN 3044; (2001) 70 SCNJ 43. <sup>G</sup>

That explains why, even long before the introduction of the Brief System, this court had looked with askance at the situation where technical rules became so triumphant that, often times, the justice of the case before the court was left lying prostrate. See for example, *Oputa JSC in Aliu Bello and Ors v AG Oyo State* (1986) 5 NWLR (Pt <sup>H</sup> 45) 528, 886.

What is more, as Tobi JSC observed in *Abubakar v Yar’ Adua* [2008] 4 NWLR (Pt. 1078) 465, 511.

It is a known fact that blunders must take place in the litigation

process and because blunders are inevitable it is not fair, in appropriate cases, to make a party in the blunder to incur the wrath of the law at the expense of hearing the merits of the case.

***In our view, therefore, the lower court was in the good company of this court when it, stoutly refused to make the first respondent in this appeal [appellant at the lower court] “to incur the wrath of the law at the expense of hearing the merits of the case,”***

***The lower court, having granted the first respondent the indulgence to consolidate the said two Notices of Appeal, the contention that the said first respondent relied on “two Notices of Appeal in the same appeal without withdrawing one,” [paragraph 4.18, page 9 of the appellant’s brief] would seem to miss the import of the libertarian interpretation of Obaseki JSC in Tukur v Government of Gongola State (supra).***

Now, learned senior counsel also contended that there “*is indeed an abuse of process when two processes of the same nature have been filed without one of them being withdrawn, as in this case,*” [paragraph 4.23, page 11 of the appellant’s brief]. The lower court, as indicated earlier, granted the first respondent the indulgence to consolidate the two Notices of Appeal. As such, it would be incorrect to maintain that “*two processes of the same nature have been filed without one of them being withdrawn, as in this case.*” In the first place, the two Notices of Appeal were disparate.

In the appeal before the lower court, the first respondent herein [as appellant] exercised two rights of appeal recognised by the Constitution, namely, appeal as of right [by his first Notice of Appeal] and an appeal with leave on grounds of mixed law and facts. See the second Notice of Appeal dated.

Even then, the concept of abuse of process applies only to proceedings which are bereft of good faith; which are not only frivolous, but also vexatious or oppressive; which, almost always, have an element of malice in them, having been commenced mala fide, to irritate or annoy the opponent. Okafor v. A-G Anambra [1991] 6 NWLR (Pt 200) 659 and the efficient and effective administration of justice, Ekpu v. Okom (2001) 44 WRN 85; Saraki v. Kotoye [1992] 9 NWLR (Pt. 264) 156, 188.

They include instances where there are a multiplicity of ac-

tions on the same subject matter against the same opponent on the same issue. *Okorodudu v Okoromadu* [1977] 3 SC 21; *NV Scheep v. MV. "S. Araz"* (2000) 15 NWLR (Pt 691) 622. Such abuse lies more in the multiplicity of the actions rather than in the exercise of the right.] *FRN v. Abiola* (1997) 2 NWLR (pt 488) 444; *Owonikoko v. Arowosanye* (1997) 10 NWLR (Pt 523) 61; *Morgan v. W.A.A. & Eng. Co. Ltd* (1971) 1 NWLR 219. B

We entirely agree with counsel for the respondents [paragraph 4.06 et seq of the first respondent's brief, for example,] that since the first Notice of Appeal was filed on grounds of law alone while the second Notice of Appeal was on grounds of mixed law and fact, after leave of the trial court had been sought and obtained, there could not have been a multiplicity of actions in the circumstance. This contention is unanswerable. C

Given the above scenario, it is very difficult to pitchfork the first respondent's approach at the lower court into any of the circumstances constitutive of abuse of process as eloquently highlighted in several decisions of this court. See for example *CBN v. Ahmed* [2001] 11 NWLR (Pt. 724) 369; *Amaefule v State* [1988] 2 NWLR (Pt 75) 156, 177; *Ntuks v NPA* [2007] 13 NWLR (Pt 1051) 392, 419-420; *Aruba v Aiyeleru* [1993] 24 NSCC (pt 1) 255; *7up Bottling Co Ltd v Abiola and Sons Bottling Co Ltd* [1996] 7 NWLR (pt 463) 714; *Umeh and Anor v Iwu and Ors* (2008) LPELR -3363 (SC) 21; *Ogoejeofor v Ogoejeofor* [2006] 3 NWLR (pt 966) 205; *Adigun and Ors v Secretary Iwo Local Government and Ors* [1999] 8 NWLR (Pt 613) 30 etc. In all, we find no merit in the appellant's complaint on this issue. F  
We, therefore, resolve it in favour of the respondents.

### ISSUES TWO AND THREE

Whether [the] appellant's right to fair hearing was breached G when the Court of Appeal failed, neglected or refused to rule one way or the other on the submissions of the appellant that the first respondent abandoned the case he presented at the trial while arguing his appeal at the Court of Appeal?

### AND

Whether in view of the express admission on the record by the first respondent 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 H

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?

On issue two, it was pointed out on behalf of the appellant, B that [while at the lower court], the first respondent [appellant at the lower court] abandoned his ground of objection at the trial court [that the said confession eventuated from a question and answer session]. Counsel explained that the first respondent [while at the C lower court] contrived entirely new grounds, namely, threat to life and promise of advantage: grounds which, in his view, amounted to an afterthought. He pointed out that the lower court, equally, abandoned the said ground canvassed at the trial court and opted for the new grounds of threat or promise of advantage. He submitted that D this approach amounted to a grave miscarriage of justice, [paragraphs 4. 30 - 4. 48; pages 13- 18 of the brief].

With regard to the third issue, he drew attention to the express admission which the first respondent made to the effect that he made and signed the disputed statement [exhibit AX] voluntarily. He E impugned the lower court’s refusal to endorse the said statement as a voluntary admission, [paragraphs 4.50 - 4.94; p. 19 - 32 of the brief].

Chief Awomolo, SAN, for the first respondent, devoted pages 10- 24; paragraphs 4. 0 - 5. 6, of the brief to spirited attempts at dismantling the main plank of the appellant’s submissions above. On F his part, Kehinde Ogunwumiju, for the second respondent took the view that the lower court clearly resolved this point [paragraphs 5. 04- 5.05]. He canvassed the view that the first respondent never abandoned his ground of objection at the lower court, [paragraphs G 5.06 -5. 07]. He observed that the law does not forbid a party from arguing or relying on issues raised by other parties, [paragraph, 5.08]. He pointed out that the notice of the nature of the objection to be raised was given by the respondents, [paragraphs 5.09 -5 .17].

Arguments offered on behalf of the third respondent, with H regard to the second and third issues, were predicated on the same grounds as those proffered by the other respondents, [paragraphs 4. 1- 5.33; pages 10 -20 of the third respondent’s brief]. Counsel for the fourth and fifth respondents saw no justification in the agitation of the appellant on the second issue, [paragraphs 5. 01-5.10].

With regard to the third issue, counsel for the fourth and fifth respondents contended that the first respondent did not use the word “voluntarily” meaning in effect that his answer was limited to an admission that he signed the statement, [paras. 6.01 - 6.27 of the brief].

### RESOLUTION OF ISSUES TWO AND THREE

By way of preliminary observations, we note that, except in such recognised exceptions as established in cases like *Okonji v Njokanma* [1991] 7 NWLR (Pt 202) 131; *Oro v Falade* [1995] 5 NWLR (Pt 396) 385, citing *Anyaduba & Anr v. Nigerian Renowned Trading Co. Ltd* (1992) 5 NWLR (Pt. 243) 535; *Balogun v Labiran* (1988) 3 NWLR (PT. 80) 66 at 80, the long established rule is that an intermediate court has a duty to pronounce on all material issues placed before it. *Samba Petroleum Ltd and Ors v UBA PLC and Ors* [2010] 6 NWLR (pt. ) 530, 531; *Brawal Shipping v Owonikoko* [2000] 6 SCNJ 508, 522; *Federal Ministry of Health v Comet Shipping Agencies Ltd.* [2009] 9 NWLR (Pt. 1145) 193; *Adeogun v. Fasogbon* [2011] 8 NWLR (Pt. 1250) 427; *Ovunwo v. Woko* (2011) 17 NWLR (Pt.1277) 522 etc.

In its second issue, the complaint of the appellant was that there was a breach of its right to fair hearing when the lower court failed, neglected or refused to “*rule one way or the other on the submission... that the first respondent abandoned the case he presented at the trial court while arguing his appeal...*”

It was contended inter alia that the learned senior counsel for the first respondent, in his written address at the lower court, abandoned the sole ground he raised against the admissibility of the confession.

The point was made that, at the trial court, the said confession was impugned on the ground that it eventuated from a session of question and answer. However, an appeal to the lower court, counsel contrived an entirely novel ground for impeaching the said confession, namely, that of alleged threat to life.

In our view, the records of the courts below will either bear out the truth of this claim or expose its falsity. At page 225 of the record, counsel for the first respondent was recorded as follows:

*“I am objecting because from the statement of the witness as (sic) the procedure, it is not voluntary. Where a statement is (sic) obtained in the process of question and answer, we urged (sic) the*

*court to reject (sic). It is the duty of [the] prosecution to prove its voluntariness."*

In its ruling, the trial court, at p. 314 of the record, noted that-

The tendering of the said statement was objected to by learned  
B counsels [sic, counsel] to the accused persons as follows: third ac-  
cused counsel (sic)

*"I am objecting to the admissibility of the statement of the  
third accused person the procedure is not voluntary. Wherein the  
statement obtained in the process of question and answer is admis-  
C sible in evidence..."*

*"In view of the objection of learned counsels (sic, counsel) to  
the accused persons to the admissibility of the statement of the third  
accused person sought to be tendered, the court thereby ordered  
trial-within-trial..."*

D As noted earlier, the first respondent was dissatisfied with the  
trial court's finding in favour of the admissibility of the said statement,  
hence his appeal to the lower court. An intimate reading of the records  
shows that the arguments of the appellant's counsel before this court  
that the sole ground of objection at the trial court was predicated on  
E the ground that the said statement was a product of question and  
answer is not, with respect, well-taken.

As shown above, the objection on page 225 of the record  
was premised on the involuntariness of the statement. At page 570  
F of the record, the lower court observed that:

When the appellant and the other accused persons objected  
to the admissibility of the statement, the grounds of objections were  
that (sic) statement was based on question and answer and contra-  
vention of section 28 [now section 29] of the Evidence Act. The  
G grounds of the objection put the prosecution on notice and formed  
the decision of the trial court to order trial within trial.

If the objection was based, inter alia, on the ground that the  
prosecution contravened the provision of section 28 of the Evidence  
Act [then in force] in the process of obtaining the said statement,  
H would it then be correct to contend, as the appellant's counsel did  
before us, that the sole ground canvassed in opposing the admissibil-  
ity of the said statement was the fact that it was a product of question  
and answer? We do not think so.

**We do not find any merit in the appellant's contention**

***that the lower court failed, neglected or refused to make a pronouncement on the submission that the first respondent abandoned the case he presented at the trial court while arguing his appeal at the appeal court. From the above excerpts, we entertain no doubts that the lower court, actually, dealt with the said complaint of the appellant. Against this background, we agree with counsel for the respondents that the lower court pronounced on all the issues raised. We find no merit in the complaints in this issue.*** B

With regard to issue three, counsel for the appellant pointed out that the first respondent, expressly, admitted that he made and signed the disputed statement voluntarily. He drew attention to several pages of the record. Before proceeding further, we pause here to observe that what prompted the trial-within-trial at the trial court was the objection of counsel for the third accused person [first respondent in this appeal] 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. C D

Counsel for the appellant drew attention to the fact that the said appellant 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 first respondent, a University graduate, knew or ought to know the import of the claim that a statement was made involuntarily. E F

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 whether the statement was voluntarily made, under the heat of cross examination, the first respondent 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: G H

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 1 of the Records]

B      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:

C      *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.*

D      [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:

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

*Answer: Yes I signed.*

[Italics supplied for emphasis]

F      Even in the face of these crystal responses, learned senior counsel for the first respondent contended that admission “*of signing the statement, exhibit AX, is certainly not synonymous with ‘I signed’ the statement, exhibit AX voluntarily,*” [page 182 of the first respondent’s brief; see, also, paragraph 6.11, page 21 of the second respondent’s brief; paragraphs 5.4-5.8. page 14 of the third respondent’s brief and paragraph 6.03 et seq of the fourth and fifth respondents’ 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,*” [page 584 of the record].

H      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.” 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, 2002) 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. Owode, "*Voluntariness of Confessions 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 first respondent fully knew that the *voire dire* was being conducted to test the same voluntariness, the prosecution [appellant] needed not prove voluntariness again," [paragraph 4.68, page 24 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) 35, 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 State (2013) LPELR -20183 (SC) 50-51, paras. 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 & Practice Relating to Evidence in Nigeria B [Second Edition] (Lagos: MIJ Professional Pub. Ltd 1998) p. 73.

***As such, the first respondent's admission of having voluntarily signed the said statement was tantamount to a confession which case law characterises as the best form of evidence in a criminal trial.*** Musa v State (2013) LPELR -19932 (SC); C Nwachukwu v State [2008] WRN (pt. 4) 1, 9-10; 32 - 33; (2007) LPELR -8075 (SC) 37, paragraph A-B; Adebayo v AG, Ogun State [2008] 7 NWLR (pt 1085) 221; (2008) LPELR -80 (SC) 23, paragraphs C-E.

D Other cases include: 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 - 9346 (SC); Edamine v The State (1996) LPELR -1002 E (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. A. R. 233, 236; Ejima v The State F [1991] 5 LRCN 1640, 1671; Arthur Onyejekwe v The State [1992] G 4 SCNJ 1, 9; [1992] 3 NWLR (Pt. 230) 444.

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 H 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).

It would even appear that counsel for first respondent [indeed other learned counsel for the respondents] 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 [first respondent in this appeal], 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.

***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.CA. 336, 338; Ramonu Atolagbe v Olayemi Shorun [1985] 1 NWLR (Pt 2) 360; Mogaji v Odofin [1978] 4 SC 91; Obimnya v Nwoko [1974] 6 SC 69; Okuoja v Ishola [1982] 7 SC 31.

***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 Ogodo 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 appellant's issues four and five, 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 *Mmaman 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 Odugbean* [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, issues four and five: issues which are subsumed in the complaint in issue three, as pointed out above, have become otiose or, at best, academic.

Before concluding this judgment, we observe that the interlocutory appeal of the first respondent against the ruling of the trial court epitomises 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 respondents, 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 first respondent 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. International Agric Ind (Nig) Ltd and Anor v Chika Brothers Ltd [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. B

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! C

In all, this appeal succeeds in part. 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. D

E

### **PETER-ODILI JSC**

I agree with the judgment by my learned brother, Chima Centus Nweze JSC. To emphasize my support I shall make some comments.

This is an appeal against the decision of the Court of Appeal, Abuja Judicial Division in which the court of Appeal or court below allowed the appeal of the 1st respondent and set aside the decision of the trial court dated 1st March, 2011 which had after a trial - with-trial admitted a confessional statement made by the said 1st respondent in evidence as being voluntary. Against the judgment of the court below the appellant filed a 17 ground Notice of Appeal. F

#### **FACTS BRIEFLY STATED**

The main trial in charge No.CR/09/2008 was going on and PW10, Reuben Omosigbo was testifying, the 1st Respondent’s counsel and other defence counsel raised objection to the confessional statement made by the 1st respondent on the ground of involuntariness. The counsel to the 1st respondent objected to the statement on the ground that it was the product of a question and answer session. H

The learned trial judge ordered a trial- within- trial to determine the voluntariness of the confessional statement. In the course of the sub-trial the 1st respondent admitted severally under cross examination that he signed the confession voluntarily.

B      The trial court admitted the statement was made voluntarily hence the appeal by 1st respondent to the court below upon two Notices of Appeal.

C      The appellant filed a Notice of preliminary objection to the competence of the Appeal before the court below which court over-ruled the objection and allowed the appeal, setting aside the ruling of the trial court. It is against that judgment that the appellant has come before the Supreme Court.

D      On the 13th day of November, 2014 date of hearing, learned counsel for the appellant, S. T. Hon SAN admitted the Brief of Argument of the appellant filed on 11/7/12.

He raised five issues of the determination of the appeal which are captured herein under, viz:

E      1. Whether the Court of Appeal was right when it held that it was regular and permissible for the 1st respondent to have argued his appeal upon two notices of appeal without withdrawing one. (Grounds 1, 2, 4, 5, and 7 of the Grounds of Appeal.)

F      2. Whether appellants right to fair hearing was breached when the Court of Appeal failed, neglected or refused to rule one way or the other on the submissions of the appellant that the 1st respondent abandoned the case he presented at the trial while arguing his appeal at the Court of Appeal. (Ground 8 of the Grounds of Appeal.

G      3. Whether in view of the express admission on the record by the 1st respondent that the disputed confessional statement was voluntary, coupled with his failure to cross-examine the only prosecution witness in the voire fire on vital issues, the Court of Appeal was right to have relied merely on alleged ‘circumstances’ and ‘state of mind of the 1st respondent’ and the failure of the prosecution to call evidence which the Court of Appeal held was vital, to hold that H      the confessional statement was not voluntary. (Grounds 11, 12 and 14 of the Grounds of Appeal)

4. Whether the court of Appeal was right when it deliberately shut its eyes to the cold contents of the record of appeal before it and it then went ahead to make findings on facts not contained on the

said record - to the prejudice of the appellant. (Grounds 16 and 17 of the Grounds of Appeal).

Chief A. S. Awomolo SAN, learned counsel for the respondent adopted the Brief filed on the 18/9/12. He also adopted the five issues as formulated by the appellant.

Learned counsel for the 2nd respondent, Mr. Kehinde Ogunwumiju adopted his Brief filed on the 3/10/12 and in it 2nd respondent adopted the issues as crafted by the appellant. B

Mr. Olumuyiwa Akinboro, learned counsel for the 3rd respondent adopted his Brief of Argument filed on 8/11/12 and deemed filed on 27/3/13 and drafted five issues for determination differently couched as appellants'. C

1. Whether the lower court was right to allow the 1st respondent argue his appeal on the two notices of appeal before it.

2. Whether the appellant's right of fair hearing with respect to the appellant's submissions that the 1st respondent abandoned its sole ground of objection both of the trial court and of the lower court was breached by the court of appeal. D

3. Whether the lower court rightly held that the 1st respondent's confessional statement was not voluntarily. E

4. Whether the findings of the lower court are supported by facts on the record of appeal.

5. Whether the judgment of the lower court is against the weight of evidence before it. F

For the 4th & 5th respondents, Mr. O. O. Joloowo of counsel adopted their Brief of Argument filed on 10/9/12 and in the Brief raised five issues for determination stated as follows:

1. Whether the lower court was right to allow the 1st respondent argue his appeal on the two notices of appeal in the circumstances of the appeal before it. (Distilled from grounds 1, 2, 3, 4, 5, 6 and 7 of the notice of appeal). G

2. Whether the lower court breached the appellant's right of fair hearing with respect to the appellant's submissions before it that the 1st respondent had abandoned its sole ground of objection both at the trial court and at the lower court. (Distilled from Grounds 8 of the notice of appeal). H

3. Whether the lower court was right to have held that the 1st respondent's confessional statement was not voluntary (Distilled

from grounds 11, 12 and 14 of the notice of appeal).

4. Whether the findings of the lower court were in consonance with the facts in the Record of Appeal.

(Distil from Grounds 13 and 15 of the notice of appeal).

B 5. Whether or not the lower court's judgment was against the weight of the evidence before it. (Distilled from Grounds 16 and 17 of the notice of appeal).

For a free flow I shall utilize the issues as crafted by the appellant though some will be token jointly.

C      ISSUE NO. 1

Whether the lower court was right to allow the 1st respondent argue his appeal on the two notices of appeal in the circumstances of the appeal before it.

Learned counsel for the appellant submitted that the court D below erred when it relied on Order 18 of the Court of appeal Rules, 2011 to validate the filing and use of the two notices of appeal. That this went to the root of the matter and a defect which affected the jurisdiction of the court. He cited *Uwazurike v A. G. Federation* (2007) ALL FWLR (Pt.367) 834, *Odunze v Nwasu* (2007) ALL FWLR E (Pt.379) 1295 at 1315.

That the 1st respondent could not validly rely on two notices of appeal in the same appeal without withdrawing one.

He referred to *Tukur v Government of Gongola State* (1988) F 1 NWLR (Pt. 68) 39; *Savannah Bank of Nigeria plc v CBN* (2009) ALL FWLR (Pt.481) 939 at 969; *Diamond Bonk Ltd v P. I. C Ltd* (2010) ALL FWLR (Pt. 512) 1098 at 1126.

That it is an abuse of court process when two process of same nature have been filed without one being withdrawn as in this case. G He referred to *Tomtec Nig. Ltd v F. H. A.* (2009) 12 SC (Pt. 111) 162; *Onyebuchi v INEC* (2002) FWLR (Pt. 103) 453 at 469.

Learned Senior Counsel, Chief A. S. Awomolo contended that the filing of two notices of appeal was not an abuse of court's process rather it was within the constitutional exercise of the 1st H respondent's right of appeal. That the 1st respondent followed the golden rules laid down by this court in the case of *Tukur v Government of Gongola State* (supra) and *Registered Trustees of AMORC v. Awoniyi* (1994) 7 NWLR (Pt. 355) 145.

That the position of the appellant is anchored on mere techni-



cality which cannot take a pride of place above substantiality. He cited *Akpan v Bob* (2010) 17 NWLR (Pt.1223) 421 at 478 - 479; *Inakoju v Adeleke* (2007) 4 NWLR (Pt. 1025) 423 at 633.

Mr. Ogunwumiju, learned counsel for the 2nd respondent submitted that the court below validly exercised its discretion to allow the application for consolidation more so that the appellant was aware of the said consolidation having been served with respondent's Brief and the two notices of appeal at the court below. That this court cannot tamper with the exercise of discretion of the lower court since there was no miscarriage of justice. He cited *S & D Const. Co Ltd v Ayoku* (2011) 13 NWLR (Pt.1265) 487 at 515, Order 17 Rule 2 of the Court of Appeal Rules; *M. V. Panormos Bay v Olam (Nig.) Ltd* (2004) 5 NWLR (Pt. 865) 1 at 13; *CBN v. Ahmed* (2001) 11 NWLR (Pt.724) 369 at 410.

Learned counsel for the 3rd respondent, Mr. Akinboro contended that the exigency of justice would override technicality and so the fact that the appellant did not file a formal application for consolidation of the two notices would not stop the court from considering the Appeal on its merit.

He cited *Ogboru v Uduaghan* (2012) 11 NWLR (Pt.1311) 357 at 380.

Mr. Jolaawo, learned counsel for the 4th & 5th respondent submitted along the same lines as the other respondents on the ground that what the lower court did was in order in compliance with the exercise of substantial justice.

For a refreshment of the memory, the matter in this issue has to do with the appellant filing and utilizing two grounds of appeal which the appellant said vitiated the appeal allowed to be so argued. The 1st Notice of appeal was filed on 7th march, 2011 containing two grounds being grounds of law alone whilst the second Notice Appeal filed with the leave of court was filed on the 16th March, 2011 containing give grounds of appeal of mixed law and fact. The 1st respondent in his Brief of Argument as appellant sought the lower court's permission to consolidate both notices of appeal as one and have them renumbered as grounds 1 - 7. Anticipating the grant of the application, the 1st respondent formulated three issues for determination from the 7 grounds which issues it argued in its brief.

The Court of Appeal in its judgment held that the application

was validly made consequent upon Order 17 Rules 1 and 2 of the Court of Appeal Rules.

The grouse of the appellant herein and respondent in the court below is that the court ought to have applied Order 7 Rule 1 of the court of Appeal Rules and rejected the oral application to consolidate the two notices. For clarity I shall recite the provisions of Order 7

B *“Every application to the court shall be by notice of motion supported by affidavit and shall state the rule under which it is brought and the ground for the relief sought”.*

C and Order 17 Rules 1 and 2 of the same Rules which provide specifically for criminal appeals as follows:

*“1. This Order shall apply to appeals to the court from any court or tribunal acting either in its original or in its appellate jurisdiction in criminal cases, other than a court martial and to matters related thereto.*

*2. Except where otherwise provided in these rules any application to the court may be made by the appellants unrepresented and in custody and is not entitled or has not obtained leave to be*  
E *present before the court, he shall make any such application by forwarding the same in writing to the registrar who shall take the appropriate steps to obtain the decision of the court thereon”*

Some salient points need to be noted, and these are that since a notice of appeal is the foundation of an appeal, any defect in  
F it goes to jurisdiction and cannot be excused because it is a criminal appeal. I shall refer to *Uwazurike v. Attorney General of the Federation* (2007) ALL FWLR (Pt.367) 834 per Ogbuagu JSC when he said as follows:

G *“It must be borne in mind always and this is also settled, that a notice of appeal is the foundation and submission of every appeal. Any defect thereto or therein, will render the whole appeal incompetent and the appellate court will lack the required jurisdiction to entertain it or any interlocutory application based on the said appeal.”*

H I.T. Muhammad JSC in the case of *Ogboru v Uduaghan* (2012) 11 NWLR (Pt. 1311) 352 or 380 stated thus:

*“On the multiplicity of notices of appeal, I go along with the submission made by the learned SAN for the appellants in his replies to the preliminary objections (particularly to that of the 1st respon-*

*dent) that in the absence of the elements of an abuse of process the combination of the notices aforesaid is not an abuse of process. I find support in several decisions of this court that an appellate can file two (multiple) notices of appeal more so, when our court rules do not prohibit that.” See Tukur v Government of Gongola State (1988) ALL NLR 42 at 49.* B

From the many judicial authorities cited on both sides on this matter of the filing of two Notices of Appeal and the validity or otherwise of the appeal in consequence thereof, what comes to the fore is that it is a single notice of appeal is the it but if there are more than one, then either the appellant withdraws one or consolidates the two would make for the validity and use of the Notices of Appeal. C

On what had transpired the Court of Appeal held as follows:

*“The brief which may be settled by counsel shall contain an address or addresses for service and shall contain what are in the appellant’s view, the issues arising in the appeal as well as amended or additional grounds of appeal.”*

*“...the appellant relied on 7 grounds of appeal from where he formulated three for determinations. The 2 grounds of appeal from the first notice and 5 grounds of appeal from the 2nd notice of appeal. This is a criminal appeal and the fact that he did not file a formal application to amend by consolidation of the two notices should not stall my consideration for emphasis.* E

*I state that applications in a brief of argument as in the instant appeal for consolidation is irregular; but since this is a criminal appeal and the nature of irregularity will not prejudice the respondent who objected to the procedure of the application in the brief not the merit of the application for consolidation. It is my firm view that it is just in the circumstance to allow the consolidation of the two notices.”* F G

I see nothing wrong with what the court below did and I take shelter in the case of Abubakar v Yar’adua (2008) 4 NWLR (Pt. 1078) SC 465) at 511 paras E - G held per Niki Tobi JSC as follows:

*“Rules of court are meant to be obeyed of course. That is why they are made. There should be no argument about that. But there is an important qualification or caveat and it is that their obedience cannot or should not be slavish to the point that justice in the case is destroyed or thrown overboard. The greatest barometer as for as the public is concerned is whether at the end of the litigation process,* H

*justice has been done to the parties. There, if in the course of doing justice, some harm is done to some procedural rule which hurts the rule such as paragraph 7 of the practice Directions, the court should be happy that it took that line of action in pursuance of justice”*

#### ISSUE NO 2:

B Whether appellant’s right to fair hearing was breached when the Court of Appeal failed, neglected or refused to rule one way or the other on the submissions of the appellant that the 1st respondent abandoned the case he presented of the trial while arguing his appeal at the Court of Appeal.

C Learned senior counsel for the appellant, S. T. Hon submitted that the ground of objection be spelt out clearly at the point to put the prosecution on guard as to what evidence it will get ready to lead in the trial-within-trial which ground once clearly spelt out should D bind the accused to the extent that he be barred from embarking in the ensuring voire dire, in a wild goose chase as was done in this case which situation this court deprecated in the case of *Obisi v Chief of Naval Staff* (2004) ALL FWLR (Pt. 215) 193 at 209; *Okoh v State* (2014) ALL FWLR (Pt. 736) at 467.

E That the 1st respondent in the written addresses of counsel of the Lower court completely abandoned the sole ground he raised against the admissibility of the confession that of question and answer session and relied on the completely new ground of alleged threat to life. Learned counsel said the proper procedure of an accused objecting to the admissibility of his confession is that he must F state the reasons for such objection of the earlier time and must stand by those reasons throughout. He relied on the cases of *Momodu v State* (2008) ALL FWLR (Pt. 447) 67 at 107; *Usung v State* (2009) G ALL FWLR (Pt.462) 1203 at 1231.

For the appellant was submitted that the Court of appeal had a duty to pronounce upon every issue raised and argued before it by a party, failing which there would be miscarriage of justice as happened here, the court below failed to pronounce on the disputed H confession allegedly procured by threat. He cited *Owners of MV “Arabella” v. N.A.I.C.* (2008) ALL FWLR (Pt.443) 1208.

Chief Awomolo SAN for the 1st respondent said it was true that the court of Appeal did not pronounce on all the issues before it and that the appellant’s arguments are not borne out of the records

of appeal.

Learned counsel for the 2nd respondent, towed the same line of arguments of the 1st respondent's counsel.

For the 3rd respondent was contended that the trial court was not left in doubt as to the grounds of the objection in relation to admitting the statement and thereafter the burden was on the prosecution to prove the voluntariness of the said statement. He relied on *Kareem v FRN (2) (2000) 8 NWLR (Pt.770) 664 at 782 - 783*. B

That the appellant's right to fair hearing was in no way breached by the lower court in its consideration of the submissions before it that the 1st respondent had abandoned its sole ground of objection both at the trial court and at the court below. C

Mr. Joloowo, learned counsel for the 4th & 5th respondent argued along the same route as the 3rd respondent, that there is no need for repetition. D

The issue here hinges on the manner the confessional statement was obtained thereby raising the question whether or not it was voluntarily obtained. In the instant case, the respondents said the statement was obtained in question and answer session without the specifics being stated or proved. The trial court held the accused made the statement voluntarily and admitted the statements while the court below set aside what the trial court did and rejected the confessional statement on the new ground that there was threat to life on the accused through which the confessions were elicited. The point has to be made that an accused person who seeks to challenge his confessional statement to be consistent both at the point of raising the objection and throughout the trial including a trial-with - trial. This is to forestall an accused at any point of trial it suits him to embark on one issue or the other not raised of the earliest opportunity as has to do with the tendering and admitting of a confessional statement which the prosecution would have a role to play in setting straight what transpired when such statements were obtained. This going up and down is not allowed since it does no good to getting at the justice of the matter and keeping the balance between prosecution and defence on an even keel. Such was the view expressed by this court in the case if: *Obisi v Chief of Naval Staff (2004) ALL FWLR (Pt. 215) 193 at 209 E - G*, per Pats-Acholonu, JSC, lead Judgment) thus: F G H

*"In the course of the proceedings, the appellant said that the*

*investigation officer used a “subtle approach” to get an admission from him. In the context the word “subtle” was used, the message sought to be conveyed is that illegal and perhaps prohibited method to effect confession from him which he euphemistically described as subtle was employed. If the investigation officer intimidated the appellant to make a confessional statement, the appellant had the right to tell the court what happened, i.e. how he was forced to make and sign a statement he later disclaimed. For a literate Engineer not to be able to described graphically and with certainty how he was made to make an omission that sought to incriminate him but rather relied on equivocation and innovation of expression of doubtful meaning and connotation thereby indulging in double talk is to say the least trifling with his defence and burying his defence on words that convey no meaning to the court.”*

From the principles above enunciated above it is clear that the court of Appeal went outside what was before it in using the submission of learned counsel raising the issue of threat to life to reject the statements already admitted after a trial - within - trial at which that threat to life did not arise. This seems in consonance with what the court of Appeal found in *Timothy v FRN* (2008) ALL FWLR (Pt.402) 1135 at 1754 when it said:

*“The complaint of the appellant in this regard is purely an after thought.*

*He should not and cannot be allowed to approbate and reprobate of the same time.”*

On basis of the foregoing on the erroneous handling the court below in relation with the confessional statements and so the issue is resolved in favour of the appellant.

#### ISSUES 3, 4, & 5

These issues raise the questions whether the lower court rightly held that the confessional statement of 1st respondent was not voluntarily obtained and if the findings of the court below were not borne out of the facts on record or weight of evidence.

Mr. Hon. SAN for the appellant stated that if the court below had considered the admission of the 1st respondent as maker of the disputed confession, that he had voluntarily signed it that would have been the end of the inquiry into the voluntariness or not of that statement which was the effect of eliciting evidence under cross-ex-

amination. He referred to Section 233 of the Evidence Act 2011 *Oforlete v The State* (2000) 7 SCNJ 162 at 179; *Adeosun v Governor of Ekiti State* (2012) ALL FWLR 1044 at 1059.

That the failure of the 1st respondent to cross-examine the appellant on the defence of threat and promise as found by the court below dealt a fatal blow on the case of the 1st respondent. He cited *Jua v State* (2010) 4 NWLR (Pt. 1148) 217 at 245- 246. B

Going on learned counsel for the appellant said the lower court used the wrong platform to assume the role of re-evaluating evidence on the alleged threat of life and promise of advantage/inducement to set aside the judgment of the trial court. He said that for a confession to be held to be involuntary on account of question and answer, the specific questions put to the accused warranting the answers, he gave must be proved. He cited *State v Jimoh Salawu* (2011) 6 - 7SC (Pt.4) 147 at 174 - 175. C

Responding, learned counsel for the 1st respondent. Chief Awomolo SAN submitted that prosecution failed to establish the voluntariness of the confessional statement. That there was a failure in a balanced evaluation of the evidence placed before the trial court which led to a denial of fair hearing and the ensuring miscarriage of justice. D

Mr. Ogunwumiju of counsel for 2nd respondent contended that a calm perusal of the answers given by the 1st respondent to the five questions will show that he only admitted signing the statement in issue which is not the same as meaning that he made it voluntarily. He cited *UNIFE Dev. Co. v. Adeshingbin & 4 Ors.* (2001) 4 NWLR (Pt.704) 609 at 626 etc. E

Learned counsel for the 3rd respondent, Mrs. Akinboro said there was a need for the calling of other witnesses by the prosecution to substantiate the voluntariness of the statement failing which the burden upon the prosecution was not discharged on the voluntariness of the statement. He cited *Oguonzee v State* (1998) 5 NWLR (Pt. 551) 521 at 571 - 571 *SSGMBN v. TD Industries Ltd* (2010) 11 NWLR (Pt. 1206) 589 at 613. F

That the evidence, adduced established the ingredients of inducement, threat and promise rather than a voluntarily made statement. H

Mr. Jolaawo, learned counsel for the 4th & 5th respondents

said a proper consideration and or evaluation of evidence will involve a review of the entire evidence before the trial court and it was the failure to so evaluate that produced the trial court ruling that the statement was voluntarily made which was in fact not the case as the lower court found.

B      In the course of the trial-within-trial, the 1st respondent in each of the two appeals admitted signing the confessional statements voluntarily. The trial court was satisfied at the end of it to hold that the issue of the statements being involuntarily obtained did not arise and stated thus:

C      *“In the instant case, the grounds of objection to the admissibility of the 3rd accused statement is that, it is a product of question and answer between PW10 and 3rd accused person and under threat to his life and promise to be used as a witness for the prosecution. I have carefully reviewed the evidence of the two witnesses and the submissions of counsels to both parties and I wish to point out that the issue of threat to life and promise of being used as witness for the prosecution was not raised by learned counsels to the accused persons in their examination of PW1. It was based on method of conducting investigation and extracting or writing statement from suspects who appeal before them. It is well known to us that this is a criminal trial and an open one for the matter and there is no room for hide and seeks game as justice is as we know it, is for all the parties.”*

F      The Court of Appeal clearly went outside the scope of what is required in an inquiry which a trial - within trial can be called to ask for more than was necessary. It even went into an area well within the ambit of only the trial judge who had the sole opportunity of seeing and hearing the witnesses and basing its findings thereon. The Court of Appeal not endowed with that privilege could only speculate to arrive at its own finding not borne out of the record. For emphasis, the prosecution did not have a duty to call more witnesses than it did in proof of the voluntariness of the statement and what H the prosecution did was enough for the trial court ought to have satisfied the Court of Appeal as there was enough in the record to sustain the position which I too I am satisfied with. See *Nkebisi v State* (2010) ALL FWLR (Pt. 521) 1407 at 1423; *Idiok v State* (2008) ALL FWLR (Pt. 421) 797 at 820; *Tanko v Echendu* (2011) ALL FWLR



(Pt. 567) 699 or 722.

In line with the authorities above cited I resolve the questions in favour of the appellant.

From the foregoing and the better reasoned lead judgment, I allow the appeal while I abide by the consequential orders earlier made.

B

### **ARIWOOLA JSC**

I had the opportunity of reading in draft the leading judgment of my learned brother, C.C. Nweze, JSC, just delivered. It covered all necessary grounds in the appeal. I am in total agreement with the reasoning therein and the conclusion arrived thereat, that the lower court was wrong to have expunged Exhibit AX from the record of the trial court. I have nothing new to add.

C

D

I abide by the order in the leading judgment restoring the expunged Exhibit AX in the record of the trial court for it to continue the trial proceedings.

The appeal is allowed in part.

E

### **MUHAMMAD JSC**

I have had a preview of the elaborate lead judgment of my brother Nweze, JSC. I agree with his reasoning and thereon that the appeal succeeds in part. I abide by all the consequential orders made in the lead judgment.

F

### **AKA'AHJSC**

G

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

H

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.