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Conduct of Trial within Trial - Any More Relevance Post Administration of Criminal Justice Act, 2015?

*N.O. Obiaraeri**

Abstract

This paper argued that on the state of the law, following the passage of the Administration of Criminal Justice Act (ACJA), 2015, there is no juridical basis for continued conduct of trial within trial in the criminal justice system in Nigeria. Deploying the doctrinal research method, the paper critically analysed provisions of the Evidence Act, 2011 as amended regarding requirement of conduct of trial within trial where voluntariness of confession is denied. This was done against the novel provisions of the ACJA 2015 prescribing that every confessional statement must be recorded on video in the presence of a legal practitioner or any authorised person so that the said recording can be tendered and played in Court as evidence to prove voluntariness. Based on landmark decisions of the apex Court on the ACJA provisions, the paper established that the provisions of the ACJA 2015 are mandatory and failure to observe them renders the confession inadmissible. In view of this paradigm shift, it was recommended that the Courts should discard the time-wasting procedure of trial within trial and insist on non-negotiable compliance with the mandatory provisions of the ACJA that confessional statement must be recorded on video in the presence of Counsel or other approved persons.

Keywords: confession, involuntary, trial, record, video

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1. Introduction

The reason behind law reform is to amend or abrogate laws that are anachronistic, outdated, obsolescent or not working and replace them with new ones that will serve the contemporary justice needs of the society. Law reform also serves to fill gaps in the law or lacuna to make them compliant in the justice delivery sector. The enactment of the Administration of Criminal Justice Act, 2015 represented a watershed in the criminal justice ecosystem in Nigeria as the law made radical and far-reaching provisions that constitute a break from the past. The thrust of this paper is to bring to the fore how the landscape of confessional statements, use of trial within trial to establish voluntariness or otherwise of confessional statement changed with the enactment of the

* LL. B (Hons), B.L. (Hons), LL.M, Ph.D (Law), FHRI, FCAI, KJW; Professor of Law and Former Dean, Faculty of Law, Imo State University, Owerri, Nigeria; Nigerian Association of Law Teachers (NALT) Taslim Elias Awardee, 2017; Former Visiting Scholar and Fellow, Human Rights Institute, Columbia University, New York, NY, USA; E-mail: profnoobiaraeri@imsuonline.edu.ng; noobiaraeri@yahoo.com; Tel: +2348035524442

Administration of Criminal Justice Act in 2015 and how this paradigm shift was cemented in the decisions of the apex Court. The paper will conclude that in view of the provision in the ACJA, 2015 that every confessional statement must be recorded on video so that the said recording can be tendered and played in Court as evidence to prove voluntariness the cumbersome practice of conduct of trial within trial has outlived its usefulness and ultimately recommend that it should be discarded.

Against the foregoing, the paper is further divided into the following parts namely: meaning of confession and admissibility of confessional statement; involuntary and inadmissible confession; conduct of trial within trial where voluntariness of confession is challenged or objected to; why conduct of trial within trial must give way; and conclusion and recommendations.

2. Meaning of confession and admissibility of confessional statement

Section 28 of the Evidence Act, 2011 defines confession as an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime. Confessional statements are detrimental to the interest of the person making it. A court can convict solely on a single confessional statement if it was not vitiated by “oppression of the person making it”.¹ Confessional statements are usually the best and fastest means by which the guilt of an accused person is established in criminal proceedings. It is to the prosecutor’s delight that a confessional statement is voluntary and admissible as it reduces the burden inexorably placed on him to prove the guilt of the accused person beyond reasonable doubt in view of the trite law that an involuntary confession is irrelevant and inadmissible. In the case of *Akpa v The State*,² the Supreme Court per Tobi JSC had the following to say:

Confession in criminal procedure, like admission in civil procedure is the strongest evidence of guilt on the part of an accused person. It is stronger than the evidence of an eye witness because the evidence, borrowing from the daily axiom, comes out from the mouth of the horse, who is the accused person. What better evidence than that? He knows or knew what he did and he says or said it in court. Is there need for any further proof? I think not?

Additionally, section 29(1) of the Evidence Act, 2011 as amended enacts regarding when confession is relevant that in any proceedings, a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court. Thus, the foundation for admission of confessional statement is laid in this quoted provision of section 29 of the Evidence Act. This relates to relevant and voluntary confession. Discussion in the next segment will point out the position of the law with respect to involuntary confession.

3. Involuntary and inadmissible confession

As noted earlier, section 29(1) of the Evidence Act, 2011 as amended enacts regarding when confession is relevant that in any proceedings, a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the Court. However, an involuntary confession is irrelevant and inadmissible and the prosecution is thrust with the onus of proving the voluntariness of a confessional statement. In section 29(2), if, in any proceedings where the prosecution proposes to give in evidence a

¹ This was also the decision in *Gira v. State* (1996) 4 SCNJ 94. The requirement of “oppression” in section 29 of the Evidence Act, 2011 as amended should be noted.

² (2007) 2 NWLR (Pt. 1019) 500 cited with approval in *Dele v State* (2011) 1 NWLR (Pt. 1229) 508 at 530.

confession made by a defendant, it is represented to the court that the confession was or may have been obtained-

- (a) by oppression of the person who made it; or
- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in such consequence, the Court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section.

By way of analysis, this provision makes confession obtained from a defendant by the omnibus term or phrase “oppression of the maker” involuntary, inadmissible and irrelevant. Under section 29(5) “oppression” is broadly interpreted to include torture, inhuman or degrading treatment, and the use or threat of violence whether or not amounting to torture. The provision in the section makes it the duty of the defendant to “represent to the Court” (meaning, bring to the attention of the Court) that the confessional statement sought to be relied upon by the prosecution was obtained by oppression. It also requires the prosecution to prove beyond reasonable doubt that “the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section”. Thus, the onus of proving voluntariness of a confessional statement is cast on the prosecution.

Furthermore, the Court may *suo motu* (on its own accord or motion), require the prosecution to prove the voluntariness of confessional statement. Hence, it is enacted in section 29(3) of the Evidence Act, 2011 as amended, that in any proceedings where the prosecution proposes to give in evidence a confession made by a defendant, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in section 29(2)(a) or (b) quoted above.

4. Conduct of trial within trial where voluntariness of confession is challenged

The position of the law is that where a confessional statement is objected to on the ground that it was not voluntarily made, the trial Court is to conduct trial within trial. Recently, in the 2025 decision in *Igenti v State*,³ the Supreme Court, per Jauro, JSC, reiterated regarding when a trial within trial will not be conducted as follows:

By virtue of section 29(3) of the Evidence Act, where the admissibility in evidence of a confessional statement is objected to on the ground that the accused person did not make same voluntarily or that it was made due to oppression, torture or fear, the Court must, as a condition precedent for the admission of the confessional statement in evidence, satisfy itself that same was made voluntarily. By our rules of Criminal Procedure and Evidence, it is through a trial-within-trial, sometimes referred to as a mini trial, that a Court before which the prosecution seeks to tender a confessional statement, requires the prosecution to prove that the statement was made voluntarily by the accused person. However, where the objection to the admissibility of a confessional statement is not that the statement was not voluntarily made, but that it was not made at all by the accused person, there will be no need to conduct a trial-within-trial. In such a situation, the Court will admit

³ (2025) LPELR-80111(SC) (Pp. 15-16 paras. C-C).

that statement in evidence and determine the probative value to be attached thereto in its judgment. See *Ofordike v State* (2019) LPELR - 46411 (SC); *Isong v State* (2016) LPELR - 40609 (SC); *Abdullahi & Ors v State* (2013) LPELR - 20644 (SC).

It was held in *Agholor v Attorney-General Bendel State*,⁴ that the test of admissibility of a confessional statement is its voluntariness. Once the issue of involuntariness is raised, it must be resolved or settled one way or the other before its admission or otherwise. As held in *Kamila v State*,⁵ it is because of the strategic position of a confessional statement that there is no getting away from it that once there is a challenge to the voluntariness of confessional statement that the trial Court faced with this challenge is bound to conduct a trial within trial to determine the voluntariness or otherwise. Once that trial within trial has been carried out and the Court rules that the confession was voluntarily made, the appellant can no longer argue that he did not make the confession voluntarily without first impugning the trial within trial.

When admissibility of a statement is challenged on the ground that it was not made voluntarily the following procedural safeguards which have crystalized over the years should be noted-

- (a) The proper time to raise an objection as to the voluntariness of a confessional statement is at the point when it is to be tendered in evidence so that the voluntariness or otherwise would be determined before it is admitted in evidence. Hence, the objection must be raised timeously at the trial and not as an afterthought.
- (b) It is incumbent on the judge to call upon the prosecutor to establish that it was voluntarily made by conducting a trial- within- trial. This is mandatorily prescribed by *section 29(3)* of the Evidence Act 2011 as amended.
- (c) The procedural step of trial-within-trial must be taken at the point when the objection is raised. In *Eke v State*,⁶ at the point of tendering the confessional statement, the accused claimed that he was beaten up and forced to write the statement. The Supreme Court held that the trial court ought to have ordered a trial-within-trial to find out if the accused person's contention that he did not write the statement voluntarily was true. Failure to conduct a trial-within-trial was wrong. The appeal was upheld on this score and the appellant's sentence and conviction was quashed.
- (d) The trial-within-trial procedure is designed to determine if the confession was voluntary. Failure, refusal or neglect to carry out the mandatory trial-within-trial is fatal to the trial. In the case of *Olayinka v The State*,⁷ it was held by the Supreme Court that the law has for long been settled in criminal cases that it is the duty of the trial court to consider a defence no matter how improbable or stupid it might be. Failure to consider and examine a defence by the trial judge does not only raise reasonable doubt in the case of the prosecution but also amounts to failure to perform a vital duty imposed on the trial judge and as such will amount to a miscarriage of justice which must result in the decision appealed against to be set aside and the conviction quashed.
- (e) Involuntary confession is irrelevant and inadmissible and where it is wrongly admitted without conducting a trial-within-trial, it will be expunged from the evidence before the

⁴ (1990) 6 NWLR (Pt. 155) 141 at 151.

⁵ (2018) LPELR-43603(SC).

⁶ (2011) LPELR-1133(SC) (Pp. 11 paras. A).

⁷ (2007) 9 NWLR (Pt.1040) 561 at 586-587.

court. The conduct of a trial-within-trial has been legally adjudged to be a necessity.⁸ However, if it does not lead to miscarriage of justice, or the other evidence led and accepted are so overwhelming and conviction can easily be sustained without the confessional statement, the appellate court can overlook. This principle was approved by the Supreme Court, per Fabiyi, JSC, in *Eke v State*⁹ wherein he held *inter alia*:

It is clear to me that the trial Judge at the Tribunal goofed in failing to carry out the mandatory trial-within-trial to determine the voluntariness of the statement credited to the appellant. To my mind, Exhibit 5 was admitted to no avail. However, the conviction of the appellant was not based solely on Exhibit 5. The saving grace was that without Exhibit 5, the evidence adduced by P.W.1 and P.W.2, the victims of the offence of armed robbery assisted by P.W.3 and P.W.4 who got the appellant arrested sufficiently put the appellant in a tight corner where he failed to extricate himself.

- (f) At the trial-within-trial, the accused person must give evidence before witnesses called by him to give evidence. This was the decision of the Supreme Court in *Eke v State* (supra).
- (g) At the end of the trial-within-trial if the court is satisfied that the confessional statement was not voluntary, the said statement would not be admissible in evidence as an exhibit and the trial judge should rule accordingly. This is a requirement arising from the provision of section 29(2) of the Evidence Act, 2011 as amended. A confessional statement found not to have been voluntary is worthless.
- (h) In *Abdullahi & Ors v State*¹⁰ and *Ogedengbe v State*¹¹ the Supreme Court held that if after the trial within trial, the trial Judge based on the evidence adduced believes that the confession was voluntarily given, then the said confession can be relied on.

It must be accentuated that “denial of voluntariness” of a confessional statement is radically different from “denial of authorship” of a confessional statement as both receive different judicial considerations. If an accused person alleges that he made a confession under an oppressive circumstance, he acknowledges that he authored the statement contained in the document but asserts that he is unwilling to be bound by its contents because of the oppressive circumstance under which he made it. This lends itself to the conduct of a trial-within-trial extensively discussed in the preceding paragraphs of this paper. This is different from the scenario where a confessional statement is challenged on the sole ground that the accused person did not make the statement at all. In this latter case, the statement should be admitted since its admissibility is not affected. Where there is outright denial of authorship, that is to say it is canvassed by the defence that the “accused person did not make the statement”, it is settled law that the question whether the statement was made voluntarily or otherwise does not arise for consideration. The trial Court is expected to admit the statement in evidence as an exhibit and in its judgment decide whether or not such denial avails the accused person. A confession does not become inadmissible merely because an accused person denies having made it. This is because such a denial is an issue of fact to be decided in the judgment as the issue does not affect admissibility of the statement. For the statement must be considered along the entire evidence and the circumstances of the case for evidential value to be attached to it

⁸ See *George v The State* (2009) 1 NWLR (Pt. 1122) 325, *Nsofor v The State* (2004) 18 NWLR (Pt.905) 292

⁹ (2011) LPELR-1133(SC) (Pp. 11 paras. A).

¹⁰ (2013) LPELR-20644(SC).

¹¹ (2014) LPELR-23065(SC).

as decided in a plethora of cases like *Dawa v The State*,¹² *Nwaebonyi v The State*,¹³ *Idowu v State*¹⁴ and *Aiguoreghian v The State*¹⁵ and very recently in *Halilu v Katsina State*.¹⁶ It does not matter that a defendant during trial has resiled from his statement to the police or not. It is elementary law, that a retraction of a confession does not mean that the Court cannot act on it and convict a person if the circumstances of the case justify this and a conviction will not be quashed simply because it was based entirely on the confession of the defendant. Retraction does not, ipso facto, render the confessional statement inadmissible. Denial may affect the weight the Court will attach to the confessional statement. It is, however, not a reason to exclude the statement. What one must therefore look at is the weight to be attached to a retracted confessional statement.

5. Conduct of Trial within trial post -Administration of Criminal Justice Act, 2015

The foregoing segment of this paper dwelt extensively on the procedure for trial within trial and its crucial importance based on the state of the law as at 2015. This segment of the paper will interrogate the question whether there is need for continued relevance of the trial within trial procedure in the administration of justice ecosystem following the enactment of the Administration of Criminal Justice Act¹⁷ in 2015. Section 1(1) of the ACJA, 2015 provides that the purpose of the Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal institutions, speedy disposing of justice, protection of the society from crime and protection of rights and interests of the suspect, the defendant, and the victim. In section 1(2), it further enacts that the Courts, law enforcement agencies and other authorities or persons involved in this Criminal Justice administration shall ensure compliance with the provisions of the ACJA for the realization of its purposes. The provisions of the ACJA apply to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja. A suspect or defendant alleged or charged with committing an offence established by an Act of the National Assembly shall be arrested, investigated, inquired into, tried or dealt with according to the provisions of this Act, except otherwise provided under this Act.¹⁸

Regarding the procedure to be taken in obtaining confessional statement, the ACJA made novel and ground breaking provisions. The ACJA, 2015 provides in its section 15(4) that

Where a suspect who is arrested with or without a warrant volunteers to make a confessional statement, the police officer shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio-visual means.

Furthermore, in section 17(1) and (2) it is provided that

Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken, if he so wishes to make a statement.

(2) Such statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society

¹² (1980) 8-11 SC 236.

¹³ (1994) 5 NWLR (Pt. 343) 138.

¹⁴ (2000) 12 NWLR (Pt. 680) 48.

¹⁵ (2004) 3 NWLR (Pt. 860) 367.

¹⁶ (2025) LPELR-80379(SC) (Pp. 36-38 paras. A-A).

¹⁷ Hereinafter abbreviated and referred to as "ACJA".

¹⁸ Sections 2 and 3 of the ACJA, 2015.

Organization or a Justice of the Peace or any other person of his choice. Provided that the Legal Practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement, except for the purpose of discharging his role as a legal practitioner.

Recall that prior to the passage of the ACJA, 2015, the test of voluntariness or involuntariness of confessional statement was determined solely by the provisions of section 29(2) of the Evidence Act, 2011 as amended. When objection to the involuntariness and admissibility of a confessional statement was raised timeously, the Court would usually determine the matter through a trial within a trial. Following the passage of ACJA, 2015, the question raged whether admissibility of a confessional statement is dependent on the presence of counsel or relation at the time of making the confession as required by section 17(2) of ACJA, 2015 or whether it is to be governed by the provision of section 29(2) of the Evidence Act, 2011 as amended. Thus, the question whether the said section 17(2) of the ACJA, 2015 can override the clear provision of the Evidence Act, 2011 on admissibility of confessional statement became contentious.

The implications of these novel provisions of sections 15(4) and 17(2) of the ACJA, 2015 were interpreted by the Supreme Court in the landmark decisions of *FRN v Akaeze*¹⁹ and *FRN v Nnaji*²⁰. In those sister appeals, the Supreme Court dismissed the appeal and the kernel of the appellant's issues that the provisions of sections 15(4) and 17(2) of the ACJA, 2015 are rather permissive and not mandatory. The Supreme Court upheld the finding of the Court of Appeal that sections 15(4) and 17(2) of the ACJA, 2015 impose on public functionaries (police officers and other officers of any law enforcement agency established by an Act of the National Assembly and this includes the EFCC) to record electronically on retrievable compact disc or such other audio visual means, the confessional statements of a suspect and to take statements of suspects in the presence of the person set out in section 17(2). The provisions are for the benefit of private citizens who are suspected of committing crimes so that the enormous powers of the police or other law enforcement agencies may not be abused by intimidating them or bullying them in the course of taking their statements. Conclusively, the Supreme Court held that the Economic and Financial Crimes Commission authorities having failed to obey the strict letters of sections 15(4) and 17(2) of the ACJA, 2015, the Federal High Court was obliged to reject the confessional statements as having been involuntarily made. The provisions of sections 15(4) and 17(2) of ACJA, 2015 have strictly provided for recording the statement of the defendant. Thus, there is no gainsaying the fact, that failure to perform the act in accordance with the dictates of those provisions of the law would be deemed to be a flagrant non-compliance with the law. In such a situation the Court would be entitled to invoke its interpretative jurisdiction to hold that the non-compliance with the law is against the recalcitrant party. Consequently, it was directed that the case files in the sister appeals be remitted to the Chief Judge of the Federal High Court for assignment to other Judges other than the learned trial Judge for hearing and determination.

6. Why conduct of trial within trial must give way

The two judgments of the Supreme Court delivered in 2024 in the sister appeals of *FRN v Akaeze* (*supra*) and *FRN v Nnaji* (*supra*) produced many revolutionary effects in the adjectival law in Nigeria. One of the implications relevant to this paper is that the provisions of the ACJA, 2015 on procedure for obtaining confessional statement are mandatory. The ACJA provisions simplified the procedure for obtaining confessional statement. This also made the requirement of the conduct of the cumbersome trial within trial either unnecessary or a mere surplusage. Sections 15(4) and 17(2)

¹⁹ (2024) LPELR-62190(SC).

²⁰ (2024) LPELR-62599(SC).

of the ACJA, 2015 have taken the guarantee of the voluntariness of a confession beyond the Judges Rules that Courts apply permissively and the police in-house procedures which consist only of assurances by the same investigating and prosecuting officers that they complied with the Judges Rules and their in-house procedures in obtaining the confession of an arrested suspect. Sections 15(4) and 17(2) of the ACJA, 2015 have established clear-cut, certain, and easily verifiable criteria by prescribing that such confessions be video recorded and be taken in the presence of independent persons such as a legal practitioner of the suspect's choice, officer of the Legal Aid Counsel, officer of a Civil Society Organisation, a Justice of the Peace or any other person of the suspect's choice. These provisions are mandatory. Any confessional statement obtained in violation of these provisions remains inadmissible. In addition to the mandatory nature of those provisions, section 3 of the ACJA, 2015 mandatorily requires that the suspect be arrested, investigated and tried in accordance with the ACJA, 2015.

Finally, in the recent 2025 decision in *Halilu v Katsina State*,²¹ the Supreme Court, per Uwa, JSC, affirmed the little or no relevance of conduct of trial within trial with the present state of law when it held as follows:

It must be noted however that the landscape of confessional statements, trial within trial and proof of voluntariness or otherwise has changed with the enactment of the Administration of Criminal Justice Act 2015 and the decision of this Court in *FRN v Nnaji*for (2024) LPELR-62599(SC) and *FRN v Akaze* (2024) LPELR-62190(SC). Sections 15(4) and 17(1)(2) of the Administration of Criminal Justice Act provide as follows

The above sections and the judicial seal in the cases hereinabove referred to have taken the guarantee of the voluntariness of a confession beyond the ineffective Judges' Rules that Courts apply permissively and the police in-house procedures. The same police investigators who are accused of obtaining the statements involuntarily come to assure the Court that they complied with the Judges Rules and their in-house procedures in obtaining the confession of an arrested suspect. In most cases, defendants contend that the confessions attributed to them were made under duress, resulting in time consuming trials-within-trials to determine the voluntariness of the confession; wasting scarce judicial time and energy. The Administration of Criminal Justice Act 2015 and the decision of this Court handed down in those cases will play a huge role in more efficient and speedy administration of criminal justice.

7. Conclusion and recommendations

This paper has shown that the effect or implication of the provisions of sections 15(4) and 17(2) of ACJA and the judgments of the Supreme Court in *FRN v Akaze*²² and *FRN v Nnaji*for²³ reiterated in *Halilu v Katsina State*²⁴ is that every confessional statement must be recorded on video so that the said recording can be tendered and played in Court as evidence to prove voluntariness or that a legal practitioner or any person as specified under section 17(2) of the ACJA, 2015 was present. This is mandatory. Failure to do so renders the confession inadmissible. The essence of the video/audio-visual evidence is obviously so that the Court will be able to decipher from the

²¹ (2025) LPELR-80379(SC) (Pp. 36-38 paras. A-A).

²² (2024) LPELR-62190(SC).

²³ (2024) LPELR-62599(SC).

²⁴ (2025) LPELR-80379(SC) (Pp. 36-38 paras. A-A).

demeanour of the Defendant and all other surrounding circumstances in the video if he or she voluntarily made the confessional statement. Alternatively, where a video facility is not available, the Police must take the confessional statement in writing and must ensure that while same was being taken, the Defendant had a Legal Practitioner of his choice present. Where this is complied with, there will be little or no need for recourse to the time-wasting procedure of trial within trial before a Court comes to the reasoned conclusion whether a confession is voluntary or involuntary. Objections raised as to the admissibility of confessional statements pose one of the greatest challenges to criminal trials as it slows down the pace of the proceedings when there is a trial within trial. It is heartwarming that sections 17(2) and 15(4) of the ACJA, 2015 have been put in place to ensure that security agencies who have the power to arrest, obtain confessional statements from suspects without any form of oppression or illegality.

It is therefore recommended that the trial within trial procedure should be discarded in criminal proceedings in Nigeria. On the current state of the law, it has outlived its usefulness. Rather, the Courts should insist on total and complete and non-negotiable compliance with the mandatory provisions of the ACJA that confessional statement must be recorded on video so that the said recording can be tendered and played in Court as evidence to prove voluntariness or presence of a legal practitioner or any authorised person or persons. If this is done, it will preserve the sanctity of the ACJA provisions, save the time of the Court wasted in conduct of trial within trial and engender more efficient and speedy administration of criminal justice.