# ***TRIAL WITHIN TRIAL:***
# ***REGULATION BY MEANS OF PRACTICE DIRECTION***

***BY KEMASUODE WODU***

## *The Current Position*

*The current and trite position of the law as enunciated in a long line of decided cases is that whenever a Defendant/Accused person raises objection to the admissibility of a confessional statement on the ground that it was not obtained voluntarily, the Court is obliged to immediately stop the substantive proceedings and conduct a trial within trial to determine whether same was obtained voluntarily or not before proceeding any further with the matter. And this is done by giving the parties the opportunity of calling witnesses in proof of their respective assertions and delivering a ruling on same after taking addresses from them.*

***See***

***HASSAN v. STATE (2016) LPELR-42554(SC) page 1 at 15*** *where the Supreme Court per Olabode Rhodes – Vivour, JSC, held as follows:*

> *"When in the course of trial the prosecution seeks to tender the confessional statement of an accused person, as it happened in this case and there is an objection on the grounds that it was obtained under duress and not voluntarily made, what is in issue is the admissibility in evidence of the confession and the trial Judge must order that a trial-within-trial (mini trial) is held. The purpose of a trial-within-trial is to determine whether or not the confession was voluntary.*

***See also***

***OGU v. COP (2017) LPELR-43832(SC) page 1 at 18 - 19***

***STATE v. SANI (2018) LPELR-43598(SC) page 1 at 23***

***C.O.P v. ALOZIE (2017) LPELR-41983(SC) page 1 at 37 – 38***

*The Supreme Court in the case of* ***BABARINDE & ORS VS STATE (2013) LPELR-21896(SC) page 1 at 14 – 15*** *clearly explained the procedure for trial within trial as follows:*

> *"it is necessary to reiterate the fact that a trial within trial is a complete process in itself within the substantive trial. The trial Court halts the main trial to conduct a mini trial specifically to determine whether or not a confessional statement allegedly made by an accused person was made voluntarily. See:* ***Adelarin Lateef & Ors. v. F.R.N.(2010) 37 WRN 85 @ 107 lines 25 - 45; Jimoh & Anor. v. The State (2011) LPELR-4357. (CA) 1 @ 19 - 20 F - D****. As submitted by learned counsel for the respondents, the witnesses in a trial within trial are re-sworn. They testify, call additional witnesses if necessary, and tender exhibits; the witnesses are subjected to cross-examination and at the conclusion of the trial, counsel to the parties address the Court. The Court delivers a considered ruling on the voluntariness or otherwise of the statements sought to be tendered."*

*It is worthy of note that for this purpose, the burden of proving that the confessional statement was obtained voluntarily is on the prosecution and this, the prosecution is under a duty to prove beyond reasonable doubt in accordance with the provisions of Section 29(2)(b) of the Evidence Act, 2011, which provide as follows:*

*"29(2) If, in any proceeding where the prosecution proposes to give in evidence a 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 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."*

***Challenges with the present position***

***a) Delay occasioned by trial within trial***

*There is no gainsaying the fact that despite all the innovations introduced by the Administration of Criminal Justice Act, 2015* ***(ACJA),*** *trial within trial still causes very substantial delay in criminal trials. The said Act did not address the issue and therefore the problem is still extant.*

*It is a known fact that trial within trial could last for upwards of six months and even for a few years. Trial within trials are known to have scuttled and or frustrated the hearing of several criminal trials.*

***b) Likelihood of the breach of the Defendant's right to fair hearing***

*Trial within trials are full blown trials within the substantive criminal trial. They therefore possess all the incidents of a full trial where the trial Judges will form their opinions about the witnesses including the Defendant/Accused person.*

*There is thus the risk of trial Judges being human, taking some set positions with respect to the credibility of the Accused persons and or their evidence or stories as for instance when the Court in the Ruling on the trial within trial finds that the Accused person is not a witness of truth, etc. This may detrimentally affect the assessment of the integrity of the witness and the credibility of his evidence by the Court during the main trial.*

***See***

***BABARINDE & ORS v. STATE (2013) LPELR-21896(SC) page 1 at 14 – 15*** *where the Supreme Court held as follows:*

> *"… In the course of delivering that ruling the Court, which had the opportunity of listening to and observing the witnesses for both sides, is obliged to give reasons for the conclusion reached. This will include the Court's opinion on the credibility of the witnesses. An examination of the entire ruling shows that the learned trial Judge, after according the evidence led the necessary scrutiny, found that the appellants were not witnesses of truth and for this reason concluded that the statements attributed to them were made voluntarily. While the choice of language in the instant case leaves much to be desired, I am unable to agree with learned counsel for the appellants that the comments showed a likelihood of bias against the appellants in respect of the substantive trial. This issue is therefore resolved against the appellants."*

*Though we have not come across a case where an appeal on this ground succeeded, but it is a serious issue to be wary of in respect of which there could just be a contrary judicial opinion.*

***The New Proposal***

*The procedure explained shortly will effectively address the issue and eliminate the delay occasioned by the present system.*

*When an Information or charge is served on a Defendant/Accused person, the Defendant/Accused if he is desirous of raising objection to the admissibility of a confessional statement in the matter on the ground of same having not been obtained voluntarily, shall file a notice and cause same to be served on the prosecution within 7 days upon receipt of the charge or information, indicating that he intends to raise such objection in the trial.*

*Then at the trial, after the objection is taken and the Court has provisionally admitted the confessional statement in evidence, the*

*Prosecution shall continue with its case and as part thereof, call witnesses and or adduce evidence to prove that the statement was obtained voluntarily.*

*The Defendant/Accused shall as part of his defence call witnesses and or adduce evidence to prove that the confessional statement was not obtained voluntarily.*

*At the close of the respective cases of the parties, the parties shall incorporate in their Final Written Addresses, their addresses on the issue of the voluntariness or otherwise of the confessional statement. The Court shall then in its final judgment in the matter also rule on the admissibility of the confessional statement.*

*In order to ensure compliance with the requirement of notice of objection aforesaid, it shall be made mandatory that in any interlocutory application filed by the Defendant/Accused in the proceedings, the Defendant/Accused must indicate whether the provisions as to the filing of the notice apply and if so, whether he has complied with same.*

*This will compel the Defendants/Accused person to comply with the requirement of notice as oftentimes, the Defendants file a number of interlocutory applications, including bail applications.*

*The importance of the notice cannot be over – emphasized as it will enable the Prosecution to come prepared with its witnesses and evidence to prove the voluntariness of the confession, instead of seeking for adjournments and looking for its witnesses when the issue is raised.*

*It is however necessary to note that a Defendant shall not be precluded from raising the objection on the ground of failure to file the Notice as the right to raise the objection is founded on the provisions of Section 29(2) of the Evidence Act. This is why we have sought to enforce compliance by making it mandatory that that information be supplied in any interlocutory application that the Defendant may file.*

*It is also worth mentioning that the practice of provisional admission in evidence of disputed evidence pending a decision on its admissibility in the Court's Ruling that will be incorporated in the final judgment, is now common and widespread especially in cases that require expeditious determination.*

***See***

***ITA VS EKPEYONG (2001) I NWLR PART 695 PAGE 587 AT 613.***

*Criminal proceedings involving the liberty of citizens are certainly matters that require very urgent determination and as such are appropriate cases for the Court to resort to the said practice of provisional admission of evidence.*

*Upon admitting a confessional statement provisionally, the parties shall be at liberty to use same in the course of the trial such as for cross – examination etc. If at the end of the day the confessional statement is rejected in evidence by the Court, the Court will then expunge any part of the proceedings where it was used.*

***Using Practice Direction to give effect to the New Proposal***

*The Constitution confers on the respective Chief Judges of the various trial Courts, the power to make rules for their Courts with respect to practice and procedure. These can be found in Sections 254, 259 & 274 of the Constitution, which we herein reproduce as follows:*

*"254. Subject to the provisions of any Act of the National Assembly, the Chief Judge of the Federal High Court may make rules for regulating the practice and procedure of the Federal High Court."*

*"259. Subject to the provisions of any Act of the National Assembly, the Chief Judge of the High Court of the Federal Capital Territory, Abuja may make rules for regulating the practice and procedure of the High Court of the Federal Capital Territory, Abuja."*

*"274. Subject to the provisions of any law made by the House of Assembly of a State, the Chief Judge of a State may make rules for regulating the practice and procedure of the High Court of the State"*

*The Courts have consistently upheld the powers of the Heads of the various Courts to make Practice Directions for their Courts by virtue of the aforesaid provisions.*

***See***

***BUHARI VS INEC (2008) 19 NWLR PART 1120 PAGE 246 also reported as*** *(2008) LPELR-814(SC) page 1 at 37 – 39,*

***N.A.A. VS OKORO (1995) 8 NWLR PART 403 PAGE 510***

***OKEREKE VS YARADUA (2008) 12 NWLR PART 1100 PAGE 95***

***EZENWOSU VS NGONADI (1992) LPELR – 1208 (SC) PAGE 1 AT 14 – 15.***

*The Supreme Court was very clear on the role of Practice Directions in regulating practice and procedure of the Courts in the case of* ***BUHARI VS INEC & ORS (SUPRA) AT 341*** *when the Court held as follows:*

> *"Practice Directions, as the name implies, direct the practice of the Court in a particular area of procedure of the Court. A Practice Direction would be described as a written explanation of how to proceed in a particular area of law in a particular Court. …"*

*Thus, all the various Chief Judges would have to do, is to issue Practice Directions for their Courts prescribing the aforesaid procedure.*

*It may be argued that by making the said Practice Directions, the Chief Judges may be delving into the realm of evidence which is*

*the exclusive legislative preserve of the National Assembly by virtue of the provisions of item 23 of Part 1 of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 as amended.*

*The simple answer to any such argument lies in the definition of evidence. The Blacks Law Dictionary ninth edition 2009 at page 635 defines evidence as follows:*

> *"1. Something (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact.*
> *2. The collective mass of things especially testimony and exhibits presented before a tribunal in a given dispute.*
> *3. The body of law regulating the admissibility of what is offered as proof into the record of a legal proceeding."*

***See***

***AKINTOLA VS SOLANA (1986) 2 NWLR PART 24 PAGE 598 AT 621*** *where the Supreme Court held as follows:*

> *"Simply put, it is the means by which any matter of fact, the truth of which is submitted to investigation may be established or disproved."*

***STERLING BANK PLC VS FASHOLA (2015) 5 NWLR PART 1453 PAGE 405 AT 429 – 430.***

*From the foregoing, it is clear that the procedure prescribed above is not one of evidence but of practice and procedure. It merely stipulates at what point in the proceedings that the evidence will be adduced and ruling delivered. It has nothing to do with the nature and type of evidence to be adduced. As defined above, evidence is something used to prove or disprove the existence of a fact and this procedure has nothing to do with that, save to regulate trial within trial and the time evidence would be brought in, in the course of the trial within trial. This procedure is not one regulating the type, quality or quantum of evidence to be adduced*

*in trial within trial. It is clearly one of practice and procedure and not evidence.*

*The Supreme Court has also acknowledged that the manner of the admissibility of a confessional statement in criminal proceedings that is being challenged is one of practice and procedure.*

***See***

***IKUMONIHAN v. STATE (2018) LPELR-44362(SC) page 1 at pages 7 – 8*** *where the Court held as follows:*

> ***"A distinction is usually drawn as regards practice and procedure in relation to the admissibility of a confession in evidence - - between a confession objected to on the ground that it was not made at all by an Accused, in which case such a confession may be said to have been retracted, and a confession objected on the ground that it was not voluntary in that although an Accused Person agreed to have made the confession, his complaint would be that he was forced or induced to make it. In the latter case, what is attacked is the admissibility in evidence of the confession and, therefore, a trial within trial must be held, the confession having been challenged on voi dire so as to determine whether or not the confession was voluntary. …"***

***HASSAN v. STATE (2016) LPELR-42554(SC) page 1 at 15 – 16*** *where the Supreme Court per Olabode Rhodes – Vivour, JSC, held as follows:*

> *"When in the course of trial the prosecution seeks to tender the confessional statement of an accused person, as it happened in this case and there is an objection on the grounds that it was obtained under duress and not voluntarily made, what is in issue is the admissibility in evidence of the confession and the trial Judge must order that a trial-within-trial (mini trial) is held. The purpose of a trial-within-trial is to determine whether or not the confession was voluntary. …*

***The well laid down procedure for conducting a trial-within-trial is as follows****: Since the voluntariness of the confession is challenged the onus is on the prosecution to show that the confessional statement was voluntarily made by the accused person. So the prosecution leads evidence to show that such was the case. Thereafter, the accused person gives evidence to show that he was beaten up etc before he made the statement. And to prove that he was beaten up he would do well to call witnesses to support his case, and a medical doctor is usually a good witness. "*

***C.O.P v. ALOZIE (2017) LPELR-41983(SC) page 1 at 37 – 38*** *where the Supreme Court held as follows:*

*"**My lords. I think it is not out of place to restate the law on procedure of determining the voluntariness of confessional statement.** Where in the course of criminal proceedings a confessional statement of an accused person is tendered in evidence by the prosecution and question is raised by the defence with regard to whether it was made or obtained voluntarily, the trial Court has a duty, and in fact MUST suspend the main trial and conduct a trial within trial to determine its voluntariness or otherwise. At the end of the mini trial, the trial Court must make up its mind in the light of the evidence adduced before it by both the prosecution and the defence, on whether such statement was voluntarily made by the accused or not. If in its opinion, the statement in question was voluntarily made, it will admit it. But if the trial Court finds that it was not voluntarily obtained, for instance there was slightest evidence of duress, force, promise, inducement or that trick was applied to the accused person, it will reject such statement and mark it so in its ruling and will proceed with the main trial, except that it will not act on it in its determination on the case. But if on the other hand, the trial Court after conducting the trial within trial finds that the statement was voluntarily made by the accused, it will deliver its ruling admitting it and mark it so accordingly and then proceed with the main trial and it*

*could later use or act on it in the determination of the case. …"*

***The Supreme Court also defined 'Practice" in BUHARI VS INEC & ORS (SUPRA) AT 341*** *in the following terms, ie:*

> *"… The word* ***'Practice' is the form, manner and order of conducting and carrying on suits or prosecutions in the Courts through their various stages according to the principles of law and the rules laid down by the respective Courts.****" (Emphasis supplied)*

*The proposal we are espousing herein deals with the order or manner of conducting proceedings in criminal trials and no more and thus clearly one of practice and procedure squarely within the scope of Practice Directions to regulate.*

*Also in order to make this procedure applicable to Magistrates' Courts, the relevant authorities empowered by the Magistrates' Courts' Laws to make Rules for Magistrates' Courts can enact the foregoing procedure as Practice Direction for the Magistrates' Courts.*

***The proposed Practice Direction versus judgments of Courts***

*Another issue that could be raised with respect to the use of Practice Directions as earlier suggested is, whether Practice Directions can supplant the procedure of trial within trial that has long been established by a very long line of judicial authorities even from the Supreme Court?*

*The answer is clearly in the affirmative. Once the Practice Directions are made, the said judicial authorities on 'trial within trial' automatically become irrelevant and inapplicable. This is because in terms of the procedure, the Courts have been merely applying longstanding common law practice and procedure on the issue in the absence of any extant law, Rule of Court or Practice Direction regulating trial within trial. The Courts are bound to apply any lawful procedure enacted by the authority vested with*

*the power to make rules of procedure or practice directions for the Courts such as the Honourable Chief Judges of the various trial Courts. That is why when Rules of Courts change, all previous judicial interpretations of the former rules become obsolete. The judicial authorities interpreting the former rules cannot be made applicable to new rules nor be used to defeat new rules made by the lawful authority.*

*Therefore when practice directions are made by the lawful authorities, it becomes incumbent on the Courts to apply them like the Courts have been doing with respect to Election Petition Practice Directions and several other Practice Directions or even Rules of Courts.*

*It is also important to mention that Practice Directions are also Rules of Court that must be obeyed.*

***See***

***ORAEKWE & ANOR v. CHUKWUKA & ORS (2010) LPELR-9128(CA) page 1 at 28 – 29,*** *where the Court held as follows:*

> *"Practice Directions, as the name implies, direct the practice of the Court in a particular area of procedure of the Court. A practice Direction could also be described as a written explanation of how to proceed in a particular area of law in a particular Court - see Buhari v. INEC* ***(2008) 19 NWLR (Pt.1120) 246 SC,*** *where Tobi, JSC, further added as follows - "what is the legal status of practice Directions? practice Directions have the force of law in the same way as rules of Court, I held in* ***Abubakar v. Yar-Adua (2008) 4 NWLR (Pt. 1078) 465 at 511*** *that rules of Court include practice Direction. - - Practice Directions will, however, not have the force of law, if they are in conflict with the Constitution or the statute which enables them ".*

***BRITTANIA-U (NIG) LTD v. SEPLAT PETROLEUM DEVELOPMENT CO. LTD & ORS (2016) LPELR-40007(SC) page 1 at 58*** *where the Supreme Court per Ngwuta, JSC, held as follows:*

*"Now "Direction" in the context of practice direction connotes command or precept emanating from an authority. See Buhari v. INEC (2009) All FWLR (Pt. 459) 419 SC at 513 para F. Rules of Court include practice directions."*

***ORAEKWE & ANOR V. CHUKWUKA & ORS (2010) LPELR-9128 (CA) page 1 at 29*** *where the Court held as follows:*

*"… In other words, the Election Tribunal and Court Practice Directions 2007, qualifies as a rule of Court, and since the rules of Court must be obeyed, it therefore follows that the said Practice Directions must also be obeyed. …"*

***The reason for the proposed Practice Direction***

*Obviously the reason for the proposed Practice Direction is to eliminate the delay occasioned by trial within trial and enhance speedy determination of criminal trials. This infact is the main reason for the making of Practice Directions.*

***See***

***BUHARI v. INEC & ORS. (2008) LPELR-814(SC) at page 45*** *where the Supreme Court per Niki Tobi, JSC (as he then was) held as follows:*

*"I should say that the Practice Directions vindicate the Constitutional Right to Fair Hearing by providing for the speedy hearing of petitions. As a matter of law, the need for speedy hearing of petitions is the fulcrum of the Practice Directions and this Court is always on the side of speedy hearing of cases."*

***The case of STATE VS SANI***

*It is necessary to draw attention to the case of the* ***STATE v. SANI (2018) LPELR-43598(SC) page 1 at 23 – 25****. In that case the learned trial Judge mixed up the trial within trial with the main*

*case. Infact some of the evidence of the witnesses that testified in the substantive trial were taken as having been adopted as part of the trial within trial and then the ruling on the trial within trial was included in the judgment. The Court of Appeal set aside the judgment. On further Appeal to the Supreme Court, the Supreme Court affirmed the judgment of the Court of Appeal and dismissed the Appeal. The Supreme Court at pages 23 - 25 per Rhodes – Vivour held as follows:*

> *"… Once a trial within trial is ordered by the trial judge the main trial is suspended until the conclusion of the trial within trial.*
> *The trial within trial commences with the state calling witnesses, usually police officers who would be examined under oath by the state and cross-examined by the defence. The witnesses for the state are to satisfy the Court that the accused person made the confessional statement voluntarily while the defence counsel is to show the contrary i.e that the accused person was forced or induced to make the statement. After the state concludes its evidence the accused person goes into the witness box to explain to the Court how he was forced, or induced to make the statement. He may call witnesses, but they can only be called after he has given evidence. I have reproduced extracts from proceedings in the trial Court on the mini trial. It is so clear that the learned trial judge made no attempt to follow well laid down procedure in conducting the trial within trial.*
>
> *It was wrong for proceedings in the trial within trial and the main trial to be taken together, and allowing the accused person no time whatsoever after the Ruling on the trial within trial was delivered before delivery of judgment in the main trial. Such a procedure is unknown to criminal procedure and prejudicial to the accused person even if his counsel consents to such strange procedure.*
>
> *The overall interest of justice is clearly in question. Lumping the trial within trial with the main trial clearly compromised the respondent's right to a fair hearing as he was denied the opportunity after the Ruling to decide how to go about his*

*defence before judgment was delivered. The accused person should not be denied that right even if his counsel acquiesced to this irregular procedure. This is premised on the position of the law that fair hearing in a criminal trial cannot be waived.*

*It must never be forgotten that this is a criminal trial that carries the death penalty. Substantial justice must be seen to be done. Reliance on technicalities would definitely lead to injustice.*

*An accused person must always be given the benefit of the doubt when there are blunders in the case of the prosecution. None compliance with well laid down procedure would never result in the Court achieving substantial justice. We are not satisfied with the procedure adopted by the learned trial judge in the conduct of the trial within trial. The trial within trial is accordingly declared a nullity. Exhibits F and F1 which were admitted in evidence in the trial within trial were wrongly admitted as the procedure adopted was wrong. After considering all the arguments we think that the Court of Appeal could have come to no other conclusion, and that the appeal must be dismissed .This appeal is hereby dismissed."*

*This case and other similar cases were decided based on the extant position of the law on the practice and procedure relating to trial within trial that requires the suspension of the substantive trial and the conduct of a separate mini – trial whenever such an objection is taken to the admissibility of a confessional statement. Under the present system, the Accused or the Defendant has a right to a separate trial within trial and when this right is denied, it must certainly lead to an infringement of the Accused persons' right to fair hearing as was held by the Supreme Court in this case.*

*Once the legal position with respect to practice and procedure regulating trial within trial changes, as we are proposing, then this case and other similar cases will pale into insignificance, as the Accused person will no longer have a right to separate trial within*

*trial. The Courts would then be interpreting the provisions of the Practice Direction and not applying the decisions which prescribed separate trial. The Accused person's right would be to the determination of the voluntariness of the confession as part of the proceedings in the substantive case, provided that he is afforded the right to object, cross – examine witnesses called by the prosecution, call his own witnesses and address the Court on the issue after calling his witnesses. But no more suspension of the substantive trial and the holding of a separate mini trial as is now done.*

*The decision of the Supreme Court in this matter and any other similar matter do not therefore detract from the proposal we are making herein.*

## *CONCLUSION*

*The foregoing procedure will greatly reduce the time spent in criminal prosecutions and ensure that these matters are completed on time. We commend the procedure to all Chief Judges of trial Courts and other heads of trial Courts who are imbued with the power to make rules or practice directions for such Courts.*

***Kemasuode Wodu*** *is the immediate past Honourable Attorney – General & Commissioner for Justice, Bayelsa State and a former National Legal Adviser of the Nigerian Bar Association*
***18th March, 2019***

# DRAFT PRACTICE DIRECTION

……. STATE HIGH COURT PRACTICE DIRECTION 2018

Commencement ( …… Day of ……., 2019)

In Exercise of the Power Conferred upon me by Section 274 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and by virtue of all powers enabling me in that behalf, I, Honourable Justice …… Chief Judge of …….. State, hereby issue the following Practice Direction for the …… State High Court.

ARRANGEMENT OF SECTIONS



## APPLICABILITY

1. This Practice Direction shall, save to the extent and as may otherwise be ordered by the Chief Judge of ……. State pursuant to Section 274 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) apply to all criminal trials in the …… State High Court.

## OBJECTIVE AND GUIDING PRINCIPLE

2 The purpose of this Practice Direction is to expedite the trial of criminal cases by eliminating the delay occasioned in the proceedings by stopping the substantive proceedings and conducting a trial within trial when a Defendant raises objection to the admissibility of a confessional statement on the ground that same was not obtained voluntarily.

DUTY OF THE DEFENDANT

3(1) Where a Defendant is desirous of objecting to the admissibility of a confessional statement in any criminal proceedings on the ground that same was not obtained voluntarily, he shall not later than 7 days after the service on him of the charge or information or at such later date as the Court may permit, cause to be filed and served on the prosecution, a notice (as in Form 01 in the Schedule hereto) that he intends to object to the admissibility of the confessional statement in the course of the trial, on the aforesaid ground.

(2) The Defendant shall in all interlocutory applications made by him in the proceedings, state whether the aforesaid requirement applies to the proceedings and if so, whether he has complied with same.

CONDUCT OF THE TRIAL

4(1) When a Defendant raises objection to the admissibility of a confessional statement on the ground that it was not voluntarily obtained, the Prosecution shall, if it is desirous of disputing same, as part of its case, proceed to call witnesses and or adduce evidence to prove that the said statement was obtained voluntarily.

(2) The Defendant shall then during his defence and as part of his defence, call witnesses and or adduce evidence to prove that the confessional statement was not obtained voluntarily.

(3) The parties shall thereafter include legal arguments with respect to the admissibility or otherwise of the confessional statement in their final addresses and the Court shall in the final judgment in the matter include its ruling on the admissibility or otherwise of the said confessional statement.

Made this …… day of ……. 2019

SIGNED

HONOURABLE JUSTICE ……
CHIEF JUDGE OF …… STATE

## ***SCHEDULE***

### *HEADING*

### *NOTICE OF OBJECTION TO CONFESSIONAL STATEMENT*

***TAKE NOTICE*** *that the Defendant/Accused Person shall during the trial object to the admissibility of the confessional statement on the ground that it was not obtained voluntarily from the Defendant/Accused person.*

*Dated the ……. day of …… 20 ….*

*SIGNED*
*……..*
*DEFENCE COUNSEL/DEFENDANT/ACCUSED PERSON*