

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE KADUNA JUDICIAL DIVISION**  
**HOLDEN AT KADUNA**

**ON TUESDAY THE 15<sup>TH</sup> DAY OF JANUARY, 2019 BEFORE HIS**  
**LORDSHIP, THE HONOURABLE JUSTICE S. M. SHUAIBU**  
**JUDGE**

**CHARGE NO: FHC/KD/CS/72<sup>C</sup>/2009**

**BETWEEN:**

FEDERAL REPUBLIC OF NIGERIA

- COMPLAINANT

**AND**

1. MANSUR ALI MASHI
2. ABDULMUMINI MUSTAPHA
3. HASSAN USMAN
4. SHEHU ALIYU
5. ABDU MU'AZU

- ACCUSED PERSONS

**RULING**

On the 6<sup>th</sup> July, 2017 and in the course of proceeding in this Case, the Learned Prosecution Counsel applied to tender in evidence the extra Judicial Statements of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Accused Persons in evidence. The application to tender the Statements was made through the 4<sup>th</sup> Prosecution witness, **ONWUKWE FELIX,**

a Deputy Superintendant of Police (Retired). He was part of the team of operatives of the Economic and Financial Crimes Commission, that investigated the case leading to the Proceeding against the Accused Persons herein.

The application was opposed by the Learned Counsel for the 1<sup>st</sup> Accused Person. The Learned Counsel, **A. D. UMAR ESQ** said that the 1<sup>st</sup> Accused Person, **MANSUR ALI MASHI** did not make the Statements sought to be tendered voluntarily. That he was oppressed and degrading treatment meted on him before the Statements were obtained.

The second Accused Person, **ABDULMUMINI MUSTAPHER**, who was not represented by Counsel on that day, also opposed the application to admit his Statements in evidence. He said that he did not make the Statements voluntarily.

As for the 4<sup>th</sup> and the 5<sup>th</sup> Accused Persons namely **SHEHU ALIYU** and **ABDU MUAZU**, however, their Learned Counsel, **IBRAHIM BAWA ESQ** did not oppose the application to admit their Statements in evidence.

Consequently the Court admitted in evidence the extra – Judicial Statements of the 4<sup>th</sup> and the 5<sup>th</sup> Accused Persons. They were marked exhibits EFCC 2 and EFCC 3 respectively.

In relation to the Statements of the 1<sup>st</sup> and 2<sup>nd</sup> Accused Persons however, the Court ordered for a trial within trial to determine the circumstances under which the Statements of the 1<sup>st</sup> and the 2<sup>nd</sup> Accused Persons were made or obtained.

Now, in the case of **SALIU VS. THE STATE (2014) ALL FWLR Part 743 Page 2051**, the Supreme Court said at page 2069 that:-

*A trial within trial is mini trial conducted to find out if the Accused Person made his confessional Statement voluntarily.*

The Law is trite that in a trial within trial, the burden squarely rests on the prosecution to prove that the extra Judicial Statement of an Accused Person was made voluntarily. The standard of proof is one beyond all reasonable doubt. In the case of **GBADAMOSI VS THE STATE (1992) 11 – 12 SCNJ Page 269**, the Supreme Court held



that the onus of proving affirmatively beyond all reasonable doubt that a confession is voluntary rests on the Prosecution.

The burden placed on the Prosecution at this stage of the case is to be discharged **Via** a Proceeding called trial within trial. The statutory basis for the proceeding is to be found in the provisions of section 29 of the Evidence Act 2011. Essentially the essence of trial within trial is the exclusion from evidence of any extra Judicial statement of an Accused Person, that is afflicted by a **Vice** identified by the provision of section 29 (2) paragraph (a) or (b) of the Evidence Act 2011.

It would appear to me, based on the provisions of section 29 (2) (b) of the Evidence Act 2011, that once an extra Judicial Statement of an Accused Person is shown to have been afflicted by a **vice** identified by the provisions of section 29 (2) (a) or (b) of the Evidence Act, 2011, the Court has a duty to exclude the extra Judicial Statement, notwithstanding that the statement may be true.



Indeed in the light of the significance of the issue to fair trial, the Law enjoins the Court to raise the issue **Suo Motu** where the defence Counsel fails to do so.

Section 29 (3) of the Evidence Act, 2011 says that:-

*(3) In any proceeding 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 either sub – section (2) (a) or (b) of this section.*

One unique feature of a trial within trial is that it is a separate, distinct and independent trial from the main proceeding giving birth to it. The issue involve in a trial within trial is narrow and strictly limited or confined to establishing that an extra Judicial Statement sought to be tendered in evidence is not afflicted by a **Vice** identified by either paragraph (a) or (b) sub – Section (2) of section 29 of the Evidence Act 2011.

Now, the foregoing is the position of the Law on the issue of trial within trial. Having analysed the position of the Law on the issue I shall now proceed to consider the case before me.

In the bid to establish that the 1<sup>st</sup> and 2<sup>nd</sup> Accused Persons made their Statements freely and voluntarily, the Learned Prosecution Counsel called two (2) witnesses at the trial within trial.

The first witness is **FELIX ONWUKWE**, a Deputy Superintendant of Police (retired) and was part of the team of operatives that investigated the case leading to the present proceeding against the Accused Persons. At the time relevant to the facts giving rise to this case the witness was serving with the Economic and Financial Crimes Commission (EFCC).

He gave evidence on the 13<sup>th</sup> November 2017 wherein the witness said:-

*The Statements of the 1<sup>st</sup> and 2<sup>nd</sup> Accused Persons were recorded voluntarily. The Statements were made at the Bank Fraud Unit in the Office of the Economic and Financial*

Crimes Commission, Kano. The Office where the Statements were made is just like a semi Hall. The leaders and members of investigation teams of the Unit occupy that Office. The Office has seven tables in all. The Office is opposite the Office of the Head of operations. There is no commotion that will arise in the Office that the Head of operations will not hear. I was present when all the Statements were made. I witnessed all the Statements. On each occasion the Accused Persons made Statements they were cautioned. They signed the cautionary words in each case before writing their Statements.

During the process of investigation, the Accused Persons were interviewed by the Head of operations at different times. They never complained to the Head of operations that they were tortured, intimidated or Coerced before making their Statements. We were not



*interested in getting confession from the Accused Persons. All that we were after is evidence. I insist that the Statements of the Accused Persons were not obtained by intimidation, threat or promise.*

In his answers to questions in cross examination by the Learned Counsel for the 1<sup>st</sup> Accused, the first prosecution witness at the trial within trial said:-

*Myself and **HALADU KASSIM** were involved in taking the Statements of the 1<sup>st</sup> Accused Person. We took the Statements during working hours ie between 7:30 a.m to 7:30 pm. During that time visitors are allowed into the Bank Fraud Unit Office. The 1<sup>st</sup> Accused Person made a total of twelve (12) Statements. We did not take up to twelve (12) Statements of the 1<sup>st</sup> Accused Person because we were not satisfied with what he had said previously in his Statements. The Statements of the 1<sup>st</sup> Accused Person were*

not contradictory. They were consistent. I cannot remember the exact number of Statements made by the Accused Person before he was released on bail. The time is quite long. We did not refuse to release the 1<sup>st</sup> Accused Person on bail until he made the twelve (12) Statements. We were not interested in making the 1<sup>st</sup> Accused Person to make confessional Statements. I did not assault the 1<sup>st</sup> Accused Person before he made his Statements. I did not force the 1<sup>st</sup> Accused Person to make his Statements by asking him to put some words in bracket. Rather I asked him to bracket the words instead of cancelling them. I never teleguided the 1<sup>st</sup> Accused Person while writing his Statements.

In his answers to questions in cross examination by the Learned Counsel for the 2<sup>nd</sup> Accused Person, the first Prosecution witness in the trial within trial said:-

I obtained Six (6) Statements from the 2<sup>nd</sup> Accused Person. I cannot remember the date the 2<sup>nd</sup> Accused Person was arrested. The 2<sup>nd</sup> Accused person made statements on the day he was arrested. The first Statement by the 2<sup>nd</sup> Accused Person is dated 22<sup>nd</sup> September 2009. The first Statement that followed it was made on the 7<sup>th</sup> August 2009. The second one that followed it was made on the 25<sup>th</sup> July, 2009 and the third one was made on the 22<sup>nd</sup> July, 2009. I insist that the 2<sup>nd</sup> accused person made a total of six (6) statements. There two (2) statements made by the 2<sup>nd</sup> accused person on the 7<sup>th</sup> December, 2009. My colleague, **HALADU KASSIM** was involved in all the statements the 2<sup>nd</sup> accused person made. The statements showed to me in open Court, are all the statements made by the 2<sup>nd</sup> accused person while he was in our custody. It is not true that the 2<sup>nd</sup> accused person made a total of sixteen



(16) statements and that we tore some of the statements and asked him to write fresh statements. It is not true that part of the conditions for admitting the 2<sup>nd</sup> accused person to bail is to admit the allegations against him.

The statements made by the 2<sup>nd</sup> accused person after he was released on bail is not in relation to this Case. Those statements relate to his assets which is not the subject - matter of the present proceeding.

The Second prosecution witness in the trial within trial is **HALADU KASSIM**. He is an operative with the Economic and Financial Crimes Commission (EFCC) Kano Zonal Office. He is part or member of the team of operatives that investigated the case against the accused persons in this case. He also testified on the 13<sup>th</sup> November, 2017. The witness said:-

*My name is **HALADU KASSIM**, a Superintendent of Police attached to EFCC Zonal office, 2008 - 2012. I know the accused*

persons in the dock. I participated in taking their statements while I was serving in the Banking Fraud Unit, EFCC Zonal Office Kano. I was one of the officers that investigated the case against them.

The statements of the 1<sup>st</sup> and 2<sup>nd</sup> accused persons were taken without any threats, intimidation, inducement or promise. The statements were voluntarily made. The statements were taken in an open office at the Bank Fraud Unit with the occupants of the office, namely the Head of the Unit, **MAINA KASSIM**, team leaders and some members of the team present in the Hall. When the accused persons came, we showed them the petition. After that we cautioned them in our standard statement sheet. After interviewing them, we asked them to give an explanation voluntarily.

The 1<sup>st</sup> accused person made about thirteen (13) different statements. The 2<sup>nd</sup> accused person made about six (6) different statements. Apart from their Original statements, they also made additional statements. Atimes the accused persons would apply to withdraw statements already made. However, we refused and told them that they can only make further or additional statements.

Myself and **FELIX ONWUKWE** took the statements of the accused persons. **MAINA KASSIM** was the Head of the team. He did not record or take statements of the accused persons. There was no need to force the accused persons to make confessional statements. The statements were voluntarily made.



In his answers to questions in cross examination by the Learned Counsel for the 1<sup>st</sup> accused person, the P.W.2 in the trial within trial said:-

*We were together with **FELIX ONWUKWE** when the statements of the 1<sup>st</sup> Accused person were made. We were together at the point a statement is made once the statement has our signatures together.*

*The office where the statements were made by the accused persons was free for any person to enter. The 1<sup>st</sup> Accused person made twelve (12) statements. The additional statements were made at his request. The 1<sup>st</sup> accused person was not forced to admit the allegations against him by making further or additional statements.*

*I did not threaten the 1<sup>st</sup> accused person that if he does not admit the allegations in the petition he will not be released. It is not true that I granted the 1<sup>st</sup> accused person bail after he had*

*admitted of the allegations contained in the petition. I cannot give the exact number of the Statements made by the 1<sup>st</sup> Accused person before he was granted bail.*

In his answers to questions in cross examination by the Learned Counsel for the 2<sup>nd</sup> Accused person, the P.W.2 in the trial within trial **HALADU KASSIM** said:-

*I gave evidence before this Court differently constituted in a trial within trial on the 28<sup>th</sup> March 2012. However I do not have my eye glass so I cannot read out the proceeding of that day before this Court differently constituted. There are six (6) statements in all made by the 2<sup>nd</sup> Accused person. Some of the statements were made while the 2<sup>nd</sup> accused person was in our custody while other statements were made after he was released on bail. It is not true that the 2<sup>nd</sup> accused person was released on bail on condition that he admits of the allegations*

*against him as contained in the petition. The additional statements were not made as a condition for the continuation of the bail of the 2<sup>nd</sup> accused person. I cannot recall that I said that the 2<sup>nd</sup> accused person made eleven (11) statements in a different proceeding.*

After the PW2, **HALADU KASSIM** was discharged by the court as a witness in the trial within trial, the Learned prosecution counsel closed his case.

On the 27<sup>th</sup> February, 2017 the 1<sup>st</sup> accused person, **MANSUR ALI MASHI** testified as the first Defence witness at the trial within trial. The second witness for the Defence **TUKUR ABDULHAMEED** also testified on the same day.

The third and last witness for the Defence at the trial is the second accused person, **ABDULMUMINI MUSTAPHER**. He testified on the 21<sup>st</sup> March 2018.

I have considered the evidence of these witnesses against the application by the prosecution to admit the statements of the 1<sup>st</sup>



and the 2<sup>nd</sup> accused persons in evidence. I discovered that the case put forward by the 1<sup>st</sup> and the 2<sup>nd</sup> Accused persons are the same.

Simply put that when the 1<sup>st</sup> and 2<sup>nd</sup> accused persons, **MANSUR ALI MASHI** and **ABDULMUMINI MUSTAPHER** respectively were arrested and confronted with a petition submitted to the Economic and Financial Crimes Commission (EFCC), by Sterling Bank Plc, their initial reaction was to decline making any statement on the allegations contained in the petition against them.

The 1<sup>st</sup> Accused person said, that since the cautionary words written on the EFCC standard statement sheet, gave him the option to make or decline to make a statement, he settled for the latter and accordingly informed the operatives of the Commission especially **FELIX ONWUKWE** and **KASSIM MAINA** of his choice or option.

The 1<sup>st</sup> accused person said that his choice or decision not to make a statement, infuriated the officers of the EFCC especially **KASSIM MAINA**. That **MAINA** got angry, shouted at the 1<sup>st</sup> accused person and threw a fist at him. The 1<sup>st</sup> accused person said that he however succeeded in blocking the blow with his hand.

The 1<sup>st</sup> accused person said that he was then locked up in the cell. That the next day, he was brought before **KASSIM MAINA**. That **KASSIM MAINA** is the team leader. That **MAINA** then called **FELIX ONWUKWE** and **HALADU KAZEEM** and directed them to take his statement. The 1<sup>st</sup> accused person said that **MAINA** told him to go and write his statement even if it means giving his personal particulars or biography.

The 1<sup>st</sup> accused person said that he was threatened by **HALIDU KASSIM** and had no choice but to write his statements as the EFCC operatives wanted or directed him to write.

In his answers to questions in cross examination, the 1<sup>st</sup> accused person said:-

*The statements that I made represents what the EFCC operatives wanted me to write and not what I intended to write as my response to the petition.*



Further in his answers to questions in cross examination, the 1<sup>st</sup> accused person, **MANSUR ALI MASHI** as a Defence witness at the trial within trial said:-

*I wrote all the statements that I made myself but I was been teleguided to write those statements.*

The case put forward by the 2<sup>nd</sup> accused person, **ABDULMUMINI MUSTAPHER** is also along the same argument. On the 21<sup>st</sup> March 2018, the 2<sup>nd</sup> accused person as a witness for the Defence, at the trial within trial said:-

*When I was called at the EFCC office, rather when I was taken there, they showed me a petition alleging that I approved some loans fictitiously and the EFCC claimed or alleged that we shared the money with my colleagues after approving and withdrawing the loan. I told the EFCC operatives that as a Branch Manager, I do not have the authority to approve loans for anybody. That all the loans were approved at*



*the Regional Office. That I only recommended approval based on the credit analysis made at the Branch Office of the Bank.*

*Looking at the petition again, I realized that the approving officer is also the petitioner. So I was very much reluctant to issue statements on loans approved by my Superior Officer.*

*But the EFCC Officials insisted that I must issue a statement. I made a statement on their insistence.*

**ABDULMUMINI MUSTAPHER**, the 2<sup>nd</sup> accused person as the third Defence witness at the trial within trial, denied that the idea or message in his statements were his own, when he further stated in his evidence in chief as follows:-

*When we got back, they were bringing me out of the cell intermittently to have discussions and requested me to make guided statements. At a point in one of the statements, I made it*

*categorically clear, that I am making the statements as requested by the EFCC operatives as a condition for my release on bail from detention.*

In his answers to questions in cross examination, the third Defence witness in the trial within trial, **ABDULMUMINI MUSTAPHER** admitted that the statements shown to him in court that the prosecution intends to put in evidence, are his statements. That the statements were not made on the same day. That he made some of the statements after he was released on bail.

At the close of the case by the Defence at the trial within trial, the court ordered for the filling of written addresses. In compliance with the order of court, the respective Learned Counsel filed and exchanged written addresses. The written addresses were adopted by Learned Counsel on the 31<sup>st</sup> May, 2018. Ruling was fixed for 2<sup>nd</sup> July, 2018. However the Ruling was not delivered on that day. By reason of court vacation, the Ruling was fixed for 3<sup>rd</sup> October, 2018.



However the Court became *funetus officio* on the matter by reason of my transfer to the Calabar Division of the Court. Subsequently, however the Chief Judge of the Federal High Court granted me an Assignment order to deliver the Ruling on the matter and to continue with the hearing of the case to determination.

In his written address filed on the 11<sup>th</sup> May, 2018, the Learned Counsel for the 1<sup>st</sup> accused person, **A.D. UMAR ESQ** formulated an issue for determination as follows:-

*Whether the prosecution has proved that the statements tendered on the 7<sup>th</sup> day of June 2017 in charge **NO. FHC/KD/72C/2009** were obtained voluntarily.*

Learned Defence Counsel reviewed the evidence led by the two prosecution witnesses at the trial, namely **FELIX ONWUKWE** and **HALADU KASSIM** and answered the issue he formulated in the negative. Learned Counsel listed instances of contradictory evidence of the two (2) witnesses and concluded that their evidence failed to discharge the burden placed on the prosecution to prove the central issue in controversy in the proceeding, beyond all reasonable doubt.



That the prosecution must succeed on the strength of its own case and must not be allowed to rely and take advantage of weakness in the case by the Defence.

On the other hand, the Learned Counsel for the 1<sup>st</sup> accused person urged the court to accept and act on the evidence of the 1<sup>st</sup> accused person and his cousin at the trial for being consistent and credible. That, the evidence of these witnesses were not discredited during cross examination.

The Learned Defence Counsel for the 1<sup>st</sup> accused person, A.D. UMAR ESQ urged the Court to reject the statements of the 1<sup>st</sup> accused person in evidence for the failure by the prosecution to prove that they were made freely and voluntarily.

In his written address filed on the 21<sup>st</sup> May, 2018, the Learned Counsel for the 2<sup>nd</sup> Accused person, **SULAIMAN YUSUF ESQ** formulated an issue as follows:-

*Whether the statements obtained in the circumstances enumerated above were*

*statements made voluntarily without influence and threat.*

The circumstances enumerated by the Learned Counsel for the 2<sup>nd</sup> accused person are circumstances emanating from the evidence of the 2<sup>nd</sup> accused person as the third witness for the Defence.

That one of such circumstance is that the officials of the EFCC insisted that the 2<sup>nd</sup> accused person must make a statement. That the statements he made were on insistence of the EFCC officials.

Secondly, that the officials of the EFCC requested the 2<sup>nd</sup> accused person to make guided statements.

Thirdly, that the officials of the EFCC rejected the initial statements of the 2<sup>nd</sup> accused person and insisted that he must tell them the truth by admitting the allegations as contained in the petition by Sterling Bank to the commission before he will be released on bail.

Learned Counsel for the 2<sup>nd</sup> accused person therefore argued that the statements sought to be tendered was not freely made by the 2<sup>nd</sup> accused person in the light of the circumstances and manners the statements were obtained.

That the prosecution failed to show that the statements were free and voluntary. That this failure render the statements inadmissible in evidence. Learned Counsel cited the case of **ONYENYE VS. THE STATE (2012) ALL FWLR PART 643 PAGE 1834 PARAGRAPH C** - as well as the case of **UZOUKWU VS. IGWE EZEONU II (1994) 10 SCNJ AT PAGE 20.**

Learned Counsel also referred the Court to the provision of Section 29 (3) of the Evidence Act 2011 in support of his submissions.

In conclusion, Learned Counsel urged the court to reject the statements of the 2<sup>nd</sup> accused person in evidence as the prosecution failed to establish that those statements were free and voluntary.

In his written address in reply filed on the 31<sup>st</sup> May, 2018, the Learned Prosecution Counsel, **NASIRU SALELE ESQ** formulated an issue for determination as follows:-

*Whether the voluntary statements of 1<sup>st</sup> and 2<sup>nd</sup> accused persons are admissible in law having been made voluntarily.*



The Learned Prosecution Counsel, reviewed the evidence of the prosecution witnesses at the trial within trial and submitted that their evidence is credible, consistent and has established beyond all reasonable doubt that the statements by the 1<sup>st</sup> and 2<sup>nd</sup> accused persons sought to be tendered in evidence were free and voluntary.

That the evidence of these witnesses that investigated the case leading to the proceeding against the accused persons show that the statements of the 1<sup>st</sup> and 2<sup>nd</sup> Accused persons were obtained in strict compliance with the requirements of the Judges Rules. That the 1<sup>st</sup> and 2<sup>nd</sup> Accused persons were duly cautioned on each time before making their statements.

Furthermore, that the evidence of the prosecution witnesses were not discredited in the course of cross examination. The Learned Prosecution Counsel therefore urged the court to accept, rely and act on the evidence of these witnesses on the authority of the decision in the case of **OFORLETE VS. THE STATE (2000) 12 NWLR PART 681 PAGE 415 AT 436.**

Finally Learned Prosecution Counsel, **NASIRU SALELE ESQ** urged the court to hold that the prosecution had discharged the burden placed on it by law in the proceeding. Counsel cited the case of **EMEKA VS. THE STATE (2001) 14 NWLR PART 1734 PAGE 666 AT 687.**

Those are the various Legal submissions of the respective Learned Counsel in this proceeding at the trial within trial. As I have already stated in this ruling earlier before now, the statutory basis for the proceeding are the provisions of section 29 of the Evidence Act, 2011. It provides:-

*29 (1) In any proceeding, 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 proceeding and is not excluded by the Court in pursuance of this section.*

*(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 circumstance 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.

(3) In any proceeding 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 either Sub Section (2) (a) or (b) of this section.*

Now, for an Accused Person to successfully invoke the provision of section 29 of the Evidence Act, 2011, the Accused Person must accept or admit that the Statement that the Prosecution proposes to give in evidence is his own Statement, but that however there is a **Caveat** ie that he made the Statement in breach of the provision of paragraph (a) or (b) of Sub Section (2) of Section 29 of the Evidence Act 2011.

That Statement the prosecution proposes to give in evidence may be true. Nevertheless once the Accused Person succeeds in establishing that the Statement, though truthful, was made in breach of Section 29 (2) (a) or (b), of the Evidence Act, 2011 then the Court has a duty to exclude the Statement notwithstanding that the Statement is true.

In the proceedings pursuant to the provisions of Section 29 (2) of the Evidence Act, 2011, the issue involved is not concerned with the content of the Statement. Rather the issue is one concerning the circumstances under which the Statement was made or obtained.

Where the Accused Person therefore deny the content of the Statement the Prosecution proposes to give in evidence, trial within trial pursuant to Section 29 (2) of the Evidence Act 2011 does not arise.

Denial of the content of a Statement is not contemplated by the provisions of Section 29 (2) paragraph (a) or (b) of the Evidence Act, 2011.

In the instant case each of the 1<sup>st</sup> and the 2<sup>nd</sup> Accused Persons deny the content of his Statements.

For instance it is on record in this proceeding, that the 1<sup>st</sup> Accused Person **Mansur Ali Mashi** said:-

*The Statements that I made represents  
what the EFCC operatives wanted me to*



*write and not what I intended to write as my response to the petition.*

The 1<sup>st</sup> Accused Person further said:-

*I wrote all the Statements that I made myself but I was been teleguided to write those Statements.*

As for the 2<sup>nd</sup> Accused Person, **Abdulmumini Mustapher**, he too deny his Statements in the following words:-

*When we got back, they were bringing me out of the cell intermittently to have discussions and requested me to make **guided** Statements. At a point in one of the Statements, I made it categorically clear, that I am making the Statements as **requested** by the EFCC operatives as a condition for my release on bail from detention.*



All these constitute denial by the 1<sup>st</sup> and 2<sup>nd</sup> Accused Persons of the Statements attributed to them and which the Prosecution proposes to give in evidence.

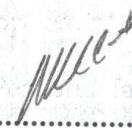
I therefore find that the denial of the content of a Statement by an Accused Person at a point the Statement is proposed to be given in evidence does not call for the conduct of a trial within trial pursuant to the provision of Section 29 (2) (a) and (b) of the Evidence Act 2011.

The Law is also settled that the denial does not operate to exclude the Statement in evidence. In such a case the Statement notwithstanding, the denial is admissible in evidence as it is relevant.

What is left for the Court to do in the circumstance is to admit the Statement as one attributed to the Accused Person and to attach such weight to it as appropriate at the end of the trial, by taking into account such other evidence adduced at the trial in support of the charge. See the case of **Ike Vs. The State (2010) 5 NWLR Part 1186 Page 41** as well as the case of **Osuagwu Vs. The State (2000) 1 NWLR Part 1123 Page 523**.

In the final analysis, the objections to the application to admit the Statements of the 1<sup>st</sup> and the 2<sup>nd</sup> Accused Persons fail for lack of merit. The objections misconceived. They failed.

Consequently the original and all the additional Statements of the 1<sup>st</sup> and the 2<sup>nd</sup> Accused Persons are hereby admitted in evidence together in each case and marked exhibits EFCC 4 and EFCC 5 respectively.

  
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**HON. JUSTICE S. M. SHUAIBU**  
**JUDGE**

**Appearances:-**

**Nasiru Salele Esq** for the Prosecution.

**A. D. Umar Esq** for the 1<sup>st</sup> Accused Person.

**Yusuf Suleiman Esq** for the 2<sup>nd</sup> Accused Person.

**Ibrahim Bawa Esq** for the 4<sup>th</sup> and the 5<sup>th</sup> Accused Persons.