

SUPREME COURT OF NIGERIA
29TH JANUARY, 1993. SC. 241/1989
CORAM:- A. G. KARIBI-WHYTE, P. NNAEMEKA-AGU,
A. B. WALI, I. L. KUTIGI, M. E. OGUNDARE, JJSC

1. ATTORNEY-GENERAL OF KWARA STATE APPELLANTS
2. COMMISSIONER FOR LOCAL GOVT. KWARA STATE
3. ATUNDE AJEIGBE

AND

RAIMI OLAWALE RESPONDENT

APPEALS -issues for determination - when not properly formulated- where unrelated to grounds of appeal- are no issues at all - when grounds of appeal are not of mixed facts and law.

CHIEFTANCY -Prior dispute between dead traditional ruler and defendant whether extended to succeeding plaintiff son of deceased ruler to - wards determining the time cause of action arose - controversy - traditional headship - not appointed headship

EVIDENCE -wrongful rejection of evidence - does not lead to reversal in all cases - failure of a party to testify - may be fatal where it is necessary he testifies.

JURISDICTION -when statute ousting jurisdiction has been repealed - determination of the period cause of action arose - based on plaintiffs claim and not defendant's answer.

FACTS

The Plaintiff/Respondent filed an action in the High Court of Kwara State against the Defendants/Appellants for a declaration inter alia, that he is the traditional head of Okanle having been so elected, and a mandatory injunction compelling the first set of Defendants to recognise him as such. He testified and called other witnesses that gave valid evidence on his behalf.

The 3rd Appellant said in his defence that he had been appointed as the village head of Okanle since about 1971 or 1972 and was since recognised as such by the other Defendants. He did not testify but called witnesses who gave conflicting evidence as to the date he was so appointed. The defendants contended that the court lacked jurisdiction by virtue of provisions of 1963 constitution based on their conception that the chieftaincy dispute arose before the inception of the 1979 Constitution that gave jurisdiction to the high court. The trial Court held that it had jurisdiction, the dispute or cause of action between the parties having arisen in 1981 when the plaintiff succeeded his late father as the traditional head of Okanle. Judgment was therefore given in favour of the plaintiff after a consideration of the whole evidence.

On appeal to the Court of Appeal by the Defendants, that Court upheld the trial Court's Judgment. In a further appeal to the Supreme Court, issues raised by counsel to the 3rd Appellant were observed to be no issues at all but mere questions. 1st and 2nd Appellants complained about no pronouncement by the Court of Appeal on two out of their grounds of appeal and challenged the propriety of that Court's reliance on only the issue of jurisdiction in upholding the High Court's decision. Counsel for the Respondent contended that all the 3rd Appellant's grounds of appeal were of mixed fact and law and must fail since no leave of Court was obtained.

HELD (unanimously dismissing the appeal)

1. An issue for determination must be formulated in concrete terms and be related to the grounds of appeal filed. It must be in such a nature that a decision on that issue must affect the result of the appeal one way or the other. (p. 144 L. 37)

2. It is only when the Court fails to consider an issue that a party can make an issue of it since a ground of appeal which does not form part of any issue is deemed abandoned. (p.145 L. 21)

3. Wrongful rejection of evidence is not per se a ground for the reversal of a decision (and therefore not an issue) unless it can be shown that if the rejected evidence was admitted, the decision would not have been the same. (P. 146 L. 4)

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4. Every proposition of law in an appeal has a factual base. As such, a ground of appeal that is based on settled or admitted facts is one of law, but if it is based on disputed facts or those that require further resolution by the court, then such ground of appeal is one of fact.

(p. 147 L. 12)

5. An issue raised before trial as to the commencement of the cause of action is decided upon a view of the plaintiff's statement of claim. Where raised on appeal (as in this case) it may not be entirely out of place to regard the findings of the trial Judge on the relevant issues raised before him. (p.149 L. 17)

6. When the issue of jurisdiction is determined on the pleadings and the plaintiff's pleading in the statement of claim is unambiguous but clearly pleads facts from which the issue of jurisdiction could be settled, it is the proper material for the determination of that issue and not the defendant's answer in the statement of defence. (p.149 L. 32)

7. The subsisting claim between the parties to this case is related to the traditional headship of Okanle, and not the appointed headship thereof. (p.150 L. 24)

8. A cause of action is an issue which arises between the parties to the case, and in representative action, it arises when the interests of the persons represented arose. (p.150 L. 33)

9. In a purely personal action such as this, the cause of action arose when the Plaintiff/Respondent was selected and installed by the kingmakers in his own right to succeed his deceased father (1981) and not (before 1979) when the 3rd Defendant/Appellant claimed without proof he was appointed head of Okanle. (case of Alao V. Akano (1988) 1 NWLR (pt. 71) 431 distinguished). (p. 150 L. 37)

10. From a perusal of part of judgment of the Court of Appeal, it is wrong and unfair to assume or suggest that it did not give due consideration to the merit of the plaintiff's claim. (p.151 L. 23)

11. All the issues duly raised on behalf of the Appellants have no substance and the appeal, therefore, fails. (p.153 L. 23)

PER NNAEMEKA - AGU JSC, *“Time has gone when appeals in this Court and the Court of Appeal were argued on grounds of appeal. Now they are argued on properly formulated issues. As it is so, one cannot make an issue of failure of the Court of Appeal or of this Court to consider any ground or grounds of appeal”* (p. 145 L. 21)

PER KARIBI-WHYTE JSC *“It is well known proposition of law that jurisdiction is assumed when the person bringing the action and the subject matter of the action are properly before the court. They are only properly before the Court when by the enabling statute or by its inherent jurisdiction it can exercise jurisdiction over the parties..... Thus for the claim to establish a cause of action, there must be before the Court juristic or juridical persons; who can make the claim and against who the Court can make an enforceable order. Secondly, there must exist a factual situation which enables the Court to proceed on its inquiry”* (p. 164 L. 9)

REPRESENTATION

Nima Salman-Mann (Mrs.) Solicitor-General, Ministry of Justice, Kwara State (with her, S. Okunleye, Ministry of Justice, Kwara State - for the 1st and 2nd Appellants Kehinde Sofola, SAN (with him, A. Sulu-vambari, J. Ekuma-Nkama and Eruomiawo) -for the 3rd Appellant Alhaji Aliyu Salman, SAN A.W. Omotosho For the Respondents

CASES REFERRED TO

1. Akpapuna & 3 ors V. Obi Nzeka II & ors (1983) 2 SCNLR
2. Okpala & anor V. Ibeme & ors (1989) 3 SCNJ 152
3. Western Steel Works Ltd & anor. V. Iron and Steel Worker of Nigeria & anor (1987) 1 NWLR 382
4. Ogbechie & ors V. Onochie & ors (1986) 2 NWLR 484
5. Nwadike & ors V. Ibekwe & ors (1987) 4 NWLR 718
6. Board of Customs & Excise V. Barau (1982) 10 SC 418
7. Bray V. Ford (1896) AC 44
8. Uwaifo V. Attorney General Bendel State (1982) 7 SC 1 2
9. Letank V. Cooper (1965) QB 222
10. Adimora V. Ajufo (1986) 3 NWLR (pt 80)1
11. Thomas & ors V. Olufosoye (1986) 1 NWLR 669
12. Izenkwe V. Nnadozie 14 WACA 361

13. Adeyemi & ors V. Opeyori (1976) 9-10 SC 31
14. Barclays Bank (Nig.) Ltd V. Central Bank of Nigeria (1976) ALL NLR 409.
15. Alao V. Akano (1988) 1 NWLR (pt. 71) 431
16. Simpson V. Robinson 12 QB 511
- 5 17. Mogaji & ors V. Odojin & ors (1978) 4 SC. 91
18. Oje V. Babalola (1991) 4 NWLR (pt 185) 267
19. Agbetoba V. L.S.F.C. (1.991)4 NWLR (pt 188) 664
20. Bamgboye V. Olanrewayu (1991) 4 NWLR (pt 184) 132
- 10 21. Metal Construction (W.A.) V. Migliore In re Ogundare (1990) 1 NWLR (pt 126) 299
22. Sanda V. Kukawa Local Government (1991) 2 NWLR 379
23. Bello & ors V. Attorney General Oyo State (1986) 5 NWLR (pt 45) 828 379
- 15 24. Kasikwu Farms V. Attorney General Bendel State.
25. Read V. Brown (1888) 22 QBD 128
26. Emenimaya & ors V. Okorji & anor (1987) 3 NWLR 14
27. Osgwaru V. Ezeiruka (1987) 6 - 7 SC 135
28. A.G. Bendel State V. Aideyan (1 987) 4 NWLR (pt 118) 646
- 20

STATUTES REFERRED TO

- Constitution of the Federal Republic of Nigeria 1979 SS.213 (8)236
- Constitution of the Federal Republic of Nigeria 1963. S. 161(3)
- 25 Evidence Act S. 226 (2).

LEAD JUDGMENT BY NNAEMEKA-AGU JSC

30 These are further appeals by the 1st and 2nd defendants and by the 3rd defendant against the judgment of the Court of Appeal, Kaduna Division, which had dismissed their appeal from the judgment of the High Court of Kwara State, holden at Omu-Aran. In the High Court, the plaintiff's claim by a writ of summons, and later amended, was as follows:-

- 35 *"1. A DECLARATION that Olokanle is the traditional head of Okanle and that Raimi Olawale having been so elected from the only ruling house in Okanle (Kosolu ruling house) in accordance with the tradition and custom of Okanle people.*

2. A MANDATORY INJUNCTION against the 1st, 2nd and 3rd defendants (now the 1st and 2nd defendants only) compelling them, their agents/servants to recognize the plaintiff as the Olokanle of Okanle."

In his statement of claim, the plaintiff traced his genealogy from one Kosolu, the founder of Okanle to Buraimoh Oyeboode, and his own father, whom he said was the last Olokanle of Okanle until his death in 1981. After Buraimoh's death, plaintiff succeeded him, having been unanimously selected and appointed by the Kingmakers. Because of the main issue that has arisen for determination in this appeal, I deem it necessary to quote in full paragraphs 16 to 21 and 23 of the statement of claim. They run thus-

"16. The plaintiff also says that Oyeboode died 1981.

17. The plaintiff says that after the creation of Igbomina Ekiti Division in 1970 the then Igbomina Ekiti Central Administration of Igbomina Ekiti Division abrogated the title 'Alangua' as being foreign to Igbomina Ekiti Division.

18. The plaintiff avers that the Igbomina Ekiti Division in its letter Reference CA/EST/16/9 Of 4th October, 1971 written to the Alangua wrote to terminate Oyeboode as Alangua. This letter is hereby pleaded.

19. In 1972 the same Local Government in its letter Reference DOIE/S/12/208 of 17th July, 1972 wrote another letter re-appointing Oyeboode as head of Okanle but under the title 'Baale'. This letter is pleaded.

20. The plaintiff's family being dissatisfied with the new title wrote a protest letter and made series of representations to the Igbomina Ekiti Division Central Administration Local Government Authority in their letter dated 14th August, 1972 which letter is hereby pleaded asking to be restored to their traditional title of 'Olokanle of Okanle.'

21. The plaintiff says that after a thorough investigation conducted by the Caretaker Committee of the Irepodun Local Government Omu Aran, the Local Government wrote the then head of Okanle (Buraimoh Oyeboode) confirming his traditional title of 'Olokanle' in its letter which is hereby pleaded, Reference IRPD/LG/CHI/ 1.1.314 of 23rd September, 1976.

22. *The plaintiff says that aye bode thus reigned as Olokanle of Okanle until his death in 1981 when the plaintiff succeeded him"*

Both sets of defendants filed their statements of defence. Both of them raised an issue as to the jurisdiction of the court to entertain the suit because it raised a chieftaincy question, jurisdiction over which
 5 was ousted before the inception of the 1979 Constitution on the 1st of October, 1979. The 1st set of defendants admitted paragraphs 17 and 18 of the statement of claim but just barely denied inter alia, paragraphs 19, 20, and 21 of the statement of claim and put the
 10 plaintiff to strict proof. As for the 3rd defendant, who was then the 4th defendant, he pleaded in paragraph 3 of his statement of defence thus -

"3. *The defendant says that he (the 4th defendant) had been appointed as the village head of Okanle with the title of 'Baale' since*
 15 *about 1971 or 1972 and the other defendants had since recognized him as such.*"

I believe that apart from the issue of jurisdiction, the pleadings and evidence before the court of trial. The main issues for determination before the court of trial was somehow summarized by the
 20 learned Senior Advocate for the plaintiff in paragraphs (a) - (f) at page 140 of Vol. 1 of the record, thus -

"(a) *What is the proper title of the traditional head of Okanle i.e. is it Olokanle or Baale of Okanle.*

(b) *What is the procedure for appointing the Baale or Olokanle*
 25 *of Okanle.*

(c) *Is the plaintiff from Kosolu ruling house or is he entitled to the Olokanle Chieftaincy stool.*

(d) *Is the defendant (i.e. 4th) from the Kosolu family ruling*
 30 *house.*

(e) *Has the plaintiff been appointed the Olokanle in accordance with the native law and custom of Okanle people.*

(f) *Was the 4th defendant imposed on the people of Okanle as their Baale."*

I should, however, reframe paragraph (f) by deleting "imposed"
 35 *and substituting the words "selected and appointed".* After trial, the learned trial Judge noted that the 3rd defendant did not give evidence to support his case and made a number of important findings of fact. He found:

"From the evidence before me I am satisfied that the title of the village head of Okanle when it was first founded was Olokanle of Okanle which title was changed to Alanguwar by the Fulani dynasty after the conquest of Ilorin division Alanguwar was abrogated by that Local Government whereupon the people of Okanle reverted to the old title of Olokanle of Okanle for their village head but the Local Government maintained that the headship of the village should be titled Baale of Okanle. I believe the evidence of the plaintiff; (P.W.1) when he said that the village heads of the seven villages under Okanle are Baales while the village head of Okanle as a head chief or paramount chief is Olokanle. It is quite clear from the contents of Exhibits A and B that between 1972 and 1976 the conflict in the name of the village head of Okanle was settled by the Igbomina-Ekiti Local Government in favour of Mallam Buraimoh Oyebode; the plaintiff's father, who, on the one hand, was allowed to continue to function as Baale of Okanle but was later referred to as Olokanle of Okanle after he had been divested of the Baaleship of Okanle (Exhibit E). Buraimoh aye bode held the post of Olokanle till he died in 1981. I am not unaware of the contents of Exhibit 'E' which cancelled with effect from 21st February, 1973 the appointment of Buraimoh Oyebode as Baale of Okanle which said appointment had been conferred on him through Exhibit 'A' dated 17th July, 1972. Exhibit 'E' did not name or appoint the 4th defendant, Atunde Ajeigbe; as Baale of Okanle in place of Buraimoh Oyebode. I disbelieve the evidence of D.W.1, D.W.2 and D.W.3 that the 4th defendant was appointed Baale of Okanle between 1971 and 1972 and hold instead that between July, 1972 per Exhibit 'A' up till 21st February, 1973 per Exhibit 'E' the Baale of Okanle was Buraimoh Oyebode. The evidence of D.W.1, D.W.2 and D.W.3 as regards the year of appointment of the 4th defendant as Baale of Okanle is conflicting and so discredited under cross examination and is as such unworthy of belief. See OTUAHA AKPAPUNA & 3 ORS v. OBI NZEKA II & 3 ORS (1983) 2 SCNLR 1.

There was thenceforth i.e. from 21st February, 1973 no scintilla of evidence that anybody was appointed the Baale of Okanle. I therefore hold that the Ifelodun/Irepodun Traditional Council's Committee headed by the Olomu of Omu-Aran could not have resolved that the 4th defendant was the Baale of Okanle in July, 1978 since

he had hitherto not been so appointed."

Later he concluded:

*"I find as a fact that as at 13th July, 1978 when the committee of the Traditional Council resolved that the 4th defendant was the Baale of Okanle he (4th defendant) had in fact neither been ap-
5 pointed nor conferred with that title by the Okanle Community as the title of Baale did not then exist and does not now exist in Okanle.*

*The only direct and categorical statement on the appointment of the 4th defendant as the Baale of Okanle was made on 3rd October, 1984 when by the contents of Exhibit 'D' the Ifelodun Local
10 Government wrote to the Esa of Okanle, Alhaji Jimoh Akano (P.W.3) and one of the kingmakers of Okanle.*

He found that the 3rd defendant was from a female line, and so could not by custom be appointed the Baale or Olokanle of Okanle.
15 He further held that as the appointment of the 3rd defendant as the Baale of Okanle before 1979 had not been proved, the jurisdiction of the court had not been ousted. Finally he entered judgment for the plaintiff in terms of his claim, as amended.

Aggrieved by the decision of the High Court, the defendants
20 appealed further to the Court of Appeal, which in a leading judgment by Akpabio, J.C.A., to which Aikawa and Ogundare, J. C.A., concurred, dismissed the appeal. The defendants, have therefore, appealed further to this Court. Learned counsel for the 3rd defendant/appellant Mr. Ijaodola, formulated four issues for determination,
25 namely:

"1. What is the cause of action.

2. What determines whether a court of first instance has original jurisdiction or not.

*3. Was it fatal to the 3rd, appellant's case that he did not
30 personally give evidence or call any witness to establish his appointment before 1/10/79 and*

4. Was the decision of the Court of Appeal which affirmed the decision of the trial High Court right or wrong."

35 I must pause here to observe that the first two so-called "issues" set out above are not issues properly so-called. For not only do they not arise from any ground of appeal but also they fall far short of what could be properly called an issue. For as this Court has stated times without number an issue for determination in an appeal must

be formulated in concrete terms and be related to the ground or grounds of appeal filed and must be of such a nature that a decision on it one way or the other must affect the result of the appeal. See on this *Obed Okpala & Anor v. Richard Ibeme & Ors* (1989) 2 NWLR (Pt.102) 208; (1989) 3 S.C.N.J. 152 at p. 159; *Western Steel Works Ltd. & Anor v. Iron & Steel Workers of Nigeria & Anor.* (No.2) (1987) 1 NWLR (Pt.49) 284, p. 304. I may mention that in the course of my consideration of the two issues framed by the 3rd appellant, I must have to answer the above two questions. But even so, to promote them to the status of issues is an abuse of forensic language. They are mere academic questions.

The two issues formulated by learned counsel on behalf of the 1st and 2nd appellants. Mr. Otta, are more in line with what constitutes an issue, although they are not completely free from fault. Those two issues read as follows:

(i) *Whether the Court of Appeal was right either in not considering or in not pronouncing upon the Appellants complaints in grounds 5 and 6 of the grounds of appeal before them (Ground 1)*

(ii) *Whether the Court of Appeal was right to have relied solely on the issue of jurisdiction in this case (Ground 2).*

Time has gone when appeals in this Court and the Court of Appeal were argued on grounds of appeal. Now they are argued on properly formulated issues. As it is so, one cannot make an issue of failure of the Court of Appeal or of this Court to consider any ground or grounds of appeal. If the court should fail to consider an issue, then one can make an issue of it. It is trite that any ground which does not form part of any issue is deemed abandoned.

Indeed, this case illustrates clearly the inherent weakness in complaining of failure to consider grounds, not issues. For the said ground 5 of appeal before the Court of Appeal, read together with its particulars, complains simply of rejection of the certified true copy of the minutes of the Ifelodun/Irepodun Council without going further to show that had the evidence been admitted the decision might probably not have been the same. It must in this regard be noted that section

226(2) of the Evidence Act provides as follows: "226 (2) *The wrongful exclusion of evidence shall not of itself be a ground for the reversal of any decision in any case if it shall appear to the court on*

appeal that had the evidence so excluded been admitted it may reasonably be held that the decision would have been the same."

It is clear from this provision that wrongful rejection of evidence is not per se a ground for the reversal of a decision, and therefore not an issue, unless it can be shown that if the rejected evidence was admitted, the decision would not have been the same. In the circumstances, merely alleging that admissible evidence was wrongly rejected cannot by itself be raised as an issue: the issue is if the evidence was wrongly excluded, whether the wrongful exclusion of the admissible evidence was substantial in the sense that it affected the result of the case. As the ground as formulated fell short of what could have been raised as an issue, I do not see how the appellant could complain of non-consideration of it. They could only have rightly complained of non-consideration of an issue duly raised in the appeal. Also, as I shall show shortly, the second issue as formulated is based on the wrong assumption that the Court of Appeal relied solely on the issue of jurisdiction for its determination of the appeal, whereas such was not the position.

In view of the grounds of appeal and the thrust of the argument of counsel on all sides in the appeal, it appears to me that the issues for determination could fairly be formulated as follows:

"(i) Whether the Court of Appeal was right to have held that the jurisdiction of the High Court was not ousted in this matter which undoubtedly raised a chieftaincy question.

(ii) Whether the Court of Appeal gave its due consideration to the merit of the plaintiff's case and reached its correct decision on the point.

(iii) Whether the failure of the 3rd appellant to give evidence personally or call a credible witness to establish his appointment before 1st October, 1979 was fatal to his case."

Before going into these issues, it is necessary to consider the preliminary objection raised by Alhaji Salman (S.A.N) the learned Senior Advocate for the respondent. He submits that grounds 1 to 4 of the 3rd appellant's ground of appeal are incompetent because they are grounds of fact or of mixed law and fact, for which no leave has been sought or obtained. They are, therefore incompetent in view of the provisions of section 213 (3) of the Constitution of 1979. As they are the only grounds in the notice of appeal, the whole appeal is incompetent.

Mr. Kehinde Sofola (S.A.N.) learned Senior Advocate filed Reply Brief for the 3rd appellant and appeared before us on his behalf. He submits that the preliminary objection is not well founded because all the grounds of appeal are those of law. He pointed out that every ground of appeal must, in the nature of things, be based on facts but submits that the mere existence of such facts does not necessarily make such grounds those of fact or of mixed law and fact: they can only be so if the facts are disputed facts. After a careful analysis of each ground of appeal he submits they are all grounds of law. His submissions on the point have not been dealt with in the respondents' Reply.

Now, it is a self-evident truth that the law does not hang, as it were, in the air: facts are the fountain-head of the law. So, every proposition of law in an appeal has a factual base. If the facts, including any particulars thereof, upon which a ground of appeal is based are disputed facts or those that require further resolution by the court, then such a ground of appeal is one of fact. But if such are settled or admitted facts, then the ground is one of law. See on these: J.B. Ogbechie & Ors. V. Gabriel Onochie & Ors. (No.1) (1986) 2 NWLR (Pt.23) 484, at pp.490-492, Paul Nwadike & Ors. v. Cletus Ibekwe & Ors. (1987) 4 NWLR (Pt.67) 718. Applying the above principles in the present case, it can be seen that although each ground of appeal contains particulars of facts to support the grounds, none of such facts is in dispute or requires any determination by the court. Furthermore, ground 1 raises an issue of jurisdiction, based on facts found by the court. This is a ground of law. Similarly, ground 2 is, in effect, attacking the application of law to undisputed facts. This is a ground of law: Board of Customs & Excise v. Barau (1982) 10 S.C. 48, p.137. Ground 3 is in effect saying that the court misconceived the nature of the dispute before it. This is the very essence of a misdirection in law, Bray v. Ford (1896) A.C. 44, p. 49. This is a ground of law. Ground 4 deals with the legal effect of failure of a party to a dispute to give evidence on his own behalf. This is also a ground of law. I therefore agree with Mr. Sofola that all the grounds of appeal are of law. No wonder then that the learned Senior Advocate for the respondents did not include a reply to the submissions of his learned counterpart in his Reply.

I shall therefore consider the issues raised in the appeal. In a

nutshell, the contention of the appellants on the issue of jurisdiction is that this chieftaincy dispute started in 1971 to 1972 or 1978, or at least before October, 1979 when the ouster of court's jurisdiction over causes or matters raising any chieftaincy question was removed by the 1979 Constitution. So, by authority of *Uwaifo v. Attorney-General of Bendel State* (1983) 4 NCLR 1; (1982) 7 S.C 124 and many other cases, the jurisdiction remained ousted in spite of the coming into effect of the 1979 Constitution. As pleadings on all sides had been closed and evidence called the court could no longer properly decide on the commencement of the cause of action by looking at the writ and the statement of claim alone: it ought to look at the whole case including the evidence called, counsel submitted. It was pointed out by Mr. Kehinde Sofola (S.A.N) in his reply brief on behalf of the 3rd appellant that admissions by the respondent and his witnesses showed that the chieftaincy dispute between the third appellant and the father of the respondent started long before 1979

Learned counsel on behalf of the respondent submitted that accepted evidence from the evidence of P.W.3. shows that the 3rd appellant was never nominated for appointment by the kingmakers of Okanle but that the respondent was duly nominated and appointed by the kingmakers as the Olokanle of Okanle. This was after the death of the respondent's father in 1981. On the alleged admissions by some defence witnesses, counsel submitted that there were no clear admissions; that the so - called admissions were not clear on the point. Counsel therefore urged the Court to accept the concurrent findings on the point by the two lower courts and hold that the dispute between the 3rd appellant and the respondent started in 1981. He also submitted that it is the averment in the statement of claim that determines whether or not a court has jurisdiction as well as when the cause of action began.

I think I should begin my consideration of this important issue in this appeal by asking myself the question: what is a cause of action? I would be content in this respect to adopt the definition of the expression by Diplock, L.J. in *Letang v. Cooper* (1965) 1 Q.B. 232 at p. 242 where he defined it as,

"..... simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another per-

son."

The principal elements of this definition are that it involves two persons one of whom has the right to a judgment against the other. The other element is that it is a factual situation. Lord Esher. M.R., clarified this latter element of a cause of action when he stated that the words "comprise every fact (though not every piece of evidence) 5 which it would be necessary for the plaintiff to prove, if traversed, to support his right to the judgment of the Court." *Read v. Brown* (1888) 22 Q.B.D. 128 at p. 131. See also: *Adimora v. Ajufo* (1988) 3 NWLR (Pt.80) 1; also *Thomas & Ors. v. Olufosoye* (1986) 1 NWLR 10 (Pt.18)669.p.682. The next question is: from where do we determine that factual situation which shows the commencement of the cause of action? While the appellants contend that in a case like this in which evidence had been called after the closure of pleadings the court could only determine this from a consideration of the whole case including the evidence called, the respondent submits that it 15 could only be determined from the averments in the statement of claim. I believe that the only inference from a view of numerous decided cases is that when before trial, an issue is raised as to the commencement of the cause of action, that issue is decided upon a 20 view of the plaintiff's statement of claim. But where, as in this case, the question is being raised on appeal, though what case the plaintiff brought before the court is still paramount, it may not be entirely out of place to regard the findings of the trial Judge on the relevant issues raised before him. It is, however of utmost importance to note that 25 what is material is when the cause of action commenced between the parties before the court and not when the question in dispute arose.

One fact that cannot be denied in practice is that it is recog- 30 nized that because of the paramountcy of an issue of jurisdiction it is sometimes necessary for the court to hear some evidence first for a correct determination of it, even though it might have disposed of the issue in limine. In my view, when the issue of jurisdiction is determined on the pleadings, the law is that it is determined on the plain- 35 tiffs pleading in his statement of claim and not on the defendant's answer in the statement of defence. For this, see *Izenikwe v. Nnadozie* (1952) 14 W.A.C.A 361. at p.363, *Adeyemi & 4 Ors v. Opeyori* (1976) 9-10 S.C. 31. In other words when the plaintiffs pleading in

the statement of claim is unambiguous and clearly pleads facts from which the issue of jurisdiction could be settled one way or the other, it is the proper material to determine that issue. But when the court, in exercise of its undoubted power to inquire whether in fact its jurisdiction has been ousted (for which see *Barclays Bank of Nigeria Limited v. Central Bank of Nigeria* (1976) 1 All NLR 409, at p. 421), and
 5 sees the need to hear evidence in order to inquire whether in fact its jurisdiction has been ousted, or when the issue of jurisdiction has been taken after evidence has been called, the court cannot in either case completely close its eyes to the evidence called. It is, however,
 10 recognized that quite often the defence succeeds on an issue or in a case by bringing up such a case that beclouds the real issue. This can also happen with respect to an issue of jurisdiction. When such is the case, I am of the view that the correct approach should be that much
 15 as the court can no longer close its eyes to, the case brought up by the defence, the plaintiff's case as on the statement of claim is still a most important factor.

But the court may proceed to make findings on facts in controversy between the parties with respect to the issue of jurisdiction in
 20 order to decide whether the case of the defence on the issue is such as to affect the averments in the statement of claim. Where, as in this case, the case for the 3rd defendant/appellant that he was appointed the Baale before 1979 had been rejected for good reasons, the matter will stand settled on the averments in the statement of claim. This
 25 was in fact what happened in the case of *Kasikwu Farms Ltd. v. Attorney-General of Bendel State* (supra). It is noteworthy in this respect that the subsisting claim between the parties related to Olokanle of Okanle, the traditional headship of Okanle, and not the appointed headship thereof. That stool never fell vacant till the respondents'
 30 father, who was the last incumbent died in 1981. Indeed it has not been suggested by the 3rd appellant that he ever disputed over the stool with the respondent at any time before 1981. Rather he thinks that if he was able to show that he disputed over it with respondent's
 35 father, then the cause of action arose at the time of such a dispute. This line of reasoning appears to me to overlook the crucial element that apart from cases of transmission of interests, a cause of action is an issue which arises between the parties in court. In a representative action, it arises when the interests of the persons represented arose.

In a purely personal action such as this in which the case of the plaintiff/respondent as revealed in paragraph 24 of the statement of claim was that he was selected by the Kingmakers in his own right to succeed his deceased father, it is my view that the cause of action arose when he was so selected and installed. That should be the point on which to decide the question of jurisdiction. I am therefore satisfied that the courts below came to a correct conclusion on the point: the jurisdiction of the courts was not ousted, as any dispute about the stool before 1981 did not concern the parties.

The next issue I wish to consider is whether the court below gave its due consideration to the merit of the plaintiff's case. I think it is wrong and unfair to assume that that court did not, as the 2nd issue formulated on behalf of the 1st and 2nd appellants seems to imply. It is sufficient in this respect to quote from part of the judgment of Akpabio, J.C.A., to which Aikawa and Ogundere, J.C.A. concurred. He held:

"The respondent not only testified himself as P.W.1 but he called two other witnesses one of whom was head of the Kingmakers of Okanle to testify on his behalf, and they did so convincingly. The 3rd appellant on the other hand failed to even go into the witness box to testify himself. That meant that all the evidence of plaintiff/respondent as regards the chieftaincy tradition of Okanle, stood uncontradicted, and were rightly believed by the learned trial Judge. There was nothing to contradict the assertion of respondent that 3rd appellant was from a female line of descent, and so was not qualified to be selected or nominated as an Olokanle of Okanle. There was nothing to say that respondent was not unanimously selected by all the Kingmakers of Okanle at the time he was alleged to have been selected. There was also no indication whatsoever to show whoever selected or nominated 3rd appellant as a Baale or Olokanle of Okanle. There was in fact no indication as to whom the 3rd appellant succeeded. Under the circumstances, I am of the view that the learned trial Judge rightly found in favour of the respondent. His decision was not perverse, but rather was founded on the only evidence available."

In my view of this the suggestion that they did not consider the appellant's case is clearly wrong and unfair. I am entirely in agreement with their Lordships in this opinion. In his pleading and evidence, the plaintiff/respondent showed how he was selected by the

Kingmakers according to custom, after pleading and giving an impressive history to back up his claim. Accepted evidence of P.W.1, P.W.2 and P.W.3 shows that the traditional head of Okanle was Olokanle and not Baale and that Baale was the head of each of the constituent seven villages of Okanle; that he was selected by the traditional kingmakers and that 3rd appellant, being from a female line, was disqualified from appointment. On the other hand, neither in his pleading nor in his evidence did the 3rd appellant show that he had any claim to the stool. He was not even sure whether he was appointed and installed in 1971 or 1972. He called no evidence to show his entitlement or his mode of appointment. His only witnesses were rightly disbelieved.

I may pause here to distinguish this case from that of *Alao v. Akano* (1988) 1 NWLR (Pt.71) 431 which was so heavily relied upon by Mr. Ijaodola in his brief on behalf of the 3rd appellant. In that case, it was established at the trial that the defendant was selected and appointed the Baale of Oke-Oyi in 1972 and some time after turbaned by the Emir. The plaintiff went to court. After the plaintiff failed in the Supreme Court, the defendant returbaned the defendant in 1981, and the plaintiff went to court again. When the matter came to the Supreme Court again, it was held that the cause of action arose in 1972 when the defendant was first appointed and turbaned, not in 1981 when he was returbaned. This court held that the cause of action must be determined from the substance of the case and that the cause of action arose in 1972 and not in 1981. So the case must in accordance with the principle in *E. Emenimaya & Ors. v. Opara Okoroji & Anor.* (1987) 3 NWLR (Pt.59) 6 and *Uwaifo v. A.-G. Bendel State* (1983) 4 NCLR 1; (1982) 7 S.C. 124 be decided in accordance with the law as at the time the cause of action arose. In the instant case, the two courts below found that the 1971 or 1972 or 1978 alleged appointment of the third appellant was not proved. So, *Alao's* case is clearly distinguishable.

One of the reasons, but not the only reason, given for the conclusion that the pre-1979 appointment was not proved was that the 3rd appellant did not testify in support of his own case. He was unwilling to testify and so could neither swear to the veracity of his case nor face the fire of cross-examination. Although a party to a suit is not obliged to testify on his behalf, where a party's case before a

court of justice is such that he is expected to swear to its truth and be cross-examined thereon and he fails to submit to these, that is a point that can go against his credit and be a good ground for rejection of his case. See *Simpson v. Robinson*. 12 Q.B. 511. As in addition to this, D.W.1, D.W.2 and D.W.3 were found to have drastically contradicted themselves on the date of his alleged appointment as the Baale. It follows that he had nothing of any weight to put on his own side of the imaginary balance on which assessment of evidence depended. The court had no alternative but to find against him: See *A.R. Mogaji & Ors v. Odofin & Ors.* (1978) 4 S.C. 91 at pp.93-96. It is this balancing of evidence called by either side to a litigation that is the only acceptable method of making conclusive findings in civil cases. When all that the 3rd defendant had to offer on his own side against the cogent and impressive evidence called by the plaintiff/respondent were no evidence by himself and discredited and contradictory evidence by his witnesses, the court below had no alternative but to accept the plaintiff's case. After all, as this court has stated a number of times the onus of proof in civil cases, quite unlike in criminal cases in which the onus of proof is all through on the prosecution is not static but keeps shifting from the plaintiff to the defendant. See *Osawaru v. Ezeiruka* (1978) 6-7 S.C. 135; *A.G. Bendel State v. Aideyan* (1989) 4 NWLR (Pt.118) 646. Applying all the above principles to the present case, it appears to me that the courts below not only gave ample consideration to the appellants' case but also come to a correct conclusion thereon. It is my view that Chieftaincy, as a traditional institution will lose its value if it is put up for grabs by someone who had only succeeded to show that he had no claim to it.

The conclusion I have reached is that all the issues duly raised on behalf of the appellants have no substance. The appeal, therefore fails, and is hereby dismissed with N1,000.00 costs against each set of appellants as represented by counsel.

KARIBI-WHYTE JSC

I have had a preview of the judgment of my learned brother Nnaemeka-Agu, J.S.C. in this appeal. I agree entirely with his reasoning, and the conclusion dismissing the appeal. I only wish to make some contribution to the principal issue litigated in this appeal, that is, the dispute culminating in the action having arisen sometime in 1971,

the cause of action being a Chieftaincy matter. Accordingly in the light of the law of the time the dispute arose whether the learned trial Judge had jurisdiction in respect of the matter before him.

The claim before the learned trial Judge as endorsed in the writ of summons dated 7th January, 1986 issued and filed on the
5 same date is as follows-

CLAIMS:

'The plaintiff is the village head of Okanle and its environs under the title 'Olokanle of Okanle' and the descendant of Kosolu family the only recognised ruling house in Okanle.
10

The first defendant is the Chief Legal Officer of the Kwara State Government. The second and third defendants are the Kwara State Local Government functionaries who on the advice of the first defendant purportedly/appointed the fourth defendant as Baale/ Vil-
15 lage head of Okanle.

1. Whereof the plaintiff claims against the defendants jointly and severally as follows;

*1. A DECLARATION that 'Olokanle' is the traditional head of Okanle and that Raimi Olawale is the Olokanle of Okanle, having
20 been so elected from the only ruling house in Okanle (Kosolu ruling house) in accordance with the traditional and custom of Okanle people.*

*2. A MANDATORY INJUNCTION against the first, second and third defendants compelling them, their agents/servants to
25 recognise the plaintiff as the Olokanle of Okanle.*

*(i) A DECLARATION that if Baale is meant to be the headship of Okanle, the plaintiff (Raimi Olawale) is the proper Baale in accordance with Okanle's tradition and custom and the recognition of the
30 fourth defendant by the second and third defendants as Baale/head of Okanle is therefore null and void as the headship of Okanle has always by tradition been from Kosolu family to which the fourth defendant is unknown.*

*(ii) A PERPETUAL INJUNCTION against the first, second and third defendants and their agents/and/or servants prohibiting them from recognising the fourth defendant as Baale/head of Okanle.
35*

(iii) A PERPETUAL INJUNCTION against the fourth defendant prohibiting him from parading himself and/or acting or holding

himself out as Baale/head of Okanle.

(iv) A MANDATORY INJUNCTION against the first, second and third defendants, their agents/servants compelling them to recognise the plaintiff as the Baale of Okanle.

In his statement of claim Plaintiff averred as follows in paragraphs 3,15,16,23,24,25,26,27. 5

"3. The Plaintiff is the recognised village head of Okanle under the title 'Olokanle of Okanle' in accordance with the tradition and custom of Okanle."

After tracing his pedigree and listing the reign of the past Olokanle he averred at paragraphs 15,16,23-27 as follows- 10

"15. The Plaintiff says that Oyewole died and was succeeded by Abioye who reigned between 1927 and 1933 before Oyebode succeeded him in 1933. 15

16. The plaintiff also says that Oyebode died in 1981.

23. The Plaintiff says that Oyebode thus reigned as Olokanle of Okanle until his death in 1981 when the Plaintiff succeeded him.

24. The Plaintiff says that after the death of Buraimoh Oyebode as Olokanle of Okanle, the Okanle Kingmakers namely, Esa, Elemesho, Balogun, Akogun, The Babaloke, The Baba Isale Ojomun, selected the Plaintiff as successor of Oyebode as Olokanle of Okanle in accordance with the tradition of Okanle. 20

25. The decision of the Okanle Kingmakers was communicated to the Ifelodun Local Government for approval vide their letter dated 28th November, 1981, which is hereby pleaded. 25

26. The Ifelodun Local Government in its letter addressed to the Plaintiff Ref. IELG/HEAD/3/S.1/106 of 4th August, 1981 wrongfully declined jurisdiction and urged the Plaintiff to approach the Ifelodun/Irepodun Traditional Council. This letter is pleaded. 30

27. The Plaintiff says that in a dramatic turn, the agent of the second and third defendants in Ifelodun Local Government wrote in his letter Reference ILG/S/88/S.7/80 of 3rd October, 1984 to say that the Plaintiffs' ruling family coined the title 'Olokanle' for itself and that in any case the fourth defendant is the purported head of Okanle. 35
The original copy of this letter is lost and all efforts at locating it have failed. A photocopy of the said letter is hereby pleaded."

It is clear from the statement of claim that the question whether there can be an Olokanle is not in dispute. This is because the position though conceded to Respondent's family by Igbomina Ekiti Central Administration is recognising the same position as the Baale. (See para 19 of the statement of claim). The issue in dispute is whether the
 5 Olokanle or the Baale is the head of Okanle. This is clearly brought out in paragraphs 17-22 of the statement of claim, where it was averred as follows:

"17. The Plaintiff says that after the creation of Igbomina Ekiti Division in 1970 the then Igbomina Ekiti Central Administration of Igbomina Ekiti Division abrogated the title 'Alangua' as being foreign to Igbomina Ekiti Division.

18. The Plaintiff avers that the Igbomina Ekiti Division in its letter Reference CA/EST/16/9 of 4th October, 1971 written to the Alangua
 15 *wrote to terminate Oyebola as 'Alangua' This letter is hereby pleaded.*

19. In 1972 the same Local Government in its letter Reference DOIEI S/12/208 of 17th July, 1972 wrote another letter reappointing Oyebole as head of Okanle but under the title 'Baale' This letter is pleaded.

20. The Plaintiff's family being dissatisfied with the new title wrote a protest letter and made series of representations to the Igbomina Ekiti Division Central Administration Local Government Authority in their letter dated 14th August, 1972 which letter is hereby pleaded asking to be restored to their traditional title of 'Olokanle' of Okanle."

25 The issue of jurisdiction has arisen because of the state of the law before October 1, 1979. Before October 1, 1979, the Courts were excluded by provision of the Constitution 1963 from exercising jurisdiction in respect of Chieftaincy disputes See S.161(3) of the Constitution of the Federation, 1963 No.20. This provision was omitted
 30 from the 1979 Constitution.

The defendants also filed their statement of defence. The 1st set of defendants admitted paragraphs 17 and 18 of the statement of claim and generally traversed paragraphs 19, 20 and 21 putting the
 35 plaintiffs to strict proof.

The 3rd defendant, who was originally the 4th defendant, pleaded as follows

"3. The defendant says that he (the 4th defendant) had been appointed as the Village Head of Okanle with the title of 'Baale' since

about 1971 or 1972 and the other defendants had since recognised him as such."

In addition to the issue of jurisdiction, the main issues for determination in the brief of learned Senior Advocate representing the plaintiff are as follows:

(i) *What is the proper title of the traditional head of Okanle i.e. is it Olokanle or Bale of Okanle?* 5

(ii) *What is the procedure for appointing the Baale or Olokanle of Okanle?*

(iii) *Is the plaintiff from Kosolu ruling house or is he entitled to the Olokanle Chieftaincy stool?* 10

(iv) *Is the defendant, i.e. 4th, from the Kosolu family ruling house?*

(v) *Has the plaintiff been appointed the Olokanle in accordance with native law and custom of Okanle people?* (vi) *Was the 4th Defendant imposed on the people of Okanle as their Baale?* 15

In his judgment the learned trial Judge made several findings of fact. He found that:

1. *The title of the Village Head of Okanle is Olokanle when it was first founded. It was only changed to Alanguwar by the Fulani Dynasty after the conquest Ilorin Division including Okanle in the Fulani Wars in 1914-27.* 20

2. *That the title Baale of Okanle was given to the Head of Okanle on the creation of Igbomina Ekiti Division and after the abrogation of Alanguwar.*

3. *Buraimoh Oyeboode was allowed to function as Baale of Okanle. He reverted to the title of Olokanle after he had been divested of the title of Baale.* 25

4. *Buraimoh Oyeboode died in 1981.*

5. *Exhibit E did not name or appoint 4th Defendant as Baale of Okanle in place of Buraimoh Oyeboode. Buraimoh Oyeboode was Baale of Okanle up to 21st February, 1973.* 30

6. *4th Defendant was not appointed Baale of Okanle between 1971 and 1972.*

7. *When the Ifelodun Traditional Council resolved that the 4th Defendant was the Baale of Okanle, he had in fact neither been appointed nor conferred with that title by the Okanle Community as the title did not then exist.* 35

In addition the learned trial Judge found that the 3rd defen-

dant could not by the custom of the Okanle people be appointed the Baale or the Olokanle, since he claims through the female line. Having held that the jurisdiction of the court was the ousted, he entered judgment for the plaintiffs in terms of his claim.

Dissatisfied with the decision, the defendants appealed to the
5 Court below. The Court below unanimously dismissed the appeal.

The Court considered two issues, namely,

1. *"Whether the trial High Court had jurisdiction to determine who is the proper head of Okanle, which depends on when the dispute actually arose."*

10 2. *"Whether or no the decision of the learned trial Judge was right or perverse on merit."*

In respect of the first issue, the learned Justice of the Court of Appeal referred to the contention of the parties relating to the date the cause of action arose. He referred to *Izenikwe v Nnadozie* (1952)
15 14 WACA, 361 in support of the proposition that *"Jurisdiction is determined by the plaintiff's demand and not defendant's answer"*. He went on to state as follows-

20 *"Therefore, in order to know whether the Court had jurisdiction to entertain the claim, all we have to do is to look at the writ of summons and or statement of claim to see when the cause of action was alleged to have arisen, without any recourse to the statement of defence."*

Akpabio J.C.A then examined the claim in the writ of summons, and then the statement of claim, and referred to paragraph
25 23 of the statement of claim where it was averred that:

"The plaintiff says that Oyebode thus reigned as Olokanle of Okanle until his death in 1981 when plaintiff succeeded him"

30 It was from this averment and other averments in the statement of claim that the learned Justice of the Court of Appeal arrived at the conclusion that the cause of action arose in 1981. The Court below therefore held, agreeing with the learned trial judge, that since the cause of action did not arise before 1981, the learned trial judge had jurisdiction to try the matter.

35 On the second question whether or not the decision of the learned trial judge was right or perverse on merit, the learned Justice of the Court of Appeal referred to the evidence. He observed that Respondent not only gave evidence, he also called two witnesses;

one of them, the head of the Okanle Kingmakers to testify on his behalf. The 3rd Appellant did not testify himself, and he did not call any witnesses. The learned Justice of the Court of Appeal therefore concluded that the evidence led by the Respondent and his witnesses remained uncontradicted, and were rightly believed by the learned trial Judge. He went on to observe as follows: 5

"There was nothing to contradict the assertion of the respondent that the 3rd appellant was from a female line of descent, and so was not qualified to be selected or nominated as an Olokanle. There was nothing to say that the respondent was not unanimously selected by all the Kingmakers of Okanle at the time he was alleged to have been selected. There was also no indication as to whom the 3rd appellant succeeded. Under the circumstances, I am of the view that the learned trial judge rightly found in favour of the respondent. His decision was not perverse, but rather was founded on the only evidence available." 10 15

All the three appellants gave notice of appeal against the decision of the Court of Appeal. The 3rd appellant gave notice on the 31st January, 1989 in which he filed three grounds of appeal. The grounds of appeal are as follows 20

" Grounds of Appeal "

1. The learned Justices of the Court of Appeal erred in law in holding that the part of the plaintiff's case adjudicated upon by the trial Court which determines whether the trial Court had jurisdiction to try the case or not. 25

Particulars of errors-in-Law:

i. Before evidence i.e. if plea to jurisdiction is raised by way of preliminary objection, it is the plaintiff's total case as stated in his statement of claim which determines whether a trial court lacks jurisdiction or not. 30

ii. After evidence has been taken, it is the total case before the trial Court which determines whether the trial Court lacks jurisdiction or not.

2. The learned Justices of the Court of Appeal erred in law in holding that the plaintiff/respondents cause of action arose after 1/10/79 despite the admissions made by the plaintiff/respondent and his witnesses and documentary evidence to the effect that the chieftaincy dispute arose before 1/10/79. 35

Particulars of error-in-Law:

i. The defendants were entitled to rely on the admissions made by the plaintiff and his witnesses that the dispute arose before 1/10/79. There was documentary evidence to the effect that the dispute arose before 1/10/79.

5 *ii. The Court of Appeal was under a duty to have held that the trial High Court decision was perverse.*

iii. The learned Justices of the Court of Appeal erred in law in not dismissing the plaintiff's case against the 4th defendant when it held that the High Court was right in its view that the plaintiff's cause of action related to the title of Olokanle when the 4th defendant never claimed at any time to be an Olokanle.

Particulars of error-in-law:

15 *"i. It is not obligatory for a party to give evidence or to call witnesses to give evidence in his favour once there was sufficient evidence in his favour from other parties in the case.*

ii. The evidence of the plaintiff and his witnesses supported the 4th defendant's case that the chieftaincy dispute arose before 1/10/79.

20 *iii. The witness for 1st-3rd defendants also gave evidence to the same effect which the trial Court perversely rejected even though the plaintiff and his witnesses gave the same evidence that the chieftaincy dispute arose before 1/10/79.*

25 *iv. A court cannot pick and choose what portion of evidence of a witness to believe or disbelieve. Other grounds may be filed on receipt of the record of appeal."*

The 1st and 2nd appellants filed two grounds of appeal in their notice of appeal dated 13th March, 1989. The grounds of appeal are as follows-

30 *"1. The Court of Appeal erred in law when it failed to consider and decide upon Grounds 5 and 6 of the grounds of appeal filed by the 1st and 2nd appellants and this has occasioned a miscarriage of justice.*

35 *Particulars of errors in law:*

(i) The learned Justices of the Court of Appeal dismissed the appeal without considering the two grounds;

(ii) No other Grounds of Appeal encompass or overlap the two grounds.

(iii) *The consideration of the grounds would have affected the decision of the Court of Appeal.*

2. *The Court of Appeal misdirected itself in law by relying solely on the statement of claim to determine the issue of jurisdiction, and it has by this approach arrived at a wrong decision.*

Particulars of errors in law:

"(i) *the pleadings of the Defendants show that the cause of action arose before 1st October, 1979.*

(ii) *all the pleadings ought to be considered before the issue of jurisdiction is resolved,"*

All the parties filed and exchanged briefs of argument in this appeal. They also formulated issues for determination in this appeal. Learned Counsel to the 3rd appellant; Mr. Ijaodola formulated what he regarded as issues for determination. They are as follows-

"1. *What is the cause of action?*

2. *What determines whether a Court of first instance has original jurisdiction or not?*

3. *Was it fatal to the 3rd Appellant's case that he did not personally give evidence or call any witness to establish his appointment before 1/10/79 and*

4. *Was the decision of the Court of Appeal which affirmed the decision of the trial High Court right or wrong."*

I consider it pertinent and useful to discuss the propriety of the above issues before turning to the formulation of issues by learned Counsel to the 1st and 2nd appellants, and by the respondent. The issues (1) and (2) in 3rd appellant's formulation do not seem to be related to any of the grounds of appeal from which they claim to have been derived. Neither the first ground of appeal which is not intelligibly framed, and seems to be incomplete even with respect to the issue of jurisdiction, nor the second ground which questions the determination of the cause of action, could be regarded as coming within the scope and purview of the two questions regarded as issues.

Observations have been made in several judgments in this Court that issues must be formulated in concrete terms. They must not only relate but must also arise from the grounds of appeal filed, -

See Oje v Babalola (1991) 4 NWLR (Pt.185)267; Agbetoba v. L.S.E.C (1991) 4 NWLR (Pt.188) 664; Bamgboye v Olanrewaju (1991) 4 NWLR (Pt.184)132. It cannot be subject matter of argument that the question "What is a cause of action?" is not an issue. These questions by themselves raise issues. I should not be understood as postulating
 5 that in the determination of this appeal, I will not ask myself these questions. It may be necessary in the determination of the existence of a cause of action to consider what is a cause of action. Similarly is the issue as to jurisdiction. This exercise does not elevate the ques-
 10 tions to issues in the case as arising from the grounds of appeal.

Learned Counsel to the 1st and 2nd appellants filed two is-
 sues for determination, which read thus-

*"(i) Whether the Court of Appeal was right either in not con-
 sidering or in not pronouncing upon the Appellants' complaints in
 15 ground 5 and 6 of the grounds of appeal before them (Ground 1).*

*(ii) Whether the Court of Appeal was right to have relied
 solely on the issue of jurisdiction in this case (Ground 2)"*

The first issue as formulated raised a complaint that the court
 below did not consider certain grounds of appeal. Grounds 5 and 6
 20 contain allegations of rejection of certified true copy of the minutes of
 the Ifelodun/Irepodun Traditional Council. It is however well settled,
 and section 226(2) of the Evidence Act is clearly in support of the
 proposition that wrongful rejection of evidence is not per se a ground
 for the reversal of a decision. It is therefore not an issue. It is a differ-
 25 ent consideration where it has been shown that had the rejected evi-
 dence been admitted, the result would have been different. In the
 instant case the mere allegation of non consideration of grounds of
 appeal cannot constitute an issue between the parties.

Learned Counsel to the respondent did not formulate any
 30 issues. He seems to have adopted the issues formulated by the ap-
 pellants. It seems reasonable to consider the following issues hereun-
 der stated as arising from the grounds of appeal filed.

35 These are-

(i) Whether the Court of Appeal was right to have held that
 on the facts before the learned trial Judge, he had jurisdiction to hear
 a matter which undoubtedly raised a chieftaincy question.

(ii) Whether the Court of Appeal considered the case of the

Plaintiff on its merit and reached a correct decision.

(iii) Whether the failure of 3rd appellant to personally testify or call any credible witness to establish his appointment before 1st October, 1979 was fatal to his case.

Before considering these issues, I shall deal with the preliminary objection raised by Alhaji Salman, S.A.N for the respondent. His submission was that grounds 14 of 3rd appellants' grounds of appeal are incompetent. The grounds relied upon are that since they contain mixed law and facts and have been filed without leave they have been filed in contravention of section 213(3) of the Constitution 1979. As these are the only grounds in the notice of appeal, the entire appeal is incompetent.

Mr. Sofola, S.A.N. in his reply submitted that all the grounds of appeal in the notice of appeal consist of undisputed facts. He pointed out that every conclusion of law is founded on facts. It is when the facts are disputed, that the question of mixed facts and law arises and which will require leave of the Court in compliance with section 213(3) of the Constitution 1979. He cited *Ogbechie & Ors v. Onochie & Ors* (1986) 2 NWLR (Pt.23) 484, *Nwadike & Ors v. Ibekwe & Ors.* (1987) 4 NWLR (Pt.67) 718. I agree entirely with this submission - See *Metal Construction (W.A.) Ltd., v. Migliore*; *In re Ogundare* (1990) 1 NWLR (Pt.126)299. I agree with this submission. The preliminary objection is misconceived.

I now turn to the issues for determination. I will begin with the first issue which concerns the issue of the jurisdiction of the learned trial judge.

The contention of the appellants is that the claim before the learned trial Judge raises a chieftaincy question. The dispute which has given rise to the action started in 1971 and at the time the dispute arose, the jurisdiction of the High Court was ousted, both under the provisions of the Constitution, and the relevant Chiefs' Law. Accordingly the jurisdiction remains ousted, notwithstanding the provisions of section 236 of the Constitution 1979 which confers jurisdiction.

It was submitted that pleadings having closed, and evidence called, the Court could no longer properly rely on the writ of summons and statement of claim alone to determine the commencement of the cause of action. The whole case must be considered. Mr. Sofola submitted that admissions by the defendant clearly show the

existence of the Chieftaincy dispute between the 3rd appellant and the father of the plaintiff/respondent long before October 1, 1979.

In his own submission, learned Counsel for the respondent submitted that evidence of PW.3 shows that the 3rd appellant was never nominated for appointment by the Kingmakers of Okanle as
 5 against the respondent who was so nominated and duly appointed as the Olokanle of Okanle. The exercise by the Kingmakers was after the death of the respondent's father in 1981. Alhaji Salman, for the respondent, submitted that the alleged admissions by some defence witnesses were not real admissions. He urged the Court to accept
 10 the, concurrent, findings of the two courts below on the fact that the dispute between the 3rd appellant and the respondent started in 1981. It was finally submitted that whether a court has jurisdiction as well as when the cause of action began is determined by the averment in the statement of claim. This appeal hangs essentially on the important
 15 issue whether the Court of Appeal was right in holding that the jurisdiction of the Court of trial in this case was determinable on examination of the writ of summons and statement of claim. It is a well known proposition of law that jurisdiction is assumed when the person bringing the action and the subject matter of the action are properly
 20 before the Court. They are only proper before the Court when by the enabling statute or by its inherent jurisdiction it can exercise jurisdiction over the parties.

A High Court is a court of unlimited jurisdiction. But the jurisdiction exercised can be regulated by the restriction of its plenitude
 25 either in terms of subject matter, in terms of the damages in civil causes or the punishment it can impose in criminal cases. Indeed its jurisdiction can be ousted by statute, by the Constitution as submitted in this case, either as to the subject-matter of the cause of action
 30 or as to the person who can bring the action. This now brings us to the question what is a cause of action. In this case the contention is that the High Court is precluded from exercising jurisdiction in respect of the subject-matter. This being a Chieftaincy dispute. What therefore is the cause of action?

35 In *Sanda v. Kukawa Local Government* (1991) 2 NWLR (Pt.174) 379, this Court said that a cause of action is the factual situation which if substantiated, entitles the plaintiff to a remedy against the defendant. See also *Bello & ors v. Attorney-General, Oyo State*

(1986) 5 NWLR (Pt.45) 828. Thus for the claim to establish a cause of action, there must be before the Court juristic or juridical persons; who can make the claim and against who the court can make an enforceable order. Secondly, there must exist a factual situation which enables the Court to proceed on its inquiry - See *Adimora v Ajufo* (1986) 3 NWLR (Pt.80) 1. An action is commenced in our High Court by the filing of a writ of summons, bearing the name of the person making the claim called Plaintiff against who the claim is made called the Defendant, etc. and on which the claim against the person is endorsed. It is this document which summons the Defendant to answer to the claim against him. The appellants have contended that in a case of the like before us, the factual situation to enable the exercise of jurisdiction can be determined only after evidence had been called after the closure of pleadings. The contention is that it can only be determined on consideration of the whole case.

Respondent on the other hand has submitted that examination of the endorsement on the writ of summons and averments in the statement of claim alone are sufficient.

There is something to be said for either submission. There is no doubt the issue of whether a plaintiffs action is properly within jurisdiction or indeed justiciable can be determined even on the endorsement of the writ of summons, as to the capacity in which action was being brought, or against who action is brought. It may also be determined on the subject matter endorsed on the writ of summons, if this is not actionable. The statement of claim when served before the statement of defence is ever filed, the defendant can bring an application to strike out the writ of summons on the same grounds. This is the position before trial. The issue can be determined on the papers already before the court, namely the writ of summons and statement of claim.

On the other hand in this case which is after trial, and on appeal, it may be relevant to consider the findings of the trial Judge on issues raised before him. It is of crucial importance to bear in mind that the jurisdiction of the court is determined entirely on the issue submitted to the court by the plaintiff for determination. The court will not cease to have jurisdiction merely because the defendant has relied on a different defence to the action. Where the subject-matter of the claim of the plaintiff is within the jurisdiction of the court, the

Court will assume jurisdiction. There may be situations, as in the instant case, when the Court will be required to determine the punctus temporis of the factual situations for the exercise of its jurisdiction. Of course where the precise period is in dispute and is in issue, it will be necessary to take evidence to determine that issue for the purpose of the exercise of jurisdiction. See *Barclays Bank of Nigeria Ltd. v. Central Bank of Nigeria* (1976) 1 All NLR 409.

It is however well settled that wherever the endorsement on the writ of summons, and the statement of claim are clear and unambiguous as to facts from which the issue of jurisdiction could be settled one way or the other, it is the proper material for determination of the issue. When this is done the issue is settled on the plaintiff's pleading in his statement of claim and not on the defendant's answer in his statement of defence - See *Adeyemi & ors. v. Opeyori* (1976) 9-10 SC.31.

Hence, when the issue of jurisdiction has been clearly established on the writ of summons and statement of claim, it is not necessary to consider the statement of defence. Jurisdiction already assumed cannot be divested on the strength of a valid defence to the action.

In the instant case there was the finding that the father of the respondent died in 1981. It was also found that the respondent was appointed Olokanle of Okanle by the Kingmakers of Okanle in 1981. These are the factual situations on which the respondent relied for issuing his writ of summons and seeking the declarations endorsed therein. The claim of 3rd defendant/appellant that he was appointed the Baale of Olokanle before 1979 was rejected by the learned trial Judge. It is therefore clear that the finding on the averment in the statement of claim stands uncontradicted. - See *Kasikwu Farms Ltd. v. Attorney-General of Bendel State* (supra).

It is important to bear in mind that the position of Olokanle of Okanle became vacant only on the death of the incumbent in 1981. There was no evidence that the respondent disputed the position of Olokanle of Okanle with the appellant. The evidence before the Court was that the respondent's father had a protracted dispute over the position with the 3rd Appellant. Thus, as between the 3rd appellant and the respondent there was no dispute as to the chieftaincy till 1981, after the death of the respondent's father. It was after this period that the respondent was selected and installed as the

Olokanle. It was at this time that the factual situation which gave rise to the cause of action arose.

I am of opinion that the Courts below came to a correct conclusion on the point. The jurisdiction was not ousted and any dispute about the Chieftaincy before 1981 did not concern the parties.

I now turn to the second issue whether the court below gave its due consideration to the merit of the plaintiff's case. It is clear from the dictum quoted hereunder that the Court below considered the case of the plaintiff on its merits. In the judgment of Akpabio J.C.A., he held as follows:

"The respondent not only testified himself as PW.1 but he called two other witnesses one of whom was head of the Kingmakers of Okanle to testify on his behalf, and they did so convincingly. The 3rd appellant on the other hand failed to even go into the witness box to testify himself. That meant that all the evidence of plaintiff/respondent as regards the Chieftaincy tradition of Okanle, stood uncontradicted, and were rightly believed by the learned trial Judge. There was nothing to contradict the assertion of respondent that 3rd appellant was from a female line of descent and so was not qualified to be selected or nominated as an Olokanle of Okanle. There was nothing to say (show) that respondent was not unanimously selected by all the Kingmakers of Okanle as an Olokanle of Okanle. There was nothing to show that respondent was not qualified to be selected. There was also no indication, whatsoever, to show whoever selected or nominated 3rd appellant as a Baale or Olokanle of Okanle. There was in fact no indication as to whom the 3rd appellant succeeded. Under the circumstances, I am of the view that the learned trial Judge rightly found in favour of the respondent. His decision was not perverse, but rather was founded on the only evidence available."

Alao v. Akano (1988)1 NWLR (Pt.71) 431 was cited and relied upon by Mr. Ijaodola in his brief of argument in support of the case of the 3rd Appellant. That case is distinguishable. In Alao v. Akano (supra), it was established at the trial that the defendant was selected and appointed the Baale of Oke-Oyi in 1972 and subsequently was turbaned by the Emir. Plaintiff unsuccessfully brought action in court to set it aside. After the plaintiff failed in Court, the defendant returbaned the defendant in 1981. Plaintiff brought another action in Court. The Supreme Court held that the cause of action arose in

1972 when the defendant was first appointed and turbanned. This Court held that the cause of action must be determined from the substance of the case and that the cause of action arose in 1972 and not in 1981. So the case must be decided in accordance with the law at the time the cause of action arose.

5 In the instant case, the Courts below found that the dates 1971 or 1972 or 1978 of the alleged appointment of the 3rd appellant as the Baale of Okanle was not proved. The Courts below held as one of the reasons for rejecting the claim of 3rd appellant to appointment as the Baale of Okanle was that he did not testify in support of the case, three of his witnesses D.W.1, D.W.2, D.W.3, gave
10 contradictory evidence as to the date 3rd appellant was alleged to have been appointed Baale of Okanle. In that state of the evidence the learned trial Judge was left with no alternative than to reject his
15 claim - See Mogaji & Ors. v. Odofofin & ors. (1978) 4 SC.91. In the circumstance, the plaintiff's case standing uncontradicted and on the balance of probabilities was accepted. The Courts below gave the fullest consideration to the case of the 3rd appellant. They also on the evidence before them came to the right conclusion.

20 For the reasons I have given above, and in addition to the fuller reasons in the judgment of my learned brother Nnaemeka-Agu J.S.C., I will and hereby dismiss the appeal, all the issues raised on behalf of the appellants having failed.

Each set of appellants as represented by Counsel is to pay
25 N1,000.00 as costs to the respondent.

WALI JSC

30 I have had a preview of the lead judgment of my learned brother, Nnaemeka-Agu, J.S.C. I entirely agree with his reasoning that the appeal lacks merit and it must therefore be dismissed. Based on the reasons given in the lead judgment which I hereby adopt as mine, I also dismiss the appeal with N1,000.00 costs against each set
35 of the appellants in favour of the respondent.

KUTIGI JSC

I have had a preview of the judgment just delivered by my

learned brother Nnaemeka-Agu, J.S.C. in this appeal. I agree with him that the appeal fails. He has set out the facts and there is no need to repeat them.

On the issue of jurisdiction, it is noteworthy that the claim between the parties relates to the Olokanle of Okanle. The plaintiff/respondent pleaded and testified to the fact that his father Oyebode, reigned as Olokanle of Okanle until his death in 1981 when the plaintiff/respondent succeeded him. The trial court therefore had jurisdiction to try the case. The learned trial Judge never believed the third defendant/appellant that he had been installed as the Baale of Okanle because such an office never existed in the locality.

On the other issues it suffices to say that the respondent showed clearly how he was selected by the Kingmakers according to custom and tradition. The 3rd appellant proved nothing because he was disbelieved along with his witnesses. The appellants also failed to show how the rejected minutes of the Traditional Council would have affected the decision of the trial court in their favour since it is not every rejection of evidence that will affect the decision of the trial court or of a court of appeal (See generally section 226 sub-section 2 of the Evidence Act).

For the above reasons and others contained in the lead judgment, the appeal is dismissed with costs as assessed.

OGUNDARE JSC

I have had the advantage of reading in draft the judgment of my learned brother Nnaemeka-Agu, J.S.C. just read. I agree entirely with the conclusion reached by him and the reasoning leading thereto. I have nothing more to add to the rather very lucid judgment. I too agree that the appeals of the two sets of appellants be dismissed and the judgment of the court below affirmed. I subscribe to the order for costs made by him. Appeal dismissed.