

## **SUPREME COURT OF NIGERIA**

22ND JANUARY, 1993. SC.68/1991

**CORAM:- A. G. KARIBI-WHYTE, S. M. A. BELGORE, P. NNAEMEKA-AGU,  
O. OLATAWURA, E. O. OGWUEGBU, JJSC**

1. ALHAJI AMODU OLALEYE OYEYEMI )  
(HEAD OF LADEKAN RULING HOUSE OF IKIRE)
2. MURANA LALEKE )
3. CHIEF YINUSA ADEMOLA MOKOWAJO )
4. CHIEF C.A. OYENIRAN )
5. KARIMU OGUNREMI ) APPELLANTS  
(ALL REPRESENTING THE LADEKAN RULING )  
HOUSE OF IKIRE )
6. ALHAJI RAIMI OWOLABI )  
(HEAD OF AND REPRESENTING ONISOKAN )  
RULING HOUSE )
7. ALHAJI RASAKI )
8. RASAKI OGUNLOWO )

AND

1. IREWOLE LOCAL GOVERNMENT IKIRE )
2. THE ATTORNEY GENERAL OF OYO STATE )
3. CHIEF SAMUEL AYODA )
4. CHIEF N.M. OLADAPO ) RESPONDENTS  
(BOTH RE PRESENTING THE AKIRE CHIEFTAINCY)  
KINGMAKERS )
5. THE MILITARY GOVERNOR OF OYO STATE )
6. PRINCE BURAIMOH OLANREWAJU )  
(REPRESENTING THE AKETULA RULING )  
HOUSE OF IKIRE )
7. MURANA OYEBAMI )  
(REPRESENTING THE LAMBELOYE RULING )  
HOUSE OF IKIRE )

*APPEALS - move to raise a new issue without leave - not possible*

*COURTS - decisions - whether to be arrived at any how - or  
from court's conclusions on facts*

*COURTS - discretion - how to be exercised*

*INTERLOCUTORY INJUNCTIONS - when not to be granted*

*STATUS QUO - purpose of order to maintain - what applicant must*

114 OYEYEMI V. IREWOLE L.G. (1993) 2 KLR 113; (1993) 1 NWLR  
*show - when application must fail.*

### **FACTS**

The plaintiffs, now Respondents, claimed against the Defendants, now Appellants in the High Court, some reliefs, relating to the Akire of Ikire Chieftaincy stool. The Appellants/Defendants also counter-claimed for some reliefs.

The trial Judge found for the Plaintiffs in respect of some of the heads of claim filed by them and also found for the Defendants in regard to some of their claims. He dismissed all the other claims and counter-claims.

The plaintiffs appealed against the Judgment to the court of Appeal and then applied by way of motion to the High Court for stay of execution of the judgment. The High Court refused the application and dismissed it. The plaintiff did not appeal against the dismissal of their motion but brought another application before the Court of Appeal for stay of execution of judgment and interlocutory injunction restraining the Defendants from installing the new Akire of Ikire pending the determination of the appeal. Court of Appeal granted the order of interlocutory injunction, though it observed that the Applicants failed to show in which way the installation of the Oba will render their appeal nugatory and also came to the conclusion that the applicants had no substantial grounds of appeal.

**HELD** (unanimously discharging Court of Appeal's order of interlocutory injunction)

1. Every decision of a court of justice should flow logically from the conclusions on facts and of law made by the court and also be readily seen to be a logical result of such an exercise The injunction granted by the Court of Appeal in this case did not so flow. (p.123 L. 16)
2. The purpose of a court order to maintain the status quo is to preserve the subject matter of the litigation from being wasted or damaged, lest a successful appellant be exposed to the danger of reaping an empty judgment. (p.123 L. 21)

3. When a court of law finds as in this case, that completion of a step sought to be restrained will not render a successful appeal nugatory, there is no basis for making the order to maintain the status quo. (p.123 L. 26)

4. To be entitled to an order to maintain the status quo, the applicant shall satisfy the court that there is a serious issue to be tried whether in a court of first instance or of appeal. (P. 123 L. 30)

5.The Court of appeal came to the conclusion that the applicants had no substantial grounds of appeal, the court has set for itself a yardstick of measurement for correct exercise its discretion. (p.124 L. 3)

6. It is an arbitrary exercise of discretion for the court to come to a conclusion without making use of criteria and standards it has set for itself as acid tests for correctness. (p.124 L. 7)

7. A court's naked and arbitrary exercise of its discretion without logic and reason is a grave error and such invocation of judicial power is bad for the law. (p. 124 L. 34)

8. The issue of use of persons who were not kingmakers now sought to be raised by the Respondents is a new issue which cannot be raised since leave of the Supreme Court was not sought and obtained. (p. 127 L 9)

**FOR SOME RESERVATION** expressed on the law of interlocutory injunctions pending appeal, as stated by the Court below - see PER NNAEMEKA-AGU JSC (P. 125 L. 2)

**PER NNAEMEKA-AGU JSC** *"..... a government or government agency against which a declaration of right has been made by its own court is expected to respect such a declaration without question whereas a citizen who disregards such a declaration exposes himself to the danger of contempt of Court proceedings".* (p. 127 L. 27)

**REPRESENTATION**

Chief A.O. Fadugba (with Chief A. Adedeji), for the 3rd, 4th & 7th Appellants For the Appellants L.A. Adedeji, for the Respondents

**CASES REFERRED TO**

- 5 1. Vaswani Trading Co. v. Savalakh & Co. (1972) 12 S.C. 77
2. Shittu Ogunremi v. Dada (1962) 1 ALL NLR 663
3. Lijadu v. Lijadu (1991) 1 NWLR 627
4. Ogbonna v. A. G. Imo State (1989) NWLR (pt 121) 312
- 10 5. Okafor v. A.G. Anambra state (1988) 2 NWLR 736
6. Registered Trustees of Lagos State Taxi Drivers Association v. A.G. Lagos State (1990) 3 NWLR 711
7. Okoya v. Santilli (1990) 2 NWLR 173
8. Yaya Adigun v. A.G. Oyo State (1987) 1 NWLR 612
- 15 9. Adeyemo & anor v. Popoola & 2 ors (1987) 4 NWLR 578
10. Obeya Memorial Specialist Hospital & anor v. A.G. of the Federation & anor (1987) 7 SCNJ 42
11. Sodeinde v. The Registered Trustees of the Ahmadiyya -Movement - in - Islam. (1980) 1-2 S.C. 163
- 20 12. Resident Ibadan Province v. Lagunju (1954) 14 WACA 549
13. Aruna Kudoro v. Alaka (1956) 1 F.S.C. 82
14. University of Lagos & anor v. Aigoro (1985) 1 NWLR 143
15. Rooke's case (1598) 5 Co. Rep. 99b
- 25 16. Sharp v. Wakefield (1891) A.C. 173 H.L.
17. Ojogbue v. Nnubia (1972) 1 ALL NLR 226
18. Hubbard & anor v. Vosper & anor (1972) 2 Q.B. 84
19. Evans Marshall & Co. Ltd v. Bertola S.A. (1973) 1 ALL ER 992
20. American Cyanamid Co. Ltd v. Ethicon Ltd (1975) 1 ALL ER
- 30 504 H.L.
21. Kotoye v. Central Bank of Nigeria (1989) 1 NWLR (pt 98) 419
22. Doherty v. Allman 3. App. Cas. 728
23. Harman pictures N.V. v. Osborne (1967) 1 WLR 723
24. Preston v. Luck (1884) 27 ch.D. 495
- 35 25. The Arnot Syle (1896) 11 P.O. 116
26. Scott v. Mercantile Accident Insurance co. (1892) 8. TLR 320
27. Solanke v. Ajibola (1969) 1 NMLR 259
28. George Ugbonma v. Ojugbeli Dei (1971) ALL NLR 8

**LEAD JUDGMENT BY NNAEMEKA-AGU JSC**

The main issue in this interlocutory appeal is whether the Court of Appeal, Ibadan Division, was right in the way and manner it exercised its discretion in granting an order of interlocutory injunction pending appeal in favour of the plaintiffs on the facts and in the circumstances of this case. 5

In the substantive suit, the parties put forward their diverse claims and counter claims relating to the Chieftaincy stool of the Akire of Ikire. The main issues in contention in the suit related to:- 10

*(i) Whether the Chieftaincy Declaration of 1958 was valid, particularly whether it included Aketula Family of Ikire as a separate and distinct ruling house;* 15

*(ii) The number and identity of the Ruling Houses;*

*(iii) The order of rotation;* 20

*(iv) The number and identity of the Kingmakers;*

*(v) Whether Ladekan Ruling House was the next entitled and eligible to produce a suitable candidate for the vacant stool of Akire of Ikire;* 25

*(vi) Whether the defendants should be restrained from calling for nomination, appointment or installation of any candidates, save those from Ladekan Ruling House;*

*(vii) and according to the counter-claim of the 7th defendant, whether the plaintiffs should be restrained from using the 1958 Akire of Ikire Chieftaincy Declaration for appointing, or installing any person from either Ladekan or Aketula to fill the vacancy.* 30

*After trial, the learned trial Judge found that:-*

*(1) The 1958 registered Chieftaincy Declaration pertaining to the Akire of Ikire does not contain the true customary law of Ikire in that:-* 35

*(a) it wrongly included Aketula Family as one of the Ruling Houses in Ikire:*

*(b) it was wrong in the order of rotation whereby the Ruling Houses would fill any vacancy in the Chieftaincy whenever it occurred;*  
*(c) that Lambeloye, and NOT Ladekan Ruling House was the next entitled to produce the next Akire of Ikire.*

5 The plaintiffs, that is, representatives of Ladekan Ruling House, aggrieved by the decision of the High Court then appealed to the Court of Appeal. During the pendency of the appeal, the plaintiffs filed in the High Court applications for a stay of execution of the judgment, which applications were dismissed by the learned trial Judge,  
 10 Olowofoyeku, J., because the applicants failed to show any special circumstances for the grant of a stay.

The plaintiffs by their motion dated 19th day of June, 1990,  
 15 applied to the Court of Appeal for an order of:

*(i) a stay of execution of the judgment of the High Court: and*  
*(ii) Interlocutory injunction restraining the 1st-5th and 7th defendants, their agents/servants from taking any step or further step whatsoever in installing any person or any member of the 7th defendants*  
 20 *Lambeloye Ruling House as the new Akire of Ikire pending the determination of the appeal filed in the suit.*

I wish to pause here to make some observations on the application before the court. The first prayer was one which the learned trial Judge had refused on the grounds that the applicants had shown  
 25 no special circumstances and that, as it was so, he would not, on principle, deprive the successful party of the fruits of the judgment in his favour. He relied on the case of Vaswani Trading Co. v. Savalakh & Co. (1972) 12 S.C. 77 for his decision. It does not appear that this  
 30 ruling and refusal of a stay have been appealed against. The plaintiffs merely appealed against the judgment in the main suit and thereafter applied for a stay and an interlocutory injunction.

Although it is settled that a court of record has an inherent power to order a stay of execution of its own judgment (for which  
 35 see *Shittu v Ogunremi v. Dada* (1962) 1 All NLR 663. (1962) 2 SCNLR 417, and section 18 of the Court of Appeal Act, 1976, appears to give a similar power to the Court of Appeal), the question is whether the power of stay could be exercised in this case where it has been refused by the High Court and there was no appeal against the

order of refusal. The question is: could the Court of Appeal set aside the decision of the High Court against which there is no appeal upon a mere application? Fortunately, I do not have to decide this point in this appeal as the Court of Appeal expressed no opinion on the application for stay. As for the application for interlocutory injunction, I must note that it is an original motion not only because no similar application had been made to the High Court but also because what it set out to achieve was, in effect, the opposite effect of the High Court decision.

In any event, the Court of Appeal after enunciating the principles that ought to guide it in its decision in the matter without actually finding whether or not those principles had been established granted the application for injunction but said nothing about the application for a stay of execution. It is against the grant of the order of interlocutory injunction that the 3rd, 4th and 7th defendants have appealed further to this Court upon three grounds of appeal. From those grounds, learned counsel on their behalf formulated the following issues for determination in this appeal, namely:-

*"2.01 Whether or not in the circumstances of the prayer for Stay of execution/interim injunction the learned Justices of the Court of Appeal have exercised their discretion judicially and judiciously in restraining the 1st to 5th and 7th Defendants/Respondents/Appellants from installing the Oba-elect in view of their findings.*

*2.02 Was there any order made by the Ife High Court enforceable by writ of execution? Or by injunction? And if there was any, was that stage passed before the motion for stay/injunction was filed?*

*2.03 Was the installation of an Akire - elect the subject matter of the claims before the High Court to be preserved or protected by the Court of Appeal?"*

The formulation on behalf of the respondents was substantially the same.

Learned counsel for the appellants submitted that on the findings before the court, there were no basis for the grant of the order of injunction and so it was illogical. He submitted that on the facts established before the court, it ought to have refused the order. He

submitted that exercise of a judicial discretion was as a matter of law based on set rules and not a matter of arbitrary decision. So the grant of the order in spite of its findings was a wrongful exercise of judicial discretion which resulted in denial of justice, he submitted. He cited Lijadu v. Lijadu (1991) 1 NWLR (Pt.169) 627, at 644. He also submitted that as the plaintiffs' claims were dismissed on all the aspects relevant to this appeal they were not entitled to an injunction: Ogbonna v. A-G., Imo State (1989) 5 NWLR (Pt.121) 312. A party can only be entitled to stay or an injunction on an issue on which he has appealed. As from "The part of the judgment appealed against", the respondents did not appeal against the issue which forms the subject of the injunction, they were not entitled to the order appealed against. Above all, even if they did, the dismissal of the claim for injunction would disentitle them to an order of interlocutory injunction pending appeal. He cited: Okafor v. A.G, Anambra State (1988) 2 NWLR (Pt.79) 735 at 751; Registered Trustees of the Lagos State Taxi Drivers Association v. Lagos State (1990) 3 NWLR (Pt.149) 711 at 720. He submitted that the discretion was not exercised judicially but was arbitrarily and the manner or exercise of it was not fair to both parties. So this court has no alternative but to reverse it.

On the second issue, he submitted that as the judgment of the learned trial Judge was merely declaratory: so it cannot be stayed or enforced by an order of injunction. Rather, it can be the subject of a subsequent enforcement action: Okoya v. Santilli (1990) 2 NWLR (Pt.131) 173 at 224. Also he pointed out that the parties who should do the act restrained, that is, install the member or the 7th defendant's family were not before the court and so the order ought not have been made in vain. The approval of the appointment was not an issue before the Court of Appeal, he contended. On the 3rd issue, he submitted that the "installation of an Akire" was not the res in either claims or counter-claims before the court, it was wrong for the Court of Appeal to stop the installation of an Akire. He, therefore, submitted that a non-issue in a suit cannot be rightly a subject of either a stay of execution or an interlocutory injunction pending an appeal. However, having found that the installation would not render the appeal nugatory, it was a wrongful exercise of its judicial discretion to have turned round to restrain the installation by all interlocutory Injunction pending appeal.



In the respondents' brief, learned counsel on their behalf submitted that the order made, being one for the maintenance of the status quo, was a right of the respondents and a judicious step which did not occasion a miscarriage of justice to the parties before the court. He pointed out that the affidavits before the court, showed that the judgment of the High Court had declared the 1958 declaration defective and the court did not proceed to make what amounted to a chieftaincy declaration in the sense of: *Yaya Adigun v. Oyo State* (1987) 1 NWLR (Pt.53) 678 and *Adeyemo & Anor v. Popoola & 2 Ors.* (1987) 4 NWLR (Pt.66) 578. So, till installation of an Akire which the appellants were rushing: through was an obvious illegality because they were using persons who were not kingmakers. It was therefore an exercise which the Court of Appeal had a duty to stop. He submitted that there was no rule of law which stated that once an application for a stay of execution failed, then one for an injunction must also fail. He pointed out that the court did not grant the application for stay of execution of the judgment: all that the court did was, after considering the circumstances of the case, to grant an injunction for a preservation of the status quo. He cited *Obeya Memorial Specialist Hospital & Anor. v. A-G. of the Federation & Anor.* (1987) 3 NWLR (Pt.60) 325: (1987) 7 SCNJ 42 at 44. He contended that the point raised in paragraphs 3.11 to 3.14 of the appellants' brief was more appropriate for the substantive appeal. He submitted that the authorities cited by the appellants were not ill point. On the 2nd issue, he submitted that the Court of Appeal, like any other superior court of record, had both inherent and statutory jurisdiction to grant a stay of execution or an order of injunction. The case of *Sodeinde v. The Registered Trustees of the Ahmadiyya Movement-in-Islam* (1980) 1-2 S.C. 163 was all authority for grant of an order of interlocutory injunction or a stay of execution pending appeal, he submitted. The court could make such an order of injunction at any time: *Richard Okechukwu v. Arthur E.N.D. Okechukwu* (1989) 3 NWLR (Pt.108) 234. He submitted further that installation was indirectly in issue. On the 3rd issue, he submitted that the res was the filling of the vacancy in the stool of Akire of Ikire and so the order of interlocutory injunction was rightly made.

So many fundamental issues have been raised in argument for and against the order of interlocutory injunction pending appeal made that I deem it necessary to examine them in some detail and if necessary, re-state the law.

The first observation I must have to make is that this is an appeal to this Court against the exercise of its discretion by the Court of Appeal, I must, therefore, approach the appeal from the standpoint that it is not the discretion of this court, and so we cannot substitute our discretion for that of the Court of Appeal. But, like all  
 5 appeals on exercise of its discretion by a lower court, we can review the exercise of it but should only interfere if the discretion was not exercised judicially and judiciously, that is, if its exercise was mala fide, arbitrary, illegal, or either by considering extraneous matters or  
 10 by not taking into consideration material issues. On the whole, the question at all times is whether its exercise was in accordance with the dictates of justice. See on these - *The Resident, Ibadan Province v. Lagunju* (1954) 14 WACA 549 at 552; *Aruna Kudoro v. Alaka* (1965) 1 FSC 82 at 83; (1956) SCNLR 255; *University of Lagos & Anor v. Aigoro* (1985) 1 NWLR (Pt. 1) 143 at 148.

In particular, I must note that it is of the very essence of the proper exercise of a judicial discretion that it be exercised in accordance with any relevant rules of law or practice and according to the  
 20 rules of reason and justice and not in accordance with private or whimsical opinion, humour, or sentiment see: *Rooke's Case* (1598) 5 Co. Rep. 99b. See also *Sharpe v. Wakefield* (1891) A.C. 173. H.L. per Lord Halsbury at p.173.

25 Now the learned Justices of Appeal in their unanimous decision set for themselves the criteria for deciding the issue raised by the application. They held:

*"In an application for an interlocutory or interim injunction  
 30 the applicants must establish a probability of a strong prima facie case. That he is entitled to the right of whose violations, he complains, and subject to this being established, the governing consideration is the maintenance of the status quo pending the appeal."*

35 But they held:

*"Throughout, the learned counsel for the applicants had not shown us that the applicants have a strong or prima facie case to be argued in the appeal. He has also not shown in what way the installation of the Oba elect will render his appeal nugatory. I do not think*

*that the chance of the applicants shall be blocked by the installation being carried out per se,"*

Regrettably, their Lordships did not find that the applicants had established a prima facie, less a strong prima facie case, that they were entitled to the right which they claimed. Rather they clearly found that they did not. Worse, they found that granting the order sought would not render the appeal, if successful, nugatory. Yet, in what looked like a dramatic summersault, they held:

*"I think that the justice of the case is better met by this court exercising its power to preserve the res by maintaining the status quo as at today the 14/2/91. Accordingly, it is hereby ordered that the 1st to 5th and 7th respondents shall not take any further steps for the installation of any person or member of the 7th respondent's Ruling House as the Akire of Ikire or for filling the vacancy in the Akire of Ikire Chieftaincy"*

It appears to me to be incontrovertible that the order of injunction made did not flow logically from the above conclusions. Needless to state that every decision of a court of justice should not only flow logically from the conclusions of facts and of law made by the court but also be readily seen to be a logical result of such an exercise: *Ojogbue v. Nnubia* (1972) 1 All NLR 226. Also it must be noted that the whole purpose of an order to maintain the status quo is to preserve the res, the subject matter of the litigation, from being wasted, damaged, or frittered away, with the result that if the appeal succeeds, the result would be nugatory in that the successful appellant could only reap an empty judgment. When as in this case, a court of law finds that completion of a step sought to be restrained will not render the appeal, if successful, nugatory, then there is absolutely no basis for making the order to maintain the status quo. Also, it is now the law that much as it has been accepted that it is useful to keep the relief of interlocutory injunction flexible and not subject to strict rules (see on this: *Hubbard & Anor. V. Vosper & Anor.* (1972) 2 Q.B. 84, and 96 and *Evans Marshall & Co. Ltd. v. Bertola S.A.* (1973) 1 All E.R. 992), it is necessary for an applicant, in order to be entitled to the order to satisfy the court that there is a serious issue to be tried whether in a court of first instance or of appeal: see *American Cyana-*

mid Co. v. Ethicon Ltd. (1975) 1 All E.R. 504. H.L. Obeya Memorial Specialist Hospital & Anor. v. A.G. of the Federation & A Anor. (1987) 3 NWLR (Pt.60) 325; (1987) 7 SCNJ 42 at 44; Kotoye v. Central Bank of Nigeria (1989) 1 NWLR (Pt.98) 419. In this case the Court of Appeal came to the conclusion that the applicant had no substantial grounds of appeal. That destroyed the very foundation of the order of injunction.

Moreover, once the court made a statement of its guiding principles, it was bound to follow them for, by such a statement of guiding principles, the court had set for itself a yardstick of measurement for its correct exercise of its discretion. Having set those criteria and standards for itself, for it to turn, as it were, somersault and decide on how to exercise its discretion without using them as acid tests for the correctness or otherwise, of the exercise was to decide arbitrarily. For as the celebrated Coke Well said in Rooke's Case (supra) judicial discretion is

"..... a science of understanding, to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences and not to do according to their wills and private affections..."

Compliance with rules, reason, and forensic logic are therefore but handmaids for a proper exercise of a judicial discretion, indeed to justice. So, for the court to have decided to exercise the discretion without subjecting it to the searchlight of reason and logic which it had already identified was a violation of first principles. See Doherty v. Allman, 3 App. Cas. 728, per Lord Blackburn. Indeed the only logical inference that could have followed from the conclusions of their Lordships that the applicants had not shown a strong prima facie case to be argued on appeal and that the installation of the Akire of Ikire during the pendency of the appeal would not render the appeal, if successful, nugatory was that the application failed and ought to have been dismissed. But rather, without giving reasons save the blanket expression that "the justice of the case is better met" by the grant of it, without stating how, their Lordships granted the order of interlocutory injunction pending appeal. In my respectful opinion, this naked and arbitrary exercise of its discretion was in grave error. For an invocation of judicial power in that way without logic and reason is bad for the law. I therefore agree with learned counsel

for the appellants that the bases for the order did not exist.

I must express some reservation on the law of interlocutory injunctions pending appeal as stated by the court below.

First: It was wrong to have expressed the guiding principles for interim and interlocutory injunctions as if they were the same or interchangeable, whereas they are not. Also, their Lordships stated that to be entitled to the order, the applicants must show a strong prima facie case that they were entitled to the right of whose violations they complain. It is my view that by this, their Lordships fixed for themselves a higher standard than our present law on the subject calls for. For though the need for looking for a prima facie case or a strong prima facie case was the practice in olden days: see, for example *Harman Pictures N.V. v. Osborne* (1967) 1 WLR 723 and *Preston v. Luck* (1884) 27 Ch. D. 497 at 505, since the decision of the House of Lords in *American Cyanamid co. v. Ethicon Ltd.* (1975) A.C. 396 at 407-409, all that is now necessary is for the court to satisfy itself that there is a serious issue to be tried. On so satisfying itself, if it is a type of act that should be restrained by an injunction, it should proceed to consider the balance of convenience. If it is satisfied that it is on the side of the applicant, it should then extract from the applicant an undertaking as to damages. These principles have been approved by this Court in the case of *Obeya Memorial Specialist Hospital & Anor. V. A.-G. of the Federation & Anor.* (1987) 3 NWLR (Pt.60) 325: (1987) 7 SCNJ 42 at 44: *Kotoye v. Central Bank of Nigeria* (1989) 1 NWLR (Pt.98) 419 at 441. In its inquiry as to whether these preconditions exist in any particular case, different approaches apply in cases of first instance as in appeals, though the basic principle is the same. Whereas in a case of first instance, the court can so satisfy itself from pleadings and such relevant uncontradicted affidavit evidence that are before the court. In an appeal such as this, it has to satisfy itself from the grounds of appeal and such affidavit before it, always bearing in mind that facts that there are presumptions that a trial Judge's conclusions on primary facts and its decision are correct until set aside on appeal and that prima facie a successful litigant is entitled to the fruits of the judgment.

I am of the clear view that where, as in this case, a party has lost its

claim to a declaratory relief and permanent injunction in a court of competent jurisdiction and having appealed, the appellate court, in an application for interlocutory injunction pending appeal which has not yet heard the appeal comes to the positive conclusion that the successful party has not shown that it has a prima facie case to argue  
 5 at the appeal, the application for an interlocutory injunction pending appeal ought not to be granted. I must bear in mind in this respect the fact that a successful litigant is, prima facie, entitled to the fruits of his judgment: *The Arnot Style* (1896) II PD. 116. From the above  
 10 state of the law and the facts. I am satisfied that even if the court below had directed itself properly by stating the guiding principles of law correctly, it should still have dismissed the application in view of the positive conclusions it had reached on the merits.

Another complaint on behalf of the appellants is that the subject  
 15 matter of the appeal had no connection with the order of injunction sought and ordered by the Court of Appeal. It must be noted that in sum the judgment appealed from found that the 1958 Declaration did not represent the custom of Ikire with respect to the rotation of the right to present candidates from the Ruling Houses and the in-  
 20 clusion of Aketula as one of the Ruling Houses and the finding that Lambeloye, and not Ladekan. Ruling House was the next entitled to present a candidate. There was also an injunction concluded thus:

*"Injunction restraining the plaintiffs, the First, the second and  
 25 fifth defendants from making use of the 1958 Akire of Ikire Chieftaincy House Declaration and appointing/installing anybody from either Ladekan or Aketula families to fill the vacant stool of Akire of Ikire,"*

Now the relevant parts of the "Part of the Decision of the  
 30 lower court complained of are in paragraph 4. From this and ground 2 of the grounds of appeal, it appears to me that the complaint is ill-founded. It is also not true that the installation of the Akire was not an issue either in the claim or counter-claim. Clearly, the injunctions sought in both included one against installation. So, much as it is true that for  
 35 such an interlocutory injunction to be rightly ordered it must have a connection with the subject matter in litigation, (for which see: *Scott v. Merchantile Accident Insurance Co.* (1892) 8 T.L.R. 320), there is that connection in this case. This complaint has, therefore, no substance.

In the second issue learned counsel for the appellants has submitted that the judgment appealed from was merely declaratory. So, there can be neither an execution of it nor a stay thereof. In any event, the parties who would do the installation of the Akire were not before the court: so equity ought not to have ordered the injunction in vain. In his reply, learned counsel for the respondents submitted 5 that the appellants were using persons who were not, in fact; kingmakers. So, and a court of equity ought to restrain the illegality.

I believe that the question of use of persons who were, in fact, not kingmakers could be disposed of rather briefly. It was an issue which could have been properly raised for trial in the High 10 Court, but which was not. It is therefore, not competent for the respondent to raise it at this stage without seeking and obtaining the leave of this court. As for the contention that the judgment was not of a nature which could be restrained by an injunction because it was merely declaratory, I must point out that both parties into this claim 15 and the counter-claim claimed for declaratory reliefs as well as injunctions. The plaintiffs/appellants failed while the defendants/respondents succeeded. So, although this court decided in *Chief R.A. Okoya v. S. Santilli & ors*, (1990) 2 NWLR (Pt.131) 173 at 224 & 228 that 20 because a declaratory judgment cannot be enforced by execution but by a subsequent proceeding in which the declared right which has been violated can be enforced, there cannot be a stay of execution thereof, the position is different in this case in that there was an order of injunction which could be executed to enforce the right. 25 Such a declaratory relief coupled with an injunction can always be executed or enforced by appropriate proceedings. In any case, a government or government agency against which a declaration of right has been made by its own court is expected to respect such a declaration without question, whereas a citizen who disregards such 30 a declaration exposes himself to the danger of contempt of court proceedings. Whether such a proceeding for an injunction or for contempt has any merit is quite a different matter. I have already held that it has not in this case. 35

For all I said on the first issue above, this appeal succeeds and is allowed. The order of interlocutory injunction imposed by the Court of Appeal is hereby lifted, and discharged. The order of costs made by that Court is set aside.

I assess costs in favour of defendants numbers 3, 4 and 7 at N1,000.00 in this court and N500.00 in the Court of Appeal.

### **KARIBI-WHYTE JSC**

5 I have read the judgment of my learned brother Nnaemeka-Agu. J.S.C. in this appeal. I agree entirely with his reasoning, and in his conclusion allow this appeal. I also for the same reasons which I hereby adopt hereby allow the appeal. I also abide by the orders  
10 made in the judgment of Nnaemeka-Agu. J.S.C.

Respondents shall pay costs assessed at N1,000 in this court, and N500 in the court below.

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### **BELGORE JSC**

I had the privilege of reading in draft the judgment of my learned brother, Nnaemeka-Agu J.S.C. and I agree with him entirely. The decision of the Court of Appeal in granting the injunction  
20 is illogical and cannot be explained in the light of its findings; it just does not seem to flow naturally from the sequence of events as found by the Court. It therefore appears to be a wrongful exercise of judicial discretion; Lijadu v. Lijadu (1991) 1 NWLR (Pt.169) 627, at 644.  
25 Once a court dismissed all the plaintiff's claims it is incompetent of that court to turn around in the same judgment to grant the plaintiff an injunction Oghonna v. A-G, Imo State (1989) 5 NWLR (Pt.121) 312. Similarly the granting of injunction on a point not appealed against is granting of prayer not sought and is certainly beyond the  
30 ambit of judicial discretion Okafor v. A- G, Anambra State (1988) 2 NWLR (Pt.79) 736, at 751.

For the foregoing reasons and fuller reasons contained in the judgment of Nnaemeka-Agu, J.S.C. I allow this appeal and set aside the judgment of Court of Appeal. I order the same consequential  
35 orders as contained in the judgment of Nnaemeka-Agu, J.S.C.

### **OLATAWURA JSC**

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



brother Nnaemeka-Agu, J.S.C. I agree with his conclusions that the appeal should be allowed.

My learned brother Nnaemeka-Agu, J.S.C. has stated in details the background facts of this appeal. I need not repeat them again. The issue which calls for determination appears to me very narrow in view of the principles and law governing stay of execution. 5

The appellants before us are Chief Samuel Ayoola, Chief N.M. Oladapo (both of whom are representing the Akire Chieftaincy Kingmakers) and Murana Oyebami who represents the Lambeloye Ruling House and they are 3rd, 4th and 7th defendants/respondents respectively - See P. 106 of the Record of Appeal where Notice of Appeal filed to this court can be found. The order made which is the subject matter of this appeal is against "1st to 5th and 7th respondents" and that they *"shall not take any further steps for the installation of any person or member of the 7th respondent's Ruling House as the Akire of Ikire for filling the vacancy in the Akire of Ikire Chieftaincy"*. 10 15 20

The learned trial Judge Olowofoyeku, J. at the conclusion of evidence and submissions gave judgment in favour of the plaintiffs for claims 1.2(a) and (c) and dismissed their claims in 2(b), 3 and 4 these claims are: 25

(1) A declaration that the purported inclusion of AKETULA HOUSE in the Akire of Ikire Chieftaincy Declaration 1958 as a separate and Ruling House is erroneous in law and in breach of Ikire Customary Law and Tradition and therefore null and void and of no effect. 30

(2)(a) A declaration that the recommendation of Mr. B.A. Obasa's Public Enquiry into Akire of Ikire Chieftaincy title in 1976 as regards to:- (Sic) 35

(a) The number and Identity of Ruling House.

(b) Number and Identity of Kingmakers (respondents the true traditional, Correct and Customary positions of the Akire of Ikire Ruling Houses)

The learned trial judge granted the declaration sought in the counter-claim by the 3rd, 4th and 7th defendants to wit:

1(a) *"That the 1958 Akire Chieftaincy Ruling House Declaration was not made in accordance to section 4(4) of the Chiefs Law of Oyo State and therefore defective as it was not made according to Ikire native law and custom and has been so found by the first, second and fifth defendants and therefore could not be used for selection, appointment and installation of a new Akire of Ikire, the stool of which is now vacant as the inclusion of Aketula family which had never been a distinct ruling house in the 1958 Akire Chieftaincy Ruling House declaration and also the exclusion of two important Kingmakers that is Chief Oosa, the head of Akire of Ikire Kingmakers and one Ejemu from the 1958 Declaration"*

(b) *The order of rotation among the Akire of Ikire Chieftaincy Ruling House as recommended by the Obasa Commission of Enquiry and accepted by the Oyo State Executive Council was wrongful, unreasonable, inequitable as the Commission did not resolve the area of rotation on the substantial evidence before it had based its conclusion on irrelevant and unreasonable facts which did not stand the test of time and therefore not made according to Ikire Native Law and Custom when the order of rotation among the Akire of Ikire Chieftaincy Ruling House should be as follows:-*

- (1) *Lambeloye*
- (2) *Ladekan*
- (3) *Disamu*
- (4) *Onisokan"*

2. *Injunction restraining the plaintiffs, the first, the second and fifth defendants from making use of the 1958 Akire of Ikire Chieftaincy House Declaration and appointing, installing anybody from Ladekan or Aketula families to fill the vacant stool of Akire of Ikire"*

It was as a result of these orders that the present respondents applied for stay of execution of the judgment of the Ile-Ife High Court delivered on 9th May 1990 and also "a further order of interlocutory injunction restraining the 1st to 5th and the 7th defendants, their

*agents and/or servants from taking any step or further steps whatsoever in installing any person or member of the 7th defendant's Ruling House as the new Akire of Ikire... "*

*The application was argued and the ruling delivered on 14th February, 1991 is the subject matter of this appeal. The drawn up order of the lower court following the ruling of that court reads:* 5

*IT IS ORDERED:-*

*1. that the applicants be and are hereby given up till today within which to apply for a stay of execution; and* 10

*2. that the 1st to 5th and 7th respondents shall not take any further steps for the installation of any person or member of the 7th respondents ruling house as the Akire of Ikire or filling the vacancy in the Akire of Ikire Chieftaincy. No order as to costs".* 15

*In considering the merits of the application the lower court said:*

*"In an application for an interlocutory or interim injunction the applicants must establish a probability or a strong prima facie case.* 20

*That he is entitled to the right of whose violations he complains, and subject to this being established, the governing consideration is the maintenance of the status quo pending the appeal.* 25

*Throughout, the learned counsel for the applicants had not shown us that the applicants have a strong or prima facie case to be argued in the appeal. He has also not shown in what way the installation of the Oba elect will render his appeal nugatory. I do not think that the chance of the applicants shall be blocked by the installation being carried out per se.* 30

*I have noted that all the steps taken so far did not include as yet, the approval of the appointment by the Military Governor. In respect of the nomination and selection of the candidate which had been effected it is sufficient to say that an injunction (including an interim one) is not granted to restrain what had already been done. This court will not act in vain.* 35

*The status quo as I see it that the candidate appointed had not been approved by the Military Governor. And the Military Governor is but a step in the filling of the vacancy in the chieftaincy.*

5 *I think that the justice of the case is better met by this court exercising its power to preserve the res by maintaining the status quo as at today the 14/2/91. Accordingly is (sic) hereby ordered that the 1st to 5th and 7th respondents shall not take any further steps for the installation of any person or member of the 7th respondents' Ruling House as the Akire of Ikire or for filing the vacancy in the Akire of Ikire Chieftaincy. No order as to costs."*

Chief Fadugba has stated clearly the issues involved in this appeal; I need not repeat what my learned brother had said in respect of the use of discretion a court has in a matter. I respectfully adopt these as may own. Where a court has stated the correct principles of law applicable in a case but curiously arrived at a wrong conclusion, it is in the interest of justice that the appellate court should not allow such a decision to stand.

20 Where the court found that the applicant has failed to do what is necessary for the applicant to succeed, the only reasonable order is the rejection of the application. As at the time the lower court came to the conclusion that what was necessary to make the application before them succeed had not been done, the proper order was to have dismissed the application. It is worth repeating and in fact is the crux of the matter that the court found:

30 *"Throughout, the learned counsel for the applicants had not shown us that the applicants have a strong or prima facie case to be argued on appeal. He has also not shown in what way the installation of the Oba elect will render his appeal nugatory, I do not think that the chance of the applicants shall be blocked by the installation being carried out"*

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The only logical thing left for the court to do was to reject the application in its entirety. The respondent has, in his brief, drawn our attention to the fact that lower court held:

*"The status quo now as I see it is that the candidate appointed*

*has not been approved by the Military Governor and the approval by the Military Governor is but a step in the filling of the vacancy in the Chieftaincy"*

With respect that is extraneous to the matter before the court. No court should speculate on an issue not before it. If one remembers that there are many sips before the cup and the mouth, a contemplated action may never take place. The subject matter as clearly shown on the writ of summons is the real matter for adjudication.

I will therefore allow the appeal and set aside the orders made by the lower court. I will also abide by the order for costs in the lead Judgment.

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### **OGWUEGBU JSC**

This is an interlocutory appeal against the ruling of the Court of Appeal, Ibadan Division dated 14th February 1991 restraining the 1st to 5th and 7th defendants/respondents from taking further steps in the installation of any person, or member of the 7th respondent's Ruling House as the Akire of Ikire or filling the vacancy in the Akire of Ikire Chieftaincy pending the determination of the appeal filed by the plaintiffs/appellants against the decision of the High Court, Ile-Ife.

The Ile-Ife Judicial Division had refused a similar application before the application which gave rise to the present appeal was made to the Court of Appeal.

The appellants/applicants sought the following orders in the Court of Appeal:

*"(i) For an enlargement of time within which to apply for a stay of execution of the judgment of the Ile-Ife High Court delivered on the 9th day of May 1990:*

*(ii) For a stay of execution of the judgment of the High Court of Ile-Ife delivered in Suit No: HIF/9987 on the 9th May 1990;*

*(iii) Of interlocutory injunction restraining the 1st to 5th and the 7th defendants, their agents and/or servants from taking any step or further steps whatsoever in installing any person or member of the*

*7th defendant's Ruling House as the new Akire of Ikire or in any manner whatsoever take step or further steps in filing the vacancy now existing in the Akire of Ikire Chieftaincy pending the determination of the appeal filed in this suit:"*

5           The respondents to the application were dissatisfied with the ruling of the Court of Appeal granting the order of interlocutory injunction and appealed to this court.

10           Three issues were formulated by the appellants for determination in the appeal. The first issue appears to me very vital to the appeal:

*"Whether or not in the circumstances of the prayer for stay of execution/interlocutory injunction, the learned Justices of the Court of Appeal have exercised their discretion judicially and judiciously in restraining the 1st to 5th and 7th defendants/respondents/appellants from installing the Oba-elect in view of their findings."* The learned Justices of the Court of Appeal at page 102 lines 23-29 of the record of appeal held as follows:-

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*"Throughout the learned counsel for the applicants had not shown us that the applicants have a strong prima facie case to be argued in this appeal. He has also not shown in what way the installation of the Oba-elect will render his appeal nugatory. I do not think that the chance of the applicants shall be blocked by the installation being carried out per se."*

Having made the above findings, the order of injunction made by the court below is inconsistent and runs counter to their said findings.

30           It is not always that an appellate court interferes with the exercise of a discretion by the court below. An appeal court is very reluctant to interfere but will do so if in exercising its discretion, the court below acted under a mistake of the law or in disregard of principle or under a misapprehension of facts or has taken into account irrelevant matters or where the discretion has worked hardship or injustice on a party. See *Solanke v. Ajibola* (1969) 1 NMLR 259 and *George Ugboma v. Ojugbeli Dei* (1971) All NLR 8.

In the instant case, it is my view that the learned Justices of the Court of Appeal after coming to the conclusion quoted above,

abdicated from their duty in not refusing the application. In the result, the discretion was not judicially and judiciously exercised on the materials placed before them. It is an arbitrary exercise of judicial discretion. The appeal is accordingly allowed by me.

I therefore agree entirely with the lead judgment of my<sup>5</sup> learned brother, Nnaemeka-Agu, J.S.C. I also abide by the orders made in the said judgment including that as to costs.

Appeal allowed.

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