

**SUPREME COURT OF NIGERIA**  
16TH DECEMBER, 1994, SC. 143/1993  
**CORAM:- M. L. UWAIS, A. B. WALI, M. E. OGUNDARE,**  
**U. MOHAMMED, Y. O. ADIO, JJSC**

THE STATE ..... APPELLANT

V.

DR. COSMAS IKECHUKWU  
OKECHUKWU ..... RESPONDENT

---

**CHIEFTAINCY MATTERS** - *Deposition of a traditional ruler - Whether the chief is deposed - When the Governor has not withdrawn the chiefs recognition.*

**CHIEFTAINCY MATTERS** - *Deposition of a traditional ruler - Whether the power to suspend or depose rests with the Governor.*

**CRIMINAL PROCEDURE** - *Chieftaincy offence - Proof of death or deposition of incumbent chief - whether the respondent was rightly convicted - For the offence charged.*

**CRIMINAL PROCEDURE** - *Wrongful holding out as a chief - Where admitted by respondent - The Court of Appeal was wrong in setting aside the trial court's conviction.*

**CRIMINAL PROCEDURE** - *Fine in Lieu of imprisonment - Where the law states that the imprisonment term is without option of fine - Whether the trial court has the power to give an option of fine.*

**CRIMINAL PROCEDURE** - *Costs - chieftaincy Offence - Whether Cost can be awarded against the state.*

**FACTS**

The Respondent, a former Senior Lecturer at the University of Nigeria Nsukka was in December, 1986 appointed and installed the tradi-

tional ruler - Oluoha XVI - of Ihiala, Anambra State, by members of his community. At the time of Respondent's appointment, one Eze J.M. Udoji was the incumbent who had been recognised by the Government of the State as the Oluoha of Ihiala. The incumbent Chief has not been deposed nor proved dead at the time of Respondent's installation. The community's reason for installing the Respondent was that Eze Udoji had not been seen in the community for about 5 past years. And that before Eze Udoji was deposed by the community, the state Government was informed but gave no reply to their letters. Sometime in 1987, the death of Eze Udoji was announced by his family. The Respondent was charged before the Anambra State High Court on two counts under the provisions of the Traditional Rulers Law 1981, of the State for wrongful installation and wrongful holding out as a chief. The Respondent had not been recognised by the Government at the time of his installation.

The trial court found the Respondent guilty and sentenced him to various terms of imprisonment with option of fines on the two counts. The Respondent appealed to the Court of Appeal whilst the State Cross-appealed against the option of fine in respect of count 2, on the ground that the trial Judge had no jurisdiction to impose a fine in lieu of imprisonment seeing that the relevant section specified that the imprisonment term is without the option of a fine. The Court of Appeal allowed the Respondent's appeal, awarded costs against the State, discharged and acquitted the Respondent. Although that court accepted the State's contention on the issue of sentence in the cross-appeal, no consequential order was made on the Cross-appeal. The State being dissatisfied has now appealed to the Supreme Court to determine inter alia, the issue of costs against the State and whether the Court of Appeal was right in failing to uphold the conviction of the accused.

**HELD** (Unanimously allowing the appeal per lead judgment of **OGUNDARE JSC**)

***Whether the Chief is deposed when the Governor has not withdrawn recognition.***

1. The power of the Governor is obviously wider than that of the community. Until he has exercised his power to withdraw recognition, the Oluoha is not deposed - Notwithstanding the feeling of the community on the subject. Exhibit E does not give the community the power to depose; it only

states the circumstances under which an Oluoha could be deposed. (P. 146 L.34)

***Power to depose traditional ruler rests with the Governor.***

2. Thus, just as with the appointment of the Oluoha by the Okparas, he remains an Oluoha-elect until he is accorded recognition by the Governor after presentation under section 7 of the Law; so also where the community feels circumstances exist for his deposition, he remains, in law, the Oluoha until recognition is withdrawn from him by the Governor. Where a community is of the view that its ruler ought to be deposed under its constitution, the prudent course to take is to communicate its views to the Governor and pray for the exercise of the latter's power under section 19(a) of the Law. In conclusion my answer to Question (iv) is that the power, under the Law, to suspend or depose a traditional ruler rests with the Governor of the State (P. 147 L. 4)

***Proof of death or deposition of incumbent chief***

3. Unless it could be shown that Eze Udoji died before December 1986 when the Respondent was appointed and installed by the Okparas or that he (Eze Udoji) had been validly deposed by the withdrawal, by the Governor, of recognition from him as the traditional ruler, the Respondent would appear to have been rightly convicted by the learned trial Judge. On whom lay the burden to prove that either of the two events had occurred before December 1986? With the admission that Eze Udoji was still the recognized Oluoha in December 1986, the onus, in my respectful view, lay on the Respondent that there had been a vacancy in the Office by the occurrence of the death of Eze Udoji or his deposition. (P. 148 L. 15)

***Wrongfully holding out as a chief***

4. With respect to their Lordships of the court below, I find it difficult to understand their reasoning in respect of count (2). The Respondent admitted that he was not recognized by the Governor at the time he held himself out as the Oluoha. The court below found that he so held himself out. In my respectful view, the ingredients of the offence created by section 19(a) are complete. The learned trial Judge was right in convicting Respondent

accordingly. The decision of the court below, based as it were on wrong premises, cannot be allowed to stand. (P. 155 L 7)

5    ***Fine in lieu of imprisonment***

5. The court below per Akintan JCA had this to say on this cross-appeal. “... There is no doubt that the two years imprisonment prescribed in section 19 of the Traditional Rulers Law is the maximum that a court can impose. (See Udoye v. The State (1967) NMLR 197). The question however is whether the inclusion of without option of fine should be construed as depriving the court of exercising its discretion to impose a fine in lieu of imprisonment. That is definitely the intention of the law in this respect. It follows therefore that whereas the court is free to impose any term of imprisonment not exceeding two years, it is barred from imposing a fine in lieu of imprisonment. The trial court therefore had no power to give an option of fine as it did in the instant case.” The Respondent before us had not appealed against this part of the judgment of the court below. In any event, that court is correct in its conclusion. The position then is that the Respondent is sentenced on count (2) to 2 months imprisonment without any option of fine. (P. 155 L. 24)

***Costs awarded against the state***

6. I do not know under what law or rule of court the court below awarded costs against the State in a criminal prosecution. Perhaps, that court lost sight of the fact that the information or complaint was brought by the State even though a private legal practitioner appeared. I know of no rule of law or practice which says that in such an event costs must be awarded against the State where it failed to prove its case. I think the award of costs was wrongly made (P. 156L25)

30    **NOTABLE POINTS OF INTEREST**

***UWAIS JSC***

***1. No evidence or the legal presumption of death of chief***

I need only to add that the evidence adduced, at the trial, established that the Respondent acted recklessly and threw caution to the winds when he accepted the selection made (of him) by the kingmakers (Okpalas) and assumed the office of Oluoha of Ihiala. There was at the time of the selec-

tion no convincing evidence that the incumbent Oluoha was actually dead nor the evidence to support the legal presumption under section 143 sub-section (1) of the Evidence Act (now section 144(3) of Cap. 112 of the Law of Nigeria, 1990 (P. 157 L 1)

5

### **WALI JSC**

#### ***2. Onus on the prosecution to prove that incumbent chief was alive***

I agree with the Court of Appeal that

*“The onus was definitely on the prosecution to prove that Eze J.M. Udoji was alive as at the time the appellant was selected and installed as Oluoha.”* 10

However that notwithstanding, there was cogent evidence adduced to the prosecution in proof of the two counts. There was no miscarriage of justice. The respondent had failed to prove in his defence the death of the incumbent chief or his deposition, at the time he was purported installed. 15 (P. 158 L 14)

### **MOHAMMED JSC**

#### ***3. Blame on government for the confusion in installing respondent as chief*** 20

I have given the details above in order to show that the Government of Anambra State could not be without blame for the confusion Ihiala over the installation of the respondent as the Oluoha. The Okpalas who are the kingmakers wrote several letters to the Government expressing their concern about the disappearance Chief Udoji, the incumbent Oluoha. When they became convinced that Chief Udoji was no more alive, they wrote to the Government expressing their desire to appoint the respondent as the new Oluoha. The Okpalas conducted the ceremony in an open palace square with representatives of the Government in the area, police and security officers, all present. (P. 160 L 12) 25 30

#### ***4. Problem of criminal prosecution in chieftaincy dispute***

Resorting to criminal prosecution in a chieftaincy dispute has its own attendant problems. The respondent cannot organise and install himself as an Oluoha without the support and encouragement of well meaning members of the dignitaries in Ihiala. This makes the issue a purely political affair. In an investigation of the crime commit many would be found wanting and to have abetted the offence (P. 161 L 21) 35

***5. Pardon under the prerogative of mercy recommended***

Consequently, even though I have declared my support for the conviction of the respondent. I strongly urge that the respondent must not be allowed to spend even a day in prison. I therefore, recommend that the Administrator of Anambra State should exercise his power under the Prerogative of Mercy and pardon him.  
(P. 162 L 5)

**REPRESENTATION**

10 Chief P. Umeadi SAN. for the Appellant  
A.O. Mogboh, SAN with C.H.C. Nwanya for the Respondent.

**CASES REFERRED TO**

Esso N.A. Ltd v. Alli (1968) N.M.L.R.  
15 R.v. Collins (1960) 44 C. App. R. 170  
Udoji v. The State (1967) NMLR 197

**STATUTES REFERRED TO**

Anambra State Traditional Rulers Law of 1981  
20 SS. 18(6), 19(a), 2-5, 7, 8, 10, 12, 13, 16, 18, 19  
Criminal Code Cap. 30, Vol. 11. Laws of Eastern Nigeria. 1963 S. 133(1)  
Evidence Act, Cap. 112 SS. 141(1) 143, 138 (1)  
Criminal Procedure Law S. 382(1)

**LEAD JUDGMENT BY OGUNDARE JSC**

25 This is an appeal by the State against the judgment of the Court of Appeal (Enugu Division) in which the latter Court had allowed the appeal of Dr. Cosmas Ikechukwu Okechukwu against his conviction by the High Court of the former Anambra State. Dr. Okechukwu had been arraigned at the High Court on an information charging him as hereunder:

*“Statement of Offence - Count one*

*Wrongful installation of a Chief contrary to Section 18(b) of the Anambra State Traditional Rulers Law of 1981.*

*Particulars of Offence*

35 *Dr. Cosmas Ikechukwu Okechukwu on the 21st day of December, 1986 at Ihiala in the Nnewi Judicial Division, not being a person recognised by the Governor of Anambra State of Nigeria as the traditional ruler of the Ihiala Community unlawfully allowed himself to be installed as the traditional ruler of the Ihiala Community to wit, Oluoha (XVI) and clan Head*

of Ihiala in the stead of the person so recognised, to wit. Eze John Mgbekwute Udoji, Oluoha (X) of Ihiala.

*Statement of Offence - Count Two Wrongful holding out as a Chief contrary to Section 19(a) of the Anambra State Traditional Rulers Law of 1981.*

*Particulars of Offence*

Dr. Cosmas Ikechukwu Okechukwu (m) on the 25th day of August, 1987 at Ihiala in the Nnewi Judicial Division, not being a recognised Chief of Ihiala Community held himself out as a recognised Chief of the Ihiala Community, to wit, Oluoha (XVI) and Clan Head of Ihiala by signing a letter dated August 25th 1987 which he wrote to the Director-Manager of Telephone Services in the Onitsha Zonal Office, Onitsha in his application for the installation of a telephone in his residence at Ihiala as the Oluoha (XVI) and Clan Head of Ihiala when there was not yet a recognised Chief of the said Ihiala Community.

*Statement of Offence - Count Three*

*Contempt of Court contrary to Section 133(1) of the Criminal Code Cap. 30. Vol.11, Laws of Eastern Nigeria, 1963.*

*Particulars of Offence*

Dr. Cosmas Ikechukwu Okechukwu (m) on the 25th day of August, 1987 at Ihiala in the Nnewi Judicial Division, being a party to a Judicial proceedings pending in the High Court, Nnewi, to wit, Ichie Paulinus Ubanozie and three others versus Dr. Cosmas Okechukwu Suit No. HN/38/87. committed an act of intentional disrespect to the said Judicial proceeding by parading himself as the Oluoha (XVI) and Clan Head of Ihiala in violation of an order of the said High Court Nnewi dated the 7th day of May, 1987 restraining you from presenting himself for installation as the Oluoha elect or parading himself as the Oluoha of Ihiala pending the determination of the substantive suit to wit Suit No. HN/38/87."

Dr. Okechukwu (hereinafter is referred to as the respondent), a former Senior Lecturer at the University of Nigeria. Nsukka was invited by the members of his community of Ihiala to be their traditional ruler, that is the Oluoha of Ihiala. He was appointed and installed as the Oluoha: this was in December 1986. Before this appointment and installation however, one Eze J.M. Udoji was the incumbent who had been recognised by the Government of the State as the Oluoha of Ihiala. Eze Udoji was still the

recognised Oluoha when the respondent was appointed and installed as the Oluoha. The reason given for the action of the Okparas of the community that appointed and installed the respondent was that Eze Udoji had not been seen in the community for about 5 years before December, 1986 and that according to the Constitution of the Community, declaratory of the custom and tradition of Ihiala. Eze Udoji was deposed by the Community and the State Government was informed but gave no reply to their letters. Sometime in 1987, the death of Eze Udoji was announced by his family. As the respondent has not been recognised at the time of his installation, he was charged under the provisions of the Traditional Rulers law 1981 of the state.

At the conclusion of the trial and addresses by learned counsel for the parties, the learned trial Judge found the defendant guilty on the two counts for which he was eventually tried: the third count on the information was discontinued with. He was convicted and sentenced on count (1) to a fine of N10.00 or one month's imprisonment and on count (2) to a fine of N40.00 or two month's imprisonment. The fines were to be cumulative while the terms of imprisonment were to be concurrent. Being dissatisfied with the judgment of the trial court the respondent appealed to the court below and, as stated earlier in this judgment, his appeal was allowed with costs. The conviction and sentences imposed on him were set aside and he was discharged and acquitted.

I may mention here that the State also cross-appealed against the sentence on count (2) of N40.00 fine imposed on the respondent by the trial High Court on the ground that the learned trial Judge had no jurisdiction to impose a fine in respect of an offence under Section 19(a) of the Traditional Rulers Law 1981. Although the court below accepted the State's contention in the cross-appeal, in view, however, of its decision on the respondent's main appeal no consequential order was made on the cross-appeal.

The State with leave of this Court appealed upon four grounds of appeal and sought the following relief:

*"An order setting aside the judgment of the learned Justices of the Court of Appeal appealed from and substitute therefore an order upholding the judgment of the learned trial Judge in the High Court varying the sentence in count 2 of the charge following the result of the successful cross-*



appeal.”

The parties filed and exchanged their respective briefs of argument. In the appellant’s brief the following four questions are set out as calling for determination in this appeal, that is to say:

“(i) Were the learned Justices in the Court of Appeal right in placing the onus of proof that Eze J.M. Udoji was a life (sic) on the prosecution in view of Section 18(b) of the Traditional rulers Law No. 14 of 1981 of Anambra State under which the accused was charged.

(ii) Were the orders for costs made in the Court of Appeal against the private prosecutor supported by any law assuming but by no means conceding that a private prosecutor was even involved and should be allowed to stand.”

(iii) Having found that the accused actually held himself out as ‘the Oluoha of Ihiala’ are the learned Justices of the Court of Appeal right in failing to uphold the conviction and then sentencing the accused in terms of the successful cross-appeal, in view of the clear words of Section 19(a) of the Traditional Rulers Law No. 14 of 1981?

(iv) After recognition of a Traditional Ruler by the Government under the relevant law to whom does the power to suspend or depose the Traditional Ruler belong, under the law?”

The five questions formulated in the respondent’s brief are not dissimilar to the above questions, Question 2 in the respondent’s brief however, does not arise out of the grounds of appeal before us, it shall therefore, be discountenanced. I shall adopt the questions as set out in the appellant’s brief for the purpose of determining this appeal. Questions (i), (iii) and (iv) shall be considered together.

Before I proceed further, I like to set out the relevant legislations that feature in this matter at all its stages:

Traditional Rulers Law, 1981

Section 2: “recognised Chief” means an “Igwe” or “Obi” selected and appointed by a town or community as the town’s or community’s traditional ruler and recognized as such by the Governor in accordance with the provisions of this law, so however, that such a recognised Chief shall ascribe to himself the title of ‘His Highness

“traditional ruler” means a person selected and appointed as “Igwe” or “Obi” of a town or community in accordance with this Law, who, on his recognition by the Governor, shall be styled or known as a recognized Chief.”

Section 3:

(1) Subject to the provisions of Section 6 of this Law, where on the date of coming into force of this Law, there is in a town or community a  
 5 person who is the traditional ruler of the town or community such community may, at any time thereafter and in accordance with the provisions of this law, present such a traditional ruler to the Governor for the purpose of his being recognized by the Governor as the traditional ruler of the town or community in accordance with this law.

10 (2) Where, on the date of coming into force of this Law, a town or community has not selected or appointed any person as traditional ruler, such community or town may at any time thereafter and in accordance with the customary law of that town or community select or appoint a person as the traditional ruler of that community.

15 (3) At any time after a person is selected or appointed as a traditional ruler of a town or community under subsection (2) of this Section, the town or community may in accordance with the provisions of this law, present such traditional ruler to the Governor for recognition in accordance with this Law.

20 Section 4:

The Governor shall not recognize any person as a traditional ruler of a town or community unless the Governor is satisfied that such person:-

- (a) was selected or appointed in accordance with the:-
  - (i) customary law of the town or community concerned; or
  - 25 (ii) town's or community's constitution, where documented;
- (b) has broad support of his town or community;
- (c) is not under twenty-one years of age;
- (d) is not a full-time public servant;
- (e) is ordinarily resident within the area of his town or community;
- 30 (f) has not been convicted in any part of Nigeria of a capital offence or any offence involving fraud and sentenced to death or to a term of imprisonment; or if he has been so convicted and sentenced, has received a free pardon;
- (g) has not, under any law for the time being in force in Nigeria  
 35 been found or declared to be of unsound mind or adjudged to be a lunatic, or if has been so found, adjudged or declared has received a certificate of sanity:

(h) has good reputation.

Section 5:

(1)(a) Subject to the provisions of Section 6 of this Law, the presentation of a traditional ruler of a town or community for the purpose of his recognition under this Law shall be carried out on a date and at a place and time fixed by the town or community, such place being a place to which members of the public may have access;

(b) such date, place and time shall be publicized in the traditional manner or otherwise within the town or community; 10

(c) a written notice of a proposed presentation and of the date, place and time of the presentation shall be delivered to the Secretary to the Local Government of the town or community concerned.

2. The traditional ruler of a town or community shall be deemed to be presented to the Governor for the purpose of his recognition under this law if, on the date and at the place and time publicized and notified in the manner specified in subsection (1) of this Section, and in the presence of members of the town or community, such traditional ruler is presented by the town or community to:- 15

(i) the Commissioner: to 20

(ii) the Secretary to the Local Government in charge of the town or community concerned: or

(iii) any other person appointed by the Governor in that behalf.

Section 7:

Where a traditional ruler of a town or community is presented to the Governor under the provisions of Section 5 or Section 6 of this Law, the Governor may, in accordance with the provisions of this law, recognize such a person as a traditional ruler of the town or community. 25

Section 8:

The recognition of a person as a traditional ruler and the withdrawal of such recognition, shall be published in the Gazette. 30

Section 10:

Notwithstanding anything contained in this Law, the Governor may suspend or withdraw the recognition of a recognised chief or traditional ruler if the Governor is satisfied that such suspension or withdrawal is:- 35

(a) necessary having regard to the code of conduct required by the customary law existing between the traditional ruler or recognized Chief and the town or community which he represents: or

(b) necessary in the interests of peace, order and good government.

Section 12:

(1) Every town or community whose traditional ruler has been recognized as a traditional ruler by the Governor shall forward to the Secretary to the Local Government in charge of the area of that community:-

(a) the town or community constitution of that community; And

(b) the customary code of conduct existing between the town or community and the traditional ruler and which shall be signed by the traditional ruler

(2) The provisions of Section 10 of this Law shall apply to a traditional ruler who has subscribed to such code of conduct.

Section 13:

(1) The town or community constitution of a town or community shall consist of:-

(a) a detailed statement of the customary law of the town or community regulating the selection, appointment, suspension, deposition, rights privileges of the traditional ruler of the town or community:

(b) prerogatives and customary code of conduct existing between the traditional ruler and the town or community concerned and identifying the person or persons or group of body of persons specified in Section 11 of this Law.

(2) Such town or community constitution after it has been duly forwarded to the Secretary to the Local Government shall not be amended unless the Governor is satisfied as to the reason for such amendment.

(3) Such town or community constitution as so forwarded or amended shall be deemed to state the Customary law of the town or community relating to the selection, appointment and deposition of the traditional ruler and to the matters in respect of which the customary law is stated.

(4) The Commissioner shall have custody of all town or community constitutions forwarded under this Law.

Section 16:

(1) Notwithstanding Section 10 of this Law, whenever there are allegations of grave misconduct against a recognized Chief, the Commissioner shall cause administrative enquiry to be held in respect of such allegations.

(2) Where the Commissioner after such enquiry, is satisfied that such allegations are proved against the recognized Chief, or that the recognized chief has ceased to enjoy the popular support of his town or community, the Commissioner shall advise the Governor to withdraw the recognition of such recognized chief.” 5

Section 18:

After the Governor has recognized a person as a traditional ruler of a town or community, any person who:-

(a) instals or purports to instal another person as such traditional ruler: or 10

(b) allows himself to be installed as a traditional ruler of that town or community in the stead of the person so recognized; is guilty of an offence, and on conviction is liable to imprisonment for twelve months or a fine of one thousand naira or to both such imprisonment and fine. 15

Section 19:

Whether or not there is a recognised chief in a town or community, a person not being a recognised Chief who:-

(a) holds himself out; or  
(b) portrays himself; or 20

(c) allows himself to be portrayed: or

(d) addresses other person; or

(e) addresses himself; or

(f) allows himself to be addressed; as a recognized Chief of that town or community, is guilty of an offence and, on conviction, is liable to imprisonment for two years without option of fine. 25

The Constitution and Code of Conduct of Oluoha of Ihiala (Exhibit Installation) On selection, presentation and acceptance, the Oluoha-Designate is installed the Oluoha of Ihiala. Two months before the installation ceremonies, the Oluoha-designate will commune separately with each of the ten families of Ihiala and feast them lavishly. 30

Interregnum

Traditionally, when a reigning Oluoha died, a seven-years interregnum interspersed. During this time, the late Oluoha’s oldest son became the Regent. Due to the demands of the modern times, both the Regency and the Interregnum shall exist for only one year from the death of the Oluoha. In the absence of an adult son or where the oldest son is not 35

conveniently available, the Okparas in Article I shall select a Regent.

Tenure of Office

12.1 The Oluoha holds office for life.

5     12.2 The Oluoha cannot be deposed unless

12.2.1 He commits a serious criminal offence.

12.2.2 He consistently conducts himself in breach of the oath of office.

12.2.3 He commits abuse of his office.

10     12.2.4 He becomes insane or otherwise incapacitated to carry out the duties of his high office or

12.2.5 He ceases to be ordinarily resident in Ihiala.

Questions (i), (iii) & (iv)

15     The resolution of these questions depend much on the interpretation to be placed on the above legislations. I say this because the facts appear not to be much in dispute. It is easy to dispose of Question (iv) first.

20     The Constitution e.t.c. of Oluoha of Ihiala (Exhibit E) was made pursuant to Section 13 of the Traditional Rulers Law. It is therefore a subsidiary legislation.

Section 13(1)(a) provides for the issue of deposition of a recognized Chief to be included in the community's constitution as was, in fact, done in paragraph 12.2 of Exhibit E. Chief Umeadi, SAN learned leading counsel for the appellant has argued that paragraph 12.2 is inconsistent with Section 10 of the law. With profound respect to the learned Senior Advocate, I do not share this view. Section 10 deals with the power of the governor (Military Administrator under the present disposition) to "suspend or withdraw the recognition of a recognized Chief or traditional ruler. To my mind the withdrawal of recognition amounts to deposition of the Chief. And the Governor may do this either as required by the customary law of the community - paragraph 12.2 of Exhibit E in the case on hand or as required by interest of peace, order and good government. The Ihiala community, on the other hand, can only recommend to the Governor that the Oluoha be deposed if he has fallen foul of any of the circumstances listed in paragraph 12.2 of Exhibit E. The power of the Governor is obviously wider than that of the community. Until he has exercised his power to withdraw recognition, the Oluoha is not deposed - notwithstanding the feeling of the community on the subject. Exhibit E does not give the community the power to depose; it only states the circumstances under which

an Oluoha could be deposed. This, in my respectful view, is the result of the reading together of Sections 10 and 13 of the law if absurdity is to be avoided.

Thus, just as with the appointment of the Oluoha by the Okpalas, he remains an Oluoha-elect until he is accorded recognition by the Governor after presentation under Section 7 of the Law; so also where the community feels circumstances exist for his deposition, he remains, in law the Oluoha until recognition is withdrawn from him by the Governor. Where a community is of the view that its ruler ought to be deposed under its constitution, the prudent course to take is to communicate its views to the Governor and pray for the exercise of the latter's power under Section 10(a) of the law.

In conclusion my answer to Question (IV) is that the power, under the law, to suspend or depose a traditional ruler rests with the Governor of the State. The learned trial Judge was, therefore, right when he found:

*"It appears to me from the provisions of the Chieftaincy Constitution and Code of Conduct of the Oluoha of Ihiala and Section 10 of the Traditional Rulers Law that the right to select or appoint an Oluoha is vested in the Okparas of the seven named families. But, they have no power to suspend, depose or withdraw recognition which by Section 10 is vested in the Governor. In other words, once a Chief is presented by a community and recognised by the government the power to depose him is taken away from the community. If for any reason a Chief or traditional ruler is in breach of the constitution and code of conduct of his selection or appointment the community has to petition the governor. An administrative board of inquiry would be set up to look into the Complaint(s) and if the governor is satisfied that a case of misconduct or breach has been established suspend or withdraw the recognition of the Chief or traditional ruler. Sylvester Anyigbo D.W. 2 conceded the procedure in cross-examination."*

Later in the Judgment, the learned Judge added:

*"In the instant case, the people of Ihiala petitioned the government on the long absence of their recognised traditional ruler Eze Udoji Oluoha (X), the rumours and uncertainties surrounding his absence for about five years. The response from the government was an ominous silence. The Okparas who selected him proceeded to depose him. I am of the view that they have no right under the law to depose him. It was a*

*perilous act; they took the laws into their hands. While there is no excuse for the government's inaction to the petitions and representations by the people of Ihiala for five years there is no justification for the precipitous step taken by the Okparas."*

5        I have considered the submissions made by learned counsel for the parties in their respective briefs which they adopted at the oral hearing of the appeal. To constitute an offence under Section 18(b) of the Law, a person must allow himself to be installed as a traditional ruler of a town in the stead of a person so recognized by the Governor. It is not in dispute that  
 10 Eze, J.M. Udoji was, at all times material to this case, the person recognised by the Governor as the Oluoha of Ihiala. Under paragraph 12.1 of Exhibit E he held office for life unless he was deposed under any of the circumstances listed in paragraph 12.2. It is not equally in dispute that the respondent allowed himself to be installed at a time when Eze Udoji was still the  
 15 recognized Oluoha. Unless it could be shown that Eze Udoji died before December, 1986 when the respondent was appointed and installed by the Okpalas or that he (Eze Udoji) had been validly deposed by the withdrawal, by the Governor, of recognition from him as the traditional ruler, the respondent would appear to have been rightly convicted by the learned trial  
 20 Judge. On whom lay the burden to prove that either of the two events had occurred before December, 1986?

With the admission that Eze Udoji was still the recognized Oluoha in December, 1986, the onus, in my respectful view, lay on the respondent that there had been a vacancy in the office by the occurrence of the death  
 25 of Eze Udoji or his deposition.

For Section 141(1) formerly Section 140(1) of the Evidence Act Cap. 112 provides:

30        *"Where a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged is upon such person."*

The court below was clearly in error when it shifted that onus on the prosecution.

35        This apart, Akintan, J.C.A. in his lead judgment observed:  
*'The Onus was definitely on the prosecution to prove that Eze J.M. Udoji was alive as at the time the appellant was selected and installed as Oluoha. As that burden was strictly placed on the prosecution's failure to discharge it was very vital to the success of the prosecution's case.'*



Even if the burden lay on the prosecution to prove that Eze Udoji was alive in December, 1986, this burden, contrary to the finding of the court below was discharged by the evidence of P.W.1 Jepheth Igwillio who testified that Eze Udoji was alive in December, 1986 and that he died on 7th May, 1987. There was also the evidence of P.W.5 Ichie Paulinus Ubanozie who confirmed that Eze Udoji was alive in December 1986. The witness also named one John Orilu Eze the Oluoha XI who succeeded Udoji. P.W. 7 Leonard Mbadugha testified that Eze Udoji died on May, 1987.

Importantly, however, is the fact that the Okparas based their action for appointing a new Oluoha on the ground that the then Oluoha, Eze Udoji had been absent from his domain for about 4 years. The evidence of D.W. 2, Sylvester Anyigbo is very useful in this respect. He testified thus:

*"I am an Ichie in my community alias Ichie Ifeatu. I was initiated by the late H.R.H. J.M. Udoji in May 1982. I have heard of Ihiala Progressive Union. I am a member and infact the 1st Vice President General and have been so since 1979.*

*I have heard of Dioha Royal Family made up of seven sub-families namely Elekechem, Nnebogwu, Melike, Abobihi Ilogbuehu, Abaliki and Ezeogu in their order of seniority. I am from Adobili sub-family.*

*I know the defendant about December 1986, the Okpalas selected the defendant and installed him as Oluoha of Ihiala.*

*At the time the defendant was selected to the best of my knowledge.*

*I do not know the whereabouts of H.R.H. Eze J.M. Udoji but his immediate family said he was in Western Germany receiving treatment. As at that date the last time I saw Eze Udoji was on 25th September 1982 when we were preparing his Abam-no-obi (Ofala).*

*I did not see him in 1983, 1984, 1985 and 1986.*

*When Eze Udoji was not seen the whole of Dioha Royal Family was worried, the whole of Ihiala was worried as they were like sheep without shepherd.*

*The Dioha Royal Family did many things first the Ichies in the council from the Dioha Family were six in number and started meetings with the first son of H.R.H. John Mgbekwute Udoji, Ezeatuegwu Cyril Udoji. We met with the Okpalas to decide on how to face the rest of Ihiala and tell them of the whereabouts of H.R.H. Eze Udoji. The meetings started about 1985. I took part in all the meetings as the meetings were between the Okpalas and representatives of Dioha Royal Family.*

After two or three sessions the Ichies from Nwabuaku Family and the son Cyril Udoji withdrew because the Okpalas insisted on being told the whereabouts of H.R.H. so that they could go and see him. Thereafter the Okpalas went to Okpala Onyia who is the Okpala of Ilogbuehu family to show them the whereabouts of H.R.H. Eze Udoji whom they installed. As the Okpala, he has the responsibility to tell them, Okpala Onyia told them that the family of H.R.H. Eze Udoji were not truthful to him on the whereabouts of H.R.H. He told them that their mission was legitimate but because of the attitude of the family of the H.R.H. and his age that he would take no further part in the search for H.R.H.

Thereafter the Okpalas sent a delegation with a letter addressed to Cyril Udoji, Mbanaso Odimegwu and Ike Asomba the close relations of H.R.H. requesting to be told the whereabouts of H.R.H. and insisted on seeing him. The answer the Okpalas received was not satisfactory. The delegation reported to the meeting of the representatives of Dioha Royal Family.

Thereafter a letter dated 25th November, 1985 was issued to them giving them five days to let them know the whereabouts of H.R.H. wherever he may be in the world that if they did not tell them the Dioha Family would take it that his H.R.H. has joined his ancestors and that they committed the abomination of hiding the fact from the Okpalas and Dioha Royal Family; that they would take necessary steps to provide another Oluoha for Ihiala; that if they did not announce his death before a new king was installed he would lose the rites of burial as a king.

The family of H.R.H. lobbied the Ogbuehis urging us to withdraw the threat as it was not nice to say that a sick brother would not receive burial rites as a king. They still did not disclose the whereabouts of Eze J.M. Udoji.

On 3rd January, 1986 the Okpalas sent a letter to the Government through the Administrator Ihiala L.G. tracing the situation and the consultations made without success and requesting assistance in tracing the whereabouts of H.R.H. Eze Udoji. The Okpalas made the point that H.R.H. has been away from his people, his throne and responsibilities for over four years and that in due course they would do their duty to providing another Oluoha. The letter was copied to the President General Ihiala Progressive Union.

*There was no reaction from the Government (Anambra State).*

*In the intervening period the Okpalas for and on behalf of Dioha Royal Family wrote to all the Okpalas of Ihiala thanking them for their patience and informing them that in due course things would be sorted out. Earlier on the President-General wrote a letter asking the Okpalas to exercise more patience for him to speak to Udoji family. Later in the year, he wrote to say he got nothing positive from them.* 5

*On 4th October, 1986 the Okpalas against (sic) addressed a letter to the Government (Anambra State) through the Administrator Ihiala Local Government with copies to Comm. of Police, Anambra State, Asst. Comm. of Police, Onitsha D.P.O. Ihiala telling them that the position was getting out of hand and that Ihiala could no longer wait; that they were going on with arrangements to instal another Oluoha. There was no reply from the government.* 10

*On 29th November, 1986 the Okpalas addressed a letter to the Ichies, Ogbuehis of Oluoha-in-council, I got a copy of the letter as an Ichie (letter identified). Seeks to tender as what the witness got. Mr. Umeadi objects, says it is inadmissible in law. Refers to S.90(1) of the Evidence Act. Mr. Nwanya says the proceedings is not civil. It is criminal proceedings and the document is admissible.* 15

*Court: The document is admissible. Weight to be attached to be determined by the court at the appropriate stage. Objection overruled. Document admitted as Exhibit F.* 20

*Witness continues (Reads Exhibit F).*

*Umuezeotutu in Exhibit F is a family in Uzoakwa Ihiala. The ancient history of Ihiala had that when it came to the turn of Ekwerompi to be the Oluoha of Ihiala the sons of Nwobuaku conspired to kill him and take over the crown. The people who conspired are now known as Ekwegbara. Ekwerompi ran to Umuezeotutu for shelter but was traced there and murdered. Going to Umuezeotutu now in Ihiala parlance means going there for the fate of Ekwerompi to befall the person.* 25 30

*Letters were addressed to public authorities by the king makers before Exhibit F and after Exhibit F.*

*The last meeting of the Oluoha-in-council was on 29/11/86. The meeting dispersed without fixing a date for another meeting. On 6th December, 1986 there was lot of merriment at the palace of the R.H. Eze Mgbekwute Udoji with hired musicians, food and drinks. On that occasion it was reported to me what happened.* 35

After 6/12/86 we got a copy of a document which was signed by a number of people decidedly outside the royal family but members of the Oluoha-in-council. I saw a copy of the document titled proclamation by Oluoha-in-council. (Copy of the document identified). Seeks to tender. Mr. Umeadi objects says the document is a copy of a copy and not admissible. Mr. Nwanya says the document is being tendered as what the witness got and what was circulated by its authors. He need not account for the original before the document is admitted. Cites *Esso W.A. Ltd. v. Alli (1968) NMLR 453*; *R. v. Collins (1960) 44 C. App. R. 170* - there are no degrees of secondary evidence. It is from proper custody under S.123 of the Evidence Act.

Mr. Umeadi at this stage says he would withdraw his objection and address on the document at the appropriate stage.

Court: Document admitted and marked Exhibit G. I reacted to Exhibit G, by issuing two letters immediately. The Okparas sent out a letter to the Administrator of Ihiala L.G. on the current situation in Ihiala and copied to the Secretary to the Governor, Commissioner in charge of Chieftaincy Matters and the President General Ihiala Progressive Union. The second letter was addressed by me and other three Ichies of Oluoha-in Council who are of the Dioha Royal Family namely Ichie Nwapulwife Dennis Odimgbe; Ichie Obidigbo Innocent Udeze and Ichie Nnaemeka Alloy Ukatu. Both letters were dated 15/12/86.

The Okpalas told the Public Officers that they were going ahead with installing a new Oluoha.

I attended all the sessions, arrangements, discussions and infact the co-ordinator of all the activities relating to the installation of the defendant. Six Okpalas took part in the installation including the 2nd in command to Ilogbueghu - Chief Udoji Nnabugwu.

The Okpara of Ilogbueghu as a person is the oldest of the Okparas and was not participating in the activities due to old age. He was being represented.

I witnessed and took part in the installation of the defendant. Five out of the six Okparas are now dead. The surviving one is so sick and bed ridden. Udoji Nnabugwu comes to court but very old.

The Okparas went through the process of formerly taking away power from the absent missing Oluoha H.R.H. John Mgbekwute Udoji and on completing the process installed the defendant.

*The process of deposition or taking away power is mainly ritualistic and done in conclave. After their prayer they brought the royal stool and called 'Mkpoto' put it on the dias where normally the king would sit, took the royal cap and put it on the stool. All of them went to the stool and placed their hands on the cap jointly took it and placed it on the ground, quickly turned their backs to it and went to their seats. A messenger took the cap, rolled it up, tied it with black ribbon and took it away. That completed the ritualistic deposition or taking away power. They gave power to the person and took it away.*

*The formal deposition took place on 21/12/86 and the formal installation ceremonies started on 22/12/86. The public authorities knew about the installation of the defendant and were all present.*

*On 23/12/86 the Commissioner for Chieftaincy Matters Prof. Humphrey Nwosu sent his under Secretary in Charge of Chieftaincy Matters: - Mr. Uchedu. He came in the Commissioner's Car from Enugu.*

*On 24/12/86 the whole of Ihiala were there jubilating the Administrator Ihiala L.G. Area Chief Lawrence Ife, the D.P.O. and all the Senior Police Officers came along. Half of the policemen in Ihiala were there with the people in plain clothes.*

*The public officers saw the Ihiala people happy and rejoicing and they later went away.*

*By January, 1987 the Commissioner for Local Government as a result of some development from the installation invited some of the Okpalas and myself and the President General, Ihiala Progressive Union, some of the Ogbuehis to his office at Enugu. I went with them.*

*The administrator Ihiala Local Government Area and the D.P.O. Ihiala were there.*

*The Commissioner said that there was a complaint that we installed a new Oluoha when the incumbent was still alive. He said that since Ihiala had its Chieftaincy Constitution that such a thing should not happen. He gave certain directives.*

*I have read Exhibit E (Ihiala Chieftaincy Constitution). By our custom and tradition a new Oluoha can be installed in the life time of another. If a reigning Oluoha became so sick that he can not perform the traditional role of an Oluoha; if he commits an abomination according to the custom and tradition of the people or if for any reason he goes away from the town he is not available to his people the people will take away power from him and give to another who will do the work.*

*In the instance case, Eze J.M. Udoji disappeared from his people, his throne and responsibilities miraculously or unaccountably from September, 1982 till date.*

5 *Under our custom and tradition the Okparas confer the power and when it become necessary they take away the power."*

Cross-examined by Chief Umeadi, the following record was made:

*"Witness given Exhibit E and asked to show the Section that gives the Okparas right to depose). Witness refers to S. 12(2) Counsel reads the*  
10 *conditions in S. 12.*

*Q: Under which of the Sections did you depose the Oluoha?*

*Ans: Under S. 12(2) (4 & 5).*

*Eze John M. Udoji was the recognised ruler of Ihiala. I do not know if he was insane when the Okparas deposed him. I do not know the*  
15 *nature of the illness when the Okparas deposed him. Going abroad for medical treatment does not mean that the person has ceased being resident in Nigeria."*

It would appear the court below, with respect, did not properly consider the case before it. Otherwise, it would not have disturbed the  
20 respondent's conviction on Count (1)

I will answer Question (i) in the negative.

I now consider Question (iii). The court below, per the lead judgment of Akintan, J.C.A. found:

*"...it is correct to say that the appellant has, by the contents of the*  
25 *letter he wrote to NITEL (Exh. C), held himself out as the Oluoha of Ihiala. The Section speaks of 'whether or not there is a recognised Chief in a town or community 'Recognised chief' is defined in Section 2 of the law as meaning:*

*'Any Igwe or Obi selected and appointed by a town or community*  
30 *as the town's or community's traditional ruler and recognised as such by the Governor in accordance with the provisions of this law.....'*

*As already stated above, the selection and installation of the appellant were lawfully done by those authorised to perform those functions*  
35 *in Ihiala. All that remained was for the appellant to receive his certificate of recognition from the government. But the position in law is that the fact that a Chief duly selected according to the accepted forms of native law and custom will not have his selection invalidated because of government's failure to recognise: (See Taiwo v. Sarumi (1913) 2 NLR 105 supra. It*

*follows that such Chief is entitled to continue to hold himself out as a traditional ruler duly and lawfully selected and installed pending the time the government takes a decision on his recognition. The prosecution has therefore also failed to prove the second count of the information.*" 5

With respect to their Lordships of the court below, I find it difficult to understand their reasoning in respect of count (2). The respondent admitted that he was not recognized by the Governor at the time he held himself out as the Oluoha. The court below found that he so held himself out. In my respectful view, the ingredients of the offence created by Section 19(a) are complete. The learned trial Judge was right in convicting the respondent accordingly. The decision of the court below, based as it were on wrong premises, cannot be allowed to stand. I, therefore, answer Question (iii) in the negative. 10

The net result of all I have been saying is that I must allow this appeal, set aside the judgment of the court below acquitting the respondent on the two counts for which he stood trial and restore the judgment of the trial High Court convicting him on those counts. 15

I now have to consider the issue of sentence. The sentence of N10.00 fine or one month imprisonment imposed on count (1), stands. 20 The trial High Court imposed a sentence of N40.00 fine or 2 months imprisonment on count (2). The State appealed against the sentence on count (2). The court below per Akintan, J .C.A. had this to say on this cross-appeal:

*"The respondent's cross-appeal is against the sentence of N40.00 fine or 2 months imprisonment imposed on the appellant in respect of the second count. It was submitted that the learned trial Judge erred in law in that respect because the punishment prescribed under the said Section 19(a) of the Traditional Rulers Law 1981, is a mandatory sentence of two years imprisonment without option of fine. The sub-Section provides thus:* 25 30

*'Whether or not there is recognised Chief in a town or community, a person not being a recognised Chief who:-*

*(a) holds himself out, as a recognised Chief of that town or community, is guilty of an offence and, on conviction, is liable to imprisonment for two years without option of fine.* 35

*Section 382(1) of the Criminal Procedure Law gives the courts a general power to impose a fine in lieu of imprisonment. The sub-Section*

*provides that:*

“382(1) Subject to the other provisions of this Section, where a court has authority under any written law to impose imprisonment for any offence and has no specific authority to impose a fine for that offence the  
5 court may, in its discretion, impose a fine in lieu of imprisonment.’

There is no doubt that the two years imprisonment prescribed in Section 19 of the Traditional Rulers Law is the maximum that a court can impose. (See *Udoye v. State* (1967) NMLR 197). The question however, is whether the inclusion of ‘without option of fine’ should be construed as  
10 depriving the court of exercising its discretion to impose a fine in lieu of imprisonment. That is definitely the intention of the law in this respect. It follows therefore that whereas the court is free to impose any term of imprisonment not exceeding two years, it is barred from imposing a fine in lieu of imprisonment. The trial court therefore had no power to give an option  
15 of fine as it did in the instant case.”

The respondent before us has not appealed against this part of the judgment of the court below. In any event, that court is correct in its conclusion. The position then is that the respondent is sentenced on count (2) to 2 months imprisonment without any option of fine. The terms of imprisonment imposed on the two counts are to be concurrent.  
20

Having set aside the judgment of the court below, it follows that the order for costs made by it is equally set aside. This order is. However, the subject of Question (iii). While it is no longer necessary to dwell much on it I need to point out, however, that I do not know under what law or  
25 rule of court the court below awarded costs against the State in a criminal prosecution. Perhaps, that court lost sight of the fact that the information or complaint was brought by the State even though a private legal practitioner appeared. I know of no rule of law or practice which says that in such an event costs must be awarded against the State where it failed to  
30 prove its case. I think the award of costs was wrongly made and I would have unhesitatingly set it aside had this appeal failed.

---

### **UWAIS JSC**

I have had the privilege of reading in advance the judgment read  
35 by my learned brother Ogundare, J.S.C. I entirely agree with the judgment. I too, therefore, allow the appeal and adopt the orders contained therein.

I need only to add that the evidence adduced, at the trial, estab-



lished that the respondent acted recklessly and threw caution to the winds when he accepted the selection made (of him) by the kingmakers (Okpalas) and assumed the office of Oluoha of Ihiala. There was at the time of the selection no convincing evidence that the incumbent Oluoha was actually dead nor the evidence to support the legal presumption under Section 143 subsection (1) of the Evidence Act (now Section 144(3) of Cap. 112 of the Laws of Nigeria. 1990) which provides:-

*143(1) A person shown not to have been heard of for seven years by those, if any, who, if he had been alive, would naturally have heard of him, is presumed to be dead unless the circumstances of the case are such as to account for his not being heard of without assuming his death; but there is no presumption as to the time when he died, and the burden of proving his death at any particular time is upon the person who asserts it."*

The disappearance of the incumbent Oluoha came to the notice of the kingmakers in September, 1982 and the respondent was installed by the kingmakers at Oluoha in December. 1986. Thus the duration of the period, when the Oluohai became missing, was not up to 5 years at the time material to this case. Consequently, the presumption was not available to the respondent. I cannot, therefore, find any extenuating circumstance to absolve the respondent, as charged from the criminal responsibility found proved by the learned trial Judge. Hence the appeal succeeds.

---

### WALI JSC

I have had a preview of the lead judgment of my learned brother. Ogundare, J.S.C. and I agree with the conclusion contained therein that there is merit in the appeal.

The only issue which I wish to comment on albeit briefly, is the issue on whom lies the onus of proof.

Section 138(1) of the Evidence Act cap. 112 (formerly Sec. 137(1) provides as follows:-

*"138(1) If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt."*

*(2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to the provisions of Section 141 of this*

*Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action.*

(3) *If the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on to the accused.*"

The particulars supplied to Counts 1 and 2 on which the respondent was convicted by the trial Court, show clearly that the burden lies on the prosecution to prove that the respondent contravened the provisions of Section 18 and 19 of the Traditional Rulers law No. 14 of 1981 of Anambra State. The survival of the then incumbent recognised Chief was a fact that the prosecution had to prove in order to secure a conviction. It was their duty to prove that:

I agree with the Court of Appeal that:

*"The onus was definitely on the prosecution to prove that Eze J.M. Udoji was alive as at the time the appellant was selected and installed as Oluoha."*

However, that notwithstanding, there was cogent evidence adduced by the prosecution in proof of the two counts. There was no miscarriage of justice. The respondent had failed to prove in his defence the death of the incumbent Chief or his deposition, at the time he was purportedly installed.

On the whole, the appeal succeeds and is accordingly allowed. I endorse the consequential order made in the lead judgment.

25

### **MOHAMMED JSC**

I have had a preview of the judgment of my learned brother, Ogundare. J.S.C., and for the reasons stated therein, I would also allow this appeal. To my mind, this is a difficult and most anxious case, and I confess that I have had some difficulty in making up my mind, but after certain amount of vacillation, I have come to the conclusion, in agreement with my learned brother, that the decision of the Court of Appeal, Enugu Division, was wrong and cannot be supported. From the facts available to me, from the records, the respondent, Dr. Cosmas Ikechukwu Okechukwu, had been invited by the king-makers, popularly known as the Okpalas, to be installed the Oluoha of Ihiala. He said in evidence that he did not accept the invitation until after he had become satisfied, through investigation, of the following facts:

*"1. That the former Oluoha H.R.H. John Mgbekwute Udoji disappeared from Ihiala since September, 1981.*

*2. That the Okpalas of Dioha Royal Family made several inquiries from the family of Udoji but could not get a convincing statement of his whereabouts.*

*3. That the Okpalas reported this to the government and made copies of the report to the Oluoha-in-Council and to the President of Ihiala Progressive Union.*

*4. That after searching for him (H.R.H. John Udoji) for more than four or five years they (the Okpalas) indicated their intention to the government to select and instal a new Oluoha."*

The respondent accepted the invitation and was installed in a ceremony held at Ihiala palace square with many people in attendance. Those who attended the ceremony included the Sole Administrator of Ihiala Local Government, an Under Secretary in the Ministry of Local Government and Chieftaincy Matters, Enugu, police and the security men in the area. There was jubilation over the installation.

After this incident, the government did not arrest or make any move to prosecute the respondent for allowing himself to be wrongfully installed the Oluoha of Ihiala. A complaint was lodged with the Commissioner of Local Government saying that the incumbent Oluoha was still alive. But the government still did not take any action until 5/5/87 when members of Umuiogbueghu Family took a civil action in Nnewi High Court, in Suit No. HN/38/87, challenging the selection and the appointment of the respondent as Oluoha of Ihiala.

The High Court granted a prayer of injunction restraining the respondent, during the pendency of the trial, from parading himself as Oluoha of Ihiala. It was during this period that the respondent wrote to Nitel, Zonal Office Onitsha, with a letterhead showing him as the Oluoha of Ihiala. This was taken as contempt of the order of injunction made by Nnewi High Court. It was this issue of contempt which went first to the Attorney-General's Office, Enugu.

I have earlier disclosed, in this judgment, that I agree that the installation was in contravention of Section 18(b) of the Traditional Rulers Law, 1981 of Anambra State. The respondent also contravened Section 19(a) of the Law, when he held himself out as the Oluoha (XVI) of Ihiala. But charges for the offence were not framed against him, and filed in court, until 15th August, 1988, more than one and a half years after the commis-

sion of the offence. Further, just before the arraignment, the trial court received the following message from Chief Umeadi, SAN:

*“R.B. Okadigbo (Miss) who is in court from the Chambers of P.G.E. Umeadi, Esq., SAN. says she is instructed by the eminent SAN to inform  
5 the court that he is interested in the case and that he has applied to the Attorney-General for a fiat to enable him personally prosecute the case. The eminent SAN, asked her to pray the court for a short adjournment to enable him obtain the fiat.*

10 Soon thereafter the Government washed its hands off the case,

I have given the details above in order to show that the Government of Anambra State could not be without blame for the confusion in Ihiala over the installation of the respondent as the Oluoha. The Okpalas who are the kingmakers wrote several letters to the Government expressing  
15 their concern about the disappearance of Chief Udoji, the incumbent Oluoha. When they became convinced that Chief Udoji was no more alive, they wrote to the Government expressing their desire to appoint the respondent as the new Oluoha. The Okpalas conducted the ceremony in an open palace square with representatives of the Government in the area, police  
20 and security officers, all present. With all the fanfare and celebration the Government took no action against the respondent until after one and a half years.

I must admit that I do not like Chieftaincy disputes being settled in a criminal court. It is my strong view that such disputes should be left to be  
25 determined through a declaration, one way or the other, in a civil action. The suit filed by members of Umuilogbueghu family challenging the appointment of the respondent as the Oluoha of Ihiala would have resolved the dispute.

My difficulty in making up my mind to affirm the conviction of the  
30 respondent arose from the fact that the traditional practice in appointing an Oluoha was for the Okpalas to instal a candidate before seeking government’s recognition. H.R.H. Eze Udoji was installed by the Okpalas before he was recognised by the government in an instrument dated 14/1/76 and published in a Legal Notice No. 26 of 1979 made under Sections 7  
35 & 8 of Edict No.8 of 1976. See pages 56 and 71 of the printed record of proceedings for this appeal. In his judgment, the learned trial Judge considered the provisions of Section 10 of the Traditional Rulers Law, 1981 and opined as follows:

*"It appears to me from the provisions of the Chieftaincy Constitution and Code of Conduct of the Oluoha of Ihiala and Section 10 of the Traditional Rulers Law that the right to select or appoint an Oluoha is vested in the Okpalas of the seven named families. But they have no power to suspend, depose or withdraw recognition which by Section 10 is vested in the Governor."* 5

It was after the enactment of the Traditional Rulers Law, 1981 of Anambra State, that it became an offence under Section 18(a) and (b) to instal or to allow oneself to be installed as a traditional ruler in replacement of the person recognized by the Government. Indeed ignorance of the law does not afford any excuse for any act or omission which otherwise constitute an offence, unless knowledge of the law by the offender is expressly declared to be an element of the offence. Be that as it may, it is my view, in this case, that there is a genuine misapprehension of the new law when the facts unfold that the respondent had been installed before a large crowd in a public square. Since the enactment of the new law the respondent is the first candidate to be considered for appointment as an Oluoha of Ihiala under the new procedure. 10 15

Resorting to criminal prosecution in a Chieftaincy dispute has its own attendant problems. The respondent cannot organise and install himself as an Oluoha without the support and encouragement of well meaning members of the dignitaries in Ihiala. This makes the issue a purely political affair. In an investigation of the crime committed many would be found wanting and to have abetted the offence because, although it is a question of fact for the court to decide, whoever was voluntarily and purposely present witnessing the commission of a crime and offered no opposition to it, though he might reasonably be expected to prevent and had the power so to do, or at least to express his dissent, might in some circumstances afford cogent evidence upon which a court would be justified in finding that he wilfully encouraged and so aided and abetted the commission of the crime. See R. v. Clarkson & Ors (1971) Cr. App. R. 445. 20 25 30

For the above reasons, it is my strong view that the respondent deserve maximum leniency for his conviction. If Section 19(a) of the Traditional Rulers Law, 1981 does not carry mandatory prison sentence, without option of fine. I would have affirmed the fine imposed by the trial court. But the provision of the law is clear that the trial court has no power to give 35

an option of fine in lieu of imprisonment. Akintan, J.C.A., is therefore right to find that the trial court had no power to give the respondent an option of payment of fine in the instant case.

Consequently, even though I have declared my support for the  
5 conviction of the respondent. I strongly urge that the respondent must not be allowed to spend even a day in prison. I therefore, recommend that the Administrator of Anambra State should exercise his power under the Prerogative of Mercy and pardon him.

10

---

**ADIO JSC**

I have had the opportunity of reading, in draft, the judgment just read by my learned brother, Ogundare, J.S.C., and I agree with his reasoning and conclusion. I too allow the appeal.

15        There was overwhelming evidence showing beyond reasonable doubt that the respondent committed the alleged offences. He allowed himself to be installed as a traditional ruler of the town in the stead of the person so recognised by the Governor. Eze Udoji who was the person recognised by the Governor as the holder of the title in question was, at the  
20 material time, not dead or deposed. There was also overwhelming evidence that the respondent held himself out as the Oluoha at the material time.

In the circumstance, the court below, with respect, should not have disturbed the judgment of the learned trial Judge. I too allow the appeal and abide by the consequential orders made in the lead judgment,  
25 including the order relating to the award of costs and the sentence imposed on the respondent.

30

35