

SUPREME COURT OF NIGERIA
22ND APRIL 1994, SC, 131/1990.
CORAM:- S.M.A. BELGORE, A.B. WALI,
I.L KUTIGI, S.U. ONU, A.I. IGUH, JJSC.

1. CHIEF MARK OLUGBEMI OBABA
2. CHIEF AJIBOLA OGUNGBIYI OBASHEPLAINTIFFS/
3. CHIEF SAMSON OLORUNSAIYE AGBANA APPELLANTS

AND

1. MILITARY GOVERNOR OF KWARA STATE
2. ATTORNEY-GENERAL OF KWARA STATE ... DEFENDANTS/
3. CHIEF EZEKIELOMOBOYE'OMOPARIOLA RESPONDENTS

CHIEFTAINCY MATTERS - Appointment of traditional ruler - By the military governor under an edict - In disregard of the appointment made by the plaintiffs who claim to be the kingmakers - whether the governor has such powers.

JURISDICTION - Ousting of court's jurisdiction by a decree - Chieftaincy matters - Appointment of a traditional ruler by the military governor via an edict - whether the validity of the edict can be challenged in court

PRACTICE & PROCEDURE - Access to court - Chieftaincy matters - Payment of N1 0,000.00 nonrefundable under the law for access to court-Contention that jurisdiction is conferred on the court thereby - Irrespective of other enactments - whether sustainable.

FACTS

The Plaintiffs/Appellants are natives of Ponyan, a village formerly in Kwara but now in Kogi State. They as the King makers, nominated one D.L. Obasa as Oba of Ponyan. As a formality, they forwarded the name to Kwara State Government for approval. But contrary to their expectations, the 1st and 2nd Respondents appointed the 3rd Respondent as the Oba Via Edict No. 2 of 1988. The Plaintiffs paid the sum of N10,000.00 pursuant to the provisions of an Edict to enable them challenge the validity of the appointment of 3rd

Respondent as the Oba. Plaintiffs then filed an action before the Kwara State High Court seeking inter alia; a declaration that 3rd Respondent's appointment as Oba of Ponyan is null and void and of no effect.

The Defendants/Respondents raised a preliminary objection contending that the High Court's jurisdiction has been ousted by virtue of provisions of Decree No. 1 of 1984, The trial court held that it lacked the jurisdiction to entertain the claim. The Plaintiffs appeal to the Court of Appeal was dismissed. Being dissatisfied, the Plaintiffs/Appellants have now appealed to the Supreme Court to determine inter alia; whether they were not entitled to challenge 3rd Respondents appointment as Oba, since they have paid the prescribed non-refundable fee of N 10,000,00.

HELD (unanimously dismissing the appeal)

1. Appellants contention that their payment of a N10,000.00 nonrefundable fee pursuant to S. 15 of Chiefs Law entitled them to be heard in court. And that once the deposit is made, the parties action must be heard irrespective of any law or even the Constitution; is stating the intendment of the said S. 15 too wide. (P121 L30)

2. The Appellants' belief that once they pay the N10,000.00, they must automatically be heard is wrong, since payment of the fee is for purposes of having access to the court. It is a different thing if once the access is thus procured for the court to have jurisdiction to look into the cause of action. (P. 123 L 23)

3. The Edict made by the Military Governor of Kwara State (*appointing 3rd Respondent as the Oba of Ponyan*) was properly made as by doing so, the Governor has not contravened any part of the Constitution, Chieftaincy matters are within the powers of state government and unless the exercise of the powers is inconsistent with the Constitution as it is now, it cannot be challenged. (P. 126 L20)

4. Unless the exercise of the Military Governor's power to make laws for peace, order and good government within the state he rules is inconsistent with a Federal Military Government Decree and Constitution (Suspension and Modification) Decree 1984, there shall be no question as to the validity of a Military Governor's Edict in any Court

of law. (P. 126 L 31)

NOTABLE POINTS OF INTEREST

BELGORE JSC

1. Supremacy of the Constitution as limited by Decree

All laws in this country flow from the constitution and any law inconsistent in any part with the Constitution is void to the extent of such inconsistency. That is the position normally in a democratic form of Government whereby the constitution is supreme. In the abnormal situation of a military regime a different situation arises where the Constitution itself is subordinate to the Decree of Federal Military Government and in some cases even to the Edict of a State Government. (P. 121 L 37)

2. Proper stage to address the issue of Jurisdiction.

"Being a fundamental matter, issue of jurisdiction must be addressed at the earliest opportunity, for any hearing proceeded upon without jurisdiction is a wasteful exercise. It is however possible that issue of jurisdiction may in certain matters, not be clear, but once it arises it must be addressed by either or all the parties and by the Court suo motu and in the process hearing the parties on it before proceeding further". (P. 123 L31)

IGUH JSC

3. Payment of N 10,000.00 nonrefundable fee - Legal implications

"In respect of the first two issues, it seems to be plain that the payment of a non-refundable sum of N10,000.00 under the Kwara State Edict No. 3 of 1988 did not ipso facto vest jurisdiction on the court to invalidate or set aside Edict No. 2 of 1988 which appointed the 3rd respondent as the Oba of Ponyan. The payment of the said fee of N10,000.00 merely conferred the appellants with access to the court for the purpose of the determination of their claim in accordance with the laws of the land and no more. It is a condition precedent prescribed by the Edict for the institution of the category of dispute covered under the said Edict. Once this condition precedent is duly

complied with the court gets conferred with jurisdiction to entertain the suit. The court did infact entertain the suit and held quite rightly in my view, that it had no jurisdiction to determine the suit". (P. 132 L37)

REPRESENTATION:

Chief S.F. Odeyemi for the Appellants

S.O. Otu (Director of Civil litigation, Kwara State) for Respondents.

CASES REFERRED TO

Military Governor, Ondo State v. Adewumi (1985)3 NWLR (pt. 13)493,

(1988)6 SCNJ 151,163

Garba v. Governor of Kaduna State (1986) 4 NWLR 3731

Adejumo v. Col Johnson (1972) 3 S.C. 45

Oredoyin v. Arowolo (1989) 4 NWLR (pt. 114) 172

Oloba v. Akereji 1988 3 NWLR (pt, 84) 5081

Ojokolobo v. Alamu (1987) NWLR (pt. 61) 377

Chacharos v. Ekimpex Ltd. (1988) 1 NWLR (pt. 68) 881

Dawkins v. Edward (1976) 1 Q.B. 449 at 503

Uredi v. Dada (1988) NWLR (part 69) 237 at 254

Lokoyi v. Olojo (1983) S.C, 61

Chinwendu v. Mbamali (1980) 3 S.C. 31

STATUTES REFERRED TO

Chiefs (Appointment and Deposition) Amendment Edict No.3 of 1988 of Kwara State, (Edict No. 8 of 1985 Amended) S. 15(1) & (2)

Constitution (Suspension and Modification) Decree No. 1 of 1984 ss. 5, 2

Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 13 of 1984 ss. 1, 2

Chiefs Edict Ondo State No, 11 of 1984 s. 11 (5) & (7)

The Oba of Ponyan (Chief E.O. Omopariola) (Appointment, etc)

Edict No. 2 of 1988 ss. 1, 2, 3, schedule

Chiefs (Appointment and Deposition) Law Cap, 20 laws of Northern Nigeria s. 3

LEAD JUDGMENT BY BELGORE JSC

The plaintiffs in the trial court are the appellants here as they were in the Court of Appeal, Kaduna branch. They all come from a village called Ponyan, then in Kwara State but now in Kogi State. Their complaint is that they have three ruling house who in rotation supply the Chief (Oba) of the town. The ruling houses, according to them, are ILARO, OTUN AND ODO-OJA. The first two had supplied the last two Chiefs and it was then the turn of Odo-Oja to nominate a Chief and that the kingmakers, who the then appellants claim to be, nominated one D. L. Obasa as Oba of Ponyan. This name, as a formality was forwarded to kwara State Government for approval. But contrary to this advice to Government, the “first and second defendants” appointed the third respondent. Chief Ezekiel Omoboye Omopariola as Oba of Ponyan by Edict No 2 of 1988, an Edict the plaintiffs claim to be aware of only in Court at Lokoja on 23rd March, 1988. As a result the plaintiffs/appellants had to amend their Statement of Claim, It appears that there was a previous ruling in the same matter against the appellants at the same Lokoja High Court on this subject matter which they never appealed. The present appeal therefore arose out of a new cause whose claims are as follows:

“Whereof the plaintiffs claim against the defendants jointly or severally as follows:

“1. A declaration that under Kwara State Edict No. 3 of 1988 the plaintiffs having paid N10,000 are entitled to challenge the validity of the appointment of the 3rd defendant as Oba of Ponyan by the 1st and 2nd defendants.

2. A declaration that the appointment of the 3rd defendant as Oba of Ponyan by the 1st and 2nd defendants is null and void and of no effect.

3. A declaration that the appointment of Mr. D. L. Obasa as Oba of Ponyan by the kingmakers of Ponyan village is valid and subsisting.

4. A declaration that the three Ruling Houses in Ponyan are ILARO, OTUN AND ODO-OJA and not Omo-Agbon, Omo-oga and Ishima.

5. An injunction restraining the 3rd defendant from parading or presenting himself as the Oba of Ponyan village in Oyi local Government Area of Kwara State or from performing any functions relating to or connected with the Oba of Ponyan stool.”

5

Against this the defendants/respondents raised preliminary objections in their statement of defence that

“1. The High Courts Jurisdiction has been ousted by virtue of S.5 Decree No. 1 of 1984 and Ss. 1, 2(b) (1) of Decree No. 13 of 1984.

10

2. The High Court of Kwara State, sitting at Lokoja judicial Division, had on 3rd May, 1988, ruled that it had no jurisdiction in a similar matter by the appellants and that they have not appealed against that decision. A similar ruling on identical points of law by the Kwara High Court was upheld by Court of Appeal in appeal No CA/K/150/86 on 7th June, 1988.”

15

Learned trial Judge decided that he had no jurisdiction to entertain the suit and relied on the Decree No.1 of 1984. An appeal was lodged at Court of Appeal, Kaduna branch which dismissed the appeal and affirmed the decision of High Court of Kwara State. For clarity, the following grounds of appeal were filed:

20

“GROUNDS OF APPEAL

1. The learned Justices of the Court of Appeal erred in law by affirming the trial court’s decision that the court lacked jurisdiction to entertain the appellants’ claims.

25

Particulars

(i) The appellants have legal right under Kwara State Edict No.3 of 1988 to challenge the validity of the appointment of the 3rd respondent after complying with the conditions thereunder.

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(ii) Kwara State Edict No. 3 of 1988 is not inconsistent with any Decree or the unsuspended provisions of the 1979 constitution.

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(iii) The respondent cannot challenge the validity of Kwara State Edict No. 3 1988 which conferred legal right on the citizens of Kwara State by virtue of Decree No. 1 of 1984.

(iv) Under Decree No. 1 of 1984 the 1st respondent has power only to make amend, or repeal an Edict but not to challenge its validity.

5 (v) Under Decree 1 & 13 of 1984 the Kwara State Edict No 2 of 1988 can be challenged if the appellants can pin-point its inconsistencies with the Decree or the unsuspended provisions of the 1979 constitution of Nigeria and the court has jurisdiction to look into such inconsistencies.

10 (vi) It is the plaintiffs' claim which determines the jurisdiction of the court without recourse to the defendants answer.

(vii) The Court of Appeal misconstrued Decree No. 13 of 1984.

15 2. The learned Justices of the Court of Appeal erred in law when they held that the trial court was right by not making a ruling on the payment of non-refundable N10,000.00 made by the appellants.

20 *Particulars*

A court must resolve and make findings on all the issues that arise for determination before it.

4. RELIEFS SOUGHT FROM SUPREME COURT

25 To allow the appeal and order the High Court to hear the case on its merits."

On these grounds of appeal the appellants formulated the following issues for determination:

30 "ISSUES FOR DETERMINATION

The issues for determination are respectfully formulated as follows:

35 Whether the Court of Appeal Kaduna was right in holding that the trial court was right by not making any finding on the payment of non-refundable N10,000.00 made by the appellants.

2.(a) Without even canvassing issue of inconsistencies whether the appellants cannot succeed on a lone ground that having paid nonrefundable sum of N10,000.00 under Kwara State Edict No.3 of

1988 they are entitled to challenge the appointment of the 3rd respondent as Oba of Ponyan. And also, whether a Governor can challenge in a Court of Law the validity of an Edict promulgated by him.

IN THE ALTERNATIVE

(b) Whether the simpliciter rule that an Edict cannot be challenged applies to this case having regard to the pleadings and inconsistencies of Edict No.2 of 1988 with Decree No.1 of 1984 and unsuspended provisions of the 1979 Nigerian Constitution raised by the appellants.”

On the issues, one has to have a look at what has been the effect of Chiefs (Appointment and Deposition) (Amendment) Edict 1988 of Kwara State amending an Edict No.8 of 1985 by inserting a new section 15 reading as follows:

“15.(1) Where the Military Governor or the appointing authority has approved the appointment of a person as a Chief, any person who intends to challenge the validity of such appointment shall first deposit with the State Accountant-General a non-refundable sum often ten thousand Naira.

(2) Where the Military Governor or the appointing authority has not approved any appointment to a vacant chieftaincy stool, any aggrieved person who institutes any court action in connection with the vacant chieftaincy stool and join the State Government or any of its agency as a party to any such court action shall first deposit with the State Accountant-General a non-refundable fee of ten thousand Naira.”

The argument of the appellants is that having paid a non-refundable fee of ten thousand Naira to the State Accountant-General. It was in law entitled to be heard on its action in court. The contention is that once the deposit is made, the parties action must be heard irrespective of any law or even the constitution. This to my mind, is stating too wide the intendment of the Section 15 Chiefs (Appointment and Deposition) Law as amended (Supra). All laws in this country flow from the Constitution and any law inconsistent in any part with the Constitution is void to the extent of such inconsis-

tency. Military Governor, Ondo State & Anor. v. Victor Adegoke
 Adewunmi (1985) 3 NWLR (Pt.13) 493: (1988) 6 SCNJ 151. 163
 (1988) 3 NWLR (Pt.82) 280; Garba v. Governor of Kaduna State &
 5 Anor. (1986) 4 NWLR (Pt.373). That is the position normally in a
 democratic form of Government whereby the constitution is supreme.
 In the abnormal situation of a military regime a different situation
 arises where the Constitution itself is subordinate to the Decree of
 Federal Military Government and in some cases even to the Edict of
 10 a State Government. The Constitution (Suspension and Modification)
 Decree (No.1 of 1984) in section 5 thereof provides:

*“5. No question as to the validity of this or any other Decree
 or of any Edict shall be entertained by any court in Nigeria”*

15 The provision of this section may sound wide considering the
 supremacy given to an Edict of a State Government. But it is not so
 wide as provisions of the same Decree No. 1 say:

“2 (2) The Military Governor of a State-

20 *(a) Shall not have power to make laws with respect to any
 matter included in the Exclusive legislative List: and*

25 *(b) Except with prior consent of Federal Military Government
 shall not make any law with respect to any matter in the Concurrent
 Legislative List relating to Federal Legislative Powers set out in the
 second column of part II of the second schedule of the Constitution.*

30 *(3) Subject to subsection (2) above and to the Constitution
 of the Federal Republic of Nigeria 1979, the Military governor of a
 state shall have power to make laws for the peace, order and good
 government of that state.*

(4) If any law-

(a)

35 *(b) made after that date (i.e. 31st December, 1983) by the
 Military Governor of a State is inconsistent with any law -*

*(i) Validly made by the National Assembly before that date
 or having effect as if so made.*

or

(ii) Made by the Federal Military Government on or after

that date,

the law made as mentioned in sub-paragraph (i) and (ii) above shall prevail and the State law shall, to the extent of inconsistency, be void.” 5

It is upon the foregoing that the Court of Appeal held in Governor of Ondo State & Anor v. Adewunmi (supra) that the Edict No 11 of Ondo State 1984 in section (117) thereof pointedly violated the Constitution a decision the Supreme Court upheld in 1988 and reported in (1988) 3 NWLR. Part 82. at page 280, a decision of the full court. Chief Adebisi Adejumo v. H.E. Col Mobolaji Johnson (1972) 3 SC. 47. In the instant appeal, what was challenged is not ouster clause by virtue of first issue for determination, but the fact that the court ought to have assumed jurisdiction to try the matter as if the payment of a prescribed fee bought off instantly the lack of jurisdiction. Section 15 of Chiefs (Appointment and Deposition) Law of Kwara State is a condition precedent for litigation on chieftaincy matters in Kwara State and it relates only to fees to be paid. The courts below (High Court of Kwara and Court of Appeal) have had occasions to pronounce on the validity of this section. What is before this court is that the Court of Appeal ought to have pronounced on this. With great respect, it is not a ground of appeal but a mere speculative adventure. The belief by the appellants that by merely fulfilling the conditions in Edict No.2 of 1988 they automatically must be heard is erroneous. All that the payment of fee N10,000.00 is for, is to have access to the court to be heard. It is a different thing if once the access is thus procured for the court to have jurisdiction to look into the cause of action. No action could be filed without payment of a fee and it is after an action is filed that the preliminary issue of jurisdiction can be raised. 10 15 20 25 30

Being a fundamental matter, issue of jurisdiction must be addressed at the earliest opportunity, for any hearing proceeded upon without jurisdiction is a wasteful exercise. It is however possible that issue of jurisdiction may in certain matters, not be clear, but once it arises it must be addressed by either or all the parties and by the court suo motu and in the process hearing the parties on it before proceeding further. Oredoyin v. Arowolo (1989) 4 NWLR (Pt.114) 172. Oloba v. Akereja (1988) 3 NWLR (Pt.84) 508. The issue is so 35

important that to fail to address it at the earliest stage may, if court has not got the jurisdiction, render the entire proceedings null and void. It is a substantive matter that must be addressed promptly,
 5 Ojokolobo v. Alamu (1987) 3 NWLR (Pt.61) 377: Chacharos v. Ekimpex Ltd. (1988) 1 NWLR (Pt.68) 881.

To return to the Edict No.2 of 1988 by the Governor of Kwara State, is the Governor competent to make the Edict? The Constitution (Suspension and Modification) Decree, No.1 of 1984. provides
 10 in section 2(3) as follows:

“2(3) Subject to subsection (2) above and to the Constitution of the Federal Republic of Nigeria the Military governor of a State shall have power to make laws for the peace, order and good government of that state,”

15 *The Section 2 of the Decree No. 1 of 1984 has earlier been quoted in full in this judgment. What is the effect of Edict No.2 of 1988. It is pertinent to be quoted in full:*

‘The Military Governor of the KWARA STATE OF NIGERIA HEREBY MAKES THE FOLLOWING Edict:-

20 *Whereas the Oyi Traditional Council has after consultation with the leaders of the Ponyan Ruling Houses recorded in writing a declaration of what in its opinion is the customary law relating to the selection of the Oba of Ponyan and has submitted such declaration to the Military Governor, together with recommendation regarding*
 25 *the selection of a new Oba of Ponyan.*

AND WHEREAS the military Governor is satisfied that the recommendation and the declaration relating to the selection of the Oba of Ponyan from one of the three Ruling Houses (Ebis) are neither repugnant to natural justice, equity and good conscience nor
 30 *incompatible in its terms or by necessary implication, with any enactment.*

NOW THEREFORE, in exercise of the powers conferred on me by Section 75 of the Local Government Edict, 1976 and section 3 of the Chiefs Appointment and Deposition Law and of all other
 35 *powers enabling me in that behalf, I Group Captain Ibrahim Alkali, Military Governor, Kwara State of Nigeria hereby make the following Edict:-*

1. This Edict may be cited as the Oba of Ponyan (Chief E.O.

Omopariola) (Appointment etc.) Edict, 1988 and shall deemed to have come into force on the 3rd day of January, 1988.

2. Chief Ezekiel Omoboye Omopariola, is hereby appointed 5 the Oba of Ponyan with effect from 16th December, 1987.

3. The declaration of Customary Law contained in the Schedule to this Edict shall be the Customary Law relating to the selection of the Oba of Ponyan where such selection is to be made from any- 10 one of the three Ruling Houses (Ebis).

SCHEDULE

There are three Ruling houses (Ebis). namely-

(i) the Omo Agbon (Jakan):

(ii) the Omo Oga (Lagun) current Ruling House: and

(iii) the Ishima (Were-Oba).

and the appointment of the Oba of Ponyan shall continue to be made in rotation from these three Ruling Houses (Ebis).

(2) When the post of Oba of Ponyan becomes vacant, such 20 vacancy shall be declared by the Shaba who under normal circumstances would be the Oba's successor.

(3) The Shaba shall thereafter assume the responsibility for 25 the administration of the town until he is formally confirmed or otherwise as the Oba of Ponyan by the Ponyan Kingmakers.

(4) The Council of Princes which consists of members drawn from the following ruling Houses (Ebis), namely-

(i) Omo Agbon (Jakan);

(ii) Omo Oga (Lagun); and

(iii) Ishima (Were-Oba).

shall invite, collate and screen nominations from the royal household including the incumbent Shaba and forward particulars of same to the kingmakers

5. (1) The Kingmakers shall consist of-

(i) Chief Olukotun from Omo-Agbon (Jakan)

(ii) Chief Okohi from Omo-Oga (Lagun); and

(iii) Chief Akogun from Ishima (Were-Oba)

6. *It shall be the duty of the Kingmakers-*

(i) *To screen the nominated candidates in order to ascertain their suitability or otherwise:*

5 (ii) *Consult other Senior Chiefs and Elders from the three Ruling Families and formally present the nominated candidate: perform all the necessary traditional rituals:*

(iii) *Forward the recommendations with authenticated minutes.*

(iv) *To the Traditional Council.*

10 *When the Oyi Traditional Council receives a nomination from the Kingmakers and the candidate is in all respects considered suitable and therefore recommendable, the Oyi Traditional Council shall then take steps to inform the Local Government Area in writing. The Oyi local Government Area shall thereafter issue the appointment papers*
15 *and announce the appointment in the news-media."*

The Edict is a sort of double barrel proclamation of the Native Law and Custom of Ponyan on appointment of their Chief after necessary investigations have been made and the acceptance of traditional Council of Oyi's recommendation approved the appointment of a new Chief. The Edict, to my mind, was properly made by the Military Governor of Kwara State as by doing so he has not contravened any part of the Constitution, Chieftaincy matters are within the powers of State government and unless the exercise of the powers is inconsistent with the Constitution as it is now, it cannot be challenged. The Constitution (Suspension and Modification) Decree No.1
25 of 1984 provides in Section 5 as follows:

"5. No question as to the validity of this or any other Decree or any Edict shall be entertained by any Court of law in Nigeria"

30 This is part of the Military Governor's power to make laws for the peace, order and good government with the state he rules. Unless the exercise of the power is inconsistent with a Federal military Government Decree and Constitution (Suspension and Modification)
35 Decree 1984, there shall be no question as to the validity of a Military Governor's Edict in any court of law, That is the purport of Federal Military Government (Supremacy and Enforcement of Powers) Decree (No.13) of 1984;

"WHEREAS the military revolution which took place on 31st

December 1983 effectively abrogated the whole pre-existing legal order in Nigeria except what has been preserved under the Constitution (Suspension and Modification) Decree 1984;

AND WHEREAS the military revolution aforesaid involved an abrupt political change which was not within the contemplation of the Constitution of the Federal Republic of Nigeria 1979 (thereafter in this Decree referred to as the Constitution”);

AND WHEREAS by the Constitution suspension (Suspension and Modification) Decree 1984 aforesaid there was established, a new government known as the “Federal Military Government” with absolute power, to make laws for the peace, order and good government of Nigeria or any part thereof with respect to any matter whatsoever and, in exercise or the said powers, the said Federal Military Government permitted certain provisions of the said Constitution to remain in operation:

AND WHEREAS by section 5 of the said Constitution (Suspension and Modification) Decree 1984, no question as to the validity or any Decree (in so far as by section 2(4) thereof the provisions of the Edict are not inconsistent with the provisions of a Decree) shall be entertained by any court of law in Nigeria:

AND WHEREAS by section 1(2) of the said Constitution and Modification) Decree 1984 provisions of a Decree shall prevail over those of the unsuspended provisions of the said Constitution:

Now, THEREFORE, THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows:-

1(1) The preamble hereto is hereby affirmed and declared as forming part of this Decree.

(2) It is hereby declared also that-

(a) for the efficacy and stability of the government of the Federal Republic of Nigeria and

(b) with a view to assuring the effective maintenance of the territorial integrity of Nigeria and the peace, order and good government of the Federal Republic of Nigeria-

(i) no civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict and

if any such proceedings are instituted before, or on after the commencement of this Decree the proceeding, shall be discharged and made void.

5 (ii) *The question whether any provision of Chapter IV of the Constitution has been, is being or would be contravened by anything done or proposed to be done in pursuance of any Decree or an Edict shall not be inquired into in any court of law and. Accordingly,*
10 *no provision of the Constitution shall apply in respect of any such question.*

2. This Decree may be cited as the Federal Military Government (Suspension and Enforcement of Powers) Decree 1984".

15 Even though the Edict No.2 (supra) have not got ouster provisions, by the nature of the exercise of his powers therein, just as in Edict No. 3 (supra), the Edicts are within the ambit of law, order and good government that the Military Governor can make laws for Governor of Ondo State and Anor v. Adewunmi (supra) is not on all
20 fours with this. Chiefs Edict (Ondo State) No. 11 of 1984 is a completely different type of legislation and in S.11 (5) & (7) thereof it blatantly ousted the jurisdiction of any court. The Edict No.11 was declared unconstitutional and rightly so. Much care and prudence
25 went into Kwara State Edicts No.2 and No.3 of 1988.

 I find no reason whatsoever to interfere with the decision of the lower courts and this appeal is accordingly dismissed. I award N1,000.00 as costs against the appellants.

30 _____

WALI JSC

 I have read before now, the lead judgment of my learned brother, Belgore JSC and I agree with the reasons he gave for concluding that the appeal has no merit.
35

 For those same reasons in the leading judgment which I adopt as mine, I also hereby dismiss the appeal and affirm the decisions of the lower courts. I award N1000.00 costs to the respondents against the appellants.

KUTIGI JSC

I read in advance the judgment just delivered by my learned brother Belgore J.S.C. I agree with his conclusion that in so far as the claims of the appellants sought to challenge the validity of Edicts Nos. 2 & 3 of 1988 or what was done under them, the claims were caught by Decree No.13 of 1984 under which the jurisdiction of courts were ousted in respect of the appellant's claims, the trial high Court was therefore right to have declined jurisdiction and struck out the case. The Court of Appeal dismissed appellants' appeal in that court. I will also dismiss it here with N1,000 costs to the respondents.

ONU JSC

By Kwara State of Nigeria Gazette Extraordinary No.2. Vol.22 of 30th March, 1988 -supplement part A titled: The Oba of Ponyan (Chief E.O Omopariola) (Appointment Etc.) Edict, 1988, the military Governor of Kwara State on 3rd January, 1988 appointed 3rd respondent herein, with effect from 27th December, 1987, as Oba of Ponyan in Oyi Local government then of Kwara (but now in Kogi) state. The plaintiffs, herein appellants, opposed the appointments and so sued the 1st, 2nd and 3rd respondents who were the defendants in the trial court for a declaration that they (respondents) having, on 9th February, 1984 selected D.E. Obasa under Native Law and Custom as their Oba. Hence, *"The Oba Ponyan (Chief E. O. Omopariola) Appointment Edict is null and void."*

After the exchange of pleadings, a preliminary objection was raised at the instance of the 3rd respondent that the jurisdiction of the High Court was ousted by virtue of section 1 and 2 (b)(i) of the Military Government (Supremacy and Enforcement Powers) Decree, No.13 of 1984.

The learned trial Judge (Owolabi, J.) upheld the preliminary objection by ruling that he indeed lacked jurisdiction to entertain the action (the fulfilment of a condition precedent for the payment of a non-refundable deposit of N10,000.00) by the appellants before instituting the suit by virtue of an Edict, Edict No.3 made pursuant to

the Chiefs (Appointment and Deposition (Amendment) Edict, 1988 notwithstanding) and so he accordingly proceeded to strike out the suit. The Court of Appeal sitting in Kaduna affirmed the decision of the High Court and so dismissed the appellant's appeal. The appeal
 5 herein to this court is sequel to that dismissal founded on two grounds of appeal attacking the decision.

The two issues submitted on behalf of the appellants and which arise for our determination are:

10 1. Whether the Court of Appeal Kaduna was right in holding that the trial court was right by not making any finding on the payment of a non-refundable N10,000.00 made by the appellants;

2. (a) Without even canvassing issue of inconsistencies whether the appellants cannot succeed on a lone ground that having
 15 paid a non-refundable sum of N10,000.00 under Kwara State Edict No.3 of 1988 they are entitled to challenge the appointment of the 3rd respondent as Oba of Ponyan. And also whether a Governor can challenge in a court of law the validity of an Edict promulgated by him.

20 ***IN THE ALTERNATIVE***

(b) Whether the simpliciter rule that an Edict cannot be challenged applies to this case, having regard to the pleadings and inconsistencies of Edict No.2 of 1988 with Decree No.1 of 1984 and
 25 unsuspended provisions of the 1979 Nigerian Constitution raised by the appellants.

I will deal with the issues in their order of sequence as follows:

ISSUE 1:

30 My answer to issue 1 must perforce be in the affirmative. The payment of a non-refundable deposit of N10,000.00 being a condition precedent to the institution of an action and not being open to question in that it does not purport to challenge the legislative competence of the Military Governor to so legislate in the promulgation
 35 of Edict No.3 by virtue of Decree No.1 of 1984, a finding on the payment of the sum becomes a non-issue. The above is irrespective of learned counsel for appellant's vehement argument both in appellant's brief and orally before us to the effect that having complied with Edict No.3 of 1988 by paying N10,000.00 as a condition

precedent for challenging 3rd respondent's appointment, 1st and 2nd respondents are thereby estopped from denying the appellants the exercise of their right. The fulfilment of the condition precedent by paying the non-refundable fee without more, terminates the duty imposed by the Edict thereby. Learned Counsel for the appellants' further contention that even though the 1st respondent admitted receiving the N10,000.00 and a ground of appeal was filed attacking that part of the decision in the court below, that court still said, contrary to the fact that appellant tied the sum (N10,000.00) to the declaration they sought, a finding on the point which is otherwise, is unhelpful to him. What is more, that the learned trial Judge made no finding on the issue were he is obliged to do so has, in my view, led to miscarriage of justice. See *Mora v. Nwalusi* (1962) 1 All NLR (Pt.4) 681.

ISSUE 2:

In relation to this issue, much as in deciding the issue of jurisdiction recourse is had to the plaintiff's claim - in the instant case, appellant's claim alone. See *Tukur v. Gongola State Government* (1988) 1 SC 78 (Pt.88) 1 NWLR (Pt.68) 39 and *Amaye v. Associated Contractors* (1990) 6 SCNJ 149 at 162 - without recourse to defendants, the respondents' answer or statement of defence, since in the promulgation of Edict No.3 1988, there has been nothing shown to contradict another Edict, a Decree, the unsuspended sections of the 1979 Constitution or an Act of the Federation the appellant cannot succeed on the point that having paid the nonrefundable sum of N10,000.00 by virtue of Kwara State Edict No.3 of 1988 without more, that act alone entitled him to challenge the appointment of the 3rd respondent as Oba of Ponyan. Nor would the Governor be employed thereby, in my view, himself to challenge the validity of such an Edict. But of *Edewor v. Uwegba & Ors.* (1987) 1 NSCC 148 (1987) 1 NWLR (Pt.50) 313. See also the Constitution (Suspension and Modification) Decree No.1 of 1984 as amended by Decree No 17 of 1985; the Federal Military Government (Supremacy and Enforcement of Powers) Decree No.13 of 1984; *The Government of Ondo State v. Victor Adegoke Adewunmi* (1985) 3 NWLR (Pt.13) 493 and Section 75 and the Local Government Edict. 1976.

Neither are the provisions of the two Edicts (Edicts Nos. 2 and 3 of 1988 respectively) shown to be inconsistent with any unsuspended parts of the 1979 Constitution. That being so and coupled with the intendment of the law maker, which no doubt is the desire to minimise
 5 multiplicity of suits involving chieftaincy, and the attendant abuse of process of court (See *Dawkins v. Prince Edward of Saxeweimer* (1976) 1 Q.B. 449 at 503) the argument that the court below wrongly held that a finding on the point is not necessary cannot, in my view, be faulted. Besides, when questioned by court if it was usual in Kwara
 10 (by extension, Kogi) state to appoint an Oba (Village head) by an Edict, learned Counsel for the 1st and 2nd respondent replied in the affirmative, adding that the Obaro of kabba was so appointed. Nothing has been shown to suggest that Edict No.2 is ambiguous or ultra vires the Governor's legislative powers.
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The two issues having been resolved against the appellants and against whom there have been concurrent findings of facts. See *Uredi v. Dada* (1988) 1 NWLR (Pt.69) 237 at 254: *Lokoyi & Anor v. Olojo* (1983) 8 SC 61 and *Mogo Chinwendu v. Nwanegbo Mbamali*
 20 (1980) 3-4 SC. 31. I see no reason to disturb the conclusion arrived at by the court below which in my judgment, rightly affirmed the decision of the trial court.

For the fuller reasons articulated in the judgment of my learned brother Belgore, J.S.C. a preview of which I have been privi-
 25 leged to have before now and with which I entirely agree. I will myself dismiss this appeal and affirm the decisions of the two courts below with costs assessed at N1,000.00 jointly to the respondents.

30 ***IGUH JSC***

I have had the opportunity of reading in draft the judgment just delivered by my learned brother, Belgore, J.S.C. I agree with the reasoning and conclusions arrived at by him and I adopt the same as
 35 mine.

In respect of the first two issues, it seems to me plain that the payment of a non-refundable sum of N10,000.00 under the Kwara State Edict No.3 of 1988 did not ipso facto vest jurisdiction on the

court to invalidate or set aside Edict No. 2 of 1988 which appointed the 3rd respondent as the Oba of Ponyan. The payment of the said fee of N10,000.00 merely conferred the appellants with access to the court for the purpose of the determination of their claim in accordance with the laws of the land and no more. It is a condition precedent prescribed by the Edict for the institution of the category of dispute covered under the said Edict. Once this condition precedent is duly complied with, the court gets conferred with jurisdiction to entertain the suit.

The court did infact entertain the suit and held quite rightly in my view, that it had no jurisdiction to determine the suit. I have not been persuaded that both the trial court and the court below were in error in this regard and I endorsed their conclusions on the issue.

On the last issue, it is clear that no provision of the Oba of Ponyan (Chief E. O. Omopariola) (Appointment. Etc.) Edict No.2 of 1988 is either in conflict or inconsistent with any Decree or the unsuspended parts of the 1979 Constitution or an Act of the National Assembly. Accordingly, there is no jurisdiction in the court to invalidate the same. See Military Governor Ondo State & Anor v. Victor Adewunmi (1985) 3 NWLR (Pt.13) 493 and Garba v. Governor of Kaduna State & Anor. (1986) 4 NWLR 373. It is not in dispute that the Military Governor of Kwara State by virtue of section 3 of the Chief (Appointment and Deposition) law, Cap. 20 Laws of Northern Nigerian applicable to Kwara State has powers to appoint a Chief. The Military Governor by Decree No.1 of 1984 as amended also has powers to enact or promulgate an Edict. Edicts numbers 2 and 3 were lawfully enacted into law by the Military Governor of Kwara State and I endorse the views of the courts below that both Edicts not being in conflict or inconsistent with any Decree or the unsuspended sections of the 1979 Constitution or any Act of the National Assembly are unquestionably valid and enforceable.

It is for the foregoing reasons and the fuller reasons contained in the leading judgment of my learned brother, Belgore, J.S.C. that I agree that this appeal lacks merit and must be dismissed. I hereby dismiss it and abide by the order for costs contained in the lead judgment.

Appeal dismissed.