

SUPREME COURT OF NIGERIA
29TH APRIL, 1994. SC 269/1990
CORAM:- S.M.A. BELGORE, A. B. WALL, I. L. KUTIGI,
U. MOHAMMED, A. I. IGUH, JJSC.

HIS HIGHNESS V.A. OTITOJU PLAINTIFF/APPELLANT
(Olomu-Oke of Omuo-Oke,
on behalf of himself and
Omuo-Oke Community)

AND

1 THE GOVERNOR OF ONDO STATE
2. ATTORNEY-GENERAL OF ONDO STATE DEFENDANTS/
RESPONDENTS
3. OBAABRAHAM FASUKI
(The Olomuo of Omuo, for himself and
the entire Omuo Community)

APPEALS - Concurrent findings - Chieftaincy matters - Concurrent findings of fact of the two lower courts - Amply supported by evidence - Whether Supreme Court will dismiss the findings.

APPEALS - Upholding trial court's findings - By the Court of Appeal - That an alleged separate town is a quarter and has no paramount ruler - Whether correct.

CHIEFTAINCY MATTERS - Paramount ruler - Claim that a mere quarter is a distinct town - With its own paramount ruler- When the two lower courts' findings to the contrary - Will be upheld by the Supreme Court.

CONSTITUTIONAL LAW- Freedom of association, s. 37 of the 1979 Constitution - Does not only apply to individuals - Applies also to group rights of a quarter or town - But it is individuals' exercise of their rights that give rise to group right.

CONSTITUTIONAL LAW - Freedom of association - Unfounded claim by appellants that a quarter is a distinct town with its own paramount ruler - Whether government's treatment of appellant 's people as part of the town - Is to a violation of their right to freedom of association.

78 OTITOJU V. GOV. OF ONDO STATE (1994) 7 KLR 77; (1994)
EVIDENCE - Exhibits - Consideration thereof - Whether Court of Appeal solely relied on attacked exhibit in coming to its conclusion.

EVIDENCE - Documents - Exhibited document that was signed and thumbprinted - No evidence to show the makers were illiterates - Whether the document is null and void.

ILLITERACY - Thumbprinting - Partly thumbprinted and partly signed document - No evidence of illiteracy - Whether thumb printing or signing one's signature perse is evidence of illiteracy or literacy.

LEGISLATION - Repeal - Chieftaincy recognition and derecognition - Whether subsequently gazetted legal notices - Can effectively repeal previously gazetted ones.

FACTS

The Plaintiff/Appellant who is the Olomuo-Oke of Omou-Oke, Ekiti, Ondo State, following certain gazetted publications was recognised as the Chief of Omuo-Oke, a quarter under Omuo. His office (the Olomuo-Oke of Omuo-Oke) was also made a recognised chieftaincy and published in a gazette. The Appellant thereafter, started nursing the ambition for paramountcy. He claimed that Omuo-Oke is a separate town from Omuo and that he is the paramount chief, Oba of Omuo-Oke. This led the government to set up a panel to investigate the Appellant's claims. The panel found the claims unestablished and their recommendations were approved by government. The aggrieved Appellant filed an action against the Respondents before the Ondo State High Court Akure seeking to establish his claim as a paramount chief attacking the Panel's findings as being illegal and asking for an injunction to restrain the government from giving effect to the Panel's findings as published in a white paper.

The trial Court found against the Appellant, dismissed his claim holding that Olomuo-Oke was a quarter in Olomuo. The court also found that two legal notices gazetted in 1976 and 1979 that derecognised the Appellant's chieftaincy effectively repealed Exhibit A & B, the gazetted orders that recognised Appellant's chieftaincy. Appellants appeal to the Court of Appeal, Benin division, was dismissed and the trial court's findings were upheld. Appellant has further appealed to the Supreme Court to determine inter alia; whether Omuo-Oke is a distinct town from Omuo town and whether the legal notices of 1976/1979 effectively repealed exhibits A & B.

HELD (unanimously dismissing the appeal)

1. From the records, the two lower courts considered all the exhibits tendered by all the parties. And the Court of Appeal did not solely rely on Exhibit H (a thumbprinted document) in coming to its conclusion that Omuo-Oke was not a distinct town from Omuo. (P. 86 L 31)

2. The fact that Exhibit H was signed in some places and thumbprinted in other places are not sufficient to have rendered it null and void. For there was no evidence on record to show the makers of the exhibit were illiterates and there is nothing in law which prevents a literate person from affixing his thumb impression to a document, so also one is not literate merely because he is able to write or sign his name on a document. (P 87 L 1)

3. The burden was on the Appellants who objected to the document (Exhibit H) to prove that they as the makers were illiterate. Having failed to discharge the burden, the said Exhibit H was properly admitted in evidence (P.87 L 15)

4. The Court of Appeal was right in upholding the trial court's findings that Omuo-Oke has always been a quarter in Omuo, and rejecting the Appellant's traditional evidence that Omuo-Oke was a separate town with its own paramount ruler. (P. 87 L23)

5. There was ample evidence in support of the findings made by the lower courts in respect of issues 1, 2 and 4 which are largely questions of fact There is no reason to disturb the said findings since it is settled law that in the absence of error on the face of the record occasioning a miscarriage of justice, the Supreme Court will not dismiss concurrent findings of fact. (P. L 15)

6. The lower courts were right in holding that the 1970/1979 legal notices effectively repealed Exhibits A & B (which made the Olomuo-Oke of Omuo-Oke a recognised chieftaincy) (P. M L 2)

7. It is nowhere stated in the Court of Appeal's judgment that s. 37 of the Constitution applies only to individuals and not to the group rights of a quarter or town. The right of Omuo-Oke people as a quarter to or not to associate with the rest of Omuo is recognised. But the right of individuals is of primary concern for it is only when individuals join together to exercise their common rights that group right is talked of as such. (R 91 L 20)

8. The 1976/1979 notice (that de-recognised Appellant's chieftaincy) do not in any way interfere with the freedom of association of Omuo-Oke people, while

the government reserves the right to treat them as part of Omuo for its administrative purpose. (P. 91 L 30)

NOTABLE POINTS OF INTEREST

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KUTIGLJSC
1. Illiterate person defined
“An “illiterate person” has been defined in the case of NTIASHAGWO V. AMODU (1959) WNLR 273 as a person who is unable to read with
10 *understanding, and to express his thoughts by writing, in the language used in the document made or prepared on his behalf. I endorse this definition. The question therefore of anyone being literate or illiterate cannot be pre-*
sumed by the court but is a matter to be established by evidence”. (P. 87 L 9)

15 **BELGOREJSC**
2. Concurrent findings of fact - When not perverse
 In the instant appeal all the findings of facts by trial Court as affirmed by the Court of Appeal are amply supported by evidence. There is nothing perverse in such findings and the evidence upon which the findings are based came in
20 lawfully. (P. 92 L 12)

WALIJSC
3. Whether Omuo-Oke is a seperate town from Omuo
“Looking at the pleadings and the evidence adduced, one is left with no iota
25 *of doubt that Omuo-Oke, though a trading station in the early colonial days, this fact did not make it a different town independent of Omuo. Also the fact that the Chief of Olomuo-Oke was recognised in Exh. A as a Chief did not make him distinct and independent of Omuo whose chieftaincy was described as “Head Chief. All the evidence adduced and accepted established that*
30 *Omuo-Oke is a quarter within Omuo chieftaincy”. (P.92 L 37)*

REPRESENTATION:
 Rotimi Jacobs with Gabriel Longe and Festus Kayamo for the Appellant.
 I. A. Adegbenro, Assistant Director of Civil Litigation, Ministry of Justice
35 Ondo
 State, for 1st and 2nd Respondents.
 Chief B.O. Benson with B. Jagun and O. A. Daramola for 3rd Respondent.

CASES REFERRED TO

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| Ntiashagwo v. Amodu (1959) WNLR 273 | |
| Edokpayi v. Oke (1964) M.N.L.R. 53 | |
| Chikwendu v. Mbamali (1980) 3 SC. 31 | |
| Ibodo & Ors. v. Enarofia & Ors. (1980) 6 - 7 SC. 42 | 5 |
| Overseas Construction Ltd. v. Creek Enterprises (1985) 3 NWLR (Part 13) 40 | |
| Fasoro v. Abdullah (1987) 3 NWLR Pt. 59) 143 | |
| Okonkwo v. Adigun (1985) 1 NWLR (Pt. 4) 694 | |
| Arisa v. The State (1988) 3 NWLR (Pt. 83) 386 | |
| Kimdy v. Military Governor, Gongola State (1988) 2 NWLR (Pt. 77) 445 | 10 |
| Dosumu v. Joto (1987) 4 NWLR (Pt. 65) 297 | |
| Chukwuogor v. Obuora (1987) 3 NWLR (Pt. 61) 454 | |
| Okonkwo v. Okolo (1988) 2 NLWR (Pt. 79) 632 | |
| Akilu v. Fawehinmi (No. 2) (1989) 2 NWLR (Pt. 102) 121 | 15 |

LEAD JUDGMENT BY KUTIGI JSC

Following the claim of the Olomuo-Oke of Omuo-Oke as the paramount Chief or Oba of Omuo-Oke, Ekiti. The Military Governor of Ondo State instituted a Judicial Commission of Inquiry headed by the Honourable Justice Ojuolape to investigate the claim. The Commission took evidence and later submitted its report to the 1st defendant herein who then issued a white paper dated August 1982. The white paper was admitted as Exhibit at the trial.

On Page 13 of Exhibit E the recommendations of the commission and the comments of the Ondo State Government were stated in part thus:

“15.0 Government views and comments on the Commission’s Recommendation:

15.1 Recommendation (i) that the claim of Olomuo-Oke as an Oba is false and should not be entertained either politically or administratively.

Comment:

Government accepts this recommendation.

15.2 Recommendation (ii) the Olomuo-Oke should be recognized as the head chief of Omuo-Oke under the paramountcy of the Olomuo who is the recognised Oba of Omuo.

Comment:

In the light of the Government’s decision on recommendation (i) above, the Olomuo-Oke will remain as the quarter head chief of Omuo-Oke

quarter in Omuo under the paramountcy of the Olomuo of Omuo.”

Being aggrieved by the commission’s recommendations and the government’s comments thereon the plaintiff in the Ondo State High Court, holden at Akure, sued the defendants claiming in his writ of summons thus:

“1. A Declaration that Olomuo-Oke is the traditional and paramount ruler of Omuo-Oke Ekiti in Ondo State.

2. A Declaration that Omuo-Oke is a distinct town in Ondo State.

3. A Declaration that the findings and recommendations of Ojuolape Judicial Commission of Inquiry into the headship claim by the Olomuo-Oke of Omuo-Oke are contrary to the customary law of Omuo-Oke community and are therefore illegal and void and of no effect whatsoever.

4. A Declaration that the Ondo State Government’s views and comments on the said commission’s recommendations as contained in Ondo State of Nigeria White Paper on Ojuolape Judicial Commission of Inquiry are illegal, unconstitutional and of no effect whatsoever.

5. An Injunction restraining the Government of Ondo State, its servants, agents, privies and officers from acting on, executing, giving effect to or otherwise dealing with (to the detriment of the plaintiff) the said findings, recommendations, views and comments as contained in the Ondo State of Nigeria White Paper on Ojuolape Judicial Commission of Inquiry.”

Pleadings were ordered, filed and exchanged by the parties. An Amended Statement of Claim was filed by the plaintiff. The 1st and 2nd defendants also jointly filed an Amended Statement of Defence while the 3rd defendant filed his own Further Amended Statement of Defence. The case was fought on these new statements of claim and defence.

At the trial only the plaintiff testified for himself and on behalf of the people of Omuo-Oke Community. He tendered in evidence series of documentary exhibits. The defendants on the other hand called three witnesses and tendered some documents in evidence as well.

From the pleadings of the parties and the evidence led, briefly stated the plaintiff’s case was that Omuo-Oke was a distinct town in Ondo State with its own paramount chief in the person of the plaintiff himself. According to the plaintiff the Western State Government in 1975 by Order published in the Gazette as Western State Legal Notice 31 of 1975. (W.S.L.N. 31 of 1975 for short) made the provisions of part II of the Chiefs Law applicable to the Olomuo-Oke of Omuo-Oke chieftaincy. By this Order the plaintiff said he

became a paramount ruler of his community instead of a minor chief that he was. The Order took effect from 20th March, 1975. The Gazette Notice was tendered in evidence as Exhibit A. Later in 1976 the same Western State Government also approved the appointment of the plaintiff as the Olomuo-Oke of Omuo-Oke with effect from 10th March, 1976. The approval notice was also published in the Gazette as the Western State Notice No. 183. It was Exhibit B in the proceedings. The plaintiff also tendered various documentary exhibits on the traditional history of Omuo-Oke to show that it is a distinct and separate town in Ondo State. The defendants' version on the other hand was that Omuo-Oke has no separate existence from Omuo and that there were no natural features demarcating it as such. That Omuo-Oke was just one of the quarters under Omuo. It was also the defendants' case that although the Olomuo-Oke as a minor chief was recognised in 1975 as per Exhibit A, and that plaintiff's appointment was also recognised as such in 1976 as per Exhibit B, the plaintiff had along with some other recognised chiefs in Ondo State been de-recognised as per Western State Legal Notice No.6 of 1976 (W.S.L.N. 6 of 1976) and the Ondo State Legal Notice 23 of 1979 (O.D.S.L.N. 23 of 1979). Both the two legal notices were given the same commencement date of 5th February, 1976. They therefore took effect before the recognition of the appellant as a chief as per Exhibit B which took effect from 10th March, 1976.

After due hearing the trial court in a reserved judgment dismissed all the claims against the defendants when it held as follows-

"I prefer the evidence of records tendered by the witnesses for the defence that Omuo-Oke has always been a quarter in Omuo. This has always been the view of Omuo-Oke elements until the plaintiff began to nurse his ambition for paramountcy. The claim of paramountcy by the Olomuo-Oke led to the Ojuolape Commission of Inquiry and Government acceptance of the findings. I hold the same view as did Ojuolape Commission that the claim of the Olomuo- Oke as an Oba is false. Omuo-Oke is not a separate town from Omuo.

In view of my conclusion I refuse to make the 1st, 2nd, 3rd and 4th Declarations sought by the plaintiff. I also refuse to grant him an injunction."

Dissatisfied and aggrieved by the decision of the High Court, the plaintiff appealed to the Court of Appeal, Benin-City. Four issues were submitted for determination in that court. They were -

"1. Whether Olomuo-Oke is the traditional and paramount ruler of Omuo-Oke Ekiti in Ondo State.

2. Whether Omuo-Oke is a distinct town in Ondo State.

3. *Whether the findings and recommendations of Ojuolape Commission of Inquiry on the headship claim by Olomuo-Oke of Omuo-Oke and the comments of the Ondo State Government as contained in the white paper on the said recommendations are illegal, unconstitutional, null and void.*

4. *If the answer to the above is in the affirmative whether an injunctive relief should be granted to prevent the Ondo State Government from acting on the recommendations and the documents thereon."*

The Court of Appeal considered all the above issues and again dismissed the plaintiff's appeal. Uche Omo J.C.A., delivering the lead Judgment concluded thus -

10 *"To summarize, the issues for determination raised by the appellant having been decided against him, this appeal must fail and is hereby dismissed with costs to the 1st and 2nd respondents jointly and the 3rd respondent assessed at N200.00 each."*

Further dissatisfied, the plaintiff has finally appealed to the Supreme 15 Court. The parties filed and exchanged briefs of argument which they relied on. The plaintiff will from now on be referred to as "the appellant" while the defendants will be referred to as "the respondents."

According to the appellant's brief the issues for determination in this appeal are:

20 1. Whether Omuo-oke is a distinct town separate from and not forming part of Omuo town.

2. Whether the Court of Appeal was right in holding that Olomuo-Oke of Omuo-Oke is not a traditional and paramount ruler of Omuo-Oke Ekiti in Ondo State.

25 3. Whether the Legal Notices of 1976 and 1979 with their commencement dates as 5th February, 1976 effectively repealed Exhibit A & B.

4. Whether the Court of Appeal is not wrong in holding that the findings and recommendation of Ojuolape Commission of Inquiry on headship claim by the Olomuo-Oke of Omuo-Oke and the comments of the Ondo 30 State Government as contained in the White Paper on the said recommendation are not illegal, unconstitutional, null and void.

5. Whether the court of Appeal is right in its construction of the provision of S.37 of the 1979 Constitution by limiting its effect and operation to the individual's rights as against group rights.-

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It would appear that issues (1), (2) and (4) are the same as issue (2), (1) and (3) respectively before the Court of Appeal. The only new issues raised in this Court are therefore clearly issues (3) and (5). I will therefore deal with issues 1, 2 and 4 together as they are interwoven and also interdependent

Issues 3 and 5 will then be taken separately.

The question raised by the first issue is whether Omuo-Oke is a distinct town separate from Omuo-town. The submission of learned counsel can be summarized as follows:

(a) No valid decision can be reached without first determining the characteristics of a town or a definition of the word "town".

(b) From various dictionary definitions and having regard to the provisions of the Chiefs Law and the documentary exhibits before the trial court, it was clear that Omuo-Oke had for over hundred years been recognised as a distinct geographical unit with its distinct identity and name.

(c) Exhibits C - C14 support the independent nature of Omuo-Oke community which the Court of Appeal failed to consider, and instead wrongly placed reliance on Exhibit H to hold that Omuo-Oke was not a distinct and separate town from Omuo. (d) Exhibit H offended Section 3 of the Illiterates Protection Act (Cap.83) and should be expunged from the record. This is actually Section 3 of Illiterates Protection Law (Cap. 48) 1978 Laws of Ondo State.

(e) The evidence relied upon by the lower Courts did not support the decision they reached. It is therefore a proper case for this Court to interfere with the concurrent findings.

Dealing with the same issue 1, the learned trial judge said on pages 165/166 of the record thus-

As to the submission that Omuo-Oke is a town independent of Omuo, no legal proof has been advanced to substantiate the assertion. The exhibits in support of road links and distances from Lokoja and other trading parts of the Niger and John Holts Companies, the importance of Omuo-Oke as a commercial centre and other records of the provincial administrators, were made by the authorities concerned for their commercial and administrative purposes. So too were the records of St. Silas School kept for the interest of the C.M.S. Authorities who were the owners of the School. I do not consider these records appropriate in assessing the independence of Omuo-Oke from the rest of Omuo. I reject the historical evidence of the plaintiff and hold that none of them has convinced me that Omuo-Oke was a separate town with its own paramount ruler. I also reject the evidence of the plaintiff that the Olomuo paid tribute to Olomuo-Oke. There was no support for the allegation.

I prefer the evidence of records tendered by the witnesses for the defence that Omuo-Oke has always been a quarter in Omuo. This has always been the view of Omuo-Oke elements until the plaintiff began to nurse the
 5 ambition for paramountcy.”

The Court of Appeal also giving a negative answer to the issue observed on Pages 303 - 304 per Uche Omo J.CA. thus -

“In attacking this decision in his brief, appellant set out the various legal dictionary definitions of a “town” and the Chiefs Law, ending up
 10 with a submission that “any geographical unit, within a local government area that has a distinct geographical identity and name and a recognized chieftaincy is a town”. He then referred to “the avalanche of documentary evidence tendered by the plaintiff at the trial” which he submitted “go to show that Omuo-Oke for over 100 years has been recognized as a town.” The
 15 many documents tendered by the appellant do go to show, without doubt, the importance of Omuo-Oke as a trading station during the early colonial era. It seems to have owed this to its being situate at an important junction of roads. No where in these documents is there any categorical statement that Omuo-Oke is a different town from Omuo town. The respondents on the other
 20 hand have been able to tender various documents which assert that Omuo-Oke is a part of Omuo town. I refer to Exhibit F. where the Olomuo is described as Head Chief; and the Olomuo Oke merely as a prominent Chief; Exhibit H, a most damning 1943 document, in which Omuo-Oke Chiefs, Elegbes and Elders (37 of them) vigorously stated Omuo-Oke’s claim to
 25 producing the next Olomuo of Omuo. Why this bid to fill the then vacant chieftaincy post if Omuo-Oke is a separate town from Omuo!”

He concluded on Page 365 as follows-

“I have carefully considered this issue and come to the conclusion that the findings of the learned trial judge in the High Court therein are
 30 correct and should not be disturbed.”

It is thus clear that it is not true to say that the Court of Appeal did not consider Exhibits C-C14 or any exhibit at all before arriving at its decision. Both the two lower Courts in fact did consider all the exhibits tendered by all the parties. The Court of Appeal also did not solely rely on Exhibit H to come
 35 to its conclusion that Omuo-Oke was not a distinct town from Omuo. Apart from Exhibit H which was described as “most damning 1943 document”, other exhibits including Exhibits F, G, H, J. N. and P amongst others, and oral evidence were also relied upon. It would therefore in my view have made no difference to the conclusion arrived at by the lower Courts even if Exhibit H is

expunged from the record. The fact that the exhibit was signed in places and thumb printed in other places are not sufficient in my view to have rendered same null and void as contended by the appellants. In the first place, there was no evidence on record to show that the makers (appellants herein) were illiterates since there is nothing in law which prevents a literate person from affixing his thumb impression to a document, so also the mere fact that one is able to write or sign one's name on a document does not mean that one is literate.

An "illiterate person" has been defined in the case of Ntiashagho v. Amodu (1959) WRNLR 273 as "a person who is unable to read with understanding and to express his thoughts by writing, in the language used in the document made or prepared on his behalf." I endorse this definition. The question therefore of anyone being literate or illiterate cannot be presumed by the Court but is a matter to be established by evidence, (See Edokpayi v. Oke (1964) N.M.L.R. 53). The burden was on the appellants who objected to the document to prove that they as the makers were illiterate. They did not do that. I am clearly of the view therefore that Exhibit H was properly admitted in evidence.

The second issue is whether the Olomuo-Oke is a traditional and paramount ruler of Omuo-Oke Ekiti in Ondo State by virtue of Exhibits A & B and on the strength of the traditional history led by the appellant at the trial. The contention here is that a recognised chief under the Chiefs Law is the paramount ruler of his community. As shown above the learned trial Judge had rejected the traditional evidence of the appellant that Omuo-Oke was a separate town with its own paramount ruler. He preferred the evidence of the respondents that Omuo-Oke has always been a quarter in Omuo and the Court of Appeal came to the conclusion that those findings by the High Court were proper and should not be disturbed. I think the Court of Appeal was right.

Turning to Exhibit A, The Recognised Chieftaincies (Amendment) Order 1975 (W.S.L.W. 31 of 1975) the learned trial judge on Pages 158 -159 said

"It must be pointed out that W.S.L.N. 31 of 1975 was the order recognising the Olomuo-Oke chieftaincy. Chief Gani Fawehinmi learned counsel regarded the recognition of Olomuo-Oke as conferment of paramountcy on him. There is nothing in law or in fact to justify that assumption. It is my view that the application of Part II of the Chiefs law 1958 did not confer paramountcy. By the same token the recognition of Olomuo-Oke by Order W.S.L.N. 31 of 1975 did not confer paramountcy on him. He was recognised under part II of the Chiefs law only as many other chiefs in various Local Council area of the Western State of Nigeria were."

And on Exhibit B, Approval of Appointment of Recognised Chief (Western State Notice No. 183), the learned trial judge stated -

5 *"The much cherished recognition having been conferred on the Olomuo-Oke chieftaincy, the present Olomuo-Oke was approved for appointment to that chieftaincy by the Western State Notice No.183 which reads as follows -*

"Western State Notice No. 183"

The Chiefs Law (Cap.19)

10 *It is hereby notified for public information that in exercise of the powers conferred on the Executive Council by sub-section 16 of the Chiefs Law, which powers have been delegated to me, and by virtue of all other powers in that behalf, the appointment of Mr. Valentine Adebayo Otitoju as the Olomuo-Oke of Omuo-Oke in the Ekiti Northern Local Government Council area, is hereby approved with effect from the 10th day of March, 1976."*

15 *Dr. J. A. Atanda,*

Commissioner for Local Government and Chieftaincy Affairs, Ibadan 10th March, 1976".

20 *"I hold that by the above approval the Olomuo-Oke became a recognised chief in Omuo-Oke, not a paramount ruler of Omuo-Oke. I reject the submission of learned counsel that the application of Part II of the Chiefs Law makes the holder of a chieftaincy in respect of which an order is made the traditional and paramount ruler of the community in respect of which the ruler is made."*

25 The Court of Appeal agreed with the conclusion of the learned trial judge above when it held on page 306 that-

30 *"As observed by the learned trial judge, among the chieftaincies so recognised under the Omuo-Local Government District Council are besides the Olomuo of Omuo, Chiefs Odofofin, Olisa, Elekota, Balogun Omuo, Oloroju and four others. These are all quarter or sectional chiefs and yet they are recognised. From this the learned trial judge came to the conclusion that "recognition" is quite a different thing from "paramountcy". I would prefer to postulate that recognition by the government (per the Chiefs Law - Part II) does not automatically carry with it the status of a "paramount ruler". It is agreed by all that by virtue of Exhibits A & B the appellant became a recognised chiefs."*

On the issue of the findings and recommendations of Ojuolape Commission of inquiry and the comments of Ondo State Government as contained in the White Paper, the learned trial Judge found on Page 166 that-

"I prefer the evidence of records tendered by the witness for the defence that Omuo-Oke has always been a quarter in Omuo; This has always been the view of Omuo-Oke elements until the plaintiff began to nurse his ambition for paramountcy. Olomuo-Oke led to the Ojuolape Commission of Inquiry and Government acceptance of the findings. I hold the same view as did Ojuolape Commission that the claim of the Olomuo-Oke as an Oba is false. Omuo-Oke is not a separate town from Omuo."

The Court of Appeal again upholding the decision of the trial Court also said

"The preponderance of evidence on the two main issues at stake, and the customary law relating thereto, in the view of the learned trial judge is in favour of the respondent. After considering the evidence I am inclined to agree with him and find no reason why his finding should be disturbed."

Issues 1, 2, & 4 as I have endeavoured to demonstrate above are largely questions of fact. All these issues of facts have been considered both by the High Court and the Court of Appeal. It is settled that when two courts have examined issues of fact and made concurrent findings, the Supreme Court in the absence of error on the face of the record occasioning a miscarriage of justice will not dismiss those findings (see for example Chinwendu v. Mbamali (1980) 3 - 4 SC. 31, Ibodo & Ors. v. Enarofia & Ors. (1980) 5 - 7 SC. 42, Overseas Construction Ltd. v. Creek Enterprises Ltd. (1985) 3 NWLR (Pt. 13) 407; Fasoro v. Abduliah (1987) 3 NWLR (Pt. 59) 134; Okonkwo v. Adigwu (1985) 1 NWLR (Pt. 4) 694.

I have myself carefully read through the record of proceeding in this case and have come to the conclusion that there was ample evidence in support of the findings made by the lower courts. I have found no reason to disturb those findings. Issues 1, 2 & 4 therefore fail.

Issue 3

This is whether the Legal Notices of 1976 and 1979 with their commencement dates as 5th February, 1976 effectively repealed Exhibits A & B. The Appellant contended that they did not.

It will be recalled that Exh. A (W.S.L.N. 31 of 1975) applied the provisions of Part II of the Chiefs Law to the Olomuo-Oke of Omuo-Oke chieftaincy, thus becoming a recognised chieftaincy. Exh. B. (Western State Notice No. 183) gave approval to the appointment of the appellant as the Olomuo-Oke of Omuo-Oke as a recognised chief. But Exhibits A & B as stated above have as their commencement dates 20/3/75 and 10/3/76 respectively.

However in 1976 the Western State Government promulgated “The Recognised Chieftaincies (Revocation and Miscellaneous Provisions) Order 1976 (W.S.L.N. 6 of 1976), by which it sought to de-recognise some recognized chieftaincies, one of which is the appellant’s. The commencement date was 5/2/76. After the creation of Ondo State, a similar Legal Notice, The Recognised Chieftaincies (Application) Order, 1979 (O.D.S.L.N. 23 of 1979) was passed. The commencement date was also 5/2/76. The latter also sought to de-recognise some recognised chieftaincies including the appellant’s. It is pertinent to say that both Legal Notices W.S.L.N. 6 of 1976 and O.D.S.L.N. 23 of 1979 stated that the provisions of Part II of the Chiefs Law shall apply to any chieftaincy mentioned in the schedule to the Legal Notices. Neither of the two legal notices had Olomuo-Oke Chieftaincy under its schedule. The learned trial judge was compelled to observe on Page 163 of the record as follows:

“I hold and believe that both orders W.S.L.N. 6 of 1976 and O.D.S.L.N. 23 of 1979 are affirmation of the intention of the makers that Part II of the Chiefs Law ceased to apply to all chieftaincies except those listed in the schedule to the orders. In so far as the Olomuo-Oke chieftaincy was not contained in the schedule it ceased from February, 1976 to be recognised as a chieftaincy under Part II of the Chiefs Law.”

The Court of Appeal on its own part had this to say-
“Exhibits A & B are two very affirmative and specific pieces of legislation. While the first recognises the appellant’s chieftaincy under Part II of the Chiefs Law, the other conveys the approval of the Executive Council for its recognition ... The 1976 notice is cited as Recognised Chieftaincies (Revocation and Miscellaneous Provisions) Order. The main aim is to revoke certain recognised chieftaincies.....
It is common ground that the Olomuo-Oke chieftaincy is not one of those chieftaincies listed in the first column of the first schedule. The effect of this order therefore is to exclude it from the list of recognised chieftaincies. The 1979 notice whilst revoking the 1976 legislation specifically sets down those chieftaincies to which Part II of the Chiefs Law will henceforth apply in Ondo State ... It is also not in dispute that the Olomuo Oke of Omuo-Oke chieftaincy is not listed in the schedule to the said order. It therefore follows that as far as Ondo State is concerned it is not one of the chieftaincies recognised under Part II of the Chiefs Law I am therefore of the view that the learned trial judge was right when he held that the 1976/1979 notices repealed Exhibits A & B, and

I also so hold."

I have not been persuaded by the arguments of learned counsel for the appellant in his brief that the conclusion arrived at by the lower courts was wrong. I agree with them that clearly the 1976/1979 legal notices effectively 5 repealed Exhibits A & B. Issue 3 also fails.

Issue 5

(a) This is the issue of whether the provision of section 37 of the 1979 Constitution applies only to individuals and not the group rights of a quarters or town. This issue arose I think out of misconception of a passage in the lead judgment of Uche Omo, J.C.A., wherein he said on Page 324 of the judgment thus - 10

"The answers to their submission briefly are:

(a) That what is primarily contemplated here is the right of an individual and not the group rights of a quarter/town;

(b) That the 1976/1979 notices do not in any way interfere with the 15 rights of the Omuo-Oke people to freedom of association. There is nothing preventing them from refusing to associate with the rest of Omuo socially, whilst the government reserves the right to treat them as part of Omuo for its own administrative purposes."

It is clear at once that it is nowhere stated in the passage above that 20 section 37 of the Constitution applies only to individuals and not to the group rights of a quarter or town. There is nothing in the passage read as a whole which suggests that town/quarter/group rights would not be recognised if and when one is shown to exist. On the contrary the passage recognised the right of Omuo-Oke people as a quarter or group to associate or not to associ- 25 ate with the rest of Omuo. Individuals in Omuo-Oke may likewise do the same. But as rightly put by the learned Justice of Appeal, it is the right of individuals that is of primary concern. It is only when individuals join together or gang up to exercise their common rights together that one talks of group or quarter rights as such. But as rightly stated above the 1976/1979 notices do not in any 30 way interfere with the freedom of association of Omuo-Oke people while the government reserves the right to treat them as part of Omuo for its own administrative purposes. That is how it should be. And I believe that is how it has been. This issue also fails.

In conclusion, all the issues for determination having been resolved 35 against the appellant, this appeal fails and is hereby dismissed with costs of N1,000.00 each to the 1st and 2nd respondents jointly and to the 3rd respondent alone.

BELGORE JSC

I had the advantage of reading before now the judgment of my learned
5 brother, Kutigi, J.S.C., and I agree with him that this appeal lacks merit. In a line
of decisions of this Court, it has time and again been emphasised that an
appellate Court should not disturb the findings of facts of the lower Court
unless such findings are not in accord with evidence before trial Court, or if in
evidence they were not lawfully received, or are perverse. If findings of facts
10 by trial Court are affirmed by the Court of Appeal, the Supreme Court will not
disturb such findings except in special circumstances enumerated above.

In the instant appeal all the findings of facts by trial Court as affirmed
by the Court of Appeal are amply supported by evidence. There is nothing
perverse in such findings and the evidence upon which the findings are based
15 came in lawfully. *Arisa v. The State* (1988) 3 NWLR (Pt.83) 386; *Kimdey v.*
Military Governor, Gongola State (1988) 2 NWLR (Pt.77) 445; *Dosunmu v. Joto*
(1987)4 NWLR (Pt.65) 297; *Chukwuogor v. Obuora* (1987) 3 NWLR (Pt. 61) 454;
Okonkwo v. Okolo (1988) 2 NWLR (Pt. 79) 632; *Akilu v. Fawehinmi* (No.2)
(1989) 2 NWLR (Pt. 102) 121.

20 The foregoing reasons support my view of the first, second and third
issues for determination in appellants' brief of argument, which unavoidably
leads to the conclusion that all the findings by lower Courts are on facts. I
have no option than to agree with the conclusion and reasoning leading
thereto in the judgment of Kutigi, J.S.C. I adopt his reasoning and conclusions
25 as mine in dismissing this appeal. I make the same consequential orders as to
costs.

WALI JSC

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I have seen and read in advance a draft copy of the lead judgment of
my learned brother, Kutigi, JSC and I entirely agree with his reasoning for
dismissing this appeal.

The learned trial judge adequately considered both the issues of fact
35 and law involved in this case and came to right conclusions and so also did
the Court of Appeal. I see no reason to disturb them.

Looking at the pleadings and the evidence adduced, one is left with
no iota of doubt that Omuo-Oke, though a trading station in the early colonial
days, this fact did not make it a different town independent of Omuo. Also the

fact that the Chief of Olomuo-Oke was recognised in Exh. A as a Chief did not make him distinct and independent of Omuo whose chieftaincy was described as “Head Chief” All the evidence adduced and accepted established that Omuo-Oke is a quarter within Omuo chieftaincy.

The appeal fails and it is dismissed. The decisions of both the trial court and the Court of Appeal are further confirmed. 5

I endorse the order as to costs made in the lead judgment.

MOHAMMED JSC

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I have the advantage of reading, in draft, the judgment of my learned brother, Kutigi, JSC, and I agree with him that this appeal ought to fail. It is abundantly clear that the appellant is not entitled to the declarations sought before the trial High Court. The Court of Appeal is therefore right to affirm the judgment of the High Court. Accordingly, this appeal is dismissed. I also 15
award N1,000.00 costs in favour of the respondent.

IGUH JSC

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My learned brother, Kutigi, J.S.C, in the lead judgment which I had the privilege of reading in draft has dealt exhaustively with all the issues involved in this appeal.

I am in complete agreement with him that nothing has been urged by the appellants in this appeal to justify our interference with the concurrent 25
findings of fact of the lower courts in this case.

I agree that there is no substance in this appeal which I will also dismiss. I endorse the order as to costs contained in the lead judgment.

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