

**SUPREME COURT OF NIGERIA**  
29TH APRIL, 1994 SC. 263/1990  
**CORAM:- S. M. A. BELGORE, A. B. WALI,**  
**I. L. KUTIGI, U. MOHAMMED, A. I. IGUH, JSC.**

HIS HIGHNESS EREJUWAI  
THE OLU OF WARRI  
& 3 OTHERS

..... DEFENDANTS/APPELLANTS

AND

EGHAREGBEYIWA O. KPEREGBEYI

& 2 OTHERS (For themselves

..... PLAINTIFFS/RESPONDENTS

and on behalf of Eyimpfe [Oshodi]

Family of Benin River

---

*CHIEFTAINCY MATTERS - Locus standi - Where action is based on Respondent's claim - That chieftaincy title is vested in their family - Where their nominated candidate was rejected - Whether respondents have the locus standi to sue.*

*CHIEFTAINCY MATTERS - Jurisdiction - Action to declare appointment of a chief null and void - Preliminary objection that High Court lacked jurisdiction - Sustained by the trial court but overruled by the Court of Appeal - Whether the High Court had jurisdiction.*

*CONSTITUTIONAL LAW - Contradictory statutes - Chieftaincy matters - Bendel State - Edict that ousts courts jurisdiction in chieftaincy matters - Prior to the promulgation of the 1979 Constitution - Whether impliedly repealed to be in conformity with the Constitution.*

*CONSTITUTIONAL LAW- Ousting of Courts 'jurisdiction - Chieftaincy matters - Trial court's reliance on Edict and 1963 Constitution in excluding court's jurisdiction - On the view that Decree No. 1 of 1984 has revived ouster clauses in the Edict - Whether sustainable.*

*PRACTICE & PROCEDURE - Raising of procedural issue of law - As to applicable customary law - Where the issue cannot be determined without*

*evidence - Whether the issue must succeed - Merely because Court of Appeal's leave was obtained.*

### **FACTS**

The Plaintiffs/Respondents filed an action before the Warri High Court against the Defendants/Appellants seeking inter alia, a declaration that the selection of the 2nd Appellant and conferment of the Chieftaincy title of Oshodi on him by the 1st Appellant was contrary to the Itsekiri customary law and therefore null and void. Pleadings were ordered, filed and exchanged. Appellants filed a motion on notice raising a preliminary objection to the effect that pursuant to S.22 of the Traditional Rulers and Chiefs Law 1979, otherwise known as Edict No. 16 of 1979 of Bendel State of Nigeria, the court has no jurisdiction. And that the Respondents have no locus standi to institute the action.

The trial court after listening to counsel on both sides ruled that it has no jurisdiction, and struck out the case, in favour of the Appellants. Respondents' appeal to the Court of Appeal was upheld by that Court which remitted the case back to the High Court for hearing on the merits. Appellants being dissatisfied have now appealed to the Supreme Court to determine amongst other issues whether the Court of Appeal was right in holding that the High Court has jurisdiction to entertain the Respondents' claim.

### **HELD** (unanimously dismissing the appeal)

1. With the coming into force of the 1979-Constitution the 1963 Constitution went into abeyance. Therefore, in the light of the provisions of s. 4(8) of the 1979 Constitution, any law enacted by the Bendel State Government before the coming into force of the 1979 Constitution and which contradicts any of the provisions of the said Constitution is either modified or repealed to conform with the Constitution. (P. 46 L 10)

2. Taking into consideration the provisions of the 1979 Constitution, the ouster clause in the defunct Bendel State Traditional Rulers and Chiefs Law 1979 stood impliedly repealed or modified by the 1979 Constitution so as to bring it into conformity with the Constitution. The fact that Decree No. 1 of 1984 suspended s. 4(8) of the Constitution will not revive these ouster clauses since the Decree did not contain express provision nor manifest intention to that effect. (P. 46 L 20) & (P. 47 L 35)

3. The trial court's conclusion that ss. 22(4) and 32 of the Bendel State Edict read together with s. 161(3) of the 1963 Constitution excluded the courts'

jurisdiction from entertaining this case is wrong and cannot be sustained. And the subsequent enactment of ss.2(4) and 16 of Decree No. 1 of 1984 has not revived ss. 22(4) and 32 (ouster clauses) of the Bendel State Edict. (P. 48 L 20)

4. Neither in the Statement of Claim nor in the Statement of Defence filed by the parties was the procedural issue provided in s.22(3) of the Bendel State Edict relating to the applicable customary law raised. The issue was not raised in the trial court and that provision can only be given adequate consideration if the evidence of the applicable customary law is before the Court of Appeal. (P. 51 L 2)

5. Although the Court of Appeal gave the Appellants leave to raise the issue (relating to s.22(3) of the Edict), it did not become automatic that the point so raised would succeed. Its success or failure would depend on its merit. (P. 51 L 34)

6. The Respondent's claim is that the Chieftaincy title of Oshodi is vested in their family and on that basis they have a right to see that the title is not conferred on a wrong and non-entitled person. The fact that the Respondents' nomination was not upheld by the Olu of Warri to which they promptly showed their resentment, is more reason to convince the trial court that with their vested interest they have the locus to challenge the validity of the Olu's action. (P. 52 L 32)

## NOTABLE POINTS OF INTEREST

### WALIJSC

#### *Modification of prior special Act by a subsequent Act*

1. The general rule of interpretation is that a subsequent Act does not affect the provision for prior special or private Act, unless it is expressly provided; in other words, a subsequent general Act will not interfere and modify or repeal the provision of a special or private Act, unless that intention is clearly manifested in the general Act (P. 45 L 29)

#### *Powers of courts in respect of any Edict or Decree*

2. The decision in Uwaifo's case prohibits the courts, even after 1st October 1979 from questioning any Edict or Decree made between 1st January 1966 and 30th September, 1979 on the ground that the person or authority which

made it had no capacity or power to make it, but did not preclude the courts from questioning the validity of such laws or any of their provisions that are inconsistent with the provisions of the 1979 Constitution. (P. 46 L 31)

***Implied modification of inconsistent laws***

- 5 3. It is important to note that the preclusion or prohibition is limited and confined to existing laws. It therefore becomes abundantly clear that if such laws or any of their provisions are inconsistent as from 1st October 1979 with the provisions of the 1979 Constitution, such laws or any of their provisions whether or not pronounced upon by the courts as being inconsistent with the  
10 said Constitution, are impliedly repealed or modified to conform with its provisions. (P. 47L11)

***Issue of law not raised in the trial court - Need to obtain leave***

4. *“It is a sweeping statement for learned counsel for the appellants to say  
15 that an issue of law not raised in the trial court can be raised in an appellate court without leave. Decisions of this Court are in abundance that such an issue, whether of law or fact can only be raised after the leave of the appellate court has been sought and obtained. The appellate court, where it thinks the point is substantial can raise it suo motu and then invite parties to  
20 address it on the same before taking a decision.”* (P. 51 L 24)

**MOHAMMED.JSC**

25 ***Alternative remedy does not exclude right to seek redress in court***

5. *“From the wording of the statute, it is clear that going to the Executive Council of the Governor is an alternative remedy. Even if that is so, since under the provisions of sections 6 and 236 of 1979 Constitution, Chieftaincy disputes, among others, are matters within the jurisdiction of the High Court  
30 the respondents are right in seeking redress in the High Court. The alternative remedy which a party can resort to in order to pursue his right does not exclude his inalienable right to seek redress in the court”.* (P. 54 L 33)

**REPRESENTATION:**

- 35 Dr. G.I. Emiko with A.M. Oniakhi for the Appellants.  
K.S. Okeaya - Inneh SAN, with Row Harriman and Miss J.O. Okeaya-Inneh for the Respondents

**CASES REFERRED TO**

Abaye v. Ofili (1986)1 NWLR (Pt. 15) 134 at 145, 146 and 147	
Military Governor of Ondo State v. Adewumi (1983)3 NWLR (Pt. 82) 280	
Baker v. Edger (1989) AC 748 at 754 (PC)	
Bramston v. Colchester Corps. (1856) E & B. 346	5
Great Central Gas Consumer Co. v. Clarke (1863)13 C.B. (N.S.) 838	
Garnett v. Bradley (1878) 3 APP CAS 944 at 966	
Stradling v. Mayor (1560) P Law 199 at P 206	
Pardo v. Bingham (1879) L.R. 4 CH APP 735	
Uwaifo v. Attorney-General of Bendel State (1983)4 N.C.L.R. 1	10
Abinabina v. Enyimade 12 WACA 171	
Djukpan v. Orovuyuo ves (1961)1 All NLR 134	
Fadiora v. Gbadebo (1978) 3 SC. 219	
Ejiofodomi v. Okonkwo (1982) 11 SC.74	
National Insurance Corporation of Nigeria v. Power and Industrial Engineer- ing	15
Co. Ltd. (1986)1 NWLR (Pt. 14)1	
Abaye v. Ofi and A.G. of Rivers State (1986)1 NWLR (Pt. 15)1	
Amiesah Momoh v. Jimo Olotu (1979)1 ANLR 117	
Senator Adesanya v. The President of the Federal Republic of Nigeria (1981)1 ANLR (Pt. 1)1	20
Titus Segunle v. Akerele (1967) NMLR 59	
Pyx and Granite Co. Ltd v. Ministry of Housing and Local Government (1958) 1 Q.B. 554	
Eguamewnse v. Amaghizemwen (1993) 9 NWLR (Pt. 315) 1 at 35	25

**STATUTES REFERRED TO**

Traditional Rulers and Chiefs Law (Edict No. 16 of 1979 Bendel State SS. 22, 32,	
Decree No. 1 of 1994 ss. 2 (4) (a), 15(1), 16	30
Constitution 1979 ss. 4(8), 6, 236(1), 274(3), 1, 6(1)(b)(b), 274(1)(3) & (4) (b) &(c)	
Constitution 1963 s. 161 (3)	

**LEAD JUDGMENT BY WALI JSC**

**35**

The plaintiffs brought an action in Warri High court, Warri Judicial Division as per the amended Writ of Summons, seeking the following declarations and orders that:-

“The recommendation, nomination and/or selection of Mr. Isaac Omiretsuli Jemide for the conferment of the Chieftaincy Title of Oshodi by His Royal Highness, Obemi Emiko Erejuwa II, The Olu of Warri as per letter dated 25th October, 1985 be declared null and void and contrary to the  
5 Itsekiri customary law regulating the nomination, selection and conferment of the said Oshodi.

2. That the recommendation, nomination and selection and conferment of the title of Oshodi on Isaac O. Jemide - the 2nd defendant, by the Olu of Warri is not in accordance with the hitherto existing Itsekiri customary  
10 law relating to the Oshodi Chieftaincy title and family.

3. That the 2nd and 3rd defendants who style themselves as members of the Udefi/Oshodi families have not the mandate of the accredited Head of Oshodi family to recommend, nominate or select Isaac O. Jemide for the appointment of Oshodi by the Olu of Warri.

15 4. That the recommendation, nomination/selection of the rightful candidate for the aged long Oshodi family has no time in Legal memory been the competence of Udefi/Oshodi families as claimed by the 2nd to 4th defendants.

5. That the recommendation, nomination/selection of the rightful  
20 candidate for the conferment of the title of Oshodi to the Olu of Warri from time immemorial had been the exclusive prerogative of ‘Oshodi Family’ of which 1st, 2nd and 3rd plaintiffs are the indisputable Head and existing senior members respectively of the Oshodi family.

6. That the conferment of the title of Oshodi of Warri on Isaac  
25 Omiretsuli Jemide as per letter dated 14th November, 1985 be declared irregular and contrary to Itsekiri Customary Law known to the Itsekiri, null and void and of no effect and should be set aside.

7. Perpetual injunction restraining the defendants by themselves, their privies, servants and/or agents or otherwise whosoever from confer-  
30 ring parading, recommending, nominating or selecting the 2nd defendant with the Chieftaincy title of Oshodi.

8. Perpetual injunction restraining the 2nd defendant from parading or holding out himself as and/or performing the traditional functions of Oshodi of Warri.

35 9. Further or other reliefs.

#### 10. IN THE ALTERNATIVE

(a) Declaration that the conferment of the title of Oshodi on Isaac Jemide is contrary to the Traditional Rulers and Chiefs Edict, 1979 and thereby null and void.

*(b) Perpetual injunction restraining the defendants by themselves, their privies, servants and/or agents or otherwise whosoever from conferring, parading, recommending, nominating or selecting the 2nd defendant with the Chieftaincy title of Oshodi.*

*(c) Perpetual injunction restraining the 2nd defendant from parading or holding - out himself as and/or performing the traditional functions of Oshodi of Warri."*

On the order of the trial court, pleadings were filed and exchanged. Thereafter the defendants filed the following Notice of Motion dated 16th February, 1987 in which the following preliminary points of objection were raised (which were also raised in the Statement of Defence filed by the 2nd, 3rd and 4th defendants):-

*"(i) That pursuant to S. 22 of the Traditional Rulers and Chiefs Law, 1979, otherwise known as Edict No. 16 of 1979 of Bendel State of Nigeria, this Honourable Court has no jurisdiction to entertain the plaintiffs' claim as set out in their Statement of Claim.*

*(ii) That the plaintiffs have no locus standi to institute the action set out in their Statement of Claim."*

*After exhaustive arguments for and against the preliminary objection, the learned trial Judge ruled in favour of the defendants."*

*"The preliminary points raised by Dr. Emiko are well taken and in the result this action is accordingly struck out."*

The plaintiffs appealed to the Court of Appeal Benin Division against the said Ruling. In a well considered judgment of that court written by Ogundare JCA (as he then was) and with which both D. Musdapher and Salami, JJCA agreed, he allowed the appeal, set aside the order of the trial court of striking out the case for want of jurisdiction and remitted it to the same court for hearing on the merits.

The defendants have now appealed to this Court against the said judgment and order of the Court of Appeal. Henceforth the plaintiffs and the defendants will be referred to as the respondents and the appellants respectively.

In compliance with Rules of this Court, briefs of argument were filed and exchanged. In the brief of arguments filed by the appellants, the following 3 issues were formulated for determination by this Court -

*"(i) Were the learned Justice of the Court of Appeal right in holding that the High Court of Warri wrongly declined jurisdiction to entertain the respondents' claim?*

*(ii) Were the learned Justices of the Court of Appeal right in hold-*

ing that the legal point, to the effect that the plaintiffs/respondents had not exhausted the procedures prescribed by the Traditional Rulers and Chiefs Edict 1979, before filing their action, cannot be raised in the Court of Appeal, after the application by the appellants to raise the matter as a fresh point of Law had been granted by the Court of Appeal without an objection by the respondents?

(iii) Was the Court of Appeal right in holding that the plaintiffs (now respondents) established sufficient interest in their statement of claim so as to afford them a locus standi to institute the claim?"

The respondents also raised 3 issues in their brief for this Court's determination, and these are -

"1. Whether the learned trial Judges of the Court of Appeal in their detailed consideration of the plaintiffs' claim before the Court, the Ruling of the Learned Trial Judge, the relevant sections of the Constitution and the embraced issues for determination of the appellants were justified in allowing plaintiffs appeal on the two issues of jurisdiction of the Warri High Court hearing the case and the Locus Standi of the plaintiffs to institute the action?

2. That having regard to the facts settled in the pleadings the Court of Appeal rightly came to the irresistible conclusion that the cause of action arose in 1985 and ultimately the 1979 Federation of Nigeria Constitution prevailed and not the 1963 Constitution.

3. That on settled pleadings briefs of the parties before the Court of Appeal and the judgment of the Warri High Court particularly provision of section 22(2) Bendel State Traditional Rulers and Chiefs Law 1979, the Court of Appeal came to a judicial and judicious decision that the plaintiffs have Locus Standi to institute this action ab initio".

The 3 issues identified in the respondents' brief are adequately covered by the 3 issues raised in the appellants' brief; so I shall base my judgment on the appellants' three issues.

On issue (1) it was the contention of learned counsel for the appellants that until an existing law or any of its provision is declared null and void by a court of competent jurisdiction, it remains valid and subsisting with all the rights, interest or privilege acquired thereunder - *Abaye v. Ofili* (1986) 1 NWLR (Pt. 15) 134 at 145, 146 and 147.

He submitted that it was erroneous for the Court of Appeal to have held that the ouster of jurisdiction clauses in Sections 22(4) and 32 of the Traditional Rulers and Chiefs Edict, 1979, was automatically repealed as from



1st October, 1979 when the 1979 Constitution came into existence, the same having been saved as an existing law by virtue of Sections 2(4)(a) and 15(1) of Decree 1 of 1984. He said these provisions remain part of existing laws notwithstanding the provisions of Sections 4(8), 6, 236 and 274(3) of the 1979 Constitution. He also submitted that S. 274(3) of the 1979 Constitution is inconsistent with S. 2(4)(a) of Decree No. 1 of 1984 and that sections 22(4) and 32 of the Edict aforesaid are not in conflict with any law made by the National Assembly before 31st December 1983, or any law made thereafter by the Federal Military Government.

On the case of Military Governor of Ondo State v. Adewumi (1988) 3 NWLR (Pt. 82) 280 learned counsel said the facts involved in it are not on all fours with the case in hand and therefore the Court of Appeal was in error to apply the ratio in it to this case.

In his counter submissions on this issue learned counsel for the respondents submitted that the ouster provisions in sections 22(4) and 32 of the Bendel State Edict No. 16 of 1979 were by implication repealed or modified by virtue of sections 274 of the 1979 Constitution in order to bring same into conformity with the said Constitution. He submitted that both sections 22(4) and 32 of the Edict were clearly, as at 1st October, 1979 inconsistent with sections 4(8), 6 and 236 of the 1979 Constitution and they were neither saved nor revived by the subsequent enactment of Decree No. 1 of 1984.

The relevant provisions that call for consideration in this appeal are

1. *“Section 1(1) (as modified): This Constitution as amended by this or any other Decree is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.*

2. *Section 4(8) now suspended by Decree No.1 of 1984:*

*(8) Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law; and accordingly, the National Assembly or a House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.*

3. *Section 6(1) (6) (b):*

*6. - (1) The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.*

*(6) The judicial powers vested in accordance with the foregoing provisions of this section -*

*(b) Shall extend to all matters between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.*

4. Section 236(1):

5 Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and  
10 determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

5. Section 274(1), (3) & (4) (b) & (c)

274 -(1) Subject to the provisions of this Constitution, an existing law shall  
15 have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be -  
(a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and

20 (b) a Law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.

(3) Nothing in this Constitution shall be construed as affecting the power of a court of law or any tribunal established by law to declare invalid  
25 any provision of an existing law on the ground of inconsistency with the provision of any other law, that is to say -

- (a) any other existing law;
- (b) a Law of a House of Assembly;
- (c) an Act of the National Assembly; or
- (d) any provision of this Constitution.

30 (4)(b) "Existing Law" means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date; and

35 (c) "Modification" includes addition, alteration, omission or repeal"

Also relevant to the consideration of this appeal are sections 22 and 32 of Bendel State Edict, No. 16 of 1979 and section 2(4) of Decree No. 1 of 1984. Sections 22 and 32 of the Traditional Rulers and Chiefs Edict No. 16 of 1979 of Bendel State provide as follows:-

“22(1) The conferment of a Traditional Chieftaincy title shall be in accordance with the customary law and shall be subject to the approval of the prescribed authority or where the provisions of section 23 have been applied, to the approval of the Executive Council.

(2) Where a Traditional Chieftaincy title is conferred on a person by those entitled by customary law so to do and in accordance with customary law the prescribed authority or the Executive Council as the case may be, may approve the appointment.

(3) Where there is a dispute as to whether a traditional Chieftaincy title has been conferred on a person in accordance with customary law or as to whether a traditional chieftaincy title has been conferred on the right person, the prescribed authority or the Executive Council as the case may be, may determine the dispute.

(4) The decision of the prescribed authority or the Executive Council as the case may be -

(a) to approve or not to approve the conferment of traditional chieftaincy title on a person;

(b) determining a dispute in accordance with subsection (3) of the Section shall not be questioned in any court.”

xxxxxxxxxxxxxx

“32. Notwithstanding anything in any written law whereby or whereunder jurisdiction is conferred upon any court, whether such jurisdiction is original, appellate or by way of transfer, no court shall have jurisdiction to entertain any civil case or matter:-

(a) instituted for the determination of any question relating to the selection, appointment, installation, withdrawal of approval of appointment, abdication or suspension of a traditional ruler, regent or a chief as the case may be, or

(b) calling in question anything done in the execution of any of the provisions of this Edict or the repealed law or in respect of any neglect or default in the execution of any such provisions by the Executive Council, the appropriate authority, a traditional council or its secretary, a prescribed authority, a local government council, a ruling house or a kingmaker.”

While section 2(4) of Decree No.1 of 1984 provides thus -

“(4) If any law -

(a) enacted before 31st December, 1983 by the House of Assembly of a State or having effect as if so enacted; or

(b) made after that date 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) or (ii) above shall prevail*  
 5 *and the State law shall, to the extent of the inconsistency, be void."*

This issue deals with implied repeal or partial repeal of a statute by another statute. It is not in dispute that the Bendel State Edict No. 16 of 1979 was promulgated in 1979 and same came into force in August, 1979. It is also not in dispute that the Constitution of Nigeria 1979 came into force on the 1st  
 10 day of October, 1979. Until the 1979 Constitution was amended by Decree No. 1 of 1984, section 4(8) of the Constitution vested in the High Court jurisdiction to entertain complaints against laws made by the National Assembly or the House of Assembly of a State within the Federation. The subsection went further to state that -

15 *"the National Assembly or the House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law."*

Sub-sections 6(1) and (6) vest the judicial powers of the Federation in the  
 20 courts and extend it to

*"All matters between, persons, or between government or authority and any person in Nigeria and all actions and proceedings relating thereto, for the determination of, any question, as to the civil rights and obligations of that person";*

25 Section 236(1) conferred on the High Court of a State unlimited jurisdiction (save the limitation put upon it by the Constitution), "to hear and determine any civil proceedings on which the existence or extent of legal right, power, duty, liability, privilege, interest, obligation or claim is in issue ..."

30 The law-making body of the Federation (i.e. Supreme Military Council) that promulgated the 1979 Constitution, took cognisance of existing laws both Federal and State and enacted a provision in the Constitution to wit: Section 274(1) to bring such existing laws into conformity with the Constitution by necessary modifications where they are found to be inconsistent.  
 35 Subsection 3 of the same section vests courts with power to declare invalid any provision of an existing law on the ground of inconsistency with the provision of any other laws which are listed as follows -

1. A Law of a House of Assembly
2. An Act of National Assembly

3. Any provision of this Constitution

4. Any other existing Law.

Section 274(4)(b) defines existing law to mean -

*“any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date”,*

While sub-section 5 of the same section defines “modification” to include addition, alteration, omission or repeal.

It is the contention of learned counsel for the appellants that on the coming into existence of Decree No. 1 of 1984, Sections 15(1) and 16 thereof saved or revived sections 22(4) and 32 of Edict No. 16 of 1979 of Bendel State, and same remained valid and subsisting since Edict No. 16 of 1979 of Bendel State has not been questioned in any proceedings before any competent court for modification as may be necessary in order to bring it into conformity with 1979 Constitution.

The learned trial judge rightly in my view summarised the undisputed positions as follows:-

*“1. That this is a Chieftaincy matter concerning the Oshodi Chieftaincy title of Warri.*

*2. That the cause of action arose in 1985.*

*3. That the applicable law was the Bendel State Traditional Rulers and Chiefs Edict of 1979, which came into force on the 24th day of August 1979 and therefore an existing Law under the 1979 Constitution.*

*4. That by virtue of Section 4(8) of the 1979 Constitution, the courts were given unlimited jurisdiction in all civil matters, including Chieftaincy matters - a Constitution which came into force on the 1st day of October, 1979.*

*5. That the said 1979 Constitution prohibits the enactment of any law which purports to oust or exclude the jurisdiction of the court.*

*6. That by the Constitution (Suspension and Modification) Decree No.1 of 1984, which came into force on the 31st day of December, 1983, certain provisions of the 1979 Constitution including Sections 4 and 5 of the said 1979 Constitution were suspended.”*

The learned trial judge in elaborating on court’s jurisdiction to entertain matters involving chieftaincy also stated that -

*“Before and after the 1963 Republican Constitution, the jurisdiction of the Court in Chieftaincy matters, was ousted. The 1979 Constitution which came into force on the 1st day of October, 1979, gave the State High*

Courts unlimited jurisdiction in Civil Matters including Chieftaincy matters - Section 236(1) of the said Constitution. I hasten to state, that by Section 6(6)(d) of the same Constitution, certain limitation were placed on the Courts in relation to certain matters. However, by the then Section 4(8) of the 1979 Constitution, Legislative Houses in the Country were forbidden from enacting any law that purports to oust the jurisdiction of the Courts."

XXXXXXXXXXXXXXXX

10 "There is no doubt, that the law on which this action rests is the Traditional and Chiefs Edict 1979 which came into force on the 24th day of August, 1979. There is also the Traditional Rulers and Chiefs Edict of 1979 - Delegation of Powers to a Prescribed Authority Order 1979, published as B.S.L.N. 46 of 1979 which also came into force on the 24th day of August, 15 1979. These are existing laws as contemplated by the 1979 Constitution. See *F. S. Uwaifo v. Attorney-General of Bendel State and Another* (1982)7 S.C. Page 124 per Idigbe J.S.C., of blessed memory."

XXXXXXXXXX

20 "It is my humble view, that on the coming into force of the 1979 Constitution on the 1st day of October, 1979, Sections 22(4) and 32(c) of the Traditional Rulers and Chief Edict 1979 became void and of no effect subject of course, to the nature of the claim. I hasten to state a caveat, that the nature of the claim is relevant to the determination of such cases. It is my view, that 25 once any law or instrument falls within the ambit of Section 6(6)(d) of the 1979 Constitution which had remained potent and unsuspended or unmodified by the Constitution (Suspension and Modification) Decree No. 1 of 1984, the jurisdiction of the court is completely ousted and or excluded in relation to any proceedings or action which seeks to question it. I am fortified in this view by the decision of the Supreme Court in the case of *Mustapha v. The Governor of Lagos State & Others* reported in (1987) 2 N.W.L.R. (Pt. 30 58) at Page 539."

He then concluded -

35 "It is my view after a very close and exhaustive study and examination of the said Statement of Claim (Exhibit "EA") notwithstanding, the ingenuity employed by the Solicitor who drafted the said Statement of Claim for which, he should be commended, the substratum of the plaintiffs claim is one, questioning the appointment by the then Olu of Warri who was the prescribed Authority of the Chieftaincy title of Oshodi of Warri on the second

*defendant/applicant. This to my mind, is what the Constitution and other relevant Laws forbade the courts from inquiring into it. This was the view expressed by Aniagolu J.S.C., in the case of Salawu Olagunju Adeyeye & Another v. Ahaji Shitta Ajiboye and others reported in (1987) 3 N.W.L.R. (Pt. 61) at Page 432. In that case, the 1963 Constitution of Northern Nigeria which ousted the jurisdiction of courts was considered and the cause of action having arose before the coming into force of the 1979 Constitution. His Lordship Aniagolu at Page 445 of the said report stated:-*

*“The claim before the Court is clearly one questioning the appointment to the Chieftaincy title of the Onijagbo. That was precisely what the Constitution and other relevant Laws, as they stood forbade the Courts from inquiring into it. The High Court was right in holding that it had no jurisdiction to entertain this case.”*

*I hold the same view, that having regard to the kernel and substratum of the claim now before me, the competence of the Prescribed Authority, the then Olu of Warri was being questioned over the appointment of the second defendant as the Oshodi of Warri, and under such circumstance, even where it can be established that there were errors in the procedure adopted, the jurisdiction of the court to inquire into this, is ousted by virtue of Section 6(6)(d) of the unsuspended and unmodified provisions of the 1979 Constitution.*

Both learned counsel agreed that the cause of action in this appeal arose in 1985 but differed on the applicable constitutional provisions. Is it the provision of section 161 (3) of the 1963 Constitution that is apposite, as found by the learned trial Judge or 1979 Constitution as modified by Section 274 of the same Constitution as contended by the learned counsel for the respondents?

The general rule of interpretation is that a subsequent Act does not affect the provision of prior, special or private Act, unless it is expressly provided; in other words, a subsequent general Act will not interfere and modify or repeal the provision of a special or private Act, unless that intention is clearly manifested in the general Act: See Baker v. Edger (1989) AC 748 at 754 (PC). But this general rule is not without exception. Where a special or a private Act is absolutely inconsistent and repugnant with a subsequent general Act, the courts are bound to declare the prior special or private Act or any of their provisions repealed by the subsequent general Act. See Bramston v. Colchester Corps. (1856) 6 E & B 246 and Great Central Gas Consumers Co. v. Clarke (1863) 13 C.B. (N.S.) 838. See also Pages 381 - 2 of Graig on Statute Law

(Seventh Edition) by S.G. G. Edgar CBE, M.A. (Cantab) and Military Governor, Ondo State v. Adewumi (1988) 3NWLR (Pt. 82) 280.

5 With the enactment and coming into force of the 1979 Constitution on 1st October 1979 and the subsequent enactment of Constitution (Suspension and Modification) Decree No.1 of 1984, can it be validly argued that the ouster clauses contained in section 22(4) and 32 of Traditional Rulers and Chiefs Edict (Law) of 1979, are still valid and subsisting, thus making section 161(3) of the 1963 Constitution still applicable?

10 It cannot be disputed that with the coming into force of the 1979 Constitution the 1963 Constitution went in abeyance and will only apply to causes of actions that arose under it. Both parties agreed that the cause of action in this matter arose in 1985. Therefore and in the light of the provisions of section 4(8) of the 1979 Constitution, any law enacted by the Bendel State  
15 Government before the coming into force of the 1979 Constitution and which contradicts any of the provisions of the said Constitution after it came into force is either modified or repealed to conform with the Constitution. It is in order to provide for this type of a situation that section 274 of the 1979 Constitution was enacted.

20 It is therefore my view that, taking into consideration the provisions of the 1979 Constitution (supra) the ouster clauses in the Traditional Rulers and Chiefs Law 1979 of the defunct Bendel State, now applicable to Delta State, stood impliedly repealed or modified by the 1979 Constitution in order that it is brought into conformity with its provisions. The fact that Decree  
25 No.1 of 1984 suspended section 4(8) of the 1979 Constitution, will not revive the ouster clauses in the Traditional Rulers & Chief Law 1979 since the Decree did not contain express provision to that effect, and nor can such manifest intention be gathered from its provisions. The Traditional Rulers and Chiefs Laws 1979 of Bendel State stands repealed in part. See Pages 366 - 368 of Graig  
30 on Statute Law (7th Edition).

The decision in Uwaifo's case prohibits the courts, even after 1st October, 1979 from questioning any Edict or Decree made between 1st January 1966 and 30th September, 1979 on the ground that the person or authority which made it had no capacity or power to make it, but did not preclude the  
35 courts from questioning the validity of such laws or any of their provisions that are inconsistent with the provisions of the 1979 Constitution. In other words, courts are precluded from questioning the capacity and power of the authorities in promulgating such laws. They are equally prohibited from questioning the validity of what the authorities did under such laws or interfering



with any accrued or subsisting rights by virtue of such actions at the time they were still valid and subsisting. In Uwaifo' s case, supra, Idigbe, JSC succinctly stated the Law thus-

*"It seems to me that while the Constitution empowers the courts to inquire into the validity of any existing law, it clearly intends that the courts should not inquire into proceedings which seeks to determine issues or questions as to the competence of any authority or person (i.e. legal capacity, power, legal qualification or jurisdiction of any authority or person) to make any existing law promulgated between 15th January, 1966 and 1st October, 1979".*

It is important to note that the preclusion or prohibition is limited and confined to existing laws. It therefore becomes abundantly clear that if such laws or any of their provisions are inconsistent as from 1st October, 1979 with the provisions of the 1979 Constitution, such laws or any of their provisions whether or not pronounced upon by the courts as being inconsistent with the said Constitution, are impliedly repealed or modified to conform with its provisions. Likewise, all things done or purported to be done under such impliedly repealed or modified laws after 1st October, 1979, are equally of no effect. In *Garnett v. Bradley* (1878) 3 APP CAS 944 at 966, commenting on the issue of implied repeal of a statute by another, Lord Blackburn stated thus -

*"I shall not attempt to recite all the contrarieties which make one statute inconsistent with another. The contraria which make second statute repeal the first. But there is one rule, a rule of common sense, which is found constantly laid down in these authorities to which I have referred, namely that when new enactment is couched in a general affirmative language and the previous law, whether a law of custom or not, can well stand with it for the language used is all in the affirmative, there is nothing to say that the old law shall be repealed ... But when the new affirmative words are, as was said in *Stradling v. Mayor* (15601 P Law 199 at P. 206 such as by their necessity to import a contradiction, that is to say, where one can see that it must have been intended that the two should be in conflict, the two could not stand together, the second repeals the first."*

To return to the circumstances of the case in hand, the wordings of the provisions of sections 22(4) and 32 of Edict No. 16 of 1979 of Bendel State are clearly inconsistent with the provisions of Sections 6(1) and (2), (6)(a) and (b), and 236(1) of the 1979 Constitution as at 1st October, 1979. And by virtue of Section 274(1) and (4)(b) and (c) of the said Constitution as at 1st October

1979, these provisions were deemed to have been modified either by implied repeal or by modification so as to bring the law into conformity with the Constitution, long before the enactment of Decree No. 1 of 1984.

The question in each case is whether the legislature had sufficiently expressed its intention. In fact we must look at the general scope and purview of the statute and the meaning sought to be applied and then consider what was the former state of the law and what it was that the legislature contemplated. See *Pardo v. Bingham* (1879) L. R. 4 CHAPP 735 and *Military Governor of Ondo State v. Adewumi* (1988) 3 NWLR (Pt. 82) 280 at 292 wherein Nnaemeka Agu, JSC., reading the lead judgment of the full panel of the court, restated the law as follows:-

*“By the clear provisions of section 1(1) and (2) of Decree No.1 of 1984, it was intended that sections 6 and 236 of the Constitution should remain extant. By those provisions of the Constitution chieftaincy among others, shall be matters within the jurisdiction of the High Court of every State. It follows, therefore that any law or Edict which purports to remove those matters from the jurisdiction of a State High Court is inconsistent with the provisions of Decree No. 1 of 1984 S.1 (1) and (2) and section 6 and 236 of the Constitution of 1979.”*

With due respect to the learned trial Judge that despite the ingenuity displayed in his reasoning in support of his conclusion that sections 22(4) and 32 of Edict No. 16 of 1979 of the Bendel State read together with Section 161(3) of the 1963 Constitution excluded the courts’ jurisdiction from entertaining the case, I am afraid to say that such a conclusion is wrong and cannot be sustained. The learned trial Judge misconstrued the ratio in *Uwaifo v. Attorney-General of Bendel State* (1983) 4 N.C.L.R. 1, particularly at Page 35. The subsequent enactment of sections 2(4) and 16 of Decree No.1 of 1984 has not revived sections 22(4) and 32 of Edict No. 16, of 1979 of Bendel State. I entirely here agree with Ogundare, JCA (as he then was) in restating the position of the law in his lead judgment that -

*“The position then is this that with the coming into force of the Constitution, the Traditional Rulers and Chiefs Law, 1979 (hereinafter is referred to as the law) took effect with such modifications as to bring it into conformity with the Constitution, “Modification” is defined in Section 274(4) (c) as including addition, alteration, omission or repeal. Section 4(8) prohibits the National Assembly of a State House of Assembly from enacting any law that “ousts or purports to oust the jurisdiction of a Court of law or of a judicial tribunal established by law”. Thus the ouster of Court’s jurisdiction in Section 32 of the law became, as from 1st October, 1979 when the Consti-*

tution came into force, impliedly repealed, for this is the only way to bring the Law into conformity with the Constitution. Sections 22(4) and 32 of the Law were clearly inconsistent with Sections 4(8), 6 and 236 of the Constitution.

It has been argued rather strenuously by Dr. Emiko both in this Court and in the court below that with the suspension of Section 4(8) of the Constitution by Decree No. 1 of 1984 titled Constitution (Suspension and Modification) Decree, 1984 (hereinafter is referred to as Decree No. 1). Section 32 of the law is revived to oust the Courts' jurisdiction in Chieftaincy matters. With profound respect to learned counsel, I am not impressed with this submission. As the suspension of section 4(8) can be equated to a repeal of it by virtue of section 6(2) of the Interpretation Act, 1984, section(1) of the Act provides the answer to learned counsel's submission. As there is nothing in Decree No. 1 reviving any provisions of an existing law modified by section 274(1) of the Constitution, the suspension of section 4(8) of the Constitution by the Decree does not, in my respectful view, bring back into force section 32 of the Law impliedly repealed on the coming into force of the Constitution on 1st October, 1979.

I may only add that the further argument of learned counsel that sections 236(1) and 274(3) of the Constitution are inconsistent with section 2(4) of Decree No. 1 are, in my respectful view, untenable.

Section 2(4) of the Decree provides:

If any law-

(a) enacted before 31st December, 1983 by the House of Assembly of a State or having effect as if so enacted; or

(b) made after that date 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 subparagraph (i) or (ii) above shall, to the extent of the inconsistency, be void."

I cannot see any inconsistency in section 236(1) and 274(3) vis-a-vis section 2(4) of the Decree. Section 1(1) of the Constitution as modified still preserves the supremacy of the Constitution over, at least, an edict of a Military Governor. The Supreme Court has, in a recent case, *Military Governor, Ondo State & Anor. v. Adewunmi* (1988) 3 N.W.L.R. (Pt.82) 280 declared that any State law which seeks to oust the jurisdiction of the Court is

void for inconsistency with Section 1(1) and (2) of Decree No. 1 and section 6 and 236 of the Constitution. I don't think it is any longer open to doubt that a State legislation whether enacted before or after 31st December, 1983 when Decree No.1 came into force, cannot oust the jurisdiction of a Court to entertain any suit before it and any State law which purports to do this is void.

*The position then is that as sections 22(4) and 32 of the Law are void, the court's jurisdiction is not ousted thereby particularly so that the cause of action arose in 1985."*

10 This issue which is tied to ground 1 of the grounds of appeal fails. The next issue is issue 2 which is tied to ground 2 of the appellants' ground of appeal. Before the appeal was heard, learned counsel for the appellants applied and was granted leave by the Court of Appeal to raise a fresh point of law which was not canvassed before the trial court, to wit -

15 *"That the learned trial Judge properly declined jurisdiction because the trial court cannot assume jurisdiction in a domestic and or executive domain in a family traditional chieftaincy title within the area of a prescribed authority, when the mandatory procedure to be followed by an aggrieved party as laid down under Section 22(6) and (7) of the Traditional*  
20 *Rulers and Chiefs Law of Bendel State 1979 has not been exhausted."*

Learned counsel submitted that the Court of Appeal was in error when it resolved in its judgment that -

(a) The procedure set down under the law to be followed by an aggrieved party for the resolve of the dispute involved in the traditional chief-  
25 taincy title was not an issue raised in the Statement of Defence nor set down for hearing at the trial court, and

(b) it was not an issue that could be determined without some evidence being led to determine whether an appeal was made by the appellants (now respondents) to the Military Governor to resolve the issue.

30 He further contended that it was too late for the Court of Appeal to say that the issue could not be raised when it had already granted the appellants leave to do so, more so when the point is tied to the jurisdiction of the court. He referred to Section 22(3), (4)(a) and (b), (6)(a) and (b) and (7) of Edict No. 16 of 1979 of Bendel State and said that the point raised being of jurisdic-  
35 tion, does not require any further evidence he cited decided cases to support his submissions.

Learned counsel for the respondents did not say much on this issue save that the Court of Appeal was right in the manner it dealt with it and urged

us to dismiss the appeal on the point.

Section 22(3) of Edict No. 16 of 1979 of Bendel State involves consideration of the applicable customary Law. Neither in the Statement of Claim nor in the Statement of Defence filed by the parties was the procedural issue provided in that sub-section raised. It was not raised in the trial court. The provision of the subsection can only be given adequate consideration if the evidence of the applicable customary law is before the Court of Appeal. I cannot seriously even say that noncompliance with this non-mandatory and discretionary procedural provision is such a jurisdictional point that can affect the jurisdiction of the trial court. In other words, looking at both subsections (3) and (4) of Section 22 of Edict No. 16 of 1979 of Bendel State, any of the parties involved in the dispute has a choice either -

(1) to refer the dispute to the prescribed authority, which in this case, is the Executive Council, or

(2) go to court for a judicial resolution of the dispute, which will be binding on the executive Council.

In raising the issue, the appellants were only seeking to reinforce their case by resorting to the procedural statutory provisions. And having regard to my preceding decision on the fundamental jurisdictional issue raised, it will be a mere surplusage for the respondents in this case to refer the matter to the Bendel State Executive Council for an executive resolution of the dispute when such a resolution no longer enjoys the sanctity of finality accorded by sub-section (4) of Section 22 of the Edict.

It is a sweeping statement for learned counsel for the appellants to say that an issue of law not raised in the trial court can be raised in an appellate court without leave. Decisions of this Court are in abundance that such an issue, whether of law or fact can only be raised after the leave of the appellate court has been sought and obtained. The appellate court, where it thinks the point is substantial can raise it suo motu and then invite parties to address it on the same before taking a decision. See *Abinabina v. Enyimadu* 12 WACA 171, *Djukpan v. Orovuyevbe* (1967) 1 All NLR 134; *Fadiora v. Gbadebo* (1978) 3 SC. 219 and *Ejiofodomi v. Okonkwo* (1982) 11 SC. 74.

Although the Court of Appeal gave the appellants leave to raise the issue, it did not become automatic that the point so raised would succeed. Its success or failure would depend on its merit. Having regard to the pleadings filed in this case, I find nothing wrong in the findings of the Court of Appeal that -

*“First, it is not an issue raised in the statement of defence nor set*

down for hearing at the trial court. Secondly, it is not an issue that can be determined without some evidence being led to determine whether an appeal was made by the appellants to the Military Governor. Thirdly, it is not stated in the Law or anywhere else that the lodging of an appeal to the Governor is a condition precedent to the filing of an action challenging the Olu of Warri for the conferment of chieftaincy title of Oshodi on 2nd respondent.” See *National Insurance Corporation of Nigeria v. Power and Industrial Engineering Co. Ltd.* (1986) 1 NWLR(Pt. 14) 1 and *Abaye v. Ofi and A.G. of Rivers State* (1986) 1 NWLR (Pt. 15) 1.

I therefore resolve issue 2 which is hinged to ground 2 of appeal against the appellants.

The complaint in the 3rd issue which is culled from ground 3 of the grounds of appeal is that the Court of Appeal is wrong in its holding that the respondents have established sufficient interest in their Statement of Claim to accord them locus standi to institute the claim. Learned counsel for the appellants submitted that since paragraphs 1 and 2 of Statement of Claim are the pillars of their case, and having selected and presented Hope Harriman to the Olu of Warri as their candidate, and that from that moment, they have exhausted whatever interest they have had in the matter and have therefore no locus to institute the present action. He further submitted that only Hope Harriman who vied for the traditional title could have instituted the action. He referred to and relied on Sections 22(3) and (6) of Edict No. 16 of 1979 of Bendel State and *Amiesah Momoh v. Jimo Olotu* (1979) 1 ANLR 117 and *Senator Adesanya v. The President of the Federal Republic of Nigeria* (1981) 1 ANLR (Pt. 1) 1.(1981) 5 S.C. 112.

This issue has received an exhaustive and painstaking consideration in the lead judgment of Ogundare JCA., (as he then was). The argument of learned counsel for the appellants is that Chief Harriman, being the candidate for the Chieftaincy that lost, is the only person that has the locus to sue. While Chief Harriman could sue in his own right, his family could equally sue to protect the family’s interest in the Chieftaincy. The respondents’ claim as revealed in their Statement of Claim is that the chieftaincy title of Oshodi is vested in their family to wit Eyimofe Family and on that basis they have a right to see that the title is not conferred on a wrong and non-entitled person. This interest was vested in them from the time of the demise of the former holder of the title, while the present cause of action in which they are interested parties arose in 1985, when the Olu of Warri purportedly conferred the Chieftaincy of Oshodi title on the 2nd appellant. The fact that their nomination was not

upheld by the Olu of Warri to which they promptly showed their resentment and disapproval, is a more reason to convince the trial court that the respondents with their vested interest have locus to challenge the validity of the Olu's action. In my view, it is an interest which the respondents as a family, 5 have a duty to protect. See Titus Sogunle and Ors. v. Amusa Akerele & Ors. (1967) NMLR 58 and Senator Adesanya v. The President of the Federal Republic of Nigeria & Anor. (1981) 5 Sc. 112, particularly the dicta on Pages 28 - 39 per Bello JSC., (as he then was), p. 40 (per Fatayi Williams, CJN) and p. 41 (per Idigbe, JSC) .

The Court of Appeal was perfectly right to have come to the conclusion after reviewing all relevant cases on the issue, that -

*"The facts of the instant case as disclosed in the statement of claim manifestly demonstrates the interest of and the injury suffered by the appellants. The learned trial judge, with due deference to him is wrong to come to the conclusion that the appellants have no standing to institute the action"* 15 and I endorse this finding.

Consequently this appeal fails in toto and it is dismissed. The order of remittal of the case to the court of trial and to be heard by another Judge for determination on its merits is affirmed. N1000.00 costs is awarded to the respondents against the appellants. 20

### BELGORE JSC

I read in advance the judgment of my learned brother, Wali, J.S.C., 25 and I agree with him that this appeal lacks merit and ought to be dismissed. The action done under the law by any authority must be related in effectiveness with the law as at the time of such action. The matter of Chieftaincy challenged was purported by trial court to be under a pre-1st October, 1979 30 Edict of Bendel State. Because of inconsistencies in the law with 1979 Constitution the ouster clauses could not be saved by S. 274 of the said Constitution. At the time of the appointment in 1985 the provisions of Edict i.e. Traditional Rulers and Chiefs Edict No. 16 of Bendel State, had been in part repealed 35 by the 1979 Constitution, especially those provisions ousting the jurisdiction of the Courts. (Uwaifo v. A.G. of Bendel State & Anor.) (1982) 7 SC. 124. If the appointment had not been caught by 1979 Constitution, the provisions ousting Court's jurisdiction would have remained valid if that appointment was made before 1st October, 1979 (Mustapha v. Governor, Lagos State & Ors

54 Erejuwa II v. Kperegbeiyi (1994) 8 KLR Belgore JSC  
(1987) 2 NWLR (Pt. 58) 539; Adeyeye v. Alhaji Shitta Ajiboye & Ors (1987) 3  
NWLR (Pt. 61) 432). This appeal has been caught by rule of inconsistency  
with Federal Decree as in Military Governor of Ondo State v. Adewumi (1988)  
3 NWLR (Pt. 82) 280.

I also dismiss it for the full reasons in the judgment of Wali, J.S.C. I  
5 make the same consequential orders as in that judgment.

---

### KUTIGIJSC

I read before now the judgment just delivered by my learned brother  
Wali, J.S.C. I agree with his conclusion that taken as a whole there is no merit  
10 in the appeal. It is accordingly dismissed with N1,000.00 costs to the respon-  
dents. I will also send the case back to the High Court for trial on the merits.

---

### MOHAMMED JSC

I entirely agree with the opinion of my learned brother, Wali, JSC., in  
15 the lead judgment, just read, that the Court of Appeal, Benin Division, is right  
to decide that the learned trial Judge, Unurhoro. J., was in error to hold that the  
High Court had no jurisdiction to entertain the claim of the respondents. It is  
plain, as from the 1st of October, 1979, all the ouster clauses contained in  
Section 22(4) and 32 of Traditional Rulers and Chiefs Law 1979, of Bendel  
20 State, have been repealed. See the Military Governor of Ondo State v.  
Adewunmi (1988) 3 NWLR (Pt. 82) 280 at 292. In this case, we are talking about  
an appointment which was conferred on the 2nd appellant by His Highness  
the Olu of Warri, as per letter dated 25th October, 1985, six years after the  
coming into force of 1979 Constitution. Thus establishing that the cause of  
25 action arose in 1985.

On the second issue, after the decision of the “prescribed authority”  
to wit, the Olu of Warri, it is open to the party wishing to challenge the deci-  
sion to either take the matter to the Executive Council of the Military Governor  
or go to Court for redress. See Section 22(3) and (4) of Edict No. 16 of 1979 of  
30 Bendel State. Having chosen to go to Court whose decision shall be binding  
on the executive council, it is an error to question why the respondents chose  
to take their matter into Court.

From the wording of the statute, it is clear that going to the Executive  
Council of the Governor is an alternative remedy. Even if that is so, since  
35 under the provisions of Sections 6 and 236 of 1979 Constitution, chieftaincy  
disputes, among others, are matters within the jurisdiction of the High Court  
the respondents are right in seeking redress in the High Court. The alternative  
remedy which a party can resort to in order to pursue his right does not  
exclude his inalienable right to seek redress in the courts.



I will refer to an English case which was decided on similar grounds. It is the case of *Pyx Granile Co. Ltd. v. Ministry of Housing and Local Government* (1958) 1 Q.B. 554. In that case a statute made provision for a determination of a dispute by the Minister and his decision was expressly made “final”. The Pyx Granite Company had a dispute and instead of going to the Minister, the Company went to the High Court and sought for a declaration. The Minister said that the High Court had no jurisdiction to entertain the claim for a declaration. Lord Denning, in his judgment, held that the High Court had jurisdiction, and added that it was settled law that the jurisdiction of the High Court to grant a declaration was not to be taken away except by clear words. In the House of Lords, Lord Simons agreed with Lord Denning and concluded that even if there is an alternative remedy for a subject, his inalienable right to seek redress in Her Majesty’s courts cannot be taken away. See the case of *Eguamwense v. Amaghizemwen* (1993) 9 NWLR (Pt. 315) 1 at 35. 5 10

For these reasons and the fuller reasons in the lead judgment of my learned brother, Wali, JSC., I will dismiss this appeal and affirm that the case be remitted to the High Court for trial de novo before another judge. I award N1,000.00 costs in favour of the respondents. 15

---

**IGUH JSC**

I have had the advantage of reading in draft the lead judgment just delivered by my learned brother, Wali, J.S.C., I entirely agree with the reasoning and conclusion therein and I have nothing more to add. 20

This appeal is devoid of substance and, accordingly, it is hereby dismissed. I abide by all the consequential orders made in the lead judgment including the order as to costs therein contained. 25

30

35