

SUPREME COURT OF NIGERIA
 13TH MAY, 1994, SC, 294/1991
CORAM:- S. M. A. BELGORE, A. B. WALI,
I. L. KUTIGI, S. U. ONU, A. I. IGUHI, JJSC

ALHAJI LAWANI ATOYEBI 5
 & ANOTHER PLAINTIFFS/APPELLANTS
 (For themselves and on behalf of the two
 Rifling Houses of Onigboho Chieftaincy)
 AND
 1. THE GOVERNOR OF OYO STATE DEFENDANTS/ 10
 2. ATTORNEY-GENERAL OF OYO STATE RESPONDENTS
 3. CHIEF SOLOMON OYEDIRAN
 (The Alepata of Igboho)

***APPEALS** - Concurrent findings - Chieftaincy matters - where there is nothing perverse, illegal or irregular in the two lower courts' findings of fact - whether the Supreme Court will interfere.* 15

***CHIEFTAINCY MATTERS** - Superiority - Question as to which out of two chieftaincy titles is Superior - When government reaction and past legislation are useful in determining the dispute.* 20

***CHIEFTAINCY MATTERS** - Traditional history - Claim of superiority of one chieftaincy against the other - Rejection of Plaintiffs' version of the traditional history - Proper determination of the overlord Chief out of the contestants.* 25

FACTS

The Plaintiffs/Appellants for themselves and on behalf of the two Onigboho Chieftaincy ruling houses filed an action against the Defendants/Respondents at Oyo State High Court Ibadan. The Plaintiffs claimed that the Onigboho is the only traditional Ruler in Igboho and sought to reverse the Governor's letter purporting to designate the Alepata to be the Senior Traditional Ruler in Igboho as being null and void and of no effect. The Plaintiffs relied on a certain traditional history towards establishing that as the aborigines, they claim superiority over whoever is Alepata of Igboho who they regard as mere ward head at Igboho, one of the ancient Oyo towns. The trial 30 35

court believed the traditional history of the 3rd Defendant, relied on past government interventions in the chieftaincy dispute in finding for the Defendants and dismissed the Plaintiffs' claim. Being dissatisfied with the trial court's finding that the Alepata is the superior Chief of Igboho, the Plaintiffs appealed unsuccessfully to the Court of Appeal. In a further appeal the Supreme Court had to determine inter alia, whether the Plaintiffs/Appellants established that the Onigboho is the only traditional Ruler of Igboho who is senior and superior in status to the Alepata.

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

1. Looking back through Government reaction from old Western Region and a 1952 legislation, it is clear that right from 1952 the Alepata of Igboho was regarded as Superior to any other Chief at Igboho (P. 9 L 27).

2. There is nothing perverse, illegal or irregular in the findings of fact by the trial court as upheld by the Court of Appeal and there is therefore no reason to interfere with those findings (P. 10 L29).

3. There is no hesitation in rejecting the Plaintiffs/Appellants version of the traditional history as done by the two lower courts. The traditional history of the 3rd Defendant/Respondent and the situation up to the recent times indicate clearly that Alepata rather than Onigboho is the overlord Chief of Igboho. 25 (P. 11 L21)

NOTABLE POINTS OF INTEREST

BELGORE JSC

1. Whether trial Court held an even balance

30 "I must state clearly that trial judge went beyond the deplored habit of saying "believe" or "I believe". Rather he went deep into the evidence of the contending parties meticulously and with the contradictions in the evidence proffered by the plaintiffs, it cannot be said that he never held an even balance. He adverted not only to historical antecedents but also with what has been on the ground in recent memory." (P. 10 L 37)

ONU JSC

2. Unassailable decision of the trial court

As indeed happened in the two courts below, the case herein was fought on

both documentary as well as oral evidence. Not only is the decision of the trial court, later affirmed by the court below, in both its traditional historical setting and contemporary statutory recognition by government unassailable, the contention of the plaintiffs that 3rd defendant, the Alepata of Igboho is no more than a quarter chief of Oba Ago quarters in Igboho without the attributes of a traditional status, lacked any empirical basis or authenticity and was justifiably jettisoned in the face of overwhelming evidence. (P. 12 L 34)

3. The role of evidence and legislation in support of the finding against the plaintiffs

Be it noted too how evidence revealed that at a point in time in the history of Igboho, the Alepata was the President of the Igboho Customary Court. In contemporary times, legislation has brought the unquestionable pride of place of the Alepata over the Onigboho of Igboho to the fore, that on no rational basis could the trial court which had fully sifted the evidence adduced before it, have found in the Plaintiffs' favour. (P. 13 L 8)

IGUHJSC

4. Abandonment of an issue - Implications of no Complaint against a decision

It is trite law that an issue on which no argument has been advanced by an appellant must be deemed abandoned. An appeal presupposes the existence of some decision which is appealed against on a given point or points. Where, therefore, there is no complaint in respect of a decision that has arisen from a judgment appealed against, such a decision may not form the basis of an issue for determination by an appellate court. (P. 16 L 28)

5. Taking of fresh point before the Supreme Court

Put differently, this court will normally not allow a fresh point to be taken before it if such a point was not raised, canvassed and/or pronounced upon by the court below. Where, however, the fresh question involves substantial point of law, substantive or procedural, and it is plain that this court has before it, all the facts in support of the new question and that no further evidence needs be adduced for a decision to be taken on such a question the Supreme Court may in its discretion and upon a proper application allow the question to be raised and the point taken if such a course of action would prevent an obvious miscarriage of justice. (P. 17 L 3)

6. How evidence is properly evaluated

A mere engagement in the summary of evidence or the mere restating of the

evidence of parties and their witnesses without an appropriate judicial consideration or analysis thereof such as giving reasons for the acceptance or rejection of the various facts in issue comprised in such evidence does not constitute an evaluation of such evidence before the court. (P. 22 L 15)

5 ***7. Every error of law does not warrant a reversal of judgment***

“ But, as I have already observed, it is not every error of law where one is infact established that occasions a miscarriage of justice to warrant the reversal of the judgment of a court below by an appellate court. In my view, whether or not the appellants had locus standi to prosecute this claim is clearly academic and not a matter of any great moment on the particular facts and circumstances of this case. This is in view of copious other findings which were rightly made by the trial court and affirmed by the Court of Appeal. On those other findings, no reasonable tribunal would have any option but to dismiss the appellants’ claims at all events.” (P. 24 L 2)

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REPRESENTATION:

Chief R.O. Oriade for the Appellants.

H.F. Sule, Principal legal Officer (Oyo) for 1st and 2nd Respondents

Uche Akalugo for the 3rd Respondent.

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CASES REFERRED TO

Kinney v. Military Governor, Gongola (1988) 2 NWLR (Pt. 77) 145

Insummu v. Joto (1987) 4 NWLR (Pt. 65) 297

Akinsanya v. U.B. A. Ltd (1986) 4 NWLR (pt. 35) 273

25 Chukwuogor v. Obuora (1987) 3 NWLR Pt. 61) 454 .

Omibruhere v. Esegime (1986) 1 NWLR (Pt. 99) 799

Kojo v Bonsie (195 7) 1 WLR 1223

Balagun v. Akanji (1988) 1 NWLR (Pt. 70) 301

Akpere v. Barclay’s Bank of Nigeria Ltd. & Anor (1977) 1 SC. 1

30 Ganiyu Kale v. Madam T. Coker & Ors. (1982) 12 SC. 252

Oladipo Maja v. Learndro Stocco (1968) NMLR 372

Bakare v. The State (1987) 1 NWLR (Pt. 52) 579

Overseas Construction Ltd. v. Creek Enterprises Co. Ltd. (1985) 3 NWLR 407

Efe v. The State (1976) 11 SC. 75

35 Obi v. Owolabi (1990) 5 NWLR (Pt. 153) 702 at 718-719

Fashanu v. Adekoya (1974) 1 All NLR 35 at 41

Mogaji & Ors. v. Rabiātu Odofin (1978) 4SC. 91

Chuokwueke v. Nwankwo (1985) 2 NWLR 195

Ebba v. Ogosu (1984) 4 SC. 84 at 98	
Emariwu v. Ovirie (1977) 2 SC. 31	
Are v. Ipaye (1986) 3 N.W.L.R (pt. 29) 416 at 418	
Ikpuku v. Ikpuku (1991) 5 NWLR (Pt. 193) 571	5
Ajibade v. Pdero (1992) 5 NWLR (Pt. 241) 257	
Uhunmwangho v. Okojie (1980) 5 NWLR (Pt. 122) 471 at 491	
London Chartered Bank of Australia v. White (1897) 4 A.C. 413	
Kabaka's Government & Anor. v. Attorney-General of Uganda & Anor. (1965) 3 WLR 512	10
Djukpan v. Orovyube (1967) 1 All NLR 134 at 137	
Udza Uor & 2 Ors. v. Paul Loko (1988) 5 SC. 25 at 35 and 43	
Attorney-General of Oyo State v. Fairlakes Hotels Ltd. (1988) 5 NWLR (Pt. 92) 1 at 29	
John Bankole and Ors. v. Mojidi pelu and Ors. (1991) 8 NWLR (Part 211) 523	15
Management Enterprises Ltd. and Anor. v. Jonathan Otusanya (1987) 2 NWLR (Pt.55) 179	
Kodilinye v. Mbanefo Odu 2 WACA 33 at 337	
Erempong v. Brempong 14 WACA 13	
Nwagbogu v. Chief Onoli Ibeziako (1972) 1 All NLR 200	20
Oduaran v. Asarah (1972) 1 All NLR (Pt. 2) 137	
Uwegba v. Attorney-General Bendel State (1986) 1 NWLR (Pt. 16) 303	
Onajobi v. Olanipekun (1985) 4 SC. (Pt. 2) 156 at 163	
Gwonto v. The State (1983) 1 SCNLR 142 at 152/153	
Oje v. Babalola (1991) 4 NWLR (Pt. 185) 267 at 282	25
Ukelianya v. Uchendu 13 WACA 45 at 46	
Azuetonma Ike v. Ugboaja (1993) 6 NWLR (Pt. 301) 535 at 556	
Anyanwu v. Mbara (1992) 5 NWLR (Pt. 242) 386 at 400	
Amusa Momoh & Ors. v. Jimo Olotu (1970) 1 All NLR 124	
Adesanya v. The President of Nigeria (1981) 1 All NLR (Pt. 1) at 39	30
Seidu v. A.G. Lagos State (1986) 2 NWLR (Pt. 21) 165	
Chief (Dr.) Irene Thomas & Ors. v. Olufosoye (1986) 2 SC. 325	

STATUTES REFERRED TO

Evidence Act s. 148 (d)	35
Chiefs Law (Oyo State Laws 1978 Cap. 21) ss. 3, 26	
Western Region Local Government Law 1952 No. 1 of 1953 (W.R.L.N. 146 of 1954)s. 3	

BOOKS REFERRED TO

The History of Yorubas - Dr. O. Johnson

5 **LEAD JUDGMENT BY BELGORE JSC**

The appellants were the plaintiffs at trial High Court and also the appellants at the Court of Appeal. They concluded their statement of claim as follows:-

“WHEREOF the plaintiffs claim as follows:-

10 1. Declaration that the first defendant’s letter purporting to designate the Alepata as the Senior Traditional Ruler in Igboho is against the ancient traditions, history, customs and usages of Igboho and is therefore unjust, unconstitutional, null and void and of no effect.

15 2. Declaration that the Onigboho is the only traditional ruler in Igboho.

3. Declaration that the Alepata is only a quarter chief in Oba Ago quarters in Igboho and not a traditional ruler.

20 4. Order restraining the first defendant, his servants, agents privies or those lawfully taking orders from him from further giving formal or any recognition to the Alepata as the senior traditional ruler in Igboho and/or in the alternative.

5. Order restraining the Alepata from parading himself as the most senior traditional ruler or a traditional ruler of Igboho.”

25 The town called Igboho is one of the ancient Oyo towns, it shared perhaps in the upheavals of last century leading to sack of Oyo Ile (or old Oyo) but managed somehow to remain in one place. The plaintiffs come from a family that always produce Onigboho of Igboho. By the evidence in court there are two versions of the hierarchy of rulership in the town - that of the plaintiffs and that of the 3rd defendant now 3rd respondent in this court as he 30 was in the Court of Appeal. Trial Judge, Yekini Adio J. (as he then was) narrated in his judgment the entire evidence before him. It is however useful for a full understanding of this case to summarise the evidence, mostly based on the pleadings.

35 The plaintiffs/appellants claim to represent the two ruling houses that in rotation present Onigboho of Igboho. Unfortunately evidence of this rotation was not presented to court and Exhibit 12, the report of Mr. C.E.B.B Simpson’s Report on his enquiry under Section 37(3) Chieftaincy Law held on 10th June, 1957 said so much. However, the plaintiffs claim to be descendants of one Tondi, a hunter from Eruwa who actually, according to them founded

Igboho. As against this claim the 3rd defendant's assertion is that Oyo was at one time deserted and one Eguguoju, an Alafin settled at Igboho having founded the place. What is not in dispute however is that Igboho at all material period up to and after Eguguoju was under the Oyo Empire and whether Alafin founded Igboho or not he was the undisputed overlord. Igboho is to the West-South- West of the ruins of old Oyo and is a fair sized town in the present Oyo North. The plaintiffs claim the present Onigboho is about the seventeenth in succession but by 1957 they could only indicate four generations of Onigbohohs and name of Tondi was never mentioned. As the aborigines they claim superiority over whoever is Alepata of Igboho who they regard as mere ward head at Igboho. The trial Judge, after reviewing all the evidence of 3rd defendant and his witnesses and recent situation whereby he regarded Alepata as the superior ruler of Igboho and that Onigboho was under him. Trial Judge never relied on traditional history alone but found that the recent situation dating for several years convinced him that the Alepata must be the overlord of Onigboho and not the other way round. He relied on the inquiry held in 1957 (Exh.12) and that of 1982 resulting in the government of former Western Region of Nigeria recognising Alepata as the superior chief of Igboho.

The surprising element in this matter is that the witnesses for the plaintiffs even could not agree on geneology of Onigboho. Whereas in the petition to Ministry of Chieftaincy Affairs (Exhibit 11) they named nine previous Onigbohohs, the one on the date of the petition being the tenth. There has been evidence of more than this number. The enquiry under Chieftaincy Law Section 37(3) in operation in 1957 by the Local Government Adviser, Mr. Simpson, dated 10th June, 1957, whose Report is Exhibit 12 at trial court recommend as follows:-

"1. I recommend that Jeremiah Afolabi is recognised as Onigboho of Igboho.

2. I recommend that Government makes it clear that the Alepata is recognised as head chief in Igboho.

3. I recommend that when the Chieftaincy declarations for Igboho are made that one unified set of kingmakers for all titles be included so as to stop any split in the town, and thatthe council should be instructed to (have one unified set of kingmakers) (Brackets are mine)."

The remarkable aspect of this report is that both parties vying for Onigboho's stool in 1957 never mentioned Tondi as the founder or first settler at Igboho. The name of Tondi as the ancestor came up for the first time in a land dispute No. HOY/ 20/72 where Adenekan Ademola J. (as he then was)

totally disbelieved the story that Tondi was the founder of Igboho; a far reaching finding not appealed against up to now. Even though it was a land matter but traditional history of who first settled and who owned the land came to play prominently. Trial court had no difficulty in finally rejecting the present plaintiffs' case and dismissing it. Court of Appeal upheld the decision of the High Court.

On appeal to this court the following issues are formulated for determination.

"The issues for determination in this appeal:

2.01. *The first issue for determination in this appeal is whether Exhibits 1, 2, 3, 4 and 5 in which Onigboho was recognised in 1932 as the Village Head of Igboho with a salary of 24.00pounds (Twenty four pounds) per annum whilst the Alepata was merely referred to in Exhibit 1 as a Chief of Igboho without stating that he was paid any salary and the traditional evidence of the plaintiffs/appellants established that the Onigboho is the only traditional ruler of Igboho and that he is senior and superior in status to the Alepata who is a minor chief in Igboho.*

2.02. *The second issue for determination is whether the Alaafin of Oyo or the Governor of Oyo State of Nigeria can unilaterally make the third defendant/respondent, Chief Solomon Oyediran, who is of the minor chieftaincy of Alepata of Igboho and not of a royal blood as he is not a member of any royal family in Yoruba land, the Oba of Igboho contrary to the Native Law and Custom and Exhibits 1, 2, 3, 4 and 5 tendered at the trial of the appellants' case.*

2.03. *The third issue for determination is whether the learned justices of the Court of Appeal should have allowed the plaintiffs' appeal by setting aside the judgment of the learned trial Judge on the ground that the learned trial Judge wrongly made findings of fact.*

2.04. *The fourth issue for determination is whether this honourable Final Appellate Court should interfere with the two concurrent findings of fact of the learned trial Judge and the Honourable Court of Appeal.*

2.05. *The fifth issue for determination is whether this Honourable Appellate Court should allow the plaintiffs' appeal by considering the facts as established from the record of appeal instead of sending the case back to the court of first instance for trial de novo."*

Exhibits 1, 2, 3, 4 and 5 are nothing but letters exchanged between the District Officer Oyo and the resident Oyo Province which were written in 1932 between 3rd, May, 1932 and 20th December, 1932 (for Exhibits 1-3) and 13th February, 1936 and 22nd December, 1936 (for Exhibits 4 and 5). Only Exhibit 1

referred to Alepata, and to that office alone in respect of succession of one Mustafa to the late incumbent, Igbaroola. Exhibits 2 to 5 exclusively concern the succession to the office of Onigboho. None of these exhibits refers to hierarchy or seniority or superiority between Alepata and Onigboho. It must be observed that the plaintiffs who took the trouble of procuring these exhibits from National Archives never tendered the Memorandum No. 2/1930/179 of 29th April, 1932 which Exhibit 1 was a reply to. Is it in support or against their case? (S.148(d) Evidence Act refers).

As for the second issue for determination, it must be pointed out that this is a matter of law. Chiefs Law (Oyo State Laws 1978 Cap. 21) in S.3 provides:-

“3. The Commissioner may by order:-

(a) apply the provisions of part 2 to a chieftaincy:

(b) designate a Local Government Council as competent council in respect of that chieftaincy:”

In accordance with that section the Military Governor of Oyo State (who at the material period was Commissioner for Local Government) made the Recognised Chieftaincies (Revocation and Miscellaneous Provisions) Order 1978 (Oy. S.L.N 18 of 1978) now in Cap. 21 Laws of Oyo State 1978, Vol. 1 page 295, and at 296. In the schedule to the Order for Irepo Local Government the following chieftaincies are recognised:-

1. Iba of Kishi.
2. Alepata of Igboho.
3. Bale of Igbeti.

Similarly by virtue of powers conferred upon the Governor in Council by S.26(1) and (2) Chiefs Law the prescribed authority for “area traditionally associated with Igboho” is Alepata of Igboho.

Looking back through government reaction from old Western Region, in the “instrument establishing the Irepo District Council” by virtue of S.3 of the Western Region, in the Region local Government Law 1952 (No.1 of 1953): (WRN 146 of 1954), it was provided that the President of Irepo District Council should rotate with each office holder in office for three years. The presidents were listed as:-

1. Akpata of Igboho.
2. Iba of Kishi .
3. Bale of Igbeti.

This clearly shows that right from 1952 the Alepata of Igboho was regarded a superior to any other chief at Igboho. Apart from council President, there were nine traditional members who as ex -officio members were permanent members. In section 9 of the instrument they were listed as:-

- (a) Alepata of Igboho.
- (b) Are of Igboho.
- (c) Onigboho of Igboho.
- (d) Onaonibode of Igboho.
- 5 (e) Iba of Kishi,
- (f) Agoro of Kishi,
- (g) Ajana of Kishi,
- (h) The Bale Iggetti,
- (i) Seriki of Iggetti.
- 10 (j) Elemosho of Iggetti.

So, it is not surprising that the Government of Oyo State, after a report of an Administrative Inquiry, had nothing new to change the order of seniority of Chiefs in Igboho when it wrote Exhibit 6A which reads inter alia as follows:-

“Headship Tussle among the Alepata, Onigboho and Ona-Onibode. I
15 am directed to inform you that government has received the report of the Administrative Inquiry into the above subject-matter; and has after a careful consideration of the report approved that:-

- (i) The Alepata should be confirmed as the most Senior Traditional Ruler in Igboho:
- 20 (ii) the Onigboho should be recognised as a Traditional Ruler in Igboho and as second in rank to the Alepata: and
- (iii) the Ona Onibode has no right to assume the headship of Igboho but his position as a traditional ruler in Igboho had been reaffirmed.”

Upon the foregoing the government has all along found in favour of
25 superiority of Alepata as the overall ruler of Igboho and that any other chief in that town including the Onigboho ranks after him. This conclusion is based on traditional history after various enquiries.

The concurrent findings of the courts below on facts as well as on law cannot be assailed in the absence of any wrong assessment of evidence,
30 miscarriage of justice or anything perverse. In the present instance I can find nothing perverse or illegal or irregular in the findings of facts by trial court as upheld by Court of Appeal. I have therefore no reason to interfere with those findings. (Kimdey v. Military Governor, Gongola (1988) 2 NWLR (Pt.77) 445; Dosunmu v. Joto (1987) 4 NWLR (Pt.65) 297; Akinsanya v. U.B.A Ltd. 35 (1986) 4 NWLR (Pt.35) 273; Chukwugor v. Obuora (1987) 3 NWLR (Pt.61) 454; Omibruhere v. Esegine (1986) 1 NWLR (Pt.19) 799. I must state clearly that trial Judge went beyond the deplored habit of saying “believe” or “I disbelieve”. Rather he went very deep into the evidence of the contending parties meticulously and with the contradictions in the evidence proffered by the

plaintiffs, it cannot be said that he never held an even balance. He adverted not only to historical antecedents but also with what has been on the ground in recent memory (Kojo v. Bonsie (1957) 1 WLR 1223; Balogun v. Akanji (1988) 1 NWLR (Pt.70) 301) All the parties agree that four Alafins live in Igboho and died and were buried there. They however differ on which Alafin first came and whether the first one actually founded the city. The preponderance of evidence is in support of an Alafin founding Igboho after the first sack of old Oyo called Oyo Ile. “The History of Yorubas” by Dr. O. Johnson with all authority attached to it lacked one important historical aspect and that is dating. He listed the four Alafins at Igboho as Eguguoju, Orompoto, Ajiboyede and Abipa, Dr. Johnson’s account was about a previous desertion of Oyo Ile Alafin having died. The son, had to abandon the city in face of the inevitable conquest by Nupes (Tapa) who had already laid a siege on the city. Ofinran, the son of Alafin Onigbogi, had to carry his people to Bariba country (Oyos called Borgus Baribas), and sought refuge of their king Eleduwe. In an attempt to go back to Oyo, he died. His son Eguguoju had to bury him at Igboho, he was thus regarded as Alafin. Three other Alafins reigned at Igboho and the last to be so buried was Ajiboyede. His son Ibipa also known as Oba M’oro left Igboho for Oyo Ile and left Alepata to run Igboho. The blank in this story as it occurs in most of the book, is the approximate date of each event. Despite this, the trial court as well as the Court of Appeal had no difficulty in rejecting the traditional history of the plaintiffs, I also have no hesitation in rejecting the appellants’ version. The traditional history of the third defendant/respondent and the situation up to the recent times indicate clearly that Alepata rather than Onigboho is the overlord chief of Igboho.

My conclusion therefore is that this appeal, from the foregoing, has no merit and it ought to be dismissed.

I therefore dismiss this appeal and uphold the decision of the Court of Appeal which affirmed the trial court’s judgment.

I award N1,000.00 costs to 3rd respondent, and the sum of N1,000.00 as costs to 1st and 2nd respondents jointly.

WALI JSC

My learned brother Belgore, J.S.C. has afforded me the privilege of reading his lead judgment in this appeal. Having read the records in this appeal the briefs filed and listened to the oral arguments of learned counsel in elaboration thereof, I entirely agree with his reasoning and conclusions on all

the issues raised for dismissing this appeal. The learned trial Judge Adio. J. (as he then was) thoroughly considered the evidence adduced before reaching the verdict that the appellants had failed to prove their case. The Court of Appeal (per Ogwuegbu. J.C.A (as he then was) was equally justified to have
 5 concluded thus after hearing the appeal:-

“The judgment was well considered. I can find nothing to justify my interference with the decision of the trial court.”

The concurrent findings of the trial court on both issues of fact and law are well substantiated and justified. In the circumstance, the concurrent
 10 findings of the two lower courts that the plaintiffs/appellants had failed to prove their claim and in the absence of any special circumstance warranting interference by this court, are hereby affirmed: Akpene v. Barclays Bank of Nigeria Ltd. & Anor (1977) 1 S.C. 47; and Ganiyu Kale v. Madam T. Coker & Ors. (1982) 12 S.C. 252.

15 The appeal is dismissed and I subscribe to the order of award of costs made in the lead judgment.

KUTIGIJSC

20 I have had the privilege of reading in advance the judgment just delivered by my learned brother Belgore, J.S.C., I agree with the reasoning and conclusions. The judgments of the lower courts are clearly unassailable. The appeal is dismissed with costs as assessed.

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ONU JSC

30 I had the advantage of reading before now the judgment of my learned brother Belgore, J.S.C. and I am in complete agreement with his reasoning and conclusions that this appeal is without merit and ought to fail.

As indeed happened in the two courts below the case herein was fought on both documentary as well as oral evidence. Not only is the decision of the trial court later affirmed by the court below in both its traditional historical selling and contemporary statutory recognition by government unassailable the contention of the plaintiffs that 3rd defendant, the Alepata of Igboho is no more than a quarter chief of Oba Ago quarters in Igboho without the attributes of a traditional status, lacked any empirical basis or authenticity and was justifiably jettisoned in the face of overwhelming evidence. For instance,
 35 2 P.W. the Oba of Ago Amodu, called by the plaintiffs knocked the bottom off

their case regarding tradition when under cross examination he admitted thus:-

I agree that Alepata is always the traditional chief that is invited to any place where it is necessary to invite the traditional ruler of Igboho to such place.

Be it noted too how evidence revealed that at a point in time in the history of Igboho, the Alepata was the President of the Igboho Customary Court. 5

In contemporary times, legislation has brought the unquestionable pride of place of the Alepata over the Onigboho of Igboho to the fore that on no rational basis could the trial court which had fully sifted the evidence adduced before it, have found in the plaintiffs' favour. It is little wonder then that plaintiffs lost in both courts below and nothing, in my view, has been urged upon us in this court especially by Chief Oriade for them, to persuade me to interfere with those concurrent findings of facts since they have not been shown to be perverse. See *Oladipo Maja v. Learndro Stocco* (1968) NMLR 372. Besides, no exceptional circumstances have been shown for disturbing those findings. See *Bakare v. The state* (1987) 1 NWLR (Pt.52) 579; *Overseas Construction Ltd. v. Creek Enterprises. Ltd.* (1985) 3 NWLR (Pt.13) 407; *Efe v. The State* (1976) 11 S.C.75; and *Obi v. Owolabi* (1990) 5 NWLR (Pt.153) 702 at 718-719. Indeed, a host of cases have now firmly laid down the principle leaving no room for doubt, that where no grounds exist for disturbing such concurrent findings of facts as in the instant case, the Supreme Court will be loath to do so. See *Fashanu v. Adekoya* (1974) 1 All NLR (Pt.1) 35 at 41; *Mogaji & Ors. v. Rabiatsu Odofin* (1978) 4 S.C.91; (1978) 11 L.R.N. 217 *Chukwueke v. Nwankwo* (1985) 2 NWLR (Pt 6) 195; *Ebba v. Ogo* (1984) 4 S.C.84; (1984) 1 SCNLR 372 and *Emariwau v. Ovirie* (1977) 2 S.C.31, to mention but a few. 10 15 20 25

As at the end of the day the decision of the case turned purely on the facts, which facts the court below accepted, it was fully justified in my view to have affirmed the decision of the trial court and I so hold. I see no reasons to disturb the two decisions.

For these and the fuller reasons given by my learned brother Belgore, J.S.C in the lead judgment with which I had expressed my concurrence. I dismiss this appeal and abide by the consequential orders inclusive of those as to costs set out therein. 30

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IGUHJSC

I have had the advantage of a preview of the lead judgment just deliv-

ered by my learned brother. Belgore, J.S.C, and I agree that this appeal is devoid of substance and should be dismissed.

I wish however to make some comments by way of emphasis only.

The plaintiffs, for themselves and on behalf of the two Onigboho chieftaincy ruling houses had at the Ibadan Judicial Division of Oyo State
5 instituted an action against the defendants claiming as follows:-

“1. Declaration that the first defendant’s letter purporting to designate the Alepata as the Senior Traditional Ruler in Igboho is against the ancient traditions, history, customs and usages of Igboho and is therefore unjust, unconstitutional, null and void and of no effect.

10 *2. Declaration that the Onigboho is the only traditional ruler in Igboho.*

3. Declaration that the Alepata is only a quarter Chief in Oba-Ago Quarters in Igboho and not a traditional ruler.

*4. Order restraining the first defendant, his servants, agents, privies
15 or those lawfully taking orders from him from further giving formal or any recognition to the Alepata as the Senior Traditional Ruler in Igboho and/or in the alternative.*

5. Order restraining the Alepata from parading himself as the most Senior Traditional Ruler or a traditional ruler in Igboho.”

20 Pleadings were ordered in the suit and were duly settled, filed and exchanged.

The facts of the case have been fully set out in the lead judgment of my learned brother and I find it unnecessary to repeat them all over again. It suffices to state that the main issues that called for determination before the
25 trial court were, firstly, whether the Alepata of Igboho is the most senior traditional ruler or, indeed, a traditional ruler at all in Igboho or whether he is only a mere “quarter chief” in Oba-Ago quarter in Igboho and secondly, whether the Onigboho is the only traditional ruler in Igboho.

The matter accordingly proceeded to trial at the Ibadan High Court
30 before Adio, J as he then was, and both parties testified on their own behalf and called witnesses. At the conclusion of hearing the learned trial Judge in a reserved judgment found for the defendants and dismissed the plaintiffs’ claims.

Being dissatisfied with this judgment, the plaintiffs lodged an appeal
35 to the Court of Appeal which in a unanimous decision dismissed the appeal and affirmed the judgment of the trial court. This appeal is against the said judgment of the Court of Appeal.

The only two competent grounds of appeal filed by the plaintiffs, who

hereinafter will be referred to as the appellants, without their particulars, are as follows:-

“1. The Honourable Justices of the Court of Appeal and the learned trial Judge erred in law in failing to hold that Exhibits 1, 2, 3, 4 and 5 confirmed under the Native Law and Customs the superiority of Onigboho over the Alepata of Igboho.

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2. The learned Justices of the Court of Appeal erred in law or otherwise misdirected themselves in law in failing to set aside the judgment of the learned trial Judge when it was discovered that the learned trial Judge actually made the findings of fact which were at variance with the evidence adduced in the court of first instance.”

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The said grounds are the only two surviving grounds out of the proposed nine grounds of appeal for which the leave of this court was sought by the appellants on the 13th day of November. The other seven proposed grounds of appeal were on the preliminary objection of the defendants hereinafter referred to as the respondent, struck out as incompetent by the order of this court. Ground one, although couched as if the complaint was an error in law, is in the main, an issue of facts. So too is ground two which, at best may, pass as an issue of mixed law and facts.

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Learned counsel for the parties filed and exchanged written briefs of argument as required by the rules of this court. In this judgment, however I will only confine myself to the first issue set out by the appellants and the last two issues formulated by the 1st and 2nd respondents in their respective briefs of argument. These three issues appear to me to cover almost entirely the main issues that have been raised by the parties in their respective briefs in this appeal and they are, in my view sufficient to determine this appeal. I will accordingly adopt them in the consideration of this appeal.

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The said three issues are as follows:-

“2.01. Whether Exhibits 1, 2, 3, 4 and 5 in which Onigboho was recognized in 1932 as the village head of Igboho with a salary of 24.00pounds per annum whilst the Alepata was merely referred to in Exhibit 1 as a Chief of Igboho without stating that he was paid any salary and the traditional evidence of the plaintiffs/appellants established that the Onigboho is the only traditional ruler of Igboho and that he is senior and superior in status to the Alepata who is a minor chief in Igboho.

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3.03. Whether from the evidence adduced by the plaintiffs/appellants, the superiority of Onigboho of Igboho over the Alepata of Igboho was established.

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3.04. Whether the misdirection on facts and errors alleged by the

appellants caused a miscarriage of justice in the circumstances of this particular case."

I will consider the first two issues together as they appear to me inter-related.

As regards the first and second issues, it is the submission of learned
 5 appellants' counsel that Exhibits 1, 2, 3, 4 and 5 and the traditional evidence
 adduced by the appellants established that Onigboho is the paramount ruler
 of Igboho and that he is senior and superior in status to the Alepata of Igboho.
 He argued in particular that Exhibit 2 in 1932 described the Onigboho as the
 Village Head of Igboho on a salary of 24.00pounds per annum whereas Exhibit
 10 1 only described the Alepata as a Chief in Ighoho but was silent on whether he
 was paid any salary.

For the respondents it was contended that the appellants before the
 Court of Appeal only argued the issues related to ground one of their original
 grounds of appeal and their two additional grounds of appeal. It was therefore
 15 submitted that the said appellants thereby abandoned grounds 2 to 10 of their
 said original grounds of appeal. The respondents then contended that the
 appellants having abandoned their nine original grounds of appeal before the
 court below cannot now argue in the alternative that from the totality of the
 evidence adduced before the trial court, the superiority of the Onighoho over
 20 the Alepata of Igboho was not established.

It must be pointed out that ground one of the original ten grounds of
 appeal only dealt with the question whether or not the appellants had locus
 standi to institute the action and no more. The first and second issues for
 determination are related to ground 4 and 6 of the original grounds of appeal
 25 before the court. The two grounds are in law deemed abandoned as no argu-
 ments concerning them were advanced by the appellants in the Court of Ap-
 peal.

It is trite law that an issue on which no argument has been advanced
 by an appellant must be deemed abandoned. See *Are v. Ipaye* (1986) 3 NWLR
 30 (Pt.29) 416 at 418; *Ikpuku v. Ikpuku* (1991) 5 NWLR (Pt.193) 571 and *Ajibade v.*
Pedro (1992) 5 NWLR (Pt.241) 257. An appeal presupposes the existence of
 same decision which is appealed against on a given point or points. Where,
 therefore, there is no complaint in respect of a decision that has arisen from a
 judgment appealed against, such a decision may not form the basis of an issue
 35 for determination by an appellate court. The appellate jurisdiction of this court
 inter alia is to review the decisions and/or judgments of the Court of Appeal.
 If therefore an issue neither arose nor called for the determination of the Court
 of Appeal which therefore did not consider the issues, it seems to me that
 such an issue may not form the basis of an appeal to the Supreme Court and a

purported appeal to this court on such an issue will be incompetent and may be struck out. See *Uhunmwangho v. Okojie* (1989) 5 NWLR (Pt.122)471 at 491. Put differently, this court will normally not allow a fresh point to be taken before it if such a point was not raised, canvassed and/or pronounced upon by the court below. See *London Chartered Bank of Australia v. White* (1897) 4 A.C. 413; *Kabaka's Government & Another v. Attorney-General of Uganda & Another* (1965) 3 WLR 512; *Djukpan v. Orovuyevbe* (1967) 1 All NLR 134 at 137; and *Udza Uor & 2 Others v. Paul Loko* (1988) 5 S.C. 25 at 35 and 43 (1988) 2 NWLR (Pt.77) 430. Where, however, the fresh question involves substantial point of law, substantive or procedural, and it is plain that this court has before it, all the facts in support of the new question and that no further evidence needs be adduced for a decision to be taken on such a question, the Supreme Court may in its discretion and upon a proper application allow the question to be raised and the point taken if such a course of action would prevent an obvious miscarriage of justice. See *Attorney-General of Oyo State v. Fairlakes Hotel Ltd.* (1988) 5 NWLR (Pt.92) 1 at 29; and *John Bankole and Others v. Mojidi Pelu and others* (1991) 8 NWLR (Pt.211) 52.”

In the present case, grounds 4 and 6 of the original grounds of appeal were clearly not argued by the appellants before the Court of Appeal. They ought therefore to be deemed abandoned. See too *Dolibe v. Nwakoze* (1986) 5 NWLR (Pt.41) 315; and *Osinupebi v. Saibu and others* (1982) 7 S.C. 104 at 110. It is also right to say that the first two issues for consideration in this appeal relate to the said grounds 4 and 6 of the original grounds of appeal and to none of the two additional grounds of appeal. These issues were also not canvassed before or pronounced upon by the court below. They however involve the kernel of the real controversy between the parties. They were infact canvassed by the parties before the trial court. They were also pronounced upon by the learned trial Judge in his judgment. In my view, they are of vital importance in the determination of the question as to whether the court below was right in its decision on the central issue in controversy between the parties, namely, whether the superiority of the Onigboho over the Alepata of Igboho was established by the appellants having regard to all the evidence before the court. It also seems to me plain that all the facts in support of the issues are fully before the court and that no additional or further evidence is required for a decision to be taken on the issues. Under such circumstances, it cannot be in doubt that this court has the competence to entertain the fresh point raised before it in order to do substantial justice to the parties. See *Management Enterprises Ltd. and Another v. Jonathan Otusanya* (1987) 2

NWLR (Pt.55) 179. I therefore propose to consider the two issues in question in the overall interest of justice.

A close study of the record of proceedings in this case clearly indicates that the appellants of the one part and the respondents of the other part gave divergent versions of and called witnesses on the all important issue of which as between the Alepata or Onigboho is superior to the other. Be this as it may, the onus is on the appellants, as plaintiffs, to satisfy the court that they are entitled on the evidence brought by them to the various declarations and reliefs claimed. In this regard, it is trite that they must succeed or fail on the strength of their own case and not on the weakness of the defendants' case although it is recognised that in some exceptional circumstances the weakness of the defence may go some way in strengthening the case for the plaintiffs. If this onus is not satisfactorily discharged, the proper judgment will be for the defendant. See *Kodilinye v. Mbanefo Odu* 2 WACA 336 at 337; *Frempong v. Brempong* 14 WACA 13; *Nwagbogu v. Chief Onoli Ibeziako* (1972) 15 All NLR (Pt.2) 200; and *Oduaran v. Asarah* (1972) 1 All NLR (Pt.2) 137.

In the present case, it is noteworthy that a number of witnesses who testified for the appellants made significant admissions in line with the respondents' case on the issue of which of Alepata and Onighoho is superior to the other in rank and therefore the traditional ruler of Ighoho. The appellants' second witness, P.W.2. Oba Alamu, himself the traditional ruler of Ago Amodu under cross examination by learned counsel for the 3rd respondent frankly admitted at page 45 of the record as follows:-

"I agree that Alepata is always the traditional chief that is invited to any place where it is necessary to invite the traditional ruler of Igboho to such place."

A little earlier on in his evidence at the same page of the record of proceedings, the same witness, testified as follow:-

"I am a president of a customary court in Ago Amodu by virtue of my being the traditional ruler of Ago AmoduI now say that Alepata had been the President of the Customary Court at Igboho for the past thirty-two years."

There is next the evidence of the appellants' fourth witness, Oba Ariwajoye and the traditional ruler of Kishi at page 48 of the record where he testified as follows:-

"I know there was a commission of inquiryI testified thereI was a member of the chieftaincy committee of a local government council. I did not attend a meeting in the palace of Alafin in 1981 in which the issue between Alepata and Onigboho was discussed. I now say that I attended the meeting at the palace of Alafin of Oyo at Oyo. I agree that the

decision at that meeting was that Alepata should continue to be a traditional ruler superior to Onigboho of Igboho though members of Onigboho family did not agree with that decision."

Later on in this evidence, the same witness admitted as follows:-

"I told the commission of inquiry that in Oyo and Igboho, Alepata was regarded as the "Oba" traditional ruler of Igboho but the Onigboho family would not agree with that. For the past forty years that I have been a traditional ruler, the Alepata has always been attending meetings of traditional rulers of Irepo District Council."

Dealing with the two issues now under consideration, the learned trial Judge after a consideration of all the oral and documentary evidence adduced by the parties had this to say, namely:-

"On the totality of the evidence before me, I find as a fact that the Alepata had been the most senior traditional ruler of Igboho before 1952. The allegation that the Onigboho was superseded by Alepata because Alafin's candidate was not nominated by the plaintiffs' family for the purpose of filing a vacancy in Onigboho of Igboho chieftaincy in 1952 or thereabout is not true and I reject it."

A little later in his judgment, the learned trial Judge made the following findings of fact, that is to say:-

"I find as a fact that Igboho was founded by Alafin Egungunoju and that four Alafins reigned in Igboho before the last one, Alafin Abipa, moved to Oyo Ile. I have found as a fact that the Alepata of Igboho had been the traditional ruler or head chief in Igboho ever before 1952, and I add the finding of fact that he had remained the head chief of Igboho till the present day."

On the question of Exhibits 1, 2, 3, 4 and 5 which the appellants in their brief made a heavy weight of, the learned trial Judge duly gave them a most careful consideration together with Exhibits 6, 6A, 10 and 11 and had this to say namely:-

In 1982, another commission of inquiry on the aforesaid controversy was set up. The 2nd plaintiff told the court that the Government's decision based on the recommendation of the commission was communicated to the plaintiff's family. The relevant letters are Exhibits "6" and "6A". Paragraph 1 of Exhibit "6" reads:-

'I forward herewith the Government's decision on the Aderale Commission of Enquiry which looked into the above matter. The Government had decided that the Onigboho should be recognised as a Traditional Ruler in Igboho and second in rank to the Alepata.'

I now come to certain letters and a memorandum marked Exhibits “1”, “2”, “3”, “4” and “5” respectively. The argument of the learned counsel for the plaintiffs was that they showed that the colonial administration regarded the Onigboho as superior to Alepata in that the Alepata was referred to as “Chief” whereas the Onigboho was referred to as “Village Head” in Exhibit “2”. The learned counsel for the 3rd defendant argued that they did not constitute evidence that the Onigboho was a traditional ruler. I have read the aforesaid documents which related to announcements of the death or appointments of an Onigboho or of an Alepata and I can’t see how they can be regarded as evidence of onigboho being regarded or recognised as the traditional ruler of Igboho or of his superiority to Alepata. There was evidence that the Alepata was designated in the instrument establishing Irepo District Council in 1955 (Exhibit “11”) as one of the three traditional rulers in the area who could be the president of the council. There was also evidence that the Alepata was made the president of the Customary Court Grade “C” in Igboho and that he remained so for several years before another customary court was created in the town. Exhibit “10”. The recognised Chieftaincies (Amendment) Order, 1978. OY SLN 17 of 1978 designated Alepata of Igboho chieftaincy as a recognised chieftaincy whereas the evidence of the representative of the 1st and 2nd defendants was that the Onigboho of Igboho chieftaincy was a minor chieftaincy under the Chiefs Law. The foregoing matters seem to me to be more important, for the present purpose, than Exhibits “1”, “2”, “3”, “4” and “5” because they tended to show that the Alepata of Igboho chieftaincy was more important or well regarded by the appropriate authorities, at least within the last thirty-one years or thereabout starting with the establishment of Irepo District Council in 1955.”

The trial court concluded its judgment as follows:-
 “Having regard to all the circumstance of this case, and the totality of the evidence before the court. The declaration sought in each of the items (1, (2) and (3) of the plaintiffs’ claim set out in the Amended Statement of Claim does not succeed.

With reference to item (4) of the plaintiffs’ claim, as stated in the Amended Statement of Claim, the totality of the evidence before the court and the findings of fact made thereon do not support the granting of the order. The recognition by the Government of Oyo State of the Alepata of Igboho as the head chief of Igboho or the senior traditional ruler in Igboho is still intact and has not in anyway been adversely affected by the judgment

in this case. For that reason, item (4) of the plaintiffs' claim stated in the Amended Statement of Claim fails.

Item (5) of the plaintiffs' claim stated in their statement of claim too has failed because the Alepata of Igboho, according to my finding, is not only a traditional ruler in Igboho, he is also the head chief in Igboho or the senior traditional ruler. No legally valid reason has been established which could warrant his being restrained from holding himself out or parading himself as a traditional ruler or the senior head chief or senior traditional ruler in Igboho.

As all the various items of the plaintiffs' claim have failed their claim is hereby dismissed in its entirety."

The Court of Appeal, per the lead judgment of Ogwuegbu, J.C.A. as he then was, after a careful consideration of the appeal lodged against the decision of the trial Judge found itself at pains to see where the learned trial Judge erred in his decision to justify any interference or the reversal thereof. I have closely considered the judgment of the court below together with all the arguments that have been urged upon this court by the learned counsel for the parties both in their briefs of argument and their oral submissions in court in expatiation thereof. I must confess that I too equally find myself at pains to disagree with the findings of the trial court on the issues under consideration and their affirmation by the Court of Appeal. I must therefore answer the questions posed by the first and second issues in the negative.

There is finally issue number three which questions whether the misdirection on facts and/or errors alleged by the appellants against the trial court occasioned any miscarriage of justice in the particular circumstances of this case. It is the contention of learned counsel for the appellants that the court below ought to have set aside the judgment of the trial court on the ground that the learned trial Judge wrongly made two findings of fact which were at variance with the evidence before the court.

The first of such finding complained of is that the second appellant agreed that there was a case in which the controversy about who should be the senior traditional ruler as between the Onigboho and the Alepata was in issue and that there was no appeal against the judgment which was against the then Onigboho. The judgment in question is Exhibit 16 which in truth is a land matter in which the admission alluded to by the trial court was infact not made. It is the appellant's contention that the trial court therefore misdirected itself on the evidence before it and that this must have disabled it from taking a proper view of the whole evidence before it which must have led to its wrong decision.

I have carefully considered the submissions of learned counsel for the appellants on this point and it must be conceded that the statement complained of was infact made by the trial court. It must also be admitted that the said statement is a clear error on point of fact. Having conceded that the statement complained of was inaccurately stated, the next question must be the effect thereof on the whole decision of the trial court.

It has to be observed that the inaccurate statement was made while the learned trial Judge was merely summarising the evidence of the plaintiffs and their witnesses. Immediately thereafter, the trial court proceeded to summarise the evidence of the defendants and their witnesses. It must also be pointed out that the learned trial Judge had not commenced to evaluate the evidence of the parties and their witnesses at the stage the statement complained of was made. This distinction is of significant importance as the summary of the evidence of parties must be distinguished from the evaluation of the evidence adduced before the court by a trial court. A mere engagement in the summary of evidence or the mere restating of the evidence of parties and their witnesses without an appropriate judicial consideration or analysis thereof such as giving reasons for the acceptance or rejection of the various facts in issue comprised in such evidence does not constitute an evaluation of such evidence before the court. See *Uwegba v. Attorney-General Bendel State* (1986) 1 NWLR (Pt.16) 303. It is a substantial error or mistake in the evaluation of evidence that is more likely to result in a miscarriage of justice than a mere inadvertent error in the summary of the evidence of the parties particularly where the latter class of error is substantially immaterial and does not affect the rest of the decision to warrant any interference by an appellate court of such a judgment.

In the present case the statement complained of did not constitute a serious or material misdirection as it neither affected the issue of proof in the case nor did it go to the root of the decision. It never went beyond the stage where the learned trial Judge was only summarising the evidence of the witness in question. It must however be stressed that after the said statement was made, the learned trial Judge thereafter neither made a finding on the issue nor did he base his judgment thereupon. The issue of estoppel per rem judicatam based on the said statement was neither raised by the parties nor decided by the trial court. It is also crystal clear from his judgment that the learned trial Judge did not in any way rely on or consider the statement complained of in arriving at his decision. I therefore agree with the submissions of learned respondents' counsel that the inaccurate statement complained of neither affected the decision of the trial court nor was the said decision based

Atoyebi v. Gov. of Oyo State (1994) 9 KLR Iguh JSC 23
on it and did not therefore occasion a miscarriage of justice. I am also in agreement with the decision of the court below when it held that the inaccurate statement complained of did not affect the judgment of the trial court.

It seems to me necessary to conclude this aspect of this appeal by stressing that it is not every mistake or error in a judgment that will result in the appeal being allowed. It is only when the error is substantial in that it has occasioned a miscarriage of justice that the appellate court is bound to interfere. See *Onajobi v. Olanipekun* (1985) 4 S.C. (Pt.2) 156 at 163; *Gwanto v. The State* (1983) 1 SCNLR 142 at 152-153; *Oje v. Babalola* (1991) 4 NWLR (Pt.185) 267 at 282; *Ukejianya v. Uchendu* (1950) 13 WACA 45 at 46; *Azuetonma Ike v. Ugboaja* (1993) 6 NWLR (Pt.301) 539 at 556; and *Anyanwu v. Mbara* (1992) 5 NWLR (Pt.242) 386 at 400. I am of the firm view that the misdirection or error complained of occasioned no miscarriage of justice and must accordingly be dismissed as immaterial. 5 10

The second alleged finding of fact complained of by the appellants is the opinion of the trial court to the effect that the appellants had no locus standi to institute the present action. In the first place, a decision on whether or not the appellants had locus standi to institute the action is neither an issue of fact nor a finding of fact. The issue is clearly a matter of law. The matter was considered by the learned trial Judge at the end of which exercise he was of the opinion that the appellants had no locus standi to institute the action. On appeal the court below had the following to say:- 15 20

“The second issue which I decided to treat last is whether the plaintiffs have the locus standi to institute the action. The learned trial Judge out of abundance of caution proceeded to consider this issue which he could easily have ignored having regard to his other findings. However, he was quick to say that his finding that the plaintiffs have no locus standi to institute the action is in addition to or in alternative to any other reason given by him for the determination of the case. 25

However, if this is the only issue for determination in this appeal, I would have dismissed it all the same. No where in the amended statement of claim did the appellants state their interest in the issue in the Contest namely, whether the Igboho or the Alepata should be the Senior Traditional ruler. The cases of Amusa Momoh & Ors. v. Jimoh Olutu (1970) 1 All NLR 117; Adesanya v. The President of Nigeria (1981) 1 All NLR (Pt.1) at 39; Seidu v. A.-G., Lagos State (1986) 2 NWLR (Pt.21) 165; and Chief (Dr.) Irene Thomas & Ors. v. Olufosoye (1986) 2 S.C. 325 (1986) 1 NWLR (Pt.18) 669 among others are on the issue.” 30 35

It is obvious that the trial Judge was only disposed to consider the matter ex abundanti cautela as there were copious other evidence and findings of fact upon which he could have had no other option than to dismiss the

appellants' claims in their entirety. The Court of Appeal so found and I have no reason to disagree with it on the point. But, as I have already observed, it is not every error of law where one is infact established that occasions a miscarriage of justice to warrant the reversal of the judgment of a court below by an appellate court. In my view, whether or not the appellants had locus
5 standi to prosecute this claim is clearly academic and not a matter of any great moment on the particular facts and circumstances of this case. This is in view of copious other findings which were rightly made by the trial court and affirmed by the Court of Appeal. On those other findings, no reasonable tribunal would have any option but to dismiss the appellants' claims at all events.
10 In the circumstance, issue number three under consideration must be answered in the negative.

In conclusion and in the light of the above and the more detailed reasons contained in the lead judgment of the learned brother, Belgore. J.S.C., I too, would dismiss this appeal. The judgment of the trial court as affirmed by
15 the Court of Appeal is hereby further confirmed. I endorse the order as to costs made in the said lead judgment.

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