

SUPREME COURT OF NIGERIA
26TH NOVEMBER 1993 SC. 12/1991
CORAM: A. G. KARIBI-WHYTE, S. M. A. BELGORE, O. OLATAWURA, U. MOHAMMED, S. U. ONU, JJSC.

SUNDAY EGUAMWENSE APPELLANT/DEFENDANT

AND

JAMES I. AMAGHIZEMWEN RESPONDENT/PLAINTIFF

CHIEFTAINCY MATTERS - Where legal position of Chieftaincy title has been already determined by the “prescribed authority” attune of the suit - whether court can grant the declaration sought

CIVIL ACTIONS - Action for declaration - proper circumstances for its invocation

COURTS - Discretionary nature of action for declaration - need for court to be cautious - to ensure that the relief sought can be granted

DECLARATION - Discretionary power of court to make binding declaration - when court should refuse the exercise thereof

JURISDICTION - Chieftaincy dispute - where jurisdiction is vested by statute in the “prescribed authority” who has already determined the dispute - whether the High Court still has jurisdiction

LEGISLATION - Where jurisdiction is vested in the prescribed authority - whether High Court’s general supervisory jurisdiction is ousted

PRACTICE AND PROCEDURE - Chieftaincy Dispute- decision by the prescribed authority -not challenged by appeal or certiorari - but by

declaration which is not appropriate - whether that decision is still valid

FACTS

The Appellant and Respondent were contesting as to who amongst them is entitled to be vested with the traditional Chieftaincy title of the Amaghizemwen of Benin, a hereditary title in Benin-City. The Respondent took his complaint to the Oba of Benin who after hearing the parties ruled in favour of the Appellant Respondent being dissatisfied took out a writ of summons before the High Court seeking declaration that he was the one entitled to be conferred with the said chieftaincy title and that the conferment of the title on the Appellant ought to be set aside, and a perpetual injunction restraining the Appellant from parading himself as the Amaghizemwen of Benin. All the claims of the Respondent were granted by the trial High Court. Appellant's appeal to the Court of Appeal was dismissed. On further appeal to the Supreme Court, Appellant raised the singular issue as to whether the High Court had jurisdiction in view of the provisions of the Bendel State Traditional Rulers and Chiefs Law No. 16 of 1979, which gave jurisdiction to the Oba of Benin as the "*prescribed authority*".

HELD (unanimously allowing the appeal, **Mohammed JSC** concurring on a different reason).

1. An action for declaration is a useful and important procedural method for determining a point of law or the construction of a document or the validity of orders or decisions of inferior Courts or Tribunals. But where the relevant statute has given exclusive jurisdiction to another tribunal, the jurisdiction of the court to grant a declaration would appear to be ousted. (P. 10 L32)
2. The power of court to make binding declaration is discretionary and the court will refuse to exercise such jurisdiction to determine an academic or hypothetical question. Hence where the declaration sought is already a decision of a statutory tribunal the court will refuse to exercise its discretionary jurisdiction to grant a declaration. (P. 11 L9)
3. From the provisions of the Traditional Rulers and Chiefs Law No. 16 of 1979, it is clear that the intention of the legislature is to vest the jurisdiction for determining traditional chieftaincy disputes in the prescribed authority, and both the right and the remedy have been provided for under the statute.

The High Courts general supervisory jurisdiction over the prescribed authority as an inferior tribunal is however not affected. (P. 13 L31)

4. In spite of the unlimited nature of the courts' jurisdiction, under S.6(6)(b) of the 1979 Constitution even where it concerned subject matter, the discretionary nature of an action for declaration enjoins the court to be cautious in the exercise of its discretion, so that the relief claimed should be something which the court can grant (P.15L36.)

5. As the Respondent has not challenged the validity of the decision of the "*prescribed authority*", either by appeal to the Executive Council for review, or by certiorari removing it to the High Court to be quashed, it is inappropriate to do so by a declaration. And the decision of the "*prescribed authority*" therefore, remains valid and effective. (P.16L24).

6. The legal position of the status of the chieftaincy title of Amaghizemwen of Benin in respect of which the declaration was being sought having been determined by the "*prescribed authority*" at the time of suit, the High Court went outside its jurisdiction in granting the declaration sought (P.16 L31).

PER MOHAMMED JSC

"All the decided authorities referred to in this appeal, disclose a settled law that unless the jurisdiction is clearly excluded the High Court has power to interfere with the decisions of statutory tribunals. It is also settled law that an aggrieved party can invoke the supervisory jurisdiction of the High Court by way of declaration in seeking for such decisions to be set aside.

In the case in hand the appellant can invoke by way of a declaration, the supervisory jurisdiction of the High Court to correct fundamental errors of law committed by the prescribed authority". (P.32 L37).

REPRESENTATION:

Chief F.R.A. William, SAN, with K.S. Okeaya-Inneh SAN, S.O. Boyo and A.O. Okeaya-Inneh for the Appellant. Respondent absent and unrepresented.

CASES REFERRED TO

1. Olawoyin v. Attorney-General Northern Region of Nigeria (1961) 1 ALL NLR269.
2. Nwankwo v. Nwanko (1992) 4 NWLR (pt. 238) 693, 710
3. Pyx Granite Co. Ltd. vs. Ministry of Housing and Local Government

(1958)1 QB 554

4. Smith v. East Elloe Rural District Council (1956) AC 736 at 769 - 770

5. Governor of Ondo State v. Adewunmi (1988) 3 NWLR (pt.82) 280.

6. Labiyi v. Anretiole (1992) 8 NWLR (pt. 258) 139.

7. Vine v. National Dock Labour Board (1957) A.C. 488

5 8. Gbokoyi v. Minister of Chieftaincy Affairs (1965) NMLR 7.

9. Ridge v. Balowin (1964) AC 4D at 125.

10. Punton v. Ministry of Pensions & National Insurance (1964) 1 WLR 226.

11. Re Barnato (1949) Ch. 258.

12. Ibenewaka v. Ebbuna (1964) 1 WLR. 219.

13. Argosam Finance Co. Ltd. v. Oxby (1964) 1 ALL ER.791

10 14. Bello v. Eweka (1981) 1 SC.101.

15. Healey v. Minister of Health (1955) 1 QB.221.

16. Barclays Bank Ltd v. Central Bank of Nigeria (1976) 6 S.C. 175

17. Barraclough v. Brown (1897) AC at p.622

18. Bronick Motors Ltd. & Anor. v. Wema Bank Ltd. (1983) NSCC 226

15 ALL N.L.R.
19. Swiss Air Transport Co. Ltd. v. African Continental Bank Ltd (1971) 1

20. Ejiofodomi v. Okonkwo (1982) 11 S.C. 74.

21. Anismink v. Foreign Compensation Commission (1969) 2AC 147.

22. Ojo Ajao & Ors. v. Popoola Alao & Ors. (1986) N.S.C.C. Vol. 17 (pt.11) 1327.

23. Madukolu vs. Nkemdilim (1962) ALL NL.R. 584.

20 24. Egbunike & Anor. vs. Muonweoku (1961) N.S.C.C. 40.

25. Bernard v. National Dock Labour Board (1953) 3 QB 18.

26. Queen v. Governor-in-Council W.R. Exparte Laniyan Ojo (1962) ALL N.L.R. 147; (1962) 1 SCNL.R.

27. Adigun & Others v. Attorney-General Oyo State (1987) 1 NWLR 678 AT 694.

25 28. Shaibu Aku v. Usman Anekwo (1991) 8 NWLR (pt.209) 280 at pages 287 - 288.

29. Governor of Ondo State v. Adewunmi (1988) 3 NWLR (pt.82) 280

30. Kalu v. Odili (1992) 5 NWLR (pt.240) 130 at 188.

30 **STATUTES REFERRED TO**

1. Traditional Rulers & Chiefs, Edict of Bendel State No.16 of 1979 ss. 21, 22.

2. Constitution 1979 ss. 6(6)(b), 236(1)

LEAD JUDGMENT BY KARIBI-WHYTE JSC

This appeal questions the exercise by the High Court of original jurisdiction to hear a declaratory action in respect of a matter with which an inferior tribunal has been vested with jurisdiction.

5

The facts of the case

The facts of this appeal are not in dispute. The litigation stems from the dispute as to whether respondent or appellant is the proper person to be vested with the title of the Amaghizemwen of Benin. The Amaghizemwen of Benin is a traditional hereditary title in Benin City. The title was created about 1735 A.D. by Oba Oresoyen of Benin. The first Amaghizemwen is said to have been Emodua. The last Amaghizemwen as claimed by the appellant was Ediae who died in 1935.

The case of the respondent is that Ogbeide was the last Amaghizeni-wen of Benin. He claims that neither Ediae, nor Eguamwense, the grandfather and father respectively of the appellant held the title of Amaghizemwen of Benin. Respondent therefore claims that his father Emovon was the eldest son of Ogbeide. Emovon performed all necessary burial rites of Ogbeide, but died in 1931 before he could be installed the Amaghizemwen of Benin. The title had remained vacant ever since.

Appellant has challenged this claim. He denied the claim of the respondent that respondent is a grand child of Ogbeide. Appellant has contended that since Ogbeide was reputed to have died childless, respondent could not be his grandchild. It was also averred that Emovon, respondent's father was alive when Ediae who died in 1935 was the Amaghizemwen. Ediae held the title from 1918 to 1935.

Respondent dissatisfied with the mediation of the family took his complaint to the Oba of Benin. He wrote several petitions alleging interference and usurpation of his title by the appellant with the active support of some other Benin chiefs who he expected to be impartial. The Oba of Benin first referred the dispute to Chief Inneh, the Ekegbiam of Benin. Respondent was dissatisfied with the effort of Chief Inneh and accordingly protested to the Oba of Benin. The Oba of Benin decided to hear the parties himself, and to decide the dispute. The Oba of Benin after hearing the parties ruled in favour of the appellant. Despite respondent's protests against the decision, the Oba did not alter his ruling.

Respondent still dissatisfied with the decision of the Oba of Benin then took out a writ of summons of the 7th Feb., 1986 in the High Court

seeking a declaration in respect of the same issue which was decided by the Oba of Benin. Both the High Court and the Court of Appeal granted respondent the Declarations and injunction sought. Appellant has now in a further appeal to this court challenged the exercise by the High Court of the jurisdiction to grant a Declaration in respect of the matter over which the Oba of Benin had in the exercise of a statutory jurisdiction already come to a decision. Thus, the appeal before us is not concerned with the rightness or otherwise of the decisions of the court below. Respondent sought by the Declaration the determination of the matters which the Oba of Benin decided. It is as I have already stated whether the High Court has the jurisdiction to make the Declaratory Orders and injunctions.

10

The appeal before this Court

Appellant relied on the three grounds of appeal, alleging an error in law leading to misdirection and miscarriage of justice in the first ground. The second ground alleged want of jurisdiction in the trial court because of the provisions of sections 21, 22(1), 22(2), 22(3) and 22(6) of the Bendel State Traditional Rulers and Chiefs Law No. 16 of 1979. The third grounds of appeal complain of the finding that the Oba of Benin, the D.W.4 did not give evidence of what he knew, but relied on a report made to him.

Since the issue of jurisdiction is involved and if successful will determine the appeal in favour of the appellant, learned counsel to the appellant, properly formulated the issue for determination on the basis of the issue of jurisdiction which is the substance of the second ground of appeal.

The issue so formulated with which learned counsel to the respondent agrees is as follows:-

"Whether the trial court had jurisdiction to entertain and grant the beliefs claimed by the plaintiff in this action."

It is appropriate at this stage to set out the reliefs claimed by the plaintiff in the High Court. They are as follows:-

30

"(a) a declaration that the plaintiff and not the defendant is entitled to be conferred with the chieftaincy title of Amaghizemwen of Benin, it being a hereditary title under Benin Native Law and Custom.

35

(b) a declaration that the conferment of the hereditary title of Amaghizemwen of Benin by Omo N'aba Erediwa, the Oba of Benin, on the defendant on or about the 3rd of July, 1985, in Benin within Benin Judicial Division is contrary to Benin Native Law and Custom of inheritance and therefore ought to be set aside.

5

(c) an order of perpetual injunction restraining the defendant, his heirs, servants and agents from parading himself as the Amaghizemwen of Benin."

I have already stated above that the dispute between the parties was taken to the Oba of Benin by the respondent for settlements. The Oba found in favour of the appellant. The Oba of Benin acted in his capacity as Prescribed Authority with statutory powers for resolving disputes relating to the appointment of certain classes of Chiefs. This Chieftaincy title of Amaghizemwen of Benin comes within the class in respect of which the prescribed authority is vested with jurisdiction to settle disputes.

15

The statutory provisions

It is important to refer to the enabling section 21 of Traditional Rulers and Chiefs Edict No. 16 of 1979 which provides as follows:-

"The Executive Council may appoint in respect of a local government area or part thereof, an authority (in this Edict referred to as the Prescribed Authority) consisting of one person or a committee of two or more persons to exercise the powers conferred under this part in respect of the office of a traditional chief or a honorary chief whose chieftaincy title is associated with a community in that area."

The Oba of Benin is the prescribed authority under the Traditional Rulers and Chief Edict No. 16 of 1979. The function of the prescribed authority is stipulated in section 22(3) of the Edict and provides that,

"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."

The sub-sections of section 22 have made provision for the review of the decision of the prescribed authority. For instance, sub-section 6 of

section 22 provides for a review by the Executive Council of the decision of the "prescribed authority." Thus the Traditional Rulers and Chiefs Edict No. 16 of 1979 which has provided for the prescribed authority, to decide disputes under the Edict, has also provided under the Edict for the channel of correction of the decision. It seems to me however that the jurisdiction for a determination of the dispute *"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....."* has been vested in the prescribed authority, or the Executive Council by section 22(3)

10 The statutory provision compared with the declaratory reliefs claimed.

I have already set out above the declarations sought by the respondent in the High Court. It is quite clear that it is (i) a Declaration that appellant is not entitled to be conferred with the hereditary chieftaincy title of Amaghizemwen of Benin, and (ii) that the conferment of the hereditary Chieftaincy title of Amaghizemwen on the appellant is contrary to Benin Native Law and Custom and ought to be set aside, (iii) A perpetual injunction.

There is no doubt that these reliefs fall squarely within the jurisdiction statutorily vested in the "prescribed authority" by section 22(3). The question appellant has put before us is whether in view of section 22(3), the High Court is entitled to exercise jurisdiction in respect of the declarations sought. The declarations are the same as the subject matters of the jurisdiction vested in the "prescribed authority."

Arguments of Counsel

Learned Counsel to the parties have filed their briefs of argument which they relied upon in their argument before us.

(i) Appellant's Counsel.

Chief F.R.A, Williams, S.A.N. for the appellant has based his argument on the application of general principles of law, and the intention of the legislature as expressed in the provisions of the Traditional Rules and Chiefs Edict No. 16 of 1979. Learned counsel submitted that the vesting power to decide a question of fact or law in a person or authority other than a court of law is a clear indication of the intention of the legislature to vest the jurisdiction to decide such questions to the person or authority other than the courts. This intention is further re-enforced by the provision for the review

or appeal procedures in such statutes. Counsel cited and relied on dicta in *Anisminic v. Foreign Compensation Commission* (1969) 2 AC 147; *Healey v. Minister of Health* (1955) 1 QB 221; *Punton v. Ministry of Pensions and National Insurance* (1964) 1 WLR 226.

Chief Williams, SAN formulated the principle involved and which should govern the issue as follows:-

"Where an authority vested with statutory function (including the power to decide any question of law or fact) exercises that function and he does so in relation to a matter of a kind over which he is authorised to act, then the validity of his action can only be challenged by an appeal or review (where that is available or by invoking the supervisory jurisdiction of the High Court to quash it or set it aside). It cannot be challenged by an action for a declaration."

Learned counsel submitted that the vesting power to decide a question of fact or law in an authority renders such decision of the authority binding on the parties' affected unless and until it is nullified on appeal to the Court or appropriate proceedings in the manner prescribed by the enabling statute. Hence a party affected by the decision cannot treat it as non-existent and therefore bring an action for declaration contrary to the determination of the statutory authority. Counsel relied on dicta in *Smith v. East Elloe Rural District Council* (1956) AC 736 at 769-770; *Ridge v. Baldwin* (1964) AC 40 at p. 125.

(ii) Respondent's Counsel

Mr. Osifo for the respondent relied on the unlimited jurisdiction of the High Court, and the judicial powers of the Courts respectively in sections 236 and 6(6)(b) of the Constitution 1979. It was submitted that the maxim *ubi jus ibi remedium* applied to the case and that it was inappropriate to interpret the provisions of the Traditional Rulers and Chiefs Edict No. 16 of 1979 by reliance on English decisions. Learned counsel argued that the Oba of Benin who is the prescribed authority would seem from his powers to be a judge in his own cause. He submitted that section 22(6)(a) & (b) of the Edict which only provides for an alternative remedy has not taken away the right of an aggrieved person to seek redress in the High Court. The provision has not taken away the jurisdiction of the High Court under section 236(1) of the Constitution 1979.

It was submitted relying on *Olawoyin v. Attorney-General Northern Region of Nigeria* (1961) 2 SCNLR 5; (1961) 1 All NLR 269 and *Nwankwo v. Nwankwo* (1992) 4 NWLR (Pt. 238) 693, 710 that a High Court is precluded

from granting a declaratory relief in the following situations -

(a) where the 1979 Constitution has vested exclusive jurisdiction in such matters in another tribunal

(b) the grant of the declaration would amount to an academic exercise.

5 Mr. Osifo submitted that the jurisdiction of the High Court in this matter cannot be merely supervisory once it is conceded that the finality clause in section 22(4)(a) & (b) of the Traditional Rulers and Chiefs Edict 1979 is null and void. Learned counsel cited several decided cases of this court in support of the submission that express words are required to exclude the exercise of the jurisdiction of the High Court to grant a declaratory relief in such matters -
10 Pyx Granite Co., Ltd v. Ministry of Housing and Local Government (1958) 1 QB 554; Governor of Ondo State v. Adewunmi (1988) 3 NWLR (Pt. 82) 280; Labiyi v. Anretiola (1992) 8 NWLR (Pt. 258) 139 were cited and relied upon.

Chief F.R.A. Williams, SAN in appellant's reply brief pointed out that the Oba, who is the prescribed authority having ruled in favour of the appellant had no power to have gone back on that decision. Learned counsel also replied to
15 the submission that there was jurisdiction under section 236 to grant the declaration. It was pointed out that the emphasis is on the disability of the person seeking to invoke the jurisdiction of the court having lost a claim for redress before the prescribed authority in the exercise of its statutory jurisdiction.

Consideration of the Submissions.

20 I have set out the submissions of the parties. The issue before us can however be put in a very narrow compass. It is whether the High Court can exercise its declaratory jurisdiction in respect of a matter already decided by the prescribed authority in the exercise of a statutory power.

I do not see how the maxim ubi jus ibi remedium relied upon by counsel to the respondent applied to this case. Neither the right nor the remedy is
25 in doubt. It is therefore not a case for formulating a remedy to meet a right where there is no remedy.

The issue may be better understood after a summary exposition of the nature of a declaratory relief. It is accepted that the action for declaration is a useful and important procedural method for ascertaining and determination of a point of law or the construction of a document, and for the determination of
30 the validity of orders or decisions of inferior courts or tribunals - See Vine v. National Dock Labour Board (1957) AC 488, Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government (1960) AC 260. Its nature is very much misunderstood. The action for declaration is used in a great variety of circumstances and is usually accompanied by ancillary reliefs. This procedure has

been very commonly adopted in cases of disputes as to title to land held under customary law. - See Fabunmi v. Agbe (1985) 1 NWLR (Pt. 2) 299. It is also generally used in disputes as to title to chieftaincy. See Gbokoyi v. Minister of Chieftaincy Affairs (1965) NMLR 7. However, where the relevant statute has given exclusive jurisdiction to another tribunal or hierarchy of tribunals, the jurisdiction of the court to grant a declaration would appear to be ousted. -
5 See Punton v. Ministry of Pensions & National Insurance (1964) 1 WLR 226.

The power to make binding declaration is discretionary - See Ibeneweke v. Egbuna (1964) 1 WLR 219. The Court will refuse to exercise such jurisdiction to determine an academic or hypothetical question - See Re Barnaro (1949) Ch. 258. Hence, where the declaration sought is already a decision of a statutory tribunal, the court will decline to exercise its discretionary jurisdiction to grant a declaration. - See Argosam Finance Co. Ltd v. Oxby (1964) 1 All ER 791. A declaratory judgment will be granted where the justice of the case demands it more than any other remedy See Bello v. Eweka (1981) 1 SC 101.

Now, it is important to advert to the fact that respondent accepted that the Oba of Benin, who is the "prescribed authority" had given a decision, and that he issued the writ seeking the declaration because of the refusal of the Oba of Benin to alter his ruling. In the pleadings before the Court, respondent in paragraphs 22, 23, 24, 25, of his statement of claim averred as follows:-
15

"22. Before 3rd July, 1985, when the title of Amaghizemwen of Benin was conferred, on the defendant, the Oba sent for both the plaintiff and the defendant. At the palace they both told their stories to the Oba who promised to give a ruling on the matter at a later date. While the ruling was being awaited, the Oba without delivering the ruling conferred the title on the defendant on 3rd July, 1985."
20

23. On the 28th October, 1985, plaintiff wrote another petition to the Oba protesting against conferment of the title on the defendant. In the petition plaintiff urged the Oba not to confirm the conferment since the defendant was not entitled to it. This letter will be relied upon at the trial of this action. So also will he rely on other letters/petitions subsequent to this.
25

24. Plaintiff was also reliably informed that about the end of October, 1985, the Omo N'Oba allowed the defendant to present himself for the second ceremony of "Imegie" (installation), thereby further consolidating the usurpation of the title of Amaghizemwen by the defendant, on the 24th De
30

ember, 1985, plaintiff wrote another petition to the Oba protesting against the undeserved favour he had shown to the defendant. A copy of this letter shall be founded upon at the trial of this action."

5 25. When the Omo N'Oba will not listen to plaintiffs protests and representations, he was compelled to institute this action 7th February, 1986, a day before the defendant would have gone to the Oba's palace to perform the third and most important ceremony of IKPONWENDOHIA (IGHOGHEGIE) which would have enabled him to take his proper place in the appropriate palace society as a recognised Benin titled Chief."

10

As against the above, the appellant in paragraph 17 of his statement of defence averred as follows:-

15 "17. The defendant admits paragraphs 22 and 23 of the statement of claim only to the extent that the Oba and his Chiefs went into the claims of the plaintiff which were dismissed and on 3rd July, 1985, the Omo N'Oba conferred the title of Amaghizemwen on the defendant."

It is pertinent to refer to the evidence at the trial of the Oba of Benin who is the prescribed authority, and gave evidence for the defendant, now appellant as
20 D.W. 4. I quote his evidence verbatim as in pages 209 line 8 to 210 lines 1- 11.

"DEFENCE WITNESS 4: The Oba of Benin: Affirms, I am the Oba of Benin. I live in the Oba's palace. I am recognised as the 1st class traditional ruler in Nigeria. I am the embodiment and custodian of Benin Native Law and Custom. The Oba of Benin hereditary title is conferred on an entitled person, the
25 title vests. I know the plaintiff and the defendant. I know D.W. 3. I recognised Exhibit 'G2, Exhibit 'G' is petitioned under the name of J.I. Emovon. In one of the petitions the plaintiff asked that the matter be referred to their family and I did. I think D.W. 3 did something about the matter. I also know that the plaintiff said he did not accept what the D.W. 3 did and I also told the D.W.
30 3. As a result of not being satisfied by the plaintiff I called all the parties including the Isienmwenro Group. They were received in one of the halls where complaints are received from the public. Apart from families, the hall is open to all persons and it is public. I am not sure of the date the parties and their group came to me but I know I listened to them. After listening, I came to

35

the conclusion that Emovon was not eligible to the title. This conclusion was put to the parties in the presence of all the people present on that day. After hearing the complaint, I did not adjourn sine die. I said that the findings of those who went into the matter as presented to me, I held that the plaintiff was not entitled to be conferred with the title. I also said that from the available evidence before me, the title has fallen on the defendant's line. I also said that
5 although the defendant's father has not taken the title, there was evidence that his father had functioned in that position. I then decided to keep the title and later to decide what to do with the title. From all available evidence adduced before me, I understand that the last holder of the title was Ediae, I know the D.W. 2, he is the Secretary of the Benin Traditional Council. I see Exhibits "L" and "K". They were written with my authority. After a while I conferred
10 the title to the defendant. In my estimation based on the investigation, I gave the title to the right person."

It is not disputed that the Chieftaincy dispute between the respondent and the appellant was referred to the Oba of Benin, who is the "prescribed authority" in accordance with section 22(3) of the Traditional Rulers and Chief Edicts
15 No. 16 of 1979. The "prescribed authority" also decided the matter as he is entitled by the statute to do. This decision is still valid and subsisting.

The contention of learned counsel to the respondent seems to me to be that the decision of the "prescribed authority" is valid, binding as it is, can be ignored and an action for declaration seeking to achieve the same result pursued.

His main contention is that section 22(6)(a) & (b) did not deprive an aggrieved party of the right to seek redress in the High Court. Section 22(6)(a) & (b) it was contended only provides for an alternative remedy. The court can exercise jurisdiction under section 236 of the Constitution 1979 which vests unlimited jurisdiction in the High Court.

I have already set out the provisions of section 22(3) of the Edict No. 16 of
25 1979. Furthermore, the provision in sub-section (6) of section 22 is clear and unambiguous that the decision of the prescribed authority may be reviewed by the Executive Council on the application of an aggrieved party. Section 22(6)(a)(b) provides as follows:

"(6) The Executive Council may on the application of an aggrieved party:-

(a) review the decision of a prescribed authority made under sub-section (3) of this section and substitute its own decision therefor; or

(b) approve the conferment of a traditional chieftaincy title on a person if such approval was withheld by the prescribed authority contrary to sub-section (5) of this section."

It seems to me clear that the intention of the legislature is to vest the jurisdiction for determining such disputes in the prescribed authority. In this case both the right and the remedy have been provided for under the statute. This does not affect the general supervisory jurisdiction of the prescribed authority as an inferior tribunal, which the High Court can exercise over inferior tribunals. It is accepted as correct principle of law that where a statute creates a special right to which a special remedy is attached, resort cannot be had to any remedy other than that provided for in the statute creating the right. As Lord Watson LJ., expressed it in *Barraclough v. Brown* (1987) AC at p. 622,

"The right and the remedy are given uno flatu and the one cannot be dissociated from the other."

The "prescribed authority" in the instant case in who is vested the jurisdiction to determine disputed chieftaincies is an independent body whose decision is subject to review by the Executive Council. There is no doubt that the "prescribed authority" is under the supervisory jurisdiction of the High Court. The right to a disputed chieftaincy under the Traditional Rulers and Chieftaincy Edict No. 16 of 1979 and the remedy are granted under the Edict.

Chief Williams, SAN has cited to us the English decisions of *Healey v. Minister of Health* (1955) 1 QB 221 and *Plinton v. Ministry of Pensions and National Insurance* (1964) 1 WLR 226. I think the principles applied in these cases are applicable to the instant case.

In *Healey's* case the question was whether plaintiff, who was the assistant to a charge-hand in a shoemaker's shop where patients in a Mental Hospital participated in shoe making as part of their therapy, is also a Mental Health Officer, within the meaning of the National Health Service (Superannuation) Regulations 1950. The Regulations by regulation 60, provided that the question is to be determined by the Minister. The Minister decided against the plaintiff. The plaintiff sued the Minister for a declaration that he (the plaintiff) was, and at all material times had been a Mental Health Officer within the meaning of the Regulations.

The Court of Appeal rejected the contention. The grounds on which the

decision was based was summed up in the judgment of Lord Denning. It is that granting the declaration would involve rehearing the case afresh. That is, the Court will have to rehear the very matter which the Minister had decided. He then went on to point out that

".....If the Court were to embark on a rehearing of this sort there is no telling where it would stop. Every person who was disappointed with a Minister's decision could bring an action for a rehearing. That would be going much too far."

Lord Denning then went on to accentuate the absurdity and inconvenience of granting the declaration. He said:

"...And suppose that the Court did rehear the matter and decide in Mr. Healey's favour, and grant the declaration which he asks, what would happen to the Minister's decision? So far as I can see, it would still stand unless the Minister chose of his own free will to revoke it. There would then be two inconsistent findings, one by the Minister and the other by the court. That would be a most undesirable state of affairs. In my opinion, if the court were to entertain this declaration it would be going outside its province altogether. It would be exercising a jurisdiction to 'hear and determine' which does not belong to it but to the Minister."

In *Punton v. Ministry of Pensions & National Insurance* (1964) 1 All ER 448, Sellers LJ, was dealing with an identical factual situation. He considered *Healey's* case, and said; at p. 455.

"Apart from certiorari there is more important, no way of substituting an effective award on which the claims could be paid. It would be out of harmony with all authority to have two contrary-decisions between the same parties on the same issues obtained by different procedures, as it were, on parallel courses which never met or could meet and where the effective decision would remain with the inferior tribunal and not that of the High Court. I conceive that to be the case here, and it seems to me to lead to a conclusion against the jurisdiction of the High Court in this particular matter."

Mr. Osifo has relied on the unlimited jurisdiction vested in the High Court by sections 6(6)(b) and 236 of the Constitution 1979 to argue that the High Court had the jurisdiction to grant a declaration in respect of a subject matter within the jurisdiction of another but inferior tribunal.

It is not disputed that section 6(6)(b) prescribed the subject matter of judicial powers of the courts under the Constitution. It includes jurisdiction in respect of disputes between persons, between states, and between persons and a state or the Federal government. The unlimited nature of the jurisdiction even where it concerned subject matter, the discretionary nature of an action for declaration enjoins the court to be cautious in the exercise of its discretion. The relief claimed should be something which the Court can grant.

The Court of Appeal had in *Fawehinmi v. A-G* (No. 1) (1989) 3 (Pt. 112) NWLR at p. 707 suggested that the powers of the High Court to make prerog-

ative orders, declarations and injunctions "was given a new lease of life under the 1979 Constitution" by the combined effect of the unlimited jurisdiction of a State High Court under section 236 and section 6(6)(b) which vested judicial powers of the Constitution to extend to all matters between persons or between government or authority and any person in Nigeria and to all actions and proceeding relating thereto, for the determination of the civil rights and obligations of that person.

The Court of Appeal has stated the position too widely. The nature and effect of an order for certiorari is clearly different from a declaration. An order for certiorari corrects errors of inferior tribunals and quashes erroneous decisions, declaration as to right already determined by the inferior tribunal does not correct the errors, if any, of the tribunal but leaves it as it is. It declares what the court regards as the true legal position. The effect is that both any wrong decision of the inferior court, and the declaration remain. This was the situation which Denning L.J pointed out in *Healey v. Minister of Health* (supra), when he said that:

15 *"...there would then be two inconsistent findings, one by the Minister and the other by the Court. That would be a most undesirable state of affairs."*

It is indeed described as a legal curiosity. The effect of the decisions of the courts below which granted the declaration sought is to create the undesirable situation stated above. Respondent has not challenged the validity of the decision of the "prescribed authority" either by appeal to the Executive Council for review, or by certiorari removing it to the High Court to be quashed. It is inappropriate to do so by a declaration. The decision of the "prescribed authority" therefore remains valid and effective.

In the circumstance the High Court should have in the exercise of its jurisdiction in the declaratory relief borne in mind the fact that there was a valid and subsisting decision of an inferior tribunal. The High Court would therefore be exercising its discretion to grant a declaration in respect of a legal situation which is already determined. The legal position of the status of the Chieftaincy title of Amaghizemwen of Benin in respect of which the declaration was being sought has at the time of the suit been determined by the "prescribed authority". The High Court went outside its jurisdiction in granting the declaration sought.

30 The appeal succeeds and it is hereby allowed. The decision of the Court of Appeal dated 7th July, 1989 affirming the judgment of the High Court dated 9/7/87 which granted the relief claimed in the declaratory action is hereby set aside.

Appellant is entitled to the costs of this appeal assessed at N450 in the Court

below, N1,000 in the High Court, and N1,000 in this Court.

BELGORE JSC

Where a statute prescribes a legal line of action for determination of an issue be that issue an administrative matter, chieftaincy matter or a matter of taxation, the aggrieved party must exhaust all the remedies in that law before going to Court. The provisions of section 21 and S.22(1) - (6) of Traditional Rulers and Chiefs Edict (No. 16) 1979 (Bendel State) are clear as to steps to take. The plaintiff seemed to have jumped the stile as he avoided all avenues that availed him and went to the High Court. I am of the view that he did a wrong thing indeed. This Court is not asked nor were the lower Courts fully adverted to S.22(4)(a) and (b) (supra) and I shall not pronounce per incuriam on that subsection; but suffice to say here that provisions of S.22(5) and (6) have amply provided for redress which the plaintiff failed to seize advantage of. The provisions of S.236 of 1979 Constitution is not an open gate for all High Courts to assume jurisdiction in all subjects. All the local remedies in the statute on every subject must be exhausted before embarking on actual litigation in Court.

In instant case the clear provisions of 8.22(3) that says

"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".

25 have amply availed the plaintiff the opportunity to carry his grievance to the appropriate fora, this he failed to do. With the provisions of S.21(5)(supra) that provide inter alia that *"the prescribed authority shall not withhold approval....."* and with clear provisions of S. 21(6) and (7), the plaintiff/respondent has jumped the gun by going to the High Court for a declaration. Despite S.235 of the 1979 Constitution the legal procedural steps must be utilized fully before jurisdiction can vest.

For the foregoing reasons and the reasons given by my learned brother Karibi-Whyte, J.S.C., I allow this appeal and set aside the decision of Court of Appeal which affirmed the judgment of trial High Court. In its stead I

enter a verdict of strike out. I abide by the order for costs as in the judgment of Karibi-Whyte, J.S.C.

5

OLATAWURA JSC

Although the issue raised in this appeal concerns the jurisdiction of the High Court of Bendel State to entertain the action, it will no doubt be necessary to refer to the claims before the trial court, and where pertinent the findings and conclusion reached in either the trial court or the Court of Appeal.

10 Suffice it to say that at no time was the issue of jurisdiction canvassed before the trial court and the lower court that can be taken up in this Court, or before the lower court at any stage of the proceedings; Barclays Bank Ltd v. Central Bank of Nigeria (1976) 6 S.C. 175; Bronik Motors Ltd & Anor v. WEMA Bank Ltd (1983) 1 SCNLR 296; (1983) NSCC 226; Ejiofodomi v. Okonkwo (1982) 11 S.C. 74; Swiss Air Transport Co. Ltd v. African Continental Bank Ltd (1971) 1 All NLR 37. The plaintiff in his amended Statement of Claim claimed as follows:

"(a) a declaration that the plaintiff and not the defendant is entitled to the chieftaincy title of Amaghizemwen of Benin, it being a hereditary title in Benin Kingdom

20

(b) a declaration that the conferment of the hereditary chieftaincy title of Amaghizemwen of Benin on the defendant by the Oba of Benin Omo N'Oba Erediauwa on 3rd July 1985 in Benin City within Benin Judicial Division is irregular and therefore ought to be set aside.

25 *(c) an order of perpetual injunction restraining the defendant from parading himself as holder of the hereditary chieftaincy title of Amaghizemwen of Benin and from proceeding to the Oba's palace, Benin City, for any ceremony connected therewith."*

The simple question is: who out of the plaintiff and defendant is entitled to the chieftaincy title of Amaghizemwen of Benin which is a hereditary title under Benin Native Law and Custom? The title devolves on the first son of the last title holder, consequently that traditional title is permanently vested in the family. For the first son to qualify for the title, he must have performed all the final traditional rites and ceremonies of his late father. Thereafter the

35

title will vest in the first son. The plaintiff averred in his Amended Statement of Claim that being the first son of his father, he performed the final burial ceremonies of his late father in 1988, including the Ukomwen ceremony which qualified him to take the hereditary title of Amaghizemwen of Benin. It was the case of the plaintiff that the defendant whose father and grandfather were never conferred with the title in dispute was conferred with the title on 5 3rd July, 1985 by the Oba of Benin despite protests by way of petition from the plaintiff. The interlocutory injunction granted by the Court against the defendant has prevented the defendant from performing the last stage of the ceremonies, hence he could not be addressed or called a chief.

The defendant in his own Amended Statement of Defence denied that the plaintiff has any claim to the title in dispute because he is not of the same family with his family. The plaintiff's father Emovon has no blood relation with Ogbeide or the Amaghizemwen family. The defendant further averred that on the death of Ogbeide who was childless, his brother Ediae became the Amaghizemwen. Ediae reigned between 1918 and 1935 and he was never challenged by Emovon. He regarded the plaintiff's father as a servant of Ogbeide and that in accordance with the custom and practice, servants answer the names of their overlords. The defendant also claimed to have buried his father in accordance with the Native Law and Custom. The defendant averred that his own father Eguamwense was sick and therefore could not take the title in his life-time, but that his grandfather, Ediae took the title and that there was no Amaghizemwen between his grandfather and himself. 20

It is better to give a resume of the evidence of the Oba of Benin who was an important witness in the case more so because of the only issue raised in this appeal. He is the custodian of Benin Native Law and Custom. He gave a vivid account with confidence and authority of how he made enquiries concerning the contestants. He is the prescribed authority. The Oba came to the conclusion that, the plaintiff who claimed through Emovon said "that Emovon was not eligible to the title", and that from the evidence placed before him, the defendant's line was entitled to the chieftaincy. Witnesses were called, and after a meticulous review of the evidence and admirable consideration of the authorities, the learned trial Judge gave judgment in favour of the plaintiff as

follows:

30

"1. That the plaintiff and not the defendant is entitled to the chieftaincy title of Amaghizemwen of Benin;

2. That the conferment of the title of Amaghizemwen of Benin on the defen-

dant is irregular according to the Bini Native Law and Custom of inheritance of hereditary title and is accordingly set aside.

3. The defendant is hereby restrained perpetually from parading himself as holder of the title of Amaghizemwen of Benin."

5 The defendant appealed against the judgment to the Court of Appeal Benin Division. The appeal was dismissed. Consequently, the defendant has now appealed to this Court. The only relevant ground in view of the issue raised reads as follows:

10 *"2. By reason of the provisions of sections 21, 22(1), 22(2), 22(3), and 22(6) of the Bendel State Traditional Ruler; and Chiefs Law, 1979, relating to the conferment and approval of Traditional Chieftaincy Titles and by virtue of B.S.L.N 44 of 1979, by which the Oba of Benin (D.W.4) in the instant case as prescribed authority determined the dispute between the parties herein, the trial court lacked jurisdiction to hear this case; and the learned Justices*
 15 *of the Court of Appeal erred in law in failing to observe in the course of the hearing that the trial court had no jurisdiction to hear and determine this suit which gave rise to this appeal.*

PARTICULARS

20 *(i) In law, the Oba of Benin (D.W. 4) in this case is by virtue of B.S.L.N. 44 of 1979, the 'prescribed authority of Oredo, Orhionmwon and Ovia Local Government Areas of Bendel State under section 21 of the Traditional Rulers and Chiefs Law, 1979, in respect of the traditional chieftaincy titles in these areas.*

25 *(ii) The Oba of Benin (D.W. 4) as shown on the record determined the dispute in favour of the appellant herein.*

(iii) The Oba of Benin (D.W.4) having determined the dispute by virtue of section 22(3) of the Traditional Rulers and Chiefs Law, 1979, any aggrieved party is by section 22(6)(a) of the same law required to apply to the State
 30 *Executive Council for a review of the decision.*

(iv) The respondent herein being aggrieved having failed to exhaust the remedy provided by section 22(6)(a) of the Traditional Rulers and Chiefs Law, 1979, to enable any enquiries to be held under section 27 of the Traditional Rulers and Chiefs Law, 1979, as provided by section 22(7) of the same law

before instituting these proceedings, the trial Court lacked jurisdiction in hearing and determining the proceedings which gave rise to this appeal."

Briefs were filed. The defendant filed a reply brief. The only issue for determination as set out in both briefs is:

"Whether the trial court had jurisdiction to entertain and grant the reliefs claimed by the plaintiff in this action."

I pointed out earlier that the issue of jurisdiction is very fundamental and can be raised at any stage of the proceedings even on appeal for the first time. It is only in this Court that the issue of jurisdiction was raised for the first time. 10 The absence or lack of jurisdiction is based on a challenge of the exercise of a statutory function. In this appeal sections 21 and 22 of the Traditional Rulers and Chiefs Edict No. 16 of 1979 have been challenged. I will therefore reproduce these sections.

"21. The Executive Council may appoint in respect of a local government 15 *area or part thereof, an authority (in this Edict referred to as 'the prescribed authority') consisting of one person or a committee of two or more persons to exercise the powers conferred under this part in respect of the office of a traditional chief or an honorary chief whose chieftaincy title is associated with a community in that area.*

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 25 *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 30 *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 a traditional chieftaincy title on a person; or

(b) determining a dispute in accordance with sub-section (3) of this section.

shall not be questioned in any court.

10 *(5) The prescribed authority shall not withhold approval of the conferment of a traditional chieftaincy title on a person if such conferment is made in accordance with the customary law regulating the conferment of the chieftaincy title.*

15 *(6) The Executive Council may, on the application of an aggrieved party:-*

(a) review the decision of a prescribed authority made under sub-section (3) of this section and substitute its own decision therefore; or

20 *(b) approve the conferment of a traditional chieftaincy title on a person if such approval was withheld by the prescribed authority contrary to sub-section (5) of this section.*

25 *(7) Before exercising the power vested in it by sub-section (6) of this section, the Executive Council may cause such enquiries as appear to it to be necessary or desirable to be held in accordance with section 27 of this Edict."*

In his oral submissions, Chief Williams, SAN, pointed out that the Oba of Benin decided the dispute between the two parties in favour of one of the parties, i.e. the defendant. There was a determination of the issue. Learned Senior Advocate relied on the following cases:

30 1(i) Anisminic v. Foreign Compensation Commission (1969) 2 AC 147.

(ii) Healey v. Minister of Health (1955) 1 QB 221.

(iii) Plinton v. Ministry of Pensions and National Insurance (1964) 1 WLR 228.

He also referred to S.236 of the 1979 Constitution of the Federal Republic of Nigeria relied upon by the plaintiff and pointed out that S.22(6) of the Edict of 1979 of the defunct Bendel State of Nigeria gives the plaintiff the right to go to the Executive Council of the State. 5

The plaintiff was neither present nor represented at the hearing and we take the brief filed on his behalf by his learned counsel Mr. Osifo as having been argued by virtue of the provision of Order 6 rule 6 Supreme Court Rules.

In the brief filed on behalf of the plaintiff, Mr. Osifo, the learned counsel for the plaintiff submitted that by the combined effect of S. 236(1) and S. 6(6)(b) of the 1979 Constitution, the High Court has jurisdiction to try the case. As at the time the plaintiff went to court, the issue had gone beyond the determination of the prescribed authority as the title of Amaghizemwen had been conferred by the Oba of Benin on the appellant. It was the contention of Mr. Osifo that the cases relied upon by Chief Williams, SAN are of no assistance because the parliament specifically reserved the matters covered by these cases for the tribunals. He further submitted that section 22(6)(a) and (b) of Edict No. 16 of 1979 provides "alternative remedy to an aggrieved party" and that it has not taken away the power of the High Court to grant declaratory relief under its unlimited jurisdiction as provided under S. 236(1) of the 1979 Constitution. Learned counsel mentioned two exceptions where declaratory reliefs cannot be granted by the High Court: where the 1979 Constitution has given exclusive jurisdiction to a tribunal or where the declaration sought would amount to an academic exercise and cited the following cases: 10 15 20

Olawoyin v. Attorney-General Northern Region of Nigeria (1961) 2 SCNLR 5; (1961) 1 All NLR 269.

Nwankwo v. Nwankwo (1992) 4 NWLR (Pt. 238) 693/710.

It is too late now to argue that anything done by a court without jurisdiction amounts to an exercise in futility. It is a nullity: Ojo Ajao & Ors v. Popoola Alao & Ors (1986) 5 NWLR (Pt.45) 802; (1961) NSCC Vol. 17 (Pt. 11) 1327. It is true that the conditions laid down in Madukolu & Ors v. Nkemdilim (1962) 2 SCNLR 341; (1962) All NLR 548 must be fulfilled before there is a competent action and this has not been disputed by the plaintiff; the plaintiff is of the firm view that the remedy by way of declaratory action is an alternative action. 25 30

I now examine the provision of the Edict relied upon by Chief William, SAN, by the provision of section 22(6) of Traditional Rulers and Chiefs Edict 1979 (hereinafter referred to as the 1979 Edict) it appears to me that the machinery set down by the Edict has not been exhausted. There is no doubt that as a result of the decision of the Oba of Benin, who is the prescribed authority, for

that chieftaincy, a dispute has arisen. This was clearly acknowledged in the judgment of the Court of Appeal Per Ogundare, J.C.A. (as he then was) with which Musdapher and Ayo Salami, J.J.C.A. agreed. He said:

"As a result of the conflicting claims that arose between the plaintiff and the defendant, the dispute was referred to the Oba Erediauwa of Benin who after conducting his own inquiry, found in favour of the defendant and appointed and installed him as the Amaghizemwen. The plaintiff being 'displeased with the result of the Oba's decisions instituted the action leading to this appeal."

Since the plaintiff was not satisfied with that decision one is bound to ask: What is the next step? Or is there any provision provided in the 1979 Edict for any aggrieved party? This is provided by S.22(6) of the 1979 Edict. It appears to me that where the legislature clearly stipulates the procedure to be followed when an act or decision of an authority is challenged, the party aggrieved can only challenge the decision successfully in the manner laid down by the legislature. The decision of the Oba of Benin about the person entitled to be the Amaghizemwen of Benin arose from the competing claims of the parties. It was for this reason that S.22(6)(a) of the 1979 Edict was enacted. As at the time the action that led to this appeal was filed that decision was not challenged and it is in law a determination of the dispute between the parties.

Declaratory action is a discretionary remedy which can be granted by the Courts but subject to certain conditions: *Egbunike & Anor v. Munweoku* (1961) 1 SCNLR 97; (1961) NSCC 40. The discretion is to be exercised "sparingly", "with a proper sense of responsibility" and judicially. Its use covers a variety of actions particularly in land disputes. It is the argument of Chief Williams, SAN that it cannot be used where, as in this case, there has been a determination, but that to resort to it in view of the provision of S.22(6) of the 1979 Act will amount to giving two decisions in respect of the same case more so where the provision laid down in the Edict has not been exhausted. He relied on *Healey v. Minister of Health* (1955) 1 QB 221. To appreciate that where a machinery has been laid down as to the way and manner a redress should be sought, that a declaratory action brought under the wide powers covered by section 236(1) of the 1979 Constitution will be of no avail, I will as quote in extenso the reports and conclusions of the Lord Justices of the Court of Appeal in that case, Lord Denning summarised the facts as follows".

"At Bridgend in Glamorganshire there is a mental hospital which is managed by a hospital management committee under the National Health

Act, 1946. The patients at the hospital do shoemaking and shoe-repairing because it helps to cure them. It is occupational therapy forming part of the treatment. The shoemaker's shop where they work is under the control of a charge hand, and he is assisted by Mr. Thomas John Healey, who is the plaintiff in this action.

A question has arisen whether Mr. Healey is a 'mental health officer' within the meaning of the National Health Service (Superannuation) Regulations 1950. It is an important matter for him, because if he is a mental health officer, he is entitled to more favourable terms of superannuation than he would otherwise be. Under the definition section in those regulations he is a 'mental health officer' if he devotes 'the whole or substantially the whole of his time to the treatment or care of' the patients. The question is whether Mr. Healey comes within that definition.

The regulations provide that that question is to be determined by the Minister. Regulation 60 says that 'Any question arising under these regulations as to the rights or liabilities of an officer or retired officer... or of a person claiming to be treated as such shall be determined by the Minister'. In accordance with that regulation the question was referred to the Minister, who determined it against Mr. Healey."

Lord Denning did not think the Court has the right to embark on a relief not sought. In this appeal it was not a claim that the determination by the prescribed authority was wrong, but a declaration was sought to hear the case afresh, but the court declined to do so. *Morris, LJ*, in the same case said:

"In the present case it is to be noted that there is no suggestion that the Minister lacked jurisdiction. It is not said that there was any irregularity of proceeding. It is not said that there was any failure to make due inquiry or that the Minister acted contrary to the principles of natural justice.

There is no pleading that the determination of the Minister was wrong in law; whether if there had been any such pleading of error of law it could have assisted the plaintiff is not a matter which can be disposed of on the hearing of this defined preliminary issue. By his pleading the plaintiff is inviting the court to assume an appellate jurisdiction which it has not been given and which the court cannot create."

I will reject the submission in the plaintiff's brief to the extent that section 22(6)(a) and (b) of the 1976 Edict only provides an alternative remedy to an aggrieved party. We should not read into that section meaning which cannot

be described as the intention of the legislature. The appeal to the Executive for a review of the decision of the prescribed authority negates that submission.

The decision of the Oba of Benin in my view is still subsisting and has not been set aside. The supervisory role of the Executive has not been sought, it will, in my view, be wrong to invoke S. 236(1) of the 1979 Constitution.

5 I will also rely on the case cited by Chief Williams, SAN as an effective answer to the wide powers relied upon through the combined effect of Ss.6(6) (b) and 236(1) of the Constitution: See *Punton & Anor v. Ministry of Pensions and National Insurance (1964) 1 WLR 226*.

10 It is for these reasons and the fuller reasons in the lead judgment of my learned brother Karibi-Whyte, J.S.C. that I will also allow the appeal, set aside the judgments of the High Court and the Court of Appeal decided on 9th July, 1987 and 7th July 1989 respectively. I abide by the order for costs in the lead judgment.

15 **MOHAMMED JSC**

The single issue which both parties agree to be the sole question for the determination of this appeal is as follows:-

"Whether the trial court had jurisdiction to entertain and grant the reliefs claimed by the plaintiff in this action."

20 At the conclusion of his submission, in the appellant's brief, Chief Williams, learned Senior Advocate, urged this court to strike out the plaintiff's action in the High Court for want of jurisdiction. Mr. Osifo, learned counsel for the respondent, disagreed and argued that the High Court had jurisdiction to entertain the reliefs Claimed by the plaintiff for the following reasons:-

25 *"(1) The jurisdiction conferred on the High Court by S.236(1) of the 1979 Constitution of the Federal Republic of Nigeria is general in nature and is subject to limitations imposed by the Constitution itself. Section 236(1) should be read together with S.6(6)(b) of the same Constitution.*

30 *(2) As at the time the respondent went to court as plaintiff the issue had gone beyond mere DETERMINATION by the Oba of Benin as the prescribed authority. The title of Amaghizemwen of Benin had been conferred by the Oba on the appellant. The title was later confirmed by the Oba while respondent was still protesting."*

The issue to be decided in this appeal is whether the High Court had

jurisdiction to entertain and grant the reliefs claimed in the suit filed by the respondent in Benin High Court. I do not intend to repeat the facts of this case which have been adequately covered by my learned brother, Karibi-Whyte, J.S.C., in the lead judgment. I however want to reproduce the claim filed by the respondent for ease of reference to my opinion in this judgment. It is as follows:- 5

"(a) A declaration that the plaintiff and not the defendant is entitled to be conferred with the chieftaincy title of Amaghizemwen of Benin, it being a hereditary title under Benin Native Law and Custom.

(b) A declaration that the conferment of the hereditary title of Amaghizemwen of Benin by Omo N'Oba Erediauwa, the Oba of Benin, on the defendant 10 on or about the 3rd of July, 1985 in Benin within Benin Judicial Division is contrary to Benin native law and custom of inheritance and therefore ought to be set aside.

(c) An order of perpetual injunction restraining the defendant, his heirs, servants and agents from parading himself as the Amaghizemwen of Benin." 15

Chief Williams submitted, in support of a proposition in law which he raised, that where the legislature has appointed a tribunal or other authority to determine a question and such question has been referred to such authority or tribunal its decision will be binding on the parties affected by it. It is unnecessary for the court to consider the effect of section 236 of the Constitution on this proposition. Chief William, went further and submitted that whatever 20 might be the meaning or effect of that section it cannot enable the complainant to avail himself of redress through the machinery of a tribunal established by law and, thereafter, proceed to invoke the jurisdiction of the High Court under section 236. Chief Williams cited relevant English authorities to buttress his argument. Two of those authorities are (i) *Healey v. Minister of Health (1955) 1 Q.B. 221*; and *Punton v. Ministry of Pensions and National Insurance (1964) 1 W.L.R. 226*. 25

The ratio decidedi in those two cases, *Healey* and *Punton*, were given in full in the lead judgment of my able and learned brother Karibi-Whyte, J.S.C. I shall only refer to what is relevant to my opinion in those judgments. In *Healey's* case Lord Denning had the following to say:-

"The relief which is sought does not include a declaration that the Minister's determination was invalid. It seeks only a declaration that the plaintiff is 30 and was a mental health officer. It is obvious that if the court were to consider granting this declaration it would have to hear the case afresh. Mr. Healey would have to give evidence showing how he spent his time, and the Minister

would have to be allowed to give evidence in answer to it. In short, the court would have to rehear the very matter which the Minister has decided. If the Court were to embark on a rehearing of this sort there is no telling where it would stop. Every person who was disappointed with a minister's decision could bring an action for a rehearing. That would be going much too far."

5 In Punton's case, Sellers L.J. opined that it would be out of harmony with all authority to have two contrary decisions between the same parties, on the same issues, obtained by different procedures as it were, on parallel courses which never met or could meet and where the effective decision would remain with the inferior tribunal and not that of the High Court.

Chief Williams further explained that one major consequence of this fact
10 is that although such a decision (of the inferior tribunal) can be nullified by judicial review or appeal to a court of higher authority (where that is available) it is not permissible for a party affected by the decision to treat the decision as non-existent and bring an action for a declaration contrary to the determination of the statutory authority.

Mr. Osifo, on his part, argued that the Oba of Benin confers chieftaincy
15 titles in Benin, he approves same and also determines any issue that may arise. He is therefore a judge in his own case. Appellant cannot take shelter under the above provisions of the Edict and then contend that plaintiff cannot seek declaratory reliefs to the High Court. Counsel submitted also that the High Court, through the provisions of S.236(1) of the Constitution, has unlimited jurisdiction and the only situations when it cannot grant a declaratory relief
20 are:-

"(a) The 1979 Constitution has already given exclusive jurisdiction in respect of such matters to another tribunal; and

(b) The grant of such declarations would amount to an academic exercise.

25 See (1) *Olawoyin v. Attorney-General Northern Region of Nigeria (1961) 1 SCNLR 5; (1961) 1 All NLR 269;*

Nwankwo v. Nwankwo (1992) 4 NWLR (pt.238) 693 at 710."

I have examined the above submissions and the English authorities relevant
30 to the issue in this appeal. In addition to the cases cited by Chief Williams, I have referred to other English authorities. I have two cases in mind which were coincidentally decisions of Lord Denning which he reported in his book "The Discipline of Law". In dealing with the chapter on "Declarations" Lord Denning said that thirty years ago it was assumed by many that courts could

not interfere with tribunals except by certiorari. But in 1953 that belief was shown to be wrong. Recourse was had to the new method of declaration and injunction or rather it was refurbishing an existing method. Lord Denning then referred to the case of *Barnard v. National Dock Labour Board (1953) 2 Q.B. 18* and explained the facts in the following narrative:-

"A docker had been suspended from work by a Tribunal without pay. He 5 alleged that the suspension was made without jurisdiction and he wanted to be reinstated and have his pay back. It was said that the courts had no power to interfere, Mr. Paul argued it. He was always a most formidable opponent. This is how I came to answer it. I will set it out at large because our decision was afterwards approved and applied by the House of Lords in *Vine v. National Dock Labour Board* .

10 Finally, Mr. Paul said (and it was his principal argument) that, these courts have no right to interfere with the decisions of statutory tribunals except by the historical method of certiorari. He drew an alarming picture of what might happen if once the court intervened by way of declaration and injunction. It meant, he said, that anyone who was dissatisfied with the decision of a tribunal could start an action in the courts for a declaration that it was bad, and thus, by a side-wind, one could get an appeal to the courts in
15 cases where Parliament intended that there should be none. I think that there is much force in Mr. Paul's contention: so much so that I am sure that in the vast majority of cases the courts will not seek to interfere with the decisions of statutory tribunals; but that there is power to do so, not only by certiorari, but also by way of declaration, I do not doubt. I know of no limit to the power
20 of the court to grant a declaration except such limit as it may in its discretion impose upon itself, and the court should not, I think, tie its hands in this matter of statutory tribunals. It is axiomatic that when a statutory tribunal sits to administer justice, it must act in accordance with the law. Parliament clearly so intended. If the tribunal does not observe the law, what is to be done? The remedy by certiorari is hedged round by limitations and may not be available. 25 Why then should not the court intervene by declaration and injunction? If it cannot so intervene, it would mean that the tribunal could disregard the law, which is a thing no one can do in this country."

In the *Pyx Granite Co. Ltd. v. Ministry of Housing & Local Government (1958) 1 Q.B. 554*, a statute made provision for a determination by Minister which was expressly made "final". The Pyx Granite Company did not go to
30 the Minister. Instead they sought a declaration in the High Court. The Minister said that the court had no jurisdiction to entertain a claim for a declaration. Lord Denning in his judgment in that case held that the High Court had jurisdiction and said, "I take it to be settled law that the jurisdiction of the High

Court to grant a declaration is not to be taken away except by clear words". In the House of Lords, Lord Simonds agreed with Lord Denning and added 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.

In *Punton v. Ministry of Pensions* (supra) which Chief Williams referred to, Lord Denning held that a High Court could make a declaration as to whether a tribunal came to a correct determination in point of law. In *Vine v. National Dock Labour Board* (1957) A.C. 488 at 509 it was held that where a statutory body is alleged to have acted contrary to law its decision can be properly questioned in an action for a declaration that the decision is null and void.

I now come back to the case in hand. The relevant part of the Traditional Rulers and Chiefs Edict No. 16 of 1979, is section 22. It provides as follows:-

"(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 a traditional chieftaincy title on a person; or

(b) determine a dispute in accordance with subsection (3) of this section shall not be questioned in any court.

(5) The prescribed authority shall not withhold approval of the conferment of a traditional chieftaincy title on a person if such conferment is made in accordance with the customary law regulating the conferment of the chieftaincy title.

(6) The Executive Council may, on the application of an aggrieved party:

(a) review the decision of a prescribed authority made under subsection (3) of this section and substitute its own decision therefore; or

(b) approve the conferment of a traditional chieftaincy title on a person if such approval was withheld by the prescribed authority contrary to subsection (5) of this section.

(7) Before exercising the power vested in it by subsection (6) of this section, the Executive Council may cause such enquiries as appear to it to be necessary or desirable to be held in accordance with section 27 of this Edict."

Now if one looks at the declarations claimed by the respondent before the High Court, one can see that they are in two parts. In claim (a) the respondent wants the High Court to declare him to be entitled to be conferred with the chieftaincy title of Amaghizemwen of Benin, being a hereditary title under Benin native law and custom. In the second leg of the claim however, the respondent wants the court to declare that the conferment of the hereditary title of Amaghizemwen of Benin by the Oba of Benin on the appellant on 3rd July, 1985 is contrary to Benin native law and custom of inheritance and therefore ought to be set aside. The respondent also claims for an injunction restraining the appellant from parading himself as the Amaghizemwen of Benin.

The trial High Court, in a considered judgment granted all the claims of the respondent and made the declarations as sought in the statement of claim. On appeal to the Court of Appeal, the learned Justices of that court coram Ogun-dare, J.C.A. (as he then was) Musdapher and Salami, J.J.C.A., unanimously dismissed the appeal. On further appeal to this court the appellant filed three grounds of appeal, one of which is a challenge to the jurisdiction of the High Court to hear the claim of the respondent.

From the authorities analysed above, in this judgment, it is crystal clear that the decision which the High Court cannot make, taking into consideration the provisions of S.22 of Traditional Rulers and Chiefs Edict No. 16 of 1979, is a declaration that the respondent is entitled to be conferred with the chieftaincy title of Amaghizemwen of Benin. If the High Court makes such a decision it would amount to having two parallel and inconsistent findings, one by the prescribed authority (The Oba of Benin) and the other by the High Court.

However, in regards to the second leg of the respondent's claim, the High Court was asked to declare that the prescribed authority (Oba of Benin) acted contrary to Benin native law and custom when the title of Amaghizemwen was conferred on the appellant. The respondent, in claim (c) of the suit, prayed for an order of perpetual injunction. These two claims fall within the supervisory

jurisdiction of the High Court over decisions of the prescribed authority. It is my respectful view that the High Court has jurisdiction to determine them. All the decided authorities referred to, in this appeal disclose a settled law that unless the jurisdiction is clearly excluded the High Court has power to interfere with the decisions of statutory tribunals. It is also settled law that an aggrieved party can invoke the supervisory jurisdiction of the High Court by way of declaration to apply for such decisions to be set aside. In *de Smith's Judicial Review of Administrative Action*, Fourth Edition at page 520, while dealing with the power of the High Court to grant reliefs sought by way of a declaration, the learned author reconstructed the ratio decided in the case of *Healey v. Minister at Health* (supra) in the following way:-

- 10 *"If the plaintiff were to ask not for a declaration that the decision was invalid but for a declaration of his legal rights, he would be met with the preliminary objection that the appointed tribunal had already determined his rights and that it was not for the court to arrogate to itself an appellate or quasi-original jurisdiction and make a new determination inconsistent with a binding (though possibly erroneous) determination of the appointed tribunal.*
- 15 *This point would not necessarily be conclusive, but such a declaration would be useless unless the tribunal had power to rescind or vary its original determination or unless the declaration would effectively preclude the tribunal from acting upon that determination or another person from acting upon it. The latter objection would have no less force if the plaintiff were instead to ask merely for a declaration that the decision of the appointed tribunal was*
- 20 *wrong in law.*

The ratio decided in *Healey's* case was that the plaintiff by his pleading, not having asked for a declaration that the Minister's determination was invalid or asserted that the determination of the minister was wrong in law or that the minister lacked jurisdiction, but having invited the court to assume an appellate jurisdiction, which, it had not been given and could not create, the appeal must be dismissed. At one stage, in the argument for Mr. Healey, his counsel, Mr. O'Connor, sought for leave to amend his action and claim a declaration that the minister's decision was void. He had to drop the idea because it was found too late in the proceedings for him to do so.

- It is in view of the above that I now refer to the second leg of the respondent's claim, where the High Court was sought to declare that the Prescribed Authority (the Oba of Benin) acted contrary to Benin native law and custom when the title of Amaghizemwen of Benin was conferred on the appellant and also when a declaration of injunction was prayed for. These two claims fall within the supervisory jurisdiction of the High Court over decisions of the Prescribed Authority. All the decided authorities referred to in this appeal, disclose a settled law that unless the jurisdiction is clearly
- 30

excluded the High Court has power to interfere with the decisions of statutory tribunals. It is also settled law that an aggrieved party can invoke the supervisory jurisdiction of the High Court by way of declaration in seeking for such decisions to be set aside.

In the case in hand the appellant can invoke by way of a declaration, the supervisory jurisdiction of the High Court to correct fundamental errors of law committed by the Prescribed Authority. See also *Anisminic v. Foreign Compensation Commission* (1969) 2 A.C. 147 at 171.

The provision in the Traditional Rulers and Chiefs Edict No.16 for an aggrieved party to apply to the state executive council for a review is an alternative remedy. In *Pyx Granite v. Ministry of Housing* (supra) Lord Simonds held that the alternative remedy does not take away the inalienable right of Her Majesty's subject to seek redress in her courts. In fact the appellant in the case in hand had even suggested that the respondent could invoke the supervisory jurisdiction of the High Court in particulars (b) to ground one of this appeal. The particulars read as follows:-

"(b) Having determined the dispute between the parties to this appeal the plaintiff herein had a legal right either to apply to the executive council pursuant to section 22(b)(a) of the Traditional Rulers and Chiefs Edict, 1979, for a review of the decision or to invoke the supervisory jurisdiction of the High Court to nullify or set aside the decision."

Be that as it may, the court's power to make a declaration, being a discretionary one, must be exercised sparingly, jealously and with the utmost caution. It is important to consider, before granting a declaratory relief, the conduct of the parties or the presence of alternative remedies or other factors which would influence the final decision of the case. In the Privy Council judgment, in *Ikebife Ibeneweka and Ors. v. Peter Egbuna and Anor* (1964) 1 W.L.R. 219 Viscount Radcliffe said:-

"The general theme of judicial observations has been to the effect that declarations are not lightly to be granted. The power should be exercised 'sparingly' with 'great care and jealousy', with extreme caution, with 'the utmost caution'. These are indeed counsels of moderation, even though as Lord Dunedin once observed, such expression affords little guidance for particular cases. Nevertheless, anxious warnings of this character appear to their Lordships to be not so much enunciations of legal principle as administrative cautions issued by eminent and prudent Judges to their, possibly more reckless, successors. After all, it is doubtful if there is more of principle involved than the undoubted truth that the power to grant a declaration should be exercised with a proper sense of responsibility and a full realization that judicial pronouncements ought not to be issued unless there are circumstances that

25

30

call for their making. Beyond that there is no legal restriction on the award of a declaration."

It is with the above legal exposition in mind that I hold that although the remedy by way of declaration is open to the respondent, in this case, before the High Court could grant the second leg of the respondent's claim, it must look at the whole action and determine whether granting the claim would give the respondent the relief he is clamouring for. I have earlier said, in this judgment that the High Court cannot make a parallel and inconsistent decision to that of the Prescribed Authority and declare the respondent the person entitled to be conferred with the chieftaincy title of Amaghizemwen of Benin.

It is in a situation like this that the High Court must consider the relevance of its order before awarding a claim by way of a declaration. Thus even though I hold that the High Court has jurisdiction to declare the decision of the Oba of Benin invalid it would not be proper for it to grant such a relief since it could not exercise an ancillary jurisdiction and declare the respondent the right person entitled to be conferred with the title of Amaghizemwen of Benin. The proper decision which the High Court should have made, in this case, was to exercise its judicial discretion and refuse to grant all the reliefs claimed by the respondent.

It is for these reasons that I allow this appeal and dismiss the claim of the respondent before the High Court. The judgments of Benin High Court and the Court of Appeal, Benin Division, are hereby set aside. I make no order as to costs.

ONU JSC

I had before now read in draft the lead judgment just delivered of my learned brother Karibi-Whyte, J.S.C. I so fully subscribe to the views expressed therein that I adopt the same as mine.

I wish to add by way of emphasis the following:-

In the trial court the reliefs claimed and which were granted to the plaintiff after pleadings were delivered and evidence adduced, were:

"(a) A declaration that the plaintiff and not the defendant is entitled to be conferred with the Chieftaincy title of Amaghizemwen of Benin, it being a hereditary title under Benin Native Law and Custom;

(b) A declaration that the conferment of the hereditary title of

Amaghizemwen of Benin by Omo N'Oba Erediauwa, the Oba of Benin, on the defendant on or about the 3rd of July, 1985 in Benin within Benin Judicial Division is contrary to Benin native law and custom of inheritance and therefore ought to be set aside;

(c) *An order of perpetual injunction restraining the defendant, his heirs, servants and agents from parading himself as the Amaghizemwen of Benin."*

The appeal of the defendant to the Court of Appeal sitting in Benin (hereinafter called the court below) failed. Hence, his (defendant's) further appeal to this court where his sole ground of appeal impugning the decision of the court below is one challenging the trial court's jurisdiction in the first place to entertain, let alone to grant the reliefs sought by the plaintiff (hereinafter referred to as the respondent). The defendant shall henceforth in the rest of this judgment be referred to as the appellant.

The lone issue submitted on behalf of the appellant by learned Senior Advocate, Chief Williams, in consonance with the single ground of appeal asks whether the trial court had jurisdiction to entertain and grant the reliefs claimed by the respondent in this action.

I agree with Chief Williams, S.A.N. that the answer to the issue in the main revolves purely on the statutory provisions made by the legislature and enshrined in the legislation referred to as the Traditional Rulers and Chiefs Edict, 1976 No. 16 of Bendel (now Edo) State of Nigeria which relevantly provides in sections 21 and 22 thus:-

"21. *The Executive Council may appoint in respect of a local government area or part thereof, an authority (in this (Edict) referred to as the "prescribed authority") consisting of one person or committee of two or more persons to exercise the powers conferred under this part in respect of the office of a traditional chief or an honorary chief whose chieftaincy title is associated with a community in that area.*

22. *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."*

The court below having accepted the findings of the trial court that the conflicting claims and counter claims between the appellant and respondent had been submitted to be looked into by the Oba of Benin who in his domain is the acknowledged prescribed authority and who had arrived at a decision adverse to respondent's wishes, the only options left for him (respondent) was either appealing therefrom or seeking an order of certiorari, the latter to which I shall come shortly. Seeking a declaration as he has done in this case, is in my respectful view, not the right thing to do. In the instant case, the respondent might have brought a suit for the issuance of certiorari to bring the order made by the Oba of Benin into the High Court for the purpose of its being quashed, the act complained about being in the nature of a quasi-judicial act or he might as well have gone on appeal to the Executive Council as enacted by the Edict. See S.22(6)(a) and (b) (ibid). See also the case of the Queen v. Governor-in-Council WR. Ex parte Laniyan Ojo (1962) 1 SCNLR 231; (1962) All NLR 147; a chieftaincy case in which it was held by the Federal Supreme Court inter alia that a defect of jurisdiction relates to when the case was embarked upon and not to a miscarriage in the course of it, nor to the correctness of the decision. The court went on to hold:-

"Indeed jurisdiction is so fundamental to every adjudication that absence of it renders the entire proceedings a nullity, no matter how well conducted or decided." See also Madukolu v. Nkemdilim (1962) 2 SCNLR 341; (1962) 1 All NLR 587 at 595.

The trial court in the case in hand, in my view, lacked jurisdiction to have entertained the suit in the first place, such jurisdiction having been ousted by the customary law, being codified or made statutory in the Traditional Rulers and Chiefs Edict, 1979 enacted by the legislature.

It is in this regard that the dicta of Omololu-Thomas, J.C.A. in case No. CA/1/154/84 (another chieftaincy appeal decided on 5th December, 1985 in relation to the Chiefs Law, 1978 Cap. 21, applicable in Oyo State provisions of which are in pari materia with those of the Bendel State Edict (ibid) and quoted with approval by this court in Adigun & Others v. Attorney-General Oyo State (1987) 1 NWLR (Pt 53) 678 at 694, renders itself apposite and relevant to the effect that:-

"It is not the business of the courts to make declarations of customary law relating to the selection of chiefs under that law. The exercise of such functions is not directly related to the general jurisdiction of the courts under section 236 of the Federal Constitution of 1979 so long as the powers

exercised under the law is within its four corners and is exercised in good faith as being a power lawfully conferred on the legislature (Caltona Ltd. v. Commissioner of Works (1943) 1 All E.R. 560 at 564 per Lord Greene, M.R. In the exercise of the court's judicial function under section 236 of the Constitution, orders declaratory of the functions or power under the law can be made for example with a view to determine the validity or otherwise of the existence of a particular custom, in contradistinction from the making of 'Declaration' as a form of sub-legislation under the law."

Compare the case of Shaibu Aku v. Usman Anekwu (1991) 8 NWLR (Pt.209) 280 at pages 287-288, chieftaincy case where in interpreting section 11 of the Chiefs (Appointment and Deposition) Law Cap.20 of Northern Nigeria applicable in Benue State, vis-a-vis section 236 of the 1979 Constitution, the Court of Appeal (per Ndoma-Egba, J.C.A.) held inter alia:-

"Section 11 of the Chiefs (Appointment and Deposition) Law Cap.20 of Northern Nigeria applicable to Benue State, would if it stood alone, deprive the trial court of jurisdiction. It enacted:"

(a)
however, section 236(1) of the Constitution, confers "unlimited jurisdiction" on a State High Court to hear and determine a wide range of civil and criminal matters, including Chieftaincy Cases and supersedes the Chiefs Laws (supra)....."

The Traditional Rulers and Chiefs Edict, 1979 No. 16 of Bendel (now Edo) State having by its sections 21 and 22 (ibid) expressly or by clear provisions excluded the jurisdiction of the courts in the form of declarations in respect of customary law relating to the selection of chiefs, such sub-legislative function must perforce be vested in the prescribed authority and not a function exercisable by the court. See Adigun v. Attorney-General of Oyo State (supra). It is in this wise that I hold that the High Court's jurisdiction in respect of such declaratory reliefs as sought by the respondent in the instant case was wrongly invoked because:-

(a) The legislature has already given exclusive jurisdiction in respect of such matters to another tribunal or tribunals in this case, the Oba of Benin or the Executive Council;

(b) The grant of such declarations as herein sought by the respondent would amount to an academic exercise. See Olawoyin v. Attorney-General of Northern Region of Nigeria (1961) 2 SCNLR 5; (1961) 1 All NLR 269; Nwankwo v. Nwankwo (1992) 4 NWLR (Pt.238) 693 at 710; and Bakare v.

A.C.B. Ltd. (1986) 3 NWLR (Pt. 26) 47.

Hence, while the dictum of Lord Denning in Pxy Granite Co. Ltd. v. Ministry of Housing and Local Government (1958) 1 Q.B. 554 at page 467 to the effect that:-

5 *"I take it to be settled law that the jurisdiction of the High Court to grant a declaration is not to be taken away except by clear words."*
is undoubtedly the law, in the circumstances of this case, what indeed section 22(4)(a) and (b) of the Traditional Rulers and Chiefs Edict, 1979 enacts is peremptory and clear and so not in any way null and void as
10 contended. It is in the light of the above that the cases of Governor of Ondo State v. Adewunmi (1988) 3 NWLR (Pt.82) 280; and Labiyi v. Anretiola (1992) 8 NWLR (Pt.258) 139 ought to be distinguished from the instant case for what they decided. Equally, the ascendancy of the Constitution over all other laws not having been disputed, what my learned brother Karibi-Whyte, J.S.C. said in Kalu v. Gudi (1992) 5 NWLR (Pt.240) 130
15 at page 188 regarding the supremacy of the Constitution and when and when not to follow English court decisions (learned Senior Advocate has relied on several and quoted from them in extenso) founded on English statutes which are in pari materia with our local enactments or principles of common law or equity constituting received laws in Nigeria, in my view, remains apposite.

20 The High Court by virtue of section 22(4)(a) of the Traditional Rulers and Chiefs Edict is merely assigned a supervisory role in the instant case. It therefore lacked jurisdiction to entertain the case herein on appeal by way of declaratory judgment and the court below was in error to have affirmed same.

25 As the respondent did not appeal against the decision of the Oba of Benin to contest whether as prescribed authority he decided the matter rightly or wrongly, his (appellant's) resort to the law court in my opinion was wrong. The suit taken out in the trial court is consequently incompetent and the court below was wrong to have upheld it. It is accordingly struck out.

30 It now remains for me to comment in conclusion on what in his brief at page 1 the respondent calls *"Background History to this Case."*
He said inter alia:-

"After the Oba of Benin, Omo N'Oba Erediauwa was crowned in 1979 appellant, with the active connivance of some corrupt Benin Palace Chiefs

began lobbying the Oba to confer the title of Amaghizemwen of Benin on him. Plaintiff/respondent got wind of it and he protested in writing to the Oba to the effect that appellant was a false pretender."

Hard words indeed. For a person who aspired to join the ranks of Benin Palace Chiefs and having succeeded in the two courts below, such words should not emanate from the respondent, his counsel who is his mouth piece on this occasion or both.

For these and the fuller reasons contained in the very comprehensive judgment of my Lord Karibi-Whyte, J.S.C, with which I had hereinbefore signified my concurrence, I allow this appeal and I accordingly set aside the decisions of the two courts below. I abide by the consequential orders inclusive of those as to costs set out in the lead judgment.

15

20

25

30