

SUPREME COURT OF NIGERIA
3RD OCTOBER, 1995. SC. 140/1990
CORAM: - M.L. UWAI, A.B. WALL, E.O. OGWUEGBU,
S. U. ONU, A. I. IGUH, JJSC.

ODOO OGOYI PLAINTIFF/APPELLANT
 AND
 1. EMMANUEL UMAGBA
 2. IGOCHE IDOKO DEFENDANTS/RESPONDENTS

APPEALS - Concurrent findings of fact - Appellate Court will not interfere therewith - Where supported by sufficient evidence - Unless it occasioned miscarriage of justice.

COURTS - Error in Law - By granting what was not claimed at trial to the defendant - Is not capable of redeeming appellant's case that failed woefully.

FACTS

The appellant as plaintiff instituted the action leading to this appeal in the High Court of Benue State, Idah, against the 1st and 2nd respondents herein who were defendants claiming:- (1) A declaration that he was and is the person duly selected to be the Head of Otukpa District; (2) Perpetual injunction restraining the 1st respondent from parading himself as the District Head of Otukpa and (3) Perpetual injunction restraining the 2nd respondent from regarding the 1st respondent as Otukpa District Head. Pleadings were filed and the case proceeded at which end, and upon evidence led by both parties, the trial court dismissed plaintiff's claim.

Aggrieved by that decision, the appellant appealed to the Court of Appeal Jos Division. That court also dismissed the appeal. Whereupon the appellant has now appealed to the Supreme Court raising seven issues, most of which were attacks on the decision of the trial court. The Supreme Court having struck out six of those issues on grounds of incompetence was left with only one issue for determination.

ISSUE FOR DETERMINATION

1. Whether the Court of Appeal as an appellate court was right in unconditionally affirming the decision of the High Court which granted a relief not claimed for by the 1st defendant/respondent (Ground 1 of notice of appeal).

HELD (Unanimously dismissing the appeal per **OGWUEGBU JSC**)

Error in Law

1. It is true that there was no counterclaim filed by either of the defendants. The trial court was in error in granting the 1st respondent a relief which he never claimed. A court is without power to award to a claimant what he has not claim and/or prove as the court in civil cases does not make a case which the party has not made for itself. Apart from the above error committed by the learned trial judge which the court below disapproved, the case of the appellant in the trial court failed woefully. (p. 1989 E)

Concurrent finds of fact

2. These are concurrent findings of fact by two lower courts on vital issues in the case. As a general rule, this court does not normally disturb or upset such concurrent findings where there is sufficient evidence to support them. The granting of the relief not claimed by the 1st respondent in this case is not such a ground and no miscarriage of justice resulted from the order. I therefore dismiss this appeal. I affirm the decision of the court below to the extent that the claim of the appellant was dismissed. (p. 1990 B)

NOTABLE POINT OF INTEREST

ONU JSC

1. Purpose of issues for determination

As the purpose of issues for determination is to enable the parties narrow the issues in the grounds of appeal filed in the interest of accuracy, clarity and brevity, the formulation or distillation of seven issues from only three grounds by the appellant in the instant case, is to be deprecated and frowned upon. (p. 1993 A)

REPRESENTATION

C. C. Wigwe with M. T. Kassa for the Appellant
Respondent absent and unrepresented

CASES REFERRED TO

Adio v. The State (1986)2 N.W.L.R. (Pt. 24) 581
Harriman v. Harriman (1987)3 N.W.L.R. (Pt. 60)244
Ajayi v. Texaco (1987)3 N.W.L.R. (Pt. 62) 577 at 593
Ekpenyong v. Nyong (1975)2 S.C. 71 at 80
Akinbobola v. Fisko (1991)1 N.W.L.R. (Pt. 167)270
Enang v. Adu (1981) 11-12 S.C. 25 at 42

Okagbue v. Romaine (1982) 5 S.C. 133 at 170-171

Western Steel Works v. Iron and Steel Workers Union (1987) 1 NWLR (Part 49) 284

Government of Gongola State Tukur (1987) 2 NWLR (Part 68) 330

Osinupebi v. Saibu (1982) 7 S.C. 104

Idika v. Erisi (1988) 2 NWLR (Part 78) 563.

STATUTE REFERRED TO

Constitution of the Federal Republic of Nigeria 1979, ss. 39 (2); 213 and 219

LEAD JUDGMENT BY OGWUEGBU, JSC

The appellant who was plaintiff in the High Court of Justice, Benue State instituted an action against the respondents as defendants in the said court claiming the following reliefs in paragraph 13 of his statement of claim:

“(3)(i) A declaration that the plaintiff was and is the only person selected or elected as the Otukpa District Head by the people competent to do the selection or election.

(ii) A perpetual injunction restraining the 1st defendant, his agents or servants from further posing or parading himself as District Head of Otukpa; and

(iii) A perpetual injunction restraining the 2nd defendant, his agents and servants from regarding or treating the 1st defendant as District Head of Otukpa.”

After the exchange of pleadings, the case proceeded to trial and in the end, the plaintiff’s claim was dismissed. His appeal to the Court of Appeal was equally dismissed. He has further appealed to this court.

The facts of the case are that Otukpa District had three clans, namely, Ai Oodo, Ai Achagbaha and Ai Owuno and that Otukpa chieftaincy stool rotates among these three clans. From the evidence, it was the turn of Ai Owuno clan to provide a candidate to fill the vacancy created by the death of the last District Head, Aba Ogangwu who hailed from Ai Achagbaha clan.

The appellant and the 1st respondent are members of Ai Owuno clan but from different kindred in the twelve kindreds that make up the clan. Both parties disagreed on the procedure for selection of a candidate and on the qualification of such a candidate.

It was the plaintiff’s case that he was selected by the members of Ai Owuno clan and that selection should be by members of Ai Owuno clan alone.

That after his selection, he was presented to Onu Ogbeche (p.W.2), the oldest person in Ai Owuno. He was not presented to Och'Idoma before P.W.2 was written by Okpokwu Local Government to summon all the elders and kingmakers from the three clans to assemble at Otukpa District Headquarters on 4:8:82 to select their District Head.

The plaintiff gave evidence that in the past any person to be selected as a candidate for the headship of the district must be a beaded clan head but the custom had changed.

The 1st defendant's evidence was that the selection of a candidate had to be done by the elders and kingmakers of the three clans and that it is still the custom that such a candidate must be a beaded clan head. It was the case of the 1st defendant that he was a clan head and he was selected by the elders and kingmakers of the three clans at Otukpa as the District Head in an exercise which he and the plaintiff contested.

It was in evidence that on 4:8:82 the officials of Okpokwu Local Government Council comprising the then Gubernatorial Liaison Officer (Mr. G.A. Ogwuche), the Acting Local Government and Social Development Secretary (Mr. M.B. Amah), the Information Officer (Mr. E.I. Okpe), the then Okpokwu Local Government Secretary (Mr. T. N. Anoh) and the then Secretary to Idoma Traditional Council (Mr. F. Okoh) arrived at Otukpa District Headquarters for the selection of the District Head. Mr. Anah, the Okpokwu Local Government Secretary called on the elders and kingmakers to select a candidate of their choice to be their District Head. P.W.2 nominated and presented the plaintiff. One Igoche Idoko presented the 1st defendant as the rightful person to be their District Head. The elders and kingmakers were advised to select only one candidate. Six elders/kingmakers led by their heads were selected from each clan to go into consultation. They retired and on their return, they conveyed the result of their consultation to the officials present and the general public that the 1st defendant was the eligible candidate to be appointed the Otukpa District Head in succession to Aba Ogangwu on the ground that by custom and tradition of Otukpa people regarding the appointment of a District Head, only a beaded clan Head from the clan whose turn it is to present a candidate is eligible to be so appointed.

There was no objection by any body including P.W.2 who earlier nominated the plaintiff and took part in the consultation. The officials left at the end of the exercise. The approval of the Governor of Benue State to the appointment of the 1st defendant as the District Head of Otukpa was conveyed to the 1st defendant by the Idoma Traditional Council. The plaintiff instituted the action leading to this appeal after the approval of the 1st defen

dant by the Governor.

The learned trial Judge, Ochimana, J. dismissed the claim of the plaintiff and concluded as follows in his judgment:

B “The plaintiff is not entitled to any of the reliefs sought in view of all the reasons I had given in this judgment. Accordingly I have dismissed this suit for lack of merit. Judgment is for the defendants. I declare that the appointment, approval and recognition of the 1st defendant was done in accordance with custom and tradition of Otukpa Community and also that the approving authority acted within the limits of the law. The 1st defendant shall continue to perform such duties incidental to the chieftaincy as it may be necessary to perform. This shall be the judgment of the court.”

C The Italics is for emphasis only. It will be visited again later in this judgment.

D The plaintiff who was dissatisfied with the judgment appealed to the Court of Appeal, Jos Division. This court in a unanimous judgment dismissed the appeal of the plaintiff and affirmed the decision of the trial court. Still aggrieved by the decision of the court below, he has further appealed to this court.

E The appellant filed six grounds of appeal. On 4:3:92 this court granted him leave to raise and argue grounds 1, 2 and 3 of his notice of appeal. Grounds 1, 2 and 3 read:

1. *The Court of Appeal erred in law in affirming the decision of the High Court, after finding as a fact that, the High Court granted a relief to the defendants/respondents which they did not claim.*

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Particulars	of	Errors
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2. *The learned trial Judge erred in law in upholding a custom, the observance of which is in breach of the fundamental human rights provisions of the Constitution of the Federal Republic of Nigeria, 1979.*

G **Particulars of Error**

(a) *The learned trial Judge based his decision on an alleged custom of Aiono clan by the defendants which discriminates against the appellant (and his kindred) from being appointed district head on the ground that he is not a “male descendant” of Aiono clan.*

H (b) *Section 39(2) of the Constitution of the Federal Republic of Nigeria 1979 entrenches the fundamental right of freedom from discrimination against any citizen of Nigeria on grounds of circumstances of birth.*

(c) *The pleadings and the record of proceedings contain extensive references to the plaintiff (and his kindred) as “female descendants” in the loose (sic) sense of descendants of the clan through the female line. Particu-*

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larly paragraph 6(a) of the Statement of Defence, P.W.1 and P.W.2 in their examination-in-chief and by D.W.1 under cross-examination by the court.

3. The trial court and the Court of Appeal were wrong in law in failing to take judicial notice of the provisions of Section 39(2) of the Constitution of the Federal Republic of Nigeria 1979.

<u>Particulars</u>	<u>of</u>	<u>Errors</u>
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Briefs of argument were filed by both parties. The appellant identified the following issues for determination in the appeal:

“1. Whether the Court of Appeal as an appellate court was right in unconditionally affirming the decision of the High Court which granted a relief not claimed for by the 1st defendant/respondent (Ground 1 of notice of appeal).”

2. Whether the declaration by the trial court that the plaintiff and his kindred are “female descendants” does not contravene section 39(2) of the 1979 Constitution of the Federal Republic of Nigeria and afortiori made per incuriam (Ground 2).

3. Whether in view of the constitutional guarantee of freedom from discrimination any person(s) or kindred can be ostracized or excluded from the social and political mainstream of his clan (Ground 2).

4. Whether and in view of section 39(2) of the 1979 Constitution the plaintiff/appellant or his kindred and indeed any citizen of Nigeria could still be placed under disability arising from circumstances of birth on the alter of customary norm or tradition (Ground 3).

5. Whether the High Court properly evaluated and confined itself to the evidence and issues before it.

6. Whether the decisions of the High Court and the Court of Appeal are valid in law.

7. Whether the High Court could rightly make a finding of fact on an issue pendente lite before another court of co-ordinate jurisdiction which has been effect (sic) of rendering a decision of that other court one way or the other nugatory.”

The respondents formulated two issues in their briefs, namely:

“1. Was the Court of Appeal justified in affirming the decision of the High Court dismissing the appellant’s claim even after finding that the High Court granted the 1st respondent, a relief the latter did not seek?

2. Whether, as matters stood in the Court of Appeal, the issue whether the custom of the Otukpa people limiting the right to the district headship to only male descendants contravenes section 39(2) of the 1979 Constitution could validly be raised before that court.”

The 1st respondent gave notice of a preliminary objection to ground two of the grounds of appeal in the respondents' brief of argument. The ground of the objection is that that ground of appeal is not a valid ground of appeal before this court because the appellant is complaining against the decision of the High Court on the issue whether or not the custom in question B contravenes section 39(2) of the 1979 Constitution and that the Supreme Court cannot consider any issue arising from a decision of the High Court. He referred us to section 219 of the 1970 Constitution.

This court upheld the objection on 10:7:95 when the appeal came up for hearing and struck out ground 2 of the ground of appeal along with the C issues arising from it as being incompetent. By section 219 of the 1979 Constitution, only the Court of Appeal has jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine appeals from the Federal High Court, the High Court of a State, Sharia Court of Appeal of a State and Customary Court of Appeal of a State. This court is therefore not competent to hear D appeals straight from the High Court, Sharia Court of Appeal or Customary Court of Appeal. A ground of appeal complaining directly against the decision of the High Court is not proper. See *Adio & Or. v. The State* (1986) 2 NWLR (Pt.24) 581 and *Harriman v. Harriman* (1987) 3 NWLR (Pt.60) 244. It is only section 213 of the said Constitution which conferred appellate jurisdiction on E this court and it is the only court in Nigeria which can hear and determine appeals from the Court of Appeal.

In the circumstance, issues 2 and 3 based on the incompetent ground 2 of the grounds of appeal are struck out. The third ground of appeal without its particulars appearing at page 5 of the appellant's brief is not the ground of F appeal which leave was given to the appellant on 4:3:92 to raise and argue. The purported third ground of appeal contained at page 5 of the said brief of argument is particulars of error (c) of ground two of the grounds of appeal which has been held incompetent.

Particulars of error of an incompetent ground of appeal cannot re- G suscite the ground of appeal which had been struck out.

Even if I have to lift the original ground three which the appellant sought and was granted leave to raise and argue from page 146 of the records, it is equally defective as a ground of appeal. The appellant's complaint there is against the decision of the High Court and the Court of Appeal. There was no H application to amend the said ground of appeal. I hold that it is incompetent. Issue four which arises from it is struck out.

Issue one is tied to ground one of the grounds of appeal. Issues five, six and seven are equally incompetent being based on complaints against the learned trial Judge. They are accordingly struck out for the same reasons as

issues two, three and four.

The only valid issue left for determination is issue one. The complaint here is based on the consequential order made by the learned trial Judge which order the court below frowned at. The learned trial Judge after dismissing the claim of the plaintiff/appellant found for the 1st defendant/respondent as follows:

"I declare that the appointment, approval and recognition of the 1st defendant was done in accordance with custom and tradition of Otukpa Community and also that the approving authority acted within the limits of the law. The 1st defendant shall continue to perform such duties incidental to the chieftaincy as it may be necessary to perform. This shall be the judgment of the court."

On the above order, the court below had this to say:

"One thing that should be stated straight away in relation to the question raised under the third issue is that there was no counterclaim filed by any of the respondents. Therefore, failure of the appellant's case or claim could not necessarily involve the granting to the 1st respondent a declaration that his selection, appointment or approval of appointment was valid or an order which was something he did not claim in this action. A court should not grant a relief which has not been claimed or asked for by a party."

It is true that there was no counter-claim filed by either of the defendants. The trial court was in error in granting the 1st respondent a relief which he never claimed. A court is without power to award to a claimant what he does not claim and/or prove as the court in civil cases does not make a case which the party has not made for itself. See *Ajayi v. Texaco Nigeria Ltd.* (1987) 3 NWLR (Pt.62) 577 at 593; *Ekpeyong & Ors. v. Nyong & Ors.* (1975) 2 S.C. 71 at 80 and *Akinbobola v. Plisson Fisko* (1991) 1 NWLR (Pt.167) 270.

Apart from the above error committed by the learned trial Judge which the court below disapproved, the case of the appellant in the trial court failed woefully. The appellant and his witnesses agreed with the defence in two main issues on which the case was fought in the trial court:

1. That the custom in Otukpa is that one must be a beaded Clan Head of one of the three component parts of Otukpa to qualify for selection and appointment as a District Head of Otukpa and that the 1st defendant was a beaded Clan head before his appointment and the appellant was not.

2. That when it is the turn of any of the three clans to produce a District Head, the selection exercise is not done exclusively by the clan whose turn it is to produce the District Head. It is done by a recognised standing

committee of kingmakers drawn from the three clans. This committee selected the 1st respondent in a contest between the appellant and the 1st respondent. The learned trial Judge and the court below found so.

B Whether the appellant is a male descendant or not, was not the reason for his non-selection. It did not even feature during the contest between him and the 1st respondent on 4:8:82. He was not even disqualified from contesting.

C These are concurrent findings of fact by two lower courts on vital issues in the case. As a general rule, this court does not normally disturb or upset such concurrent findings where there is sufficient evidence to support them. The granting of the relief not claimed by the 1st respondent in this case is not such a ground and no miscarriage of justice resulted from the order. See Enang & Ors. v. Adu (1981) 11 S.C. 25 at 42; Okagbue v. Romaine (1982) 5 S.C. 133 at 170 171 and Lokoyi v. Olojo (1983) 2 SCNLR 127; (1983) 8 S.C. 61 at 68.

D I therefore dismiss this appeal. I affirm the decision of the court below to the extent that the claim of the appellant was dismissed. The respondents are entitled to costs which I assess at N1,000.00.

E **UWAIS JSC**

I have had the privilege of reading in advance the judgment read by my learned brother Ogwuegbu, J.S.C. I agree with the judgment. Accordingly, the appeal is hereby dismissed. I abide by the order in the said judgment.

F **WALI JSC**

I have the privilege of reading in advance a copy of the lead judgment by my learned brother, Ogwuegbu J.S.C., and I agree with it.

G For the same reasons advanced in the lead judgment which I hereby adopt, I too dismiss this appeal with N1,000.00 costs to the respondents.

ONU JSC

H I had the privilege to read before now the judgment of my learned brother Ogwuegbu, J.S.C. just read and with it I am in entire agreement.

I wish, however, to add my own words of contribution as follows:-

The facts and background of this case which are not in any way in dispute are as clearly and succinctly set out in the judgment of my learned brother. They therefore need no restatement. Suffice it to say, that upon losing

the case in the Benue State High Court then sitting in Idah, to the respondents, the appellant who was therein plaintiff, appealed to the Court of Appeal sitting in Jos. There too, he also lost to the respondents and he has now further appealed to this court where on 4th March, 1992 he was granted leave to argue three grounds of appeal contained in his Notice of Appeal which B without their particulars state:

(i) The Court of Appeal erred in affirming the decision of the High Court, after finding as a fact that the High Court granted a relief to the defendant/respondent which he did not claim.

(ii) The learned trial Judge erred in law in upholding a custom, the observance of which is in breach of the Fundamental Human Rights Provision of the Constitution of the Federal Republic of Nigeria, 1979. C

(iii) The pleadings and record of proceedings contain extensive references to the plaintiff/appellant and his kindred as female descendants in the loose sense of descendants of the clan through the “female line.” D

The parties hereto exchanged briefs of argument in accordance with the rules of this court. From the three grounds set out above the appellant has distilled or formulated the following seven questions for our determination, to wit:

“2.01. Whether the Court of Appeal as an appellate court was right E in unconditionally affirming the decision of the High Court which granted a relief not claimed for by the 1st defendant/respondent. (Ground 1 notice of appeal).

2.02. Whether the declaration by the trial court that the plaintiff and his kindred are “female descendants” does not contravene section 39(2) of the 1979 Constitution of the Federal Republic of Nigeria and afortiori made per in curiam (Ground 2). F

2.03. Whether in view of the constitutional guarantee of freedom from discrimination any person (s) or kindred can be ostracized or excluded from the social and political mainstream of his clan (Ground 2) G

2.04. Whether and in view of section 39(2) of the 1979 Constitution the plaintiff/appellant or his kindred and indeed any citizen of Nigeria could still be placed under a disability arising from circumstances of birth on the alter of custom any norm or tradition. (Ground 3).

2.05. Whether the High Court properly evaluated and confined itself H to the evidence and issues before it.

2.06. Whether the decisions of the High Court and the Court of Appeal are valid in law.

2.07. Whether the High Court could rightly make a finding of fact on

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an issue pendente lite before another court of co-ordinate jurisdiction which has been effect of rendering a decision of that other court one way or the other nugatory."

The two central issues which the learned counsel for the respondents, Chief J.A., Omakwu, submitted as arising for our determination, however, are:-

B 1. Was the Court of Appeal justified in affirming the decision of the High Court dismissing the appellant's claim even after finding that the High Court granted the 1st respondent, a relief the latter did not seek?

C 2. Whether, as matters stood in the Court of Appeal, the issue whether the custom of the Otukpa people limiting the right of district headship to only male descendants contravenes section 39(2) of the 1979 Constitution could validly be raised before that court.

D The appeal eventually came up on 10th of July, 1995 for hearing. Thereat, C. C. Wigwe, Esq., of counsel for the appellants, adopted the appellant's brief in its entirety. His attention was there and then drawn by court to his Ground (ii) at page 5 vis-a-vis his issue 2.02 at the same page 5 of his brief. He agreed that both were incompetent as their attacks were aimed at the trial court's decision and not that of the court below from which the appeal herein emanated. They were therefore accordingly both struck out.

E Before I proceed to consider the remaining six Issues, I deem it pertinent to deal with other defects apparent in the appellants' brief. Since issues 2.03 and 2.04 are integral parts of and could have conveniently been considered under the canopy of issue 2.02 which has already been struck out, the former two Issues (2.03 and 2.04, respectively) have no legs upon which to stand. They are both, also accordingly struck out. That is not all.

F I notice too, that issues 2.05 and 2.07 as can be observed, complain about the decision of the trial High Court and not against the decision of the court below.

G That being the case, I take the firm view that the two issues are also incompetent and they are accordingly hereby struck out. Further, the grouse in Issue 2.06 being an admixture of complaints against the decisions of the trial High Court and the court below, both rolled into one, is a misnomer and so unarguable. Besides, the purported issue or question for determination, not appearing to have been framed from any of the three grounds of appeal set out above in support thereof and for which no leave has been sought and obtained, is not only incompetent but completely baseless and valueless. See *Western Steel Works v. Iron and Steel Workers Union* (1987) 1 NWLR (Pt.49) 284; *Tukur v. Government of Gongola State* (1988) 1 NWLR (Pt.68) 39; *Osinupebi v. Saibu* (1982) 7 S.C. 104 and *Idika v. Erisi* (1988) 2 NWLR (Pt.78) 563. The issue is also accordingly struck out.

As the purpose of issues for determination is to enable the parties narrow the issues in the grounds of appeal filed in the interest of accuracy, clarity and brevity, the formulation or distillation of seven issues from only three grounds by the appellant in the instant case, is to be deprecated and frowned upon. See *Ogbuanyinya v. Okudo* (No.2) (1990) 4 NWLR (Pt. 146) 551 at 557-558. For, as this court has had occasion to point out in *Salami v. Oke* (1987) 4 NWLR (Pt.63) 1 (per Obaseki, J.S.C.) at page 12: B

“It is improper and not within the right of the appellants or their counsel to formulate an issue not raised in the ground of appeal.”

See also *U.B.A. Trustees Ltd. v. Nigergrob* (1987) 3 NWLR (Pt.62) 600; *I.A.I. Ltd. v. Chika Bros* (1987) 4 NWLR (Pt.63) 92 at 101; *Osinupebi v. Saibu* (supra); *Idika v. Erisi* (supra) and *Momodu v. Momoh* (1986) 5 NWLR (Pt.43) 649. C

In consequence, the only issue we are left with is appellant’s first issue (Issue 2.01), the respondents’ Issue 2 which is concomitant with appellant’s issues 2.02, 2.03 and 2.04, put together as I earlier pointed out, having been jointly and severally struck out for incompetence. D

In my consideration of the lone issue left namely, issue 2.01, it is enough to say firstly, that the court below was justified in affirming the decision of the learned trial Judge. Secondly, that the court below made the observation in which it criticised the trial court only after it had come to a decision on the issues submitted to it for decision. It did not base its decision on the observation which may safely be regarded as per incuriam. All it was therein saying was that the trial court should have stopped at dismissing the appellant’s claim before it and should not have gone on to grant a relief not sought by the 1st respondent when it concluded as follows:- E

“Judgment is for the defendants. I declare that the appointment, approval and recognition of the 1st respondent was done in accordance with custom and tradition of Otukpa Community and also that the approving authority acted within the limits of the law. The 1st respondent shall continue to perform such duties incidental to the chieftaincy as it may be necessary to perform. This is the judgment of the court.” F

Thirdly, there was no way the appellant could have reaped the benefit of the observation to the extent that his claim would succeed. Even if the 1st respondent had asked for a declaration that he was the rightful district head of Otukpa and the trial court had refused same, except of course the appellant counter-claimed, that would not eo ipso entitle him (appellant) to a declaration that he was the rightful district head. For him (appellant) to be entitled to that relief, he ought to establish his claim by credible evidence. For, G

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as Lewis, J.S.C. pertinently pointed out in *Bornu Holding Co. Ltd. v. Alhaji Hassan Bogoco* (1971) 1 All NLR 324 at 333: it by no means follows that because the defendant's case is rejected the plaintiff is entitled to judgment. A plaintiff is only entitled to judgment if a trial court accepts his evidence and if that evidence supports his case.

- B See also *Dennis Ewulu & Ors. v. Lawrence Nwankpu & Anor.* (1991) 8 NWLR (Pt.210) 487. In the instant case, the fact that the court below had observed that the trial court was wrong to have declared that the election, selection and/or appointment of the 1st respondent was valid would not entitle the appellant to a decision by the court below that he was the rightful
- C district head of Otukpa. This is the moreso, when credible evidence was neither adduced that the appellant was qualified to be elected nor in fact would the court be justified in affirming the decision of the trial court to the effect that the appellant's claim, if ever, succeeded. Besides, the appellant did not appeal to the court below contending that the trial court was wrong to have
- D granted the said relief to the 1st respondent who did not claim it. Indeed, the court below could not have validly allowed the appeal on that point; if it had done so, it would have amounted to granting a relief to the appellant which he did not ask for. See *Obioma v. Olomu* (1(78) 3 S.C. 1 and *Makanjuola v. Balogun* (1989) 3 NWLR (Pt.108) 192 at 206. Issue 1 is accordingly resolved in the
- E affirmative.

- For these and the more elaborate reasons contained in the judgment of my learned brother Ogwuegbu, J.S.C. with which I had signified my concurrence, I, too, will dismiss this appeal which, with the decision of the two courts below, constitute concurrent findings of facts of the two courts which I will be
- F loath to disturb. I abide by the consequential orders inclusive of those as to costs.

IGUHJSC

- G I have had the opportunity of reading in draft the judgment just delivered by my learned brother, Ogwuegbu, J.S.C. I agree entirely that the appeal has no substance and that it should be dismissed.

- The main issue the appellant faces in this appeal is the concurrent findings of fact by both the trial court and the court of appeal against him.
- H This court will not interfere with such concurrent findings of fact where there is sufficient evidence in support thereof and where there is no substantial error apparent on the record of proceedings such as some miscarriage of justice or a violation of some principles of law or procedure. See *National Insurance Corporation of Nigeria v. Power and Industrial Engineering Co, Ltd.*

(1986) 1 NWLR (Pt.14) 1 at page 36; Enang v. Adu (1981) 11-12 S.C. 25 at page 42; Nwagwu v. Okonkwo (1987) 3 NWLR (Pt.60) 314 at page 321; Igwego v. Ezeugo (1992) 6 NWLR (Pt.249) 561 at page 574; Woluchem v. Gudi (1981) 5 S.C. 291 at page 326 etc,

In the circumstance and for the more elaborate reasons contained in B the lead judgment of my learned brother which I adopt as mine, this appeal fails and it is hereby dismissed. I endorse the consequential order including those as to costs made in the said judgment.

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