

SUPREME COURT OF NIGERIA
4TH JULY, 1995. SC. 322/1990
CORAM: M.L. UWAIS, I.L. KUTIGI,
E.G. OGWUEGBU, Y.O. ADIO, A.I. IGUH, JJSC.

CHIEF MICHAEL OMODELE ALESE

(For and on behalf of

Olonigbonran family of Ilawe-Ekiti

AND

CHIEF JULIUS ALADETUYI

..... APPELLANT

..... RESPONDENT

ACTIONS - Cause of action - In the present case - When did it arise -
Unto determination of applicable law.

JUDGMENTS - Rights and obligations of parties - Consideration thereof
- Must be in the light of existing Law - At the time cause of action arose.

JURISDICTION - Assumption of jurisdiction - By the court - Is to be
when person bringing action and subject matter - Are properly before the
court.

LEGISLA TION - Revocation - Of provision of an existing law by another
- Legal effect thereof

FACTS

The respondent herein, instituted the action leading to this appeal at the High Court of Ondo State, Akure in 1980 against the claim of the 3rd defendant (appellant herein) to the stool of Oloja - Adin of Ilawe - Ekiti and the appointment of the 2nd defendant as the Sole Commissioner of the Oloja-Adin Chieftaincy Commission by the Governor of Ondo State (1st defendant). The respondent, who is from the FATOYE RULING HOUSE, was appointed by the ALAWE of Ilawe-Ekiti, the Oloja-Adin of Ilawe-Ekiti to succeed GABRIEL ESAN (of the same ruling house) who had died in 1977. The Fatoye Ruling House has been the only ruling house from time immemorial, to the stool of Oloja-Adin of Ilawe-Ekiti, until in 1962 when a committee of Ekiti South District Council acting under s.4(l). Part II of the Chiefs Law, cap 19, Laws of Western Region of Nigeria 1959, which classified the Oloja-Adin stool a Recognized Chieftaincy, made a DECLARATION which provided for two (2) Ruling Houses viz: OLONIGBONRAN and FATOYE. This 1962 DECLARATION, the Fatoye Ruling House challenged unsuccessfully in court.

The Alawe of Ilawe Ekiti appointed the respondent without reference to the 1962 DECLARATION, but in accordance with the RECOGNIZED CHIEFTAINCIES (REVOCATION AND MISCELLANEOUS PROVISIONS) ORDER, Western State Legal Notice No. 6 of 1976, which reduced the Oloja-Adin to a minor chieftaincy stool. The Ondo State Governor's failure to recognize the respondent, moved the respondent to institute an action praying for certain declarations, reliefs and injunctions which the trial court refuse to grant. Dissatisfied with the decision of the trial court, the respondent appealed to the Court of Appeal, Benin Division, which court, set aside the ruling of the trial court and entered judgment for the respondent according to his prayers before the trial Court. Against that decision of the Court of Appeal, the appellant has appealed raising one sole issue or in the alternative four issues for the determination of the Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether the 1st Respondent/Plaintiff's claim is not a challenge to the Registered Chieftaincy Declaration of 1962 made under Chiefs Law Cap 19, Laws of Western Region of Nigeria 1959 in respect of which the jurisdiction of the State High Court had been removed by virtue of section 161 (3) of the 1963 Constitution. (Ground 1 Amended Notice of Appeal.)

This is an issue which relates to jurisdiction which if successful could dispose of the whole appeal. Alternatively however, the appellant submits that other issues which arise for determination are:

2. Whether or not the Chieftaincy Declaration of 1962 which codified the traditional mode of succession to the Oloja-Adin Chieftaincy Title is still valid and subsisting (Grounds 2, 3 and 4 of Amended Notice of Appeal). Etc (see p. 1362)

HELD (Unanimously dismissing the appeal per lead judgment of **OGWUEGBU JSC**)

Legislation - Revocation

1. The legal effect of Legal Notice No. 6 of 1976 is to repeal the 1962 Declaration in respect of the Oloja-Adin Chieftaincy. That seems to me the intendment of the revocation. The Declaration was not put into operation before it was revoked and sections 4 and 5 of the Chiefs Law do not apply to minor chieftaincy which the Oloja-Adin had become. When one considers the position of the Alawe of Ilawe in the chieftaincies to which Parts II and III of the Chiefs Law apply, it will not be difficult to see that the 1962 Declaration was effectively repealed. (p. 1364 G)

Assumption of jurisdiction

2. Jurisdiction is assumed by a court when the person bringing the action and the subject matter are properly before it. They are properly before the court when by the enabling statute or by its inherent jurisdiction it can exercise jurisdiction over the parties. Jurisdiction may be ousted by statute, by the Constitution, either as to the subject matter of the cause of action or as to the person. (p. 1365 D)

Cause of action - When did it arise

3. The cause of action arose in 1980. The factual situation the existence of which entitled the plaintiff/respondent to seek or obtain a remedy against the defendants is the interference of the 1st defendant with the nomination, selection and installation of the plaintiff/respondent according to native law and custom and not the death of Chief Gabriel Esan. The cause of action was not therefore caught by section 161(3) of the 1963 Constitution. (p.367F)

Rights and obligations of parties - Consideration thereof

4. The rights and obligations of parties must be considered in the light of the provisions of the law as it was when the cause of action arose and the change in the law after the cause of action arose is of no moment. Flowing from the above proposition of the law, the cause of action did not arise until the installation of the respondent and the setting up of the Sole Commission in 1980. (p. 1368 E)

NOTABLE POINT OF INTEREST***IGUH JSC******1 Jurisdiction - Exercise thereof depends on endorsement on the writ***

I think it ought to be pointed out that the question of whether or not a court can entertain or exercise jurisdiction in a particular cause or matter will, to a large extent, depend on the endorsement of the claims on the writ of summons and the statement of claim. Accordingly, where by the said endorsement, a cause of action is disclosed in law, the court, unless its jurisdiction is ousted by other statutory provisions is entitled to entertain and to determine such a claim. And so, even before 1979, the jurisdiction of the court was not ousted even though the action touched on a chieftaincy matter so long as such an action did not relate to the selection, appointment etc of a chief. (1370 D)

REPRESENTATION

Wole Olufon with Gbinigie for the Appellants

Femi Osundahunsi for the Respondent

CASES REFERRED TO

- Uwaifo v. The Attorney-General of Bendel state (1982)7 S.C. 124
- Mustapha v. Governor of Lagos State (1987)2 N.W.L.R. (Pt. 58)539
- B Utih v. Onoyivwe(1991)1 N.W.L.R. (Pt. 166)165
- Gbokoyi v. Minister of Chieftaincy Affairs, Western Region (1965) N.M.L.R.7
- Edewor v. Uwegba (1987) 1 N.W.L.R. (Pt. 50) 313 at 339
- Lipede v. Shonekan (1995)1 N.W.L.R. (Pt. 374)608 at 689-690
- C Attorney-General Kwara State v. Olawale (1993)1 N.W.L.R. (Pt. 272)645
- Sanda v. Kukawa Local Government (1991)2 N.W.L.R. (Pt. 174)37
- Adimora v. Ajufo (1986)3 N.W.L.R. (Pt. 80) 1
- Jackson v. Spittall (1870) L.R. 5 C.P. 542 at 552
- Ibadan v. Lagunju (1952) 14 W.A.C.A. 549
- Alao v. Akano (1988) 1 N.W.L.R. (Part 71) 431
- D Bronik Motors Ltd v. Wema Bank Ltd. (1983) 6 S.C. 158

STATUTES AND RULES REFERRED TO

- Chiefs Law Cap 19, Laws of Western Region of Nigeria 1959, Parts II and III; ss. 4(1); .25
- E Constitution of the Federal Republic of Nigeria 1963, s. 161(3)
- Constitution of the Federal Republic of Nigeria 1979, ss.6(6); 236(1)
- Recognized Chieftaincies (Revocation and Miscellaneous) Order (L.N) No. 6 of 1976 of Western State.
- Registered Chieftaincy Declaration of 1962
- F

LEAD JUDGMENT BY OGWUEGBU

The 1st respondent in this appeal as plaintiff, instituted a civil action in the Akure Judicial Division of the High Court of Ondo State against the appellant as 3rd defendant. The Governor of Ondo State and the Hon. Justice R.O. Fawehinmi (Sole Commissioner to Oloja Adin Chieftaincy Commission) were 1st and 2nd defendants respectively. He filed the action in a representative capacity as the Oloja-Adin of Ilawe-Ekiti.

H He claimed the following reliefs:

“1. A declaration that Chief Julius Aladetuyi, the Oloja-Adin of Ilawe was validly appointed as the Oloja-Adin of Ilawe according to native law, custom and tradition of Ilawe with particular reference to Adin Quarters of Ilawe-Ekiti.

2. A declaration that the Judicial Commission of Inquiry set up by

the 1st defendant mandating or empowering the 2nd defendant as Sole Commissioner to inquire into the Oloja-Adin Chieftaincy is "res judicata" and is therefore null and void and of no legal effect.

3. *An order that the registered declaration of 1962 appertaining to the Oloja-Adin Chieftaincy can no longer be used for the appointment of an Oloja-Adin by reason of the western Nigeria Legal Notice No.6 of 1976.*

4. *An order that there is only one Ruling House to the Oloja-Adin Chieftaincy the identity of which is Fatoye Ruling House.*

5. *An injunction restraining the 2nd defendant as Sole Commissioner from continuing with the Inquiry into the validity or otherwise of the appointment of the plaintiff and/or any other ancillary and collateral matters attendant to it as contained in the terms of reference of the Commission which is set up by the 1st defendant.*

6. *An order restraining the 1st defendant from acting upon any report or recommendation made by the 2nd defendant as Sole Commissioner to the Oloja-Adin Chieftaincy consequent on the commission set up by the 1st defendant."*

Pleadings were ordered, filed and exchanged. The case proceeded to trial. In the end, the learned trial Judge in a reserved judgment, refused to make the declarations sought. He held that there are two ruling houses for the Oloja-Adin Chieftaincy namely, Fatoye and Onoligboran and that it was the turn of the latter house to produce a candidate after the demise of Gabriel Esan of Fatoye House in 1977. The injunctions sought were also refused.

The plaintiff was not satisfied with the judgment and appealed to the Court of Appeal, Benin Division. The court set aside the decision of the learned trial Judge and ordered as follows:-

"1. *That the appellant, Chief Julius Aladetuyi is validly appointed the Oloja-Adin of Adin Quarter Ilawe according to native law and custom and tradition of Ilawe.*

2. *That the registered declaration of 1962 appertaining to the Oloja-Adin Chieftaincy can no longer be applied for reason of its having been repealed by implication by the Western Nigeria Legal Notice 6 of 1976.*

3. *That there is only one ruling house to the Oloja-Adin Chieftaincy of which is Fatoye Ruling House."*

The appellant who was the 3rd defendant in the trial court and the 3rd respondent in the court below was dissatisfied with the decision of the Court of Appeal. He appealed to this court. From the amended grounds of appeal filed with the leave of this court granted on 22/9/93, the appellant formulated one sole issue and four issues in the alternative in his brief of argument:-

"1. *Whether the 1st respondent/plaintiffs claim is not a challenge*

to the Registered Chieftaincy Declaration of 1962 made under Chiefs Law Cap. 19. Laws of Western region of Nigeria 1959 in respect of which the jurisdiction of the State High Court had been removed by virtue of section 161(3) of the 1963 Constitution (Ground 1 Amended Notice of Appeal)

This is an issue which relates to jurisdiction which is successful B could dispose of the whole appeal. Alternatively however, the appellant submits that other issue which arise for determination are:

2. Whether or not the Chieftaincy Declaration of 1962 which codified the traditional mode of succession to the Oloja-Adin Chieftaincy Title is still valid and subsisting (Grounds 2, 3 and 4 of Amended Notice of C Appeal).

3. What is the effect of the Recognised Chieftaincies (Revocation and Miscellaneous) Order (L.N.) No.6 of 1976 (hereinafter called the Legal Notice) on the mode of succession to the Oloja-Adin Chieftaincy stool especially in relation to the Chieftaincy Declaration of 1962 as it relates to the Oloja-Adin Chieftaincy Stool. (Grounds 2, 3 and 4 of Amended Notice D of Appeal).

4. What in the circumstances of this case is the appropriate law regulating the mode of succession to the Oloja-Adin Chieftaincy stool.

5. Whether the Court of Appeal could suo motu make findings on issues not canvassed by the appellant in that court.”

E The facts briefly stated are as follows: The Oloja-Adin prior to 1976, was a recognised chieftaincy under the Chiefs Law Cap 19 Laws of Western Region of Nigeria, 1959. As a result, Part II of the Chiefs Law applied to it. The only ruling house at the material time was Fatoye Ruling House (plaintiff/respondent). It was not in dispute that the plaintiffs family is the F only family from which candidates have been selected and made Oloja-Adin time immemorial without interruption and it had produced ten successive Oloja-Adins commencing from Afintoto to Chief Gabriel Esan who died in 1977.

G In 1962, a declaration was made pursuant to section 4(1) of the Chiefs Law of 1959 by a committee of the Ekiti South District Council under the chairmanship of Oba Adegoriola II. The declaration provided for two ruling houses for the Adin Chieftaincy. These were Olonigboran and Fatoye Ruling Houses. The order of rotation is (1) Olonigboran Ruling House and (2) Fatoye Ruling House (who was the incumbent at the time of the H declaration). The declaration provided for twenty kingmakers and the Consenting Authority. The said declaration was approved by the Commissioner for Chieftaincy Affairs on 10/10/62 and registered on 15/10/62.

On becoming aware of the said declaration, the Fatoye Ruling

House found the inclusion of Olonigboran Ruling House unacceptable and challenged it unsuccessfully in the court. Their action was struck out because chieftaincy matters were not justiciable under the 1963 Constitution and section 25 of the Chiefs Law of 1959.

In 1976, the Recognised Chieftaincies (Revocation And Miscellaneous Provisions) Order, Western State Legal Notice No.6 of 1976 came into force. This notice reduced the Oloja-Adin chieftaincy stool to a minor chieftaincy to which Part III of the Chiefs Law applied.

Hitherto, Part II of the said Law applied to it. Paragraph 2 of the Legal Notice reads:

"2. The application of Part II of the Chiefs Law to any Chieftaincy in the Western State other than those listed in the first column of the schedule to this Order is hereby revoked."

This order came into force on 5:2:76. The Chiefs Law of 1959 and the Western State Legal Notice No.6 of 1976 were made applicable to Ondo State which was carved out of the former Western State of Nigeria.

It was the contention of the plaintiff/respondent that with the coming into force of the Recognised Chieftaincies (Revocation and Miscellaneous Provisions) Order, the 1962 Declaration ceased to have any effect in so far as the Oloja-Adin Chieftaincy Stool is concerned. The court below held among, other things, that the 1962 Declaration was no longer applicable and that the plaintiff/respondent was validly appointed as the Oloja-Adin in accordance with native law, custom and tradition of Ilawe-Ekiti.

It was the contention of the defendant/appellant that the respondent's claim is not justiciable in that it is a challenge of 1962 Declaration made under section 4(1) of the Chiefs Law, Cap. 19, Laws of Western Region of Nigeria, 1959. The learned counsel for the appellant submitted in his brief that both the trial court and the court below lacked jurisdiction to entertain the plaintiff/respondent's action and that the plaintiff's predecessor had unsuccessfully challenged the validity of the declaration in the court. He referred the court to section 161(3) of the Constitution of the Federal Republic of Nigeria, 1963.

It was his further submission that the 1963 Constitution was in operation when the cause of action arose and the respondent waited until 1979 when the 1979 Constitution came into force. He referred us to the cases of *Uwaifo v. The Attorney General of Bendel State* (1982) 7 S.C. 124, *Mustapha v. Governor of Lagos State* (1987) 2 NWLR (Pt.58) 539 and *Utih & Ors. v. Onoyivwe* (1991)1 NWLR (Pt. 166) 166. Learned counsel stated that the case of *Utih v. Onoyivwe* supra is on all fours with the case in hand and urged us to allow the appeal on the ground of want of jurisdiction.

In his reply, the learned counsel for the respondent submitted in his brief and conceded that before the 1979 Constitution, the courts had no jurisdiction over chieftaincy matters. He submitted that both before and after the 1979 Constitution, the courts had and still have jurisdiction to make declarations of what the customary law is; that such declaration is not the same thing as chieftaincy question. He cited the cases of *Gbokoyi v. Minister of Chieftaincy Affairs Western Region* (1965) NMLR 7 at 8, *Utih v. Onoyivwe supra* & *Edewor v. Uwegha & Ors.* (1987)1 NWLR (Pt.50) 313 at 339. He urged us to dismiss the appeal.

Until 15th October, 1962 when the 1962 declaration was registered, the plaintiff/respondent's family remained the only Ruling house from which candidates were selected and made the Oloja-Adin of Ilawe-Ekiti. With the coming into force of the declaration, the Olonigboran Ruling House was added to the Fatoye Ruling House. The order of rotation is that after Olonigboran Ruling House, Fatoye Ruling House comes next. There is a provision for twenty king makers and the Alawe of Ilawe is the consenting authority.

This declaration was made pursuant to section 4(1) of the Chiefs Law Cap. 19. Laws of the Western Region of Nigeria. 1959 which reads:

"4(1) Subject to the provisions of this law, the Committee of a competent council –

(a) may; and

(b) shall if required by the Minister, make a declaration in a writing stating the customary law which regulates the selection of a person to be holder of a recognized chieftaincy."

(the italics is for emphasis only).

On 5/2/76, the Recognised Chieftaincies (Revocation and Miscellaneous Provisions) Order. Western State Legal Notice No.6 of 1976 came into force and removed the Oloja-Adin Chieftaincy stool from Part II of the Chiefs Law and made it a minor chieftaincy to which Part III of the said law applied. From that date, Part II of the Chiefs Law ceased to apply to the Oloja-Adin Chieftaincy.

The legal effect of Legal Notice No.6 of 1976 is to repeal the 1962 Declaration in respect of the Oloja-Adin Chieftaincy. That seems to me the intendment of the revocation. The declaration was not put into operation before it was revoked and sections 4 and 5 of the Chiefs Law do not apply to minor chieftaincy which the Oloja-Adin has become

When one considers the position of the Alawe of Ilawe in the chieftaincies to which Parts II and III of the Chiefs Law apply, it will not be difficult to see that the 1962 Declaration was effectively repealed. For instance, when the Oloja-Adin Chieftaincy was governed by Part II of the

Law, the Alawe of Ilawe was the consenting authority whereas his role when it became a minor chieftaincy is that of the Prescribed Authority by virtue of section 18 of the Chiefs Law. The prescribed authority cannot wear the two pairs of shoes at the same time.

The 1962 declaration derived its existence and subsistence from section 4 of the Chiefs Law. The declaration as stipulated in section 4(1) (b) of the Chiefs Law was made to *"regulate' the selection of a person if he is the holder of a recognized chieftaincy"*. When the chieftaincy was de-recognised. Part II of the Law ceased to apply to it as well as the declaration. See the recent case of Lipede & Ors v. Sonekan & Anor. (1995)1 NWLR (Pt.374) 608 at 689-690.

As to whether the courts below were competent to entertain the action in view of the provisions of the 1963 Constitution and section 25 of the Chiefs Law, the appellant's contention is that the claim before the learned trial Judge raised a chieftaincy question; that the dispute giving rise to the action started before the 1979 Constitution came into operation and at the time, the jurisdiction of the High Court was ousted both by the 1963 Constitution and section 25 of the Chiefs Law. The issue is very important because jurisdiction is assumed by a court when the person bringing the action and the subject matter are properly before it. They are properly before the court when by the enabling statute or by its inherent jurisdiction it can exercise jurisdiction over the parties. Jurisdiction may be ousted by statute, by the Constitution, either as to the subject-matter of the cause of action or as to the person. See Attorney General Kwara State & Ors. V. Raimi Olawale(1993)1 NWLR (Pt.272) 645 at 674.

It must be remembered that:-

(a) Chief Gabriel Esan the incumbent Oloja-Adin when the 1962 declaration was made died in 1977 and the said declaration was not tested before it was revoked in 1976: and,

(b) the plaintiff/respondent was installed in accordance with native law, custom and tradition as the Oloja-Adin of Adin in Ilawe by the Alawe of Ilawe on 2/10/80

Thereafter, Exhibit "G" was written to the Alawe of Ilawe by the Secretary to the Government of Ondo State on the direction of the Governor of Ondo State. It was that letter and the appointment of the Sole Commissioner that gave rise to the action. The letter reads in part:

"Date 31st October, 1980

Oba Joseph Ademileka II.

The Alawe of Ilawe,

Ilawe-Ekiti.

Kabiyesi,

*Judicial commission of inquiry
into the Oloja-Adin Chieftaincy
Dispute in Ilawe-Ekiti*

B Following representations made to His Excellency, the Governor on the purported appointment of an Oloja-Adin in Ilawe-Ekiti His Excellency has decided to institute a Judicial Commission of Inquiry into the Chieftaincy Dispute in accordance with subsection 18(6) of the Chiefs Law Cap. 19

C 2. I am therefore directed to advise Your Highness to suspend all actions in the meantime on the chieftaincy pending the outcome of the inquiry. This letter supercedes my previous letter reference No. OB/C.200/T of 30th September, 1980.

D
Sgd. (R.O. Modupe)
Ag. Permanent Secretary
for Secretary to State Government."

The plaintiff/respondent in his statement of claim averred as follows in paragraphs 81-87 and 97:-

E "81. The family unanimously ratified the selection of the plaintiff as the most suitable candidate.

82. The nomination of the candidate i.e. the selection of the plaintiff was communicated to the kingmakers.

F 83. The kingmakers made the appointment as required by native law and custom regulating appointment to the Oloja-Adin Chieftaincy.

84. After the appointment the present incumbent who is the plaintiff in this case Chief Julius Aladetuyi was installed as the Oloja-Adin in line with the native law and custom of installation of an Oloja-Adin.

G 85. During the installation ceremonies, the 1st defendant sent police to disturb the installation ceremonies.

86. After a valid appointment outlined above, 1st defendant urged the Alawe by reasonable deduction from his letter dated 31st October, 1980 Ref. No. DC/C.200/322 to the Alawe to depose the incumbent Chief Julius Aladetuyi.

H 87. The 1st defendant later appointed the 2nd defendant as Sole Commissioner to look into the Oloja-Adin chieftaincy dispute precisely the same terms as the terms of reference of Oshatuberu Inquiry.

97. The plaintiff will contend at the trial that to allow the continuity of the Commission set up by the 1st defendant and being sat over and

adjudicated upon by the 2nd defendant in respect of the Oloja-Adin chieftaincy dispute in the circumstance of the case is an abuse of due process of law and offends against the principle of "res judicata" and infringes the doctrine of separation of powers."

Having set out all the relevant facts, other questions to be answered are:

What is the cause of action in this case and at what point in time can it be said to have arisen?

In *Letang v. Cooper* (1965) 1 Q.13.232, Diplock L.J, defined a cause of action as "a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. If by failing to exercise reasonable care, inflicts direct personal injuries upon, it is permissible today to describe this factual situation indifferently, either as a cause of action for negligence or an action for trespass to the person, though "negligence" is the expression to be preferred." See also Attorney-General, Kwara State & Ors. V. Olawale supra; Sanda v. Kukawa Local Government (1991) 2 NWLR (Pt. 174) 379; Bello & Ors. V. Attorney General, Oyo State (1986) 5 NWLR (Pt. 45) 828 and Adimora v. Ajufo (1986) 3 NWLR(Pt.80) 1.

In *Jackson v. Spittall* (1870) L.R. 5 C.P. 542 at 552, "cause of action" was also defined as that which in popular meaning. For many purposes, in legal meaning as the act on the part of the defendant which gives the plaintiff his cause of complaint.

Even though Chief Gabriel Esan died in 1977, the stool remained vacant until 2/10/80 when the plaintiff-respondent was installed by the Prescribed Authority - The Alawe of Ilawe. It was as a result of Exhibit "G" and the appointment of the 2nd defendant as Sole Commissioner by the 1st defendant that the plaintiff/respondent instituted the action which led to the present proceedings. These actions of the 1st defendant took place after the 1979 Constitution came into effect.

The cause of action arose in 1980. The factual situation the existence of which entitled the plaintiff/respondent to seek or obtain a remedy against the defendants is the interference of the 1st defendant with the nomination. Selection and installation of the plaintiff/respondent according to native law and custom and not the death of Chief Gabriel Esan. The cause of action was not therefore caught by section 161(3) of the 1963 Constitution which stated that:

"161 (3) Notwithstanding anything in any other provisions of this Constitution {including in particular section 32 of this Constitution} but without prejudice to the proviso to subsection (1) of section 22 and subsection (4) of section 27 of this Constitution, no chieftaincy question shall be

entertained by any court of law in Nigeria, and a certificate which is executed by an authority authorised in that behalf by a law coming into force in a territory on or after the date of commencement of this Constitution (including a law passed before that date) and which states

..... shall be conclusive evidence of the matters set out in the statement. ..

Section 6(6)(b) of the 1979 Constitution reads:

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

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

Section 236(1) of the 1979 Constitution provides:

“236(1) Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty. Liability, privilege interest, obligation or claim is in issue or to hear and determine any criminal.

Therefore the court below had jurisdiction to entertain the appeal arising from the decision of the High Court.

The rights and obligations of parties must be considered in the light of the provisions of the law as it was when the cause of action arose and the change in the law after the cause of action arose is of no moment. See *Uwaifo v. Attorney General, Bendel State* (1982) 7 S.C. 124 and *Alao F v. Akano* (1988) 1 NWLR (Pt. 71) 431. Flowing from the above proposition of the law, the cause of action did not arise until the installation of the respondent and the setting up of the Sole Commission in 1980. The facts of the case of *Utih & Ors. V. Onoyivwe & Ors* supra cited and relied upon by the learned appellant’s counsel are not on all fours with the facts of the present case and therefore not applicable.

It cannot also be the case of the appellant that his right became vested in 1977 when the last holder of the office died. Before that time, the Western Nigeria Legal Notice No.6 of 1976 had wiped out the 1962 Declaration on which his claim to the stool could have been anchored. From then, the Chieftaincy Stool was governed by Part III of the Chiefs Law and the applicable customary law regulating the mode of succession continued to be that which had been in force before the Declaration and under which the respondent was appointed.

For the above reasons, the appeal fails and it is hereby dismissed. The judgment of the court below is affirmed. The respondent is entitled to the costs of this appeal which are hereby assessed at N1,000.00.

UWAIS JSC

I have had the opportunity of reading in draft the judgment read by my learned brother Ogwuegbu, J.S.C. I entirely agree with the reasoning and conclusion therein. Therefore, I too see no merit in the appeal. I, accordingly, hereby dismiss it and affirm the decision of the Court of Appeal with N1,000.00 costs to the respondent.

B

C

KUTIGI JSC

I agree with the judgment just delivered by my learned brother Ogwuegbu, J.S.C. which I read before now. The appeal is therefore dismissed with N1,000.00 costs against the appellant.

D

ADIO JSC

I have had the opportunity of reading, in draft, the judgment just delivered by my learned brother, Ogwuegbu, J.S.C. and I entirely agree that the appeal does not succeed. Accordingly, I dismiss the appeal and I abide by the order for costs.

E

IGUH JSC

I have had the privilege of reading, in draft, the judgment just delivered by my learned brother, Ogwuegbu J.S.C. and I entirely agree that this appeal lacks substance and should be dismissed.

F

The most vital issue canvassed by the parties in this appeal is whether the jurisdiction of the trial court to entertain the action is not ousted by virtue of section 161(3) of the 1963 Constitution of Nigeria which the appellant contended was still in operation at the time the cause of action in the suit arose.

G

It is beyond dispute that since the decision of the Privy Council in *Resident of Ibadan v. Lagunju* (1952) 14 W.A.C.A. 549 up to the promulgation of the 1979 Constitution of Nigeria, which, by sections 6 and 236 H thereof changed the situation, the jurisdiction of the courts of law in respect of matters relating to the selection, appointment, recognition or deposition

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of chiefs had remained ousted. See, for instance *Mustapha v. Governor of*

Lagos State (1987) 2 NWLR (Pt.58) 539; *Alao v.Akano* (1988)1 NWLR (Pt. 71)431 and *Chief Etuedor & Ors v. Jacob Onoyivwe & Ors.* (1991) 1 NWLR (Pt.166) 166 at 241. But this position notwithstanding, the jurisdiction of the court was however not ousted although the action touched on chieftaincy matters so long as it did not relate to the selection, appointment, recognition etc of a chief. See *Chief Efuedor Utih & Ors v. Jacob Onoyivwe & Ors* supra. So, too, although courts would not interfere on the matter of the selection of a chief, if something was being done which was contrary to natural justice or the requirement of the law, the courts would intervene. See *Edewor v. Uwegba* (1987) 1 NWLR (Pt.50) 313 at 339. It was only after the 1979 Constitution came into force from the 1st day of October, 1979 that general unlimited jurisdiction was conferred on the courts of law in respect of all matters set out in section 236(1) of the said Constitution including chieftaincy matters, unless such jurisdiction is expressly prohibited by Statute or the Constitution. See *Bronik Motors Ltd. & Anor v. Wema Bank Ltd* (1983) 6 S.C. 158; (1983) 1 SCNLR 296.

The argument of learned counsel for the appellant is that the respondent's claims before the trial court were not justiciable in that the cause of action in the suit arose in 1977 when the last incumbent of the chieftaincy title died.

I think it ought to be pointed out that the question of whether or not a court can entertain or exercise jurisdiction in a particular cause or matter will, to a large extent, depend on the endorsement of the claims on the writ of summons and the statement of claim. Accordingly, where by the said endorsement, a cause of action is disclosed in law, the court unless its jurisdiction is ousted by other statutory provisions is entitled to entertain and to determine such a claim. And so, even before 1979, the jurisdiction of the court was not ousted even though the action touched on a chieftaincy matter so long as such an action did not relate to the selection, appointment e.t.c of a Chief.

In the present case, however, it is clear that the cause of action did not arise in 1977 when the last incumbent of the chieftaincy title died but on the date Chief Julius Aladetuyi the Oloja-Adin was appointed. This, from the record of proceedings, was on the 2nd October, 1980. Under the circumstance, it cannot be seriously argued that the present cause of action was caught by the 1963 Constitution of Nigeria. It seems to me plain that the cause of action in this suit was caught by the 1963 Constitution. The trial court therefore had jurisdiction to entertain the claims.

On the issue of the validity of the respondent's appointment and

the applicability of the Registered Declaration of 1962 to the Oloja-Adin Chieftaincy. I agree with the court below that the 1962 Declaration ceased to have any effect whatever in so far as minor chieftaincies, including the Oloja-Adin chieftaincy, are concerned, as from the 5th February 1976 when the Recognised Chieftaincies (Revocation and Miscellaneous) Orders W.S.L.N. No.6 of 1976 came into force. What regulated the appointment of the Oloja-Adin chieftaincy and indeed all other minor or unrecognised chieftaincies after the 1976 enactment was the native law, custom and tradition of the people. This course was followed in the appointment of the respondent. I cannot therefore hold that the procedure for his appointment was improper. B

It is for the above and the more elaborate reasons contained in the lead judgment of my learned brother that I too, dismiss this appeal as unmeritorious. I abide by the order as to costs therein contained. C

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