

**SUPREME COURT OF NIGERIA**  
1ST SEPTEMBER, 1995 SC. 256/1989  
**CORAM:- M.L. UWAIS, A.B. WALI, M.E. OGUNDARE,**  
**U.MOHAMMED, S.U.ONU, JJSC.**

1. THE GOVERNOR OF OYO STATE  
2. THE ATTORNEY-GENERAL &  
COMMISSIONER FOR JUSTICE, OYO STATE ..... DEFENDANTS/  
3. OBA S.A. AYANTOYE (THE ASAONI OF OKEWU-ORA) APPELLANTS  
AND  
OBA OLOLADE FOLAYAN (ILUFEMILOYE  
AWUILUWUARERE 1) THE AKESIN OF ORA ..... PLAINTIFF/  
RESPONDENT  
(SUBSTITUTED FOR OBA ISAIAH OLANIPEKUN  
DECEASED)

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***CHIEFTAINCY MATTERS*** - Jurisdiction - Where the 1963 constitution is applicable - Courts lack jurisdiction to adjudicate on report of chieftaincy commission of inquiry.

***CHIEFTAINCY MATTERS*** - Jurisdiction - Where court lacks jurisdiction - Its order of injunction is a nullity.

***LEGISLATION*** - Repeal - Chieftaincy dispute - Whether an existing law can be repealed by a statement in a press release.

***LEGISLATION*** - Validity - Chieftaincy commission of inquiry law - Failure to gazette appointment of the commission - Though an irregularity - Proceedings of the commission are not invalidated thereby.

**FACTS**

This case came about as a result of a protracted dispute over chieftaincy title between the plaintiff, the Akesin of Ora, and the third defendant, the Asaoni of Okewu-Ora. The dispute is over matters of precedence between the two and who has the right to wear a beaded crown. Two commissions of Inquiry set up by the Oyo State government to look into the issue gave the third defendant, the Asaoni the upper hand in the matter. The commissions declared the Asaoni the superior chief while relegating the Akesin to a minor status, and declaring that holders of the Akesin chieftaincy had no right to wear a beaded crown. Aggrieved, the plaintiff went to court. The trial court,

whilst dismissing most of the reliefs sought by the plaintiff, nevertheless conceded to him and his successors the right to wear a beaded crown. The seniority of the Asaoni was upheld by the trial court.

Dissatisfied with various aspects of the judgment, all the parties appealed. The Court of Appeal, Ibadan dismissed the defendants' appeal, while partially granting some of the prayers sought by the plaintiff. Both parties to the conflict have now appealed to the Supreme Court with the third defendant raising six issues for determination in the main appeal while the plaintiff raised one issue for determination in the cross-appeal.

### **ISSUES FOR DETERMINATION**

*"4.01 Whether or not the Court of Appeal had jurisdiction to entertain a chieftaincy dispute in the 1977 Ademola Report and/or to set it aside having regard to s. 158(a) and s. 163(3) of the 1963 Constitution of the Federation of Nigeria and s. 24 of the Chiefs Laws of the then Western Region of Nigeria.*

*4.02 Whether or not the Court of Appeal was right in affirming a declaration that the Akesin is entitled to wear a beaded crown when the Report and findings of the Aboderin Commission of Inquiry to the contrary were not set aside, are conclusive and remain binding on the parties.*

*4.03 Whether or not the Court of Appeal was right in affirming that the Press Release (based on the Aboderin Report and findings) is void and to predicate its decision thereon after having refused claims 1 and 3 founded on the said Report and findings which remain unimpeached." (Etc, etc see p. 1652)*

**HELD** (Unanimously allowing 3rd defendant's appeal per lead judgment of **WALIJSC**)

### ***Chieftaincy jurisdiction - Where the 1963 Constitution is applicable***

1. The Ademola Commission of Inquiry and the implementation of its recommendations by the then Military Government happened before 1st October, 1979, that is before the coming into force of the 1979 Constitution. So the applicable constitution at the time the Ademola Report was implemented was the 1963 Constitution. Since the Inquiry and its resultant report was on chieftaincy, by virtue of Sections 158(4a) and 161 (3) of the 1963 Constitution and also Section 24 of the Chiefs Law of Western Nigeria, 1959 neither the trial court nor the Court of Appeal or any other court has jurisdiction to adjudicate on the Ademola Report of Commission of Inquiry. It dealt with chieftaincy matters in which the jurisdiction of the courts was ousted by section 158 (4a) and section 161(3) of the 1963 Constitution and section 24 of the Chiefs Law of

Western Nigeria, 1959. These were the existing and applicable laws at the time. (p. 1654A)

***Legislation - Repeal***

2. There is a subsisting legislation - Edict No. 5 of 1977 Legal Notice No. 22 which was tendered and admitted in evidence as Exhibit 7 which provided that the Akesin of Ora is entitled to wear a beaded crown. The order In Exhibit 7 did not put any limitation that after the demise of the incumbent Akesin, his successor-in-title shall not wear a beaded crown. The learned trial judge was right in his observation that pronouncements at a press conference by the Executive simpliciter are not enough to change or repeal any existing legislation. Therefore the right to wear a beaded crown conferred upon Akesin and his successors-in-title cannot be taken away through a statement made in press release in so far as the legislation vesting the right has not been validly amended. (p. 1658E)

***Where court lacks jurisdiction***

3. I have already dealt with the Court of Appeal decision on the Ademola Report and came to the conclusion that the Court of Appeal lacked jurisdiction to deal with the matter and whatever decision it made in that regard, is null and void. It follows therefore that the order of injunction given against the 1st defendant, his agents, officers and other servants for giving effect to the recommendations in the Ademola Report to the prejudice of the plaintiff/respondent lacks any legal basis. The appeal against it would therefore not arise since the decision on which it is based has earlier on been declared to be a nullity. The appeal by the 3rd Defendant as appellant therefore succeeds. (p. 1659D)

***Failure to gazette appointment of chieftaincy commission***

4. I find no provision in the Commissions of Inquiry Law Cap 25, Laws of Oyo State, 1978 where it stated that before any Commission of Inquiry appointed by the Governor by virtue of the powers conferred on him by that Law takes effect, an instrument must be published in a gazette as a Legal Notice. Section 21 of the Interpretation Law (Cap 52 Laws of Oyo State 1978) does not say that if the order appointing a Commission of Inquiry is not published in the Gazette as stipulated in Section 21(4) of the Interpretation Law, the appointment of the Commission is rendered null and void. If the instrument of appointing the Aboderin Commission of Inquiry was not published before the inquiry was started or even completed, such proceedings were not null and void. If there was anything it was an irregularity which had no effect on the

proceedings and the report based on it. I cannot see any bias or its likelihood in the evidence vis-a-vis the plaintiff in the conduct of the inquiry by the members either individually or collectively. (p. 1660 A)

## B NOTABLE POINTS OF INTEREST

### WALIJC

#### *1. Chieftaincy issue - What constitutes same*

It is not in dispute that the setting up of Ademola Chieftaincy Review Commission of Inquiry and the report it submitted in that regard were before 1st October 1979. The inquiry was held in public. It dealt with Chieftaincy affair concerning the plaintiff and the 3rd defendant and the change of the title of the 3rd defendant from “Asaoni of Okewu-Ora” to “Asaoni of Ora” was part of the recommendations contained in the report submitted by it. The plaintiff’s argument that the change of title of the 3rd defendant is not a chieftaincy issue is therefore untenable. I accept the 3rd defendant’s submission that the issue is part and parcel of chieftaincy, as it is well founded. (p. 1653 D)

#### *2. Fair hearing - Right to waive hearing*

It should be borne in mind that the fact that question of fair hearing is a universally recognized issue, does not mean that a person who elected not to be heard after being given opportunity can be forced to do so. It is a right which a party may elect to waive if he so desires. (p. 1653 F)

#### F 3. *When a commission of Inquiry cannot make conclusive pronouncements*

Where the powers vested in a commission are of advisory, deliberative or investigatory character, the commission cannot make binding and conclusive pronouncements since whatever decision it takes or recommendation it makes will have no legal and binding effect until it is accepted and con-firmed by the authorizing body. But this does not mean that the authority cannot express its mind on the recommendations contained therein pending its implementation. (p. 1659 B)

### OGUNPAREJC

#### H 4. *Cause of action - Applicable law*

It is beyond dispute that the law applicable to a cause of action is a law prevailing at the time the cause of action arose notwithstanding that that law had been repealed at the time the action is being tried. Whatever cause of action the Plaintiff might have in respect of the Ademola Commission arose

when the Commission submitted its report in 1977. It is, therefore, the 1963 Constitution that would determine whether or not the court had jurisdiction, (p. 1670D)

### **5. Chieftaincy question - Definition thereof**

B

It is, however, contended by the plaintiff that the findings and recommendations of the Commission changing the title of the Asaoni of Okewu-Ora to Asaoni of Ora was not a chieftaincy question excluded from the court's jurisdiction by the 1963 Constitution. The expression "*Chieftaincy question*" used in sections 158(4)(a) and 161(3) was defined in section 165(1) of the 1963 Constitution to mean: "*Any question as to the validity of the selection, appointment, approval of appointment, recognition, installation, grading, deposition or abdication of a chief*". In my respectful view, the issues referred to the Ademola Commission are chieftaincy questions within the meaning of the above definition. By section 4(2) of the Chiefs Law Cap.21 Laws of Oyo State 1978, a chieftaincy Declaration is a statement of the customary law relating to the appointment etc. of a recognized chief. It follows, therefore, that any question relating to such a declaration is a chieftaincy question. (p. 1670F)

E

### **6. Judicial review - Powers of the court**

In relation to matters within a public body's field of judgment the court conducts its review from the body's standpoint and must not intervene solely on the basis that it would itself have acted differently.... In a judicial review the court must not stray into the realms of appellate jurisdiction for that would involve the court in a wrongful usurpation of power in exercise of its power of judicial review the court has no jurisdiction to substitute its own opinion for that of the public body whose decision is being reviewed for it is not part of the purpose of judicial review to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. What the court is concerned with is the manner by which the decision being impugned was reached. It is its legality, not its wisdom, that the court has to look into. For the jurisdiction being exercised by the court is not an appellate jurisdiction but rather a supervisory one. (p. 1672 G)

H

### **7. When grant of court's suo motu issue is wrongful**

This apart, it does not appear that the issue of injunction which was refused by the trial court was ever raised in the plaintiffs cross appeal to the court below. True enough the relief sought by the plaintiff from the Court of Appeal

was the granting to the plaintiff of all the reliefs claimed by him but not granted by the lower court, but there was no ground of appeal in his Notice of Appeal challenging the refusal to grant an injunction in his favour nor was the question of injunction one of the issues put before the court below by the plaintiff. The court below, with profound respect, was, therefore, in error to have  suo motu raised the issue of injunction and grant same without hearing the parties on it. (p. 1673 H)

### **REPRESENTATION**

Akin Olujimi, holding brief for Chief Folake Solanke  
C SAN, for the 3rd Defendant/Appellant/Respondent  
R. A. Ogunwole, holding brief for Chief Afe Babalola, SAN,  
for the Plaintiff/Respondent/Cross-Appellant.

### **CASES REFERRED TO**

- D Mustapha v. Governor of Lagos State (1987)2 NWLR (Pt. 58)539  
Kotoye v. Saraki (1994)12 KLR 226  
Uwaifo v. Attorney-General, Bendel State (1982)7 SC. 124  
Nwabia v. Adiri (1958) SCNLR 451,454  
H.R.H Adeyemi v. A.G (1984) 1 SCNLR 525  
E Amavo Ltd v. Bendel Textile Mills Ltd (1991)8 N.W.L.R. (Part 207) 37  
Osadebay v. A.G. Bendel State (1991) 1 N.W.L.R. (Part 207) 525 at 555  
Tukur v. Government of Gongola State (1989)4 NWLR (Part. 117) 517  
Bala v. Bankole (1986)3 NWLR (Part 27) 141;  
Aro v. Fabolude (1983)2 S.C. 75  
F Arubo v. Aiyeleru (1993) 2 KLR 23  
Obioma v. Olomu (1978) 2 S.C.1  
Western Steel Works v. Iron & Steel Workers Union (1987) 1 NWLR (part 49) 284

### **BOOK REFERRED TO**

Salmond on Jurisprudence (12th Edition) p. 43

### **STATUTES REFERRED TO**

- Chiefs Law of Western Nigeria, 1959, s. 24 Commission of Inquiry Law,  
H Cap. 25, Laws of Oyo State; s. 10  
Constitution of the Federal Republic of Nigeria, 1963, ss 158(4a); 161 (3) 165(1)  
Interpretation Law of Oyo State 1977; s. 21(3) (4) (5)  
Inter-tribunal Boundaries Settlement Ordinance 1933; s. 3

The Chiefs (Wearing of Beaded crowns) Order, 1977

The Chiefs (Wearing of Beaded crowns) (Amendment) Order, 1979

Recognized Chieftaincies (Miscellaneous Provisions) Order, 1978, OYSLN 18 of 1978

**LEAD JUDGMENT WALI JSC**

**B**

By an amended Writ of Summons, filed in the High Court of Justice of Oyo State holden at Ibadan, the present respondent as plaintiff, claimed against the present appellants as defendants as follows:-

*“(1) Declaration that the appointment and proceedings of the Aboderin Commission of Enquiry are unconstitutional, irregular contrary to Natural Justice null and void and that all actions based on the findings are void and of no effect on the grounds that:*

*(a) The claim of precedence and the right to wear a beaded crown are not disputes within the context of the chiefs’ law.*

*(b) The Commission of Enquiry was neither regularly appointed nor was the instrument of the purported appointment published as by law.*

*(c) There was no administering law under which the said Commission of Enquiry could have been appointed.*

*(d) The Commission did not and has not announced its decisions in public up till now; and*

**E**

*(e) The Commission did not act Judicially and impartially shutting out the evidence that favoured the plaintiff whilst leaning heavily to and admitting those that favoured the other side.*

*(2) Declaration that the decision of the 1st defendant contained in the press release issued on behalf of the 1st defendant by his Deputy Governor on the 18th of September, 1980 and based on the findings of Aboderin Commission of Enquiry is illegal, unconstitutional, and contrary to Natural Justice on the following grounds:*

*(a) The Chiefs Law makes no provisions for any representation before the pronouncement of the said decision and the 1st defendant did not invite any representation from the plaintiff before acting to the prejudice of the plaintiff.*

*(b) The 1st defendant ignored the advice and or orders of both his Deputy, the Obas and Council of Chiefs in Oyo State.*

*(3) An Order setting aside the report and findings of the Aboderin Commission of Enquiry, the conclusions and the consequential actions of the Oyo State Government on the report and findings.*

*(4) An Order setting aside the report and findings of the Ademola Commission of Inquiry wholly or partly in so far as its decision affects the*

interest of the plaintiff.

(5) *An injunction restraining the 1st defendant, all his agents, officers and other servants of the 1st defendant from giving effect to the said decisions or otherwise acting thereon to the prejudice of the plaintiff.*”

Pleadings were ordered, filed and amended. At the end of the hearing B of the case, the learned trial Judge, (Ibidapo Obe J.) in a considered judgment found as follows:-

“.....that the plaintiff has not satisfied the court on his reliefs to:

(1) *Set aside the report and findings of the Aboderin Commission of Inquiry, the conclusions and the consequential actions of the Oyo State C Government on the Report and findings.*

(2) *An Order setting aside the report and findings of the Ademola Commission of inquiry as wholly or partly in so far as its decision affects the interest of the plaintiff.*

(3) *On injunction, Government need not be restrained before a D judgment of a court of competent jurisdiction is respected.*

(4) *The plaintiff has however satisfied the court on the declaration that the decision of the then Governor contained in the Press Release issued on behalf of the Government by the Deputy Governor on the 18th of September, 1980 as based on the findings of Aboderin Commission of Enquiry is E Void.*

(5) *Semble, the plaintiff has also satisfied the court for the declaration that the Akesin both by law as set out in the Oyo State Legal Notice No. 22 (Amendment) Order, 1979 known as the Chiefs (wearing of beaded crowns) (Amendment) Order, 1979 and by tradition and usage, is entitled to wear a F beaded crown. The Akesin of Ora by status will continue to wear his crown since “the King never dies”.*

Dissatisfied with the trial court’s judgment, the defendants as well as the plaintiff appealed to the Court of Appeal, Ibadan Division against it. The Court of Appeal, after hearing the appeal, delivered a considered judgment G and ordered as follows:-

“1. *Appeal by the 1st and 2nd defendants is hereby dismissed.*

2. *Appeal by the 3rd defendant is also dismissed.*

3. *Plaintiff’s appeal partially succeeds and*

(i) *an order setting aside the findings and report of Ademola Com- H mission of Inquiry in so far as it affects the plaintiff’s interest is hereby made.*

(ii) *An injunction restraining the 1st defendant, all his agents, officers and other servants from giving effect to the decision or otherwise acting thereon to the prejudice of the plaintiff is hereby granted.*

4. *Subject to paragraph 3 above the judgment of the High Court*



*delivered on 27th September, 1986 is confirmed.*

*5. The plaintiff is awarded costs of this appeal assessed at four hundred (N400.00) Naira against the 1st and 2nd defendants jointly and N200.00 against the 3rd defendant.”*

Aggrieved by the decisions of the Court of Appeal, the parties have B now further appealed to this court. The 1st and 2nd defendants filed a joint Notice of Appeal, while the 3rd defendant filed a separate Notice of Appeal. The plaintiff also obtained leave of this court to appeal and consequent upon that filed his own Notice of Appeal.

The attempt by the 1st and 2nd defendants to appeal to this court did C not succeed but learned counsel appeared on their behalf holding a watch brief, since they were named in the appeal as person's affected. No brief of argument was filed on their behalf and learned counsel appearing for them did not apply for leave to address the court during the hearing of the appeals.

The brief facts of the case as narrated by the plaintiff and adopted by D the 3rd defendant are as follows:

The dispute between the plaintiff, the Akesin of Ora and the 3rd defendant, the Asaoni of Ora, arose as a result of the claim by the plaintiff that he is entitled to wear a beaded crown as of right and that the 3rd defendant has no right to claim precedence over him. The other related issue is the change of E the title of the 3rd defendant from Asaoni of Akewu-Ora to Asaoni of Ora as recommended by the Ademola Chieftaincy Declarations Review Commission of 1977, which was accepted and implemented by the then Oyo State Government.

Briefs were filed and exchanged for the two appeals that is, the main F appeal by the 3rd defendant and the cross-appeal by the plaintiff. In the brief filed by the 3rd defendant, the following issues have been formulated for this court to determine -

*“4.01 Whether or not the Court of Appeal had jurisdiction to entertain a chieftaincy dispute in the 1977 Ademola Report and/or to set it aside G having regard to S. 158(a) and S. 163(3) of the 1963 Constitution of the Federation of Nigeria and S. 24 of the Chiefs Laws of the then Western Region of Nigeria.*

*4.02 Whether or not the Court of Appeal was right in affirming a declaration that the Akesin is entitled to wear a beaded crown when the H Report and findings of the Aboderin Commission of Inquiry to the contrary were not set aside, are conclusive and remain binding on the parties.*

*4.03 Whether or not the Court of Appeal was right in affirming that the Press Release (based on the Aboderin Report and findings) is void and*

*to predicate its decision thereon after having refused Claims 1 and 3 founded on the said Report and findings which remain unimpeached.*

4.04 Whether or not having regard to issues 1, 2 and 5 above, the Court of Appeal was correct in granting an injunction against the 1st defendant all his agents and preventing them from giving effect to a part of the B 1977 Ademola Report of acting thereon to the prejudice of the plaintiff.

4.05 Whether or not on the principle of 'issue Estoppel' and/or 'res judicata', the plaintiff could validly re-open the litigation on the Ademola Report after his previous unsuccessful action in HOS/58/78 on the same issue/s.

4.06 The 3rd defendant intends to apply to this Honourable Court C in the course of the hearing of the appeal for leave to re-introduce a point to wit: issue 5 in paragraph 4.05 above - not taken in the Court of Appeal - but which was pleaded and given in evidence in the High Court. (PP. 143, 197 and 209 of the Record of Proceedings).

In response to the 3rd defendant/appellant's brief, the plaintiff/respondent filed a brief in which he raised the following 4 issues for this court's determination -

"(i) Whether the lower court was right in upholding the decision of the trial Court That Akesin is entitled both by law and tradition to wear a beaded crown.

E (ii) Whether having regard to the fact that the cause of action arose before 1979 the lower court had jurisdiction to set aside the report of Ademola Chieftaincy Review Commission in so far as the same affected the plaintiff.

(iii) Whether the lower court was right in granting injunctive relief in favour of the plaintiff against the defendants not to use the Report of F Ademola Commission against the plaintiff.

(iv) Whether the lower court was right in setting aside the report of Ademola when the plaintiff had unsuccessfully challenged same in HOS/58/78 as shown in Exhibit 34."

G For the cross-appeal by the plaintiff, only one issue was formulated to wit:-

*Whether having regard to the law and the materials before it, the Court of Appeal was right in refusing to set aside the report of the Aboderin Commission of Inquiry."*

H In the 3rd defendant/respondent's brief in the plaintiff's cross-appeal, the following two issues were formulated -

"1. Whether or not the Court of Appeal was right in refusing to set aside the Aboderin Commission of Inquiry proceedings and Report.

2. Whether or not the non-publication of the instrument of appointment of the Aboderin Commission in the gazette rendered its proceedings

*void.*”

It is pertinent at this stage to deal with the 5th issue in the 3rd defendant’s brief which is on “Issue Estoppel” and/or “res Judicata”.

As will be shown later on in this judgment that the 5th issue does not arise since the Court of Appeal lacked jurisdiction to deal with it. It is accordingly struck out for want of jurisdiction. B

On issue 1, it was the contention of learned counsel for the 3rd defendant that the Court of Appeal was wrong in assuming jurisdiction over a chieftaincy issue that arose before 1st October 1979 as a result of which it set aside part of the Ademola Report on Chieftaincies. She argued that the name of a chieftaincy is fundamental as it relates to every chieftaincy issue or dispute such as selection, appointment, installation, deposition, abdication etc., and that any such dispute about a name is a chieftaincy issue. C

In reply, learned counsel for the plaintiff submitted that since the plaintiff’s complaint is only challenging the change of the 3rd defendant’s title from “Asaoni of Okewu-Ora” to “Asaoni of Ora”, it is an issue outside the purview of Section 165(1) of the 1963 Constitution, and to that extent Section 161(3) of the same constitution and S. 24 of the Chiefs Law do not apply. D

It is not in dispute that the setting up of Ademola Chieftaincy Review Commission of Inquiry and the report it submitted in that regard were before 1st October, 1979. The Inquiry was held in Public. It dealt with Chieftaincy affair concerning the plaintiff and the 3rd defendant and the change of the title of the 3rd defendant from “Asaoni of Okewu-Ora” to “Asaoni of Ora” was part of the recommendation contained in the report submitted by it. The plaintiff’s argument that the change of title of the 3rd defendant is not a chieftaincy issue is therefore untenable. I accept the 3rd defendant’s submission that the issue is part and parcel of chieftaincy, as it is well founded. E

It should be borne in mind that the fact that question of fair hearing is a universally recognised issue, does not mean that a person who elected not to be heard after being given opportunity can be forced to do so. It is a right which a party may elect to waive if he so desires. F

The Ademola Commission of Inquiry was held in public and before it started its sitting, it invited through the media, submission of memoranda by interested parties. This is the usual practice by public inquiries of its nature. Followed by the submission and reception of memoranda, it took evidence in public from those interested. Apart from the plaintiff’s complaint that he was inhibited from giving evidence before the Tribunal, there was no evidence that either he or any other person wishing to testify on his behalf was denied hearing before the Tribunal. G

H

The Ademola Commission of Inquiry and the implementation of its recommendations by the then Military Government happened before 1st October, 1979, that is before the coming into force of the 1979 Constitution. So the applicable constitution at the time the Ademola Report was implemented was the 1963 Constitution. Since the Inquiry and its resultant report was on chieftaincy, by virtue of Sections 158(4a) and 161(3) of the 1963 Constitution and also Section 24 of the Chiefs Law of Western Nigeria, 1959 neither the trial court nor the Court of Appeal or any other has jurisdiction to adjudicate on the Ademola Report of Commission of Inquiry. It dealt with Chieftaincy matters in which the jurisdiction of the courts was ousted by section 168(4a) and section 161(3) of the 1963 Constitution and section 24 of the Chiefs Law of Western Nigeria, 1959. These were the existing and applicable laws at the time. See *Mustapha v. Governor of Lagos State* (1987) 2 NWLR (Pt. 58) 539; *Kotoye v. Saraki* (1994) 7 NWLR (Pt.357) 414; *Adeyemi v. Attorney-General of Oyo State & Ors.* (1984) 1 SCNLR 525; *Uwaifo v. Attorney-General, Bendel State* (1982) 7 SC. 124 and *Alhaji Salami Olaniyi v. Gbadamosi Aroyehun* (1991) 5 NWLR (Pt.194) 652; (1991) 4 LRCN 1271; *Osadebay v. Attorney-General, Bendel State* (1991) 1 NWLR (Pt.169) 525.

The jurisdiction of a court is determined by the existing law at the time the cause of action in dispute arose, and not, by the existing law at the time the court's jurisdiction is invoked. See *Kasikwu Farms Ltd. v. Attorney-General, Bendel State* (1986) 1 NWLR (Pt. 19) 695; *Omisade v. Akande* (1987) 2 NWLR (Pt.55) 158. Claim (4) in the plaintiff's amended Writ of Summons is hereby struck out for want of jurisdiction.

Issues 2 and 3 in the 3rd defendant's brief in the main appeal cover issue 1 of the plaintiff's brief as respondent to the main appeal. In these issues, it was the submission of learned counsel for the 3rd defendant that in view of the categorical finding of the Aboderin Commission of Inquiry recommendation that-

*"the Asaoni shall take precedence over Akesin in all matters as the paramount ruler and that on the death of the plaintiff an Akesin will no longer be entitled to wear a headed crown",*

which was accepted by the Government, the Court of Appeal was wrong in affirming the right of the plaintiff to wear a beaded crown, since he is not a descendant of any Oba or prince or royal family in Ile-Ife. It was submitted that any finding based on the Press Release on the Aboderin Commission by the Deputy Governor cannot affect the Report itself and that the Court of

Appeal was wrong to declare the Press Release void. It was contended that the Aboderin commission of Inquiry was specifically set-up to settle complaints about Legal Notice No. 22 and that the Commission's recommendation on it is legally binding on the Government and the parties. The following cases were cited and relied on *Anjoku & Anor. v. Nnamani* (1953) 14 WACA B 357 and *Oyelade v. Araoye & Anor* (1968) NMLR 41.

In reply to 3rd defendant/appellant above, learned counsel for the plaintiff/respondent submitted that apart from Legal Notice No. 22 (Amendment) Order, 1979 (Exh. 7) the plaintiff called evidence which was accepted by the trial court, that the plaintiff - Akesin originally came from Ife, a descendant of Oduduwa and is therefore by tradition entitled to wear a beaded crown and he referred to the evidence of P.W.1, P.W.5 and P.W.6 in that regard. He therefore submitted that the argument of the 3rd defendant/appellant that the Court of Appeal was wrong in upholding the decision of the trial court that plaintiff, as of right, is entitled to wear a beaded crown without setting aside the recommendations of the Aboderin Commission Report on the issue, is untenable. He contended that the Commission's Report was merely recommendatory and as such it only provided a basis for executive action and that such recommendation would have no force of law. He said for a tribunal to be able to exercise the power of a binding and authoritative decision, there must be an enabling statutory provisions giving it such power. He cited *Nwabia v. Adiri* (1958) SCNLR 451, 454 and *HRH. Lamidi Olayiwola Adeyemi & Ors. v. A.-G., Oyo State & Ors.* (1984) 1 SCNLR 525 in support. He also said that neither Section 10 of the Commission of Inquiry Law Cap 25 Laws of Oyo State, nor any other section in that Law had conferred on the Aboderin Commission power to give a binding decision as was the case in Section 3 of the Inter- Tribunal Boundaries Settlement Ordinance 1933 considered and applied *Anjoku & Anor. v. Nnamani* (supra). Learned counsel finally submitted that there is no appeal to this court against the nullification of government decision on the Aboderin Commission Report.

Let me start with the submission of learned counsel for the plaintiff/respondent that there is no appeal to this court against the nullification of government decision on the Aboderin Commission Report. This submission is misconceived. In Ground 3 in the 3rd defendant's Notice of Appeal dated 10th April 1990 and filed in this court on 19th April 1990, its particulars leave no avenue for doubt that the 3rd defendant complained of the non-setting aside by the Court of Appeal of the Aboderin Commission Report before affirming the trial court's decision that Akesin is entitled by law and tradition

to wear a beaded crown.

In my view, the findings of the trial court on the Aboderin Report are correct. The learned trial Judge after considering the evidence before him held as follows:”

*In sum, I hold that the plaintiff has not satisfied the court on his B reliefs to:*

*(1) Set aside the report and findings of the Aboderin Commission of Inquiry, the conclusions and the Consequential actions of the Oyo State Government on the Report and findings.*

Before the learned trial Judge made these findings he specifically C referred to the recommendations highlighted in the Press Release which affected the plaintiff to wit:

“10(a) Finally, Government has noted the Report and all the recommendations contained therein as highlighted in its findings:

(b) Government has approved all the recommendations of the Com-D mission of Inquiry except the clause that deals with the Prescribed Authority of the Orangun of Ila. The Government approved that the Orangun of Ila should continue to exercise his power of Prescribed Authority in the area:

(c) Government also agreed that the Akesin of Ora is not an Oba and should not have been allowed to wear a beaded crown:

E (d) Government approved that because the present Akesin of Ora had, by virtue of Edict No.5 of 1977, been allowed to wear a beaded crown, no Akesin after the present incumbent should wear a headed crown

(e) Government also approved that the status future Akesin and the present Chiefs under Akesin be determined in accordance with the facts and F history of the general position of things in Ora as stated in the Report and as should be further revealed in an administrative inquiry which will be set up soon to arrange all the chieftaincy titles in Ora under one Oba, i.e. THE ASAONI OF ORA according to their seniority:

(f) For the benefit of the general public, Government has decided to G publish the Report of the Commission Inquiry.”

and held -

“This Court, (indeed, any Court) would be amazed by what the Deputy Governor on behalf of the 1st and 2nd defendants said in paragraphs 10(c) and (d) already noted above. Government stated that because the H present Akesin of Ora had, by virtue of Edict No. 5 of 1977, been allowed to wear a beaded crown, no Akesin after the present incumbent should wear a beaded crown. I hold the view that where a person with a vested legal right has that right kept afoot in the statute book, can the same Government make a pronouncement at a Press Conference purporting to take away that same

*right from him without abrogating the law? It seems to me that no Government, and or Governor of a state however executive shall rule by mere pronouncements at Press Conference and when this happens, such statements cannot be more than mere political aberrations.*

*This takes me to the submission of the Senior State Counsel, Mr. Boade to the effect that the Press Conference of the Deputy Governor was constitutional and in accordance with the rules of natural Justice. I am afraid, this submission does not represent the law, on the ground that what the Akesin has is a vested right.*

*‘A right vests when all the facts have occurred which must by law occur in order for the person in question to have the right.’*

(See Salmond on Jurisprudence 12th Edition page 43) Thus where the right of the plaintiff is vested, as in this case, it can only be taken from him by law validly passed and not by mere executive or political statement dished out at a Press Conference.

Let me now consider whether or not the Akesin’s successor-in-title after his demise would be eligible, like the present incumbent, to wear a beaded crown. This appears to be the mainspring as to the status of the plaintiff. The answer, in my judgment, is to be found in the law to which reference has already been made. The 67 names of Obas and Chiefs listed in the Order of 1977 are together with the addition of other 7 names contained in the Order of 1977 are by legal presumption entitled to their beaded crowns.

“x x x x x x x x “

*I hold the view, therefore, that Government shall not interfere with the vested rights of the plaintiff or his successors-in-title without legal justification. It is also my view that having heard the witnesses, I am inclined to believe, and so I accept the evidence that the Akesin of Ora by the tradition of his forebears is entitled to wear a beaded crown.”*

In affirming the decision of the trial court, the Court of Appeal said -

*“It was not disputed that unlike the Ademola Commission, the plaintiff, the Akesin of Ora, himself went and testified before Aboderin Commission of Inquiry. The day-to-day proceedings and the Report of the Inquiry were tendered as Exhs. 3 and 3A respectively at the trial. But the plaintiff made the allegation that at some stage of the inquiry he was denied further hearing when he tried to tender Exhs. 20D-D4. A careful examination of Exhs. 3 and 3A however do not support the plaintiff’s claim. In addition, the plaintiff completely failed to establish at the trial court copies of Exhs. 10 and 16 or any other exhibit for that matter, were directed to any member of the Commission or that the Commission was influenced in any way by the contents or any exhibit before making its recommendations. There was clearly*

*no evidence that the Commission was influenced by anything or biased in any way in reaching its conclusions. It is not enough for the court to have nullified the Commission's report merely because the trial court said it would appear that the government had prejudged the findings of Aboderin Commission. That was not a finding that the Commission was influenced by any stand of the government at all. Far from it, I am therefore clearly of the view that the trial court was right when it held that the plaintiff failed to satisfy it on the relief to set aside the report and findings of Aboderin Commission of Inquiry, I reject all submissions to the contrary."*

C From the excerpts (supra) it becomes clear that both the trial Judge and the Court of Appeal were referring to the pronouncement by the Deputy Governor in the Press Release affecting the right of the plaintiff conferred on him by law and tradition which cannot be taken away or changed by a mere press release. Until the law i.e. Exh. 7 is amended and the recommendations of D the report are legally and properly implemented, the accepted report will continue to remain as mere recommendations yet to be executed. The execution cannot be by a press release simpliciter. The cases cited by learned counsel for the 3rd defendant/appellant are not apposite as submitted by learned counsel for the plaintiff/respondent.

E There is a subsisting legislation - Edict No.5 of 1977 Legal Notice No.22, which was tendered and admitted in evidence as Exh. 7 which provided that the Akesin of Ora is entitled to wear a beaded crown. The order in Exh. 7 did not put any limitation that after the demise of the incumbent Akesin, his successor-in-title shall not wear a beaded crown. The learned trial Judge was F right in his observation that pronouncements at a press conference by the Executive simpliciter are not enough to change or repeal any existing legislation. Therefore the right to wear a beaded crown conferred upon Akesin and his successors-in-title cannot be taken away through a statement made in a press release in so far as the legislation vesting that right has not been validly G amended. Although the press release issued by the Deputy Governor has no effect on the existing right vested by law in the plaintiff and his successors-in-title to wear a beaded crown, nonetheless it is an acceptance of the recommendations in the Aboderin report and that is not an illegal or unconstitutional act. I find no substance in the arguments of learned counsel for the 3rd defendant/appellant that the Court of Appeal was wrong in affirming the decision of H the trial court on the issue without setting aside the Report of the Aboderin Commission. The report is entirely a separate document from the Deputy Governor's press release, though based on the report. Whereas the report recommended certain changes affecting the status of Akesin, the press re



lease was made in order to make known to the public, the Government views on it.

The Press Release, which derived its legitimacy from the Aboderin Commission Report, is not synonymous with the Report itself. The Aboderin Commission of Inquiry was, from its terms of reference, merely advisory. Where the powers vested in a commission are of advisory, deliberative or investigatory character, the commission cannot make binding and conclusive pronouncements since whatever decision it takes or recommendation it makes will have no legal and binding effect until it is accepted and confirmed by the authorising body. But this does not mean that the authority cannot express its mind on the recommendations contained therein pending its implementation.

On issue 4, it was the contention of learned counsel for the 3rd defendant/appellant that since the injunction granted was predicated on the erroneous setting aside of the Ademola Report, it could not be sustained particularly when the plaintiff/respondent did not appeal against it.

Learned Senior Advocate finally urged the court to allow the 3rd defendant/appellant's appeal. I have already dealt with the Court of Appeal decision on the Ademola Report and came to the conclusion that the Court of Appeal lacked jurisdiction to deal with the matter and whatever decision it made in that regard, is null and void. It follows therefore that the order of injunction given against the 1st defendant, his agents, officers and other servants from giving effect to the recommendations in the Ademola Report to the prejudice of the plaintiff/respondent lacks any legal basis. The appeal against it would therefore not arise since the decision on which it is based has earlier on been declared to be a nullity.

The appeal by the 3rd defendant as appellant therefore succeeds.

I shall now deal with the cross-appeal by the plaintiff.

In the only issue formulated by the plaintiff in the cross-appeal, it was the contention of learned counsel that by virtue of section 21(3), (4) and (5) of the Interpretation Law of Oyo State, the publication of the instrument of appointment of the Aboderin Commission of Inquiry was mandatory and failure to fulfil this condition precedent, had robbed the Commission of the necessary jurisdiction to enter upon the inquiry. Learned counsel also urged this court to hold that both the trial court and the Court of Appeal were wrong in not inferring bias or likelihood of it on the part of Aboderin Commission of Inquiry against the plaintiff on the following two grounds-

1. The circumstances of the appointment of the Commission, and
2. the failure of the Commission to act judicially.

I have gone into the arguments of learned counsel on both sides and

having done so, I am of the firm view that both the trial court and the Court of Appeal are right in their findings on the issue. I find no provision in the Commissions of Inquiry Law Cap 25, Laws of Oyo State, 1978 where it stated that before any Commission of Inquiry appointed by the Governor by virtue of the powers conferred on him by that Law takes effect, an instrument must be published in a gazette as a Legal Notice. Section 21 of the Interpretation Law (Cap 52 Laws of Oyo State 1978) does not say that if the order appointing a commission of inquiry is not published in the Gazette as stipulated in Section 21(4) of the interpretation Law, the appointment of the Commission is rendered null and void. If the instrument of appointing the Aboderin Commission of Inquiry was not published before the inquiry was started or even completed, such proceedings were not null and void. If there was anything it was an irregularity which had no effect on the proceedings and the report based on it. I cannot see any bias or its likelihood in the evidence vis-a-vis the plaintiff in the conduct of the inquiry by the members either individually or collectively.

In the light of my observations above, I agree with the findings of the trial court that -

*“In the light of above, little is left to be said about Ademola and Aboderin Commissions of Inquiry. Section 21 of the Chiefs Law and the Commissions of Inquiry Law Cap. 25 of 1978 Laws of Oyo State under which both Commissions of Inquiry were set up are clear and I hold the view, having regard to Exhs. 3 and 34, 17 and 25 that both Commissions performed their respective assignments under the provisions of the law aforesaid,”*

and that of the Court of Appeal that -

*“.....non-publication of the Commission in the gazette would only amount to a mere irregularity which would not vitiate the proceedings and findings of the Commission whose members were duly sworn-in. In fact the Commission can be published in the gazette at any time and publication is not a condition precedent to its functioning.....”*

I endorse these findings. I find no substance in the cross-appeal by the plaintiff.

In the final analysis, I hereby make the following orders -

1. The substantive appeal by the 3rd defendant succeeds. The order “setting aside the findings and report of Ademola Commission of Inquiry in so far as it affects that plaintiff’s interest” and the injunction “restraining the 1st defendant, all his agents, officers and other servants, from giving effect to the said decisions or otherwise acting thereon to the prejudice of the plaintiff” are hereby set aside.

2. The cross-appeal by the plaintiff is hereby dismissed.

The 3rd defendant/appellant is awarded N1000.00 costs against the

plaintiff/respondent.

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**UWAIS JSC**

I have had the advantage of reading in draft the judgment read by my learned brother Wali, J.S.C. I agree with it and I too allow the substantive B appeal and dismiss the cross-appeal. I adopt the order therein.

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**OGUNDARE JSC**

The two appeals now before us, that is the 3rd defendant's main appeal and the plaintiff's cross-appeal relate primarily to the extent to which the court is empowered to review the findings of an administrative tribunal- C in this case, the Ademola and Aboderin Commissions of Inquiry into two principal chieftaincies in Ora Town in the Ila Local Government of former Oyo State (now Osun State). The two principal chieftaincies are - the Asaoni and the Akesin. D

There has been a long standing dispute as to:-

- (a) whether the Akesin is entitled to wear a beaded crown;
- (b) whether the Asaoni title is restricted to Okewu quarters or the whole of Ora town and
- (c) the order of precedence between the two chieftaincies. E

It is not in dispute that the two chieftaincies are subordinate to the Orangun of Ila and both were formerly recognised chieftaincies (See WRLN 22 of 1959 titled Recognised Chieftaincies Order). As a result of the Recognised Chieftaincies (Miscellaneous Provisions) Order 1978, OYSLN 18 of 1978, however, only the Asaoni remains a recognised chieftaincy, the Akesin having F been reduced to a minor chieftaincy. On or about 1976 the Oyo State Government set up a commission of inquiry known as Chieftaincy Review Commission, to, among other things, investigates the correctness or otherwise of all disputed chieftaincy declarations in respect of recognised chieftaincies in the State. One of the matters placed before the Commission headed by the Hon. G Mr. Justice Adenekan Ademola was the Declaration in respect of the Asaoni. At the end of its assignment the Ademola Commission recommended some minor changes in the existing Asaoni Chieftaincy Declaration one of which was that the title of the Asaoni the "Asaoni of Ora" rather than "Asaoni of Okewu-Ora". The Government accepted the recommendations and caused H the declaration amended accordingly. The Asaoni's new title was reflected in the Recognised Chieftaincies (Miscellaneous Provisions) Order, OYSLN 18 of 1978 in which the title was listed as "Asaoni of Ora". The Asaoni as a recognised chieftaincy is one to which Part II of the Chiefs Law applies; the Akesin by its

omission from the list contained in the OYSLN 18 of 1978 becomes a minor chieftaincy and appears to have remained so till date.

Section 28(1) of the Chiefs Law empowers the Executive Council of the State to specify, after consultation with the council of Obas and Chiefs in the State, the chieftaincies the holders for the time being of which are entitled to wear beaded crowns. Pursuant to this power the Oyo State Executive Council issued OYSLN 7 of 1977 titled The Chiefs (Wearing of Beaded Crowns) Order wherein the list of seventy eight chieftaincies entitled to the use of beaded crowns was given. The Asaoni of Ora was on this list but not the Akesin. Following the issuance of this legal notice, the then Akesin, with the support of the Orangun of Ila, the prescribed authority in the Ila Local Government and some other members of the Council of Obas and Chiefs of the State, protested, to Government against the exclusion of his chieftaincy from the list, in consequence of which the Legal Notice was amended and Akesin's title was included among the chieftaincies entitled to the use of beaded crowns - See Legal Notice OYSLN 22 of 1979 titled The Chiefs (Wearing of Beaded Crown) Order 1979. With the publication of this Legal Notice came protests to the Oyo State Government against the inclusion of the Akesin title. To put to rest the long standing dispute as to the Akesin's right to wear beaded crown the Government set up a Commission of Inquiry headed by Mr. Justice' Aboderin to inquire into the following matters:-

*“(i) In the light of the history of Ora town from its inception to the present day with special reference to the ruling house or houses in the area, the origin of such ruling house or houses and their relationship to one another, to examine the conditions which entitle any ruler to wear a beaded crown in the area;*

*(ii) To enquire into the claim of the Akesin of Ora that he is entitled to wear a beaded crown and to make a finding on the issue;*

*(iii) To examine the claim of the Asaoni of Ora to precedence over the Akesin of Ora in the area and to make a finding thereon;*

*(iv) To enquire into the circumstances which led to the controversy over the wearing of beaded crown by the Akesin of Ora and to make recommendations;*

*(v) To find out whether the wearing of a beaded crown by the Akesin of Ora is, by tradition. inconsistent with the claim of the recommendations (sic);*

*(vi) To enquire into any other matter or matters arising out of the above and which in the opinion of the commissioners will aid the government in arriving at a lasting solution to the conflict of interest between the*

*Asaoni of Ora and the Akesin of Ora.*”

The Aboderin Commission conducted an inquiry and submitted a report containing its findings and recommendations, to the Government of Oyo State. It found:-

“(i) *The conditions which entitled any ruler to wear a beaded crown in Ora area are:-* B

- (a) *he must be a direct descendant of Oduduwa;*
- (b) *he must have brought his crown from Ile-Ife;*
- (c) *he must have founded a kingdom of his own; and*
- (d) *he must be the ruler of that kingdom.*

(ii) *Akesin had no blood relationship with any Oba, Prince or C Royal family in Ile-Ife;*

(iii) *The first Akesin was an idol priest. The name Akesin and the title subsequently associated with it originated from the incumbent's role as traditional religious head. All subsequent Akesins became Akesins because they satisfied this qualification. They came from different families not related D by blood;*

(iv) *The members of each of Akesin's three ruling houses are not related to each other by blood. For instance, members of Oka-Agbala and Oke-Kanga ruling houses are not lineal descendants of the first Akesin;*

(v) *It was not disputed that Asaoni is an Oba who brought his crown from Ife and that he is related by blood to the royal family in Ile-Ife, it was also not disputed that the ruling houses for Asaoni are all lineal descen- E dants of the first Asaoni;*

(vi) *The derivation of the names Kosagbe, Okewu and Asaoni were not disputed and that the name Ora was derived from the expression” F ORATAN”. It was the Asaoni and his people who gave Ora its name;*

(vii) *It was not disputed that it was Asaoni who founded the place formerly called Okewu and that he (Asaoni) was its ruler and Oba. The Commission was satisfied that it was Okewu which was renamed Ora when its inhabitants resettled after being dispersed by war. It was the former Okewu G which became Ora and that Ora was founded by Asaoni. Asaoni is Ora's only Oba and ruler;*

(viii) *Akesin is not an Oba; he did not inherit any crown; he is not a ruler in Ora and he is not traditionally entitled to wear a beaded crown;*

(ix) *Akesin is a Chief under Asaoni and Asaoni has precedence over him. H*

(x) *The main cause of the controversy over the wearing of a beaded crown by Akesin of Ora is the inordinate ambition of the present Akesin of Ora, who wants to make himself an Oba in Ora contrary to history and tradition;*

(xi) *The recommendation which led to the recognition of the right of Akesin*

*to wear a beaded crown in 1979 was based on wrong facts. The wearing of a beaded crown by Akesin is inconsistent with tradition; and*

*(xii) Akesin of Ora, being only one of Asaoni's Chiefs has no traditional rights to create chieftaincy titles or to instal chiefs in Ora."*

and recommended that:-

B *(i) Government should make clear to the people of Ora particularly, the Akesin and his supporters that the Akesin of Ora is not by tradition qualified to be an Oba and accordingly, he is not entitled to wear a beaded crown. He is only one of Asaoni's chief;*

*(ii) The Asaoni of Ora should be made the consenting Authority for C the Akesin of Ora chieftaincy. This would ensure that the true position as found by the commission is recognised. This is because the approval or consent of the Asaoni of Ora to the appointment of an Akesin in Ora has been found to be traditionally necessary.*

*(iii) In order to ensure that all the chiefs in Ora recognise the D Asaoni of Ora as their Oba and head of the town, the Asaoni of Ora could be made the Prescribed Authority for all chief in Ora. This recognition, according to the commission, is subject to its being in conformity with Government policy on Prescribed Authorities;*

*(iv) Chieftaincy titles created by the Akesin of Ora since his ap- E pointment in 1938 are ultra vires and they should be declared null and void. Chieftaincy titles which were in existence immediately before Akesin merely appointed persons to fill vacancies as they occurred should be carefully examined and if the present holders of such chieftaincies are found to have come from the proper chieftaincy families and their appointments are other- F wise in accordance with the tradition attached to such chieftaincies, except for the fact that they were appointed or approved by Akesin or ultra vires the appointment should be ratified; otherwise, they should be nullified, An independent body is recommended to carry out this exercise."*

The Government after due consideration of the report and after con- G sultation with the Council of Obas and Chiefs which body opposed the Commission's recommendations, accepted the findings and recommendations of the commission, except (1) that relating to the right of the Orangun of Ila as prescribed authority in Ora and (2) permitted the then Akesin to continue to wear beaded crown during his life. The decision of government was made H known in a press release issued by the deputy Governor of the State. Before, however, Government could take action on its decision by further amending the list of chieftaincies entitled to the wearing of beaded crowns the then Akesin, Isiah Olanipekun instituted the action leading to the appeals now before us, claiming against the three defendants, as per paragraph 33 of his

amended Statement of claim, as hereunder:

*“(1) Declaration that the appointment and proceedings of the Aboderin Commission of inquiry are unconstitutional, irregular contrary to Natural Justice null and void and that all actions based on the findings are void and of no effect on the grounds that: (a) The claim of precedence and the right to wear a beaded crown are not disputed within the context of the chiefs law: B*

*(b) The Commission of Inquiry was neither regularly appointed nor was the instrument of the purported appointment published as required by law;*

*(c) There was no administering law under which the said Commission of Inquiry could have been appointed: C*

*(d) The Commission did not and has not announced its decision in public till now;and*

*(e) The Commission did not act judicially and impartially by shutting out the evidence that favoured the plaintiff whilst leaning heavily to and admitting those that favoured the other side; D*

*(2) Declaration that the decision of the then Governor contained in the press release issued on behalf of the then Governor by the Deputy Governor on the 18th of September, 1980 and based on the findings of Aboderin Commission of Inquiry is illegal unconstitutional, and contrary to Natural Justice on the following grounds: E*

*(a) The Chiefs Law makes no provision for any representation before the announcement of the said decision and the 1st defendant did not invite any representation from the plaintiff before acting to the prejudice of the plaintiff; and*

*(b) The then Governor ignored the advice and or orders of both the then Deputy: (sic) the Obas and Council of Chiefs in Oyo State. F*

*(3) An Order setting aside the report and findings of the Aboderin Commission of Enquiry, the conclusions and the consequential actions of the Oyo State Government on the report and findings, G*

*(4) An order setting aside the report and findings of the Ademola Commission of inquiry wholly or partly in so far as its decision affects the interest of the plaintiff. H*

*(5) An injunction restraining the 1st defendant all his agents, officers and other servants of the 1st defendant from giving effect to the said decisions or otherwise acting thereon to the prejudice of the plaintiffs.”*

Pleadings having been filed and exchanged and amended, the action proceeded to trial. At the close of evidence but before addresses of learned counsel. Plaintiff’s pleadings were, with leave of court, further amended by the inclusion of paragraph 7a and the addition of two new reliefs. Paragraph

7(a) and the addition of the two new reliefs. Paragraph 7(a) reads:-

*“7(a) The plaintiff states that the traditional criterion for allowing an Oba to wear a beaded crown in Oyo State is that the Oba must be a descendant of Oduduwa.”*

And the two new reliefs are:

B *“(6) Declaration that the only traditional criterion for an Oba to be entitled to wear a headed crown in Oyo State is that the Oba must be a descendant of Oduduwa.*

*(7) Declaration that the Akesin being a descendant of Oduduwa is traditionally entitled to wear headed crown.”*

C After addresses by learned counsel for the parties, the learned trial Judge (Ibidapo-Obe. J.) in a considered judgment, concluded thus:-

*“In sum, I hold that the plaintiff has not satisfied the court on his reliefs to:*

*(1) Set aside the report and findings of the Aboderin Commission of Inquiry, the conclusions and the consequential actions of the Oyo State Government on the Report and findings.*

*(2) An order setting aside the report and findings of the Ademola Commission of Inquiry wholly or partly in so far as its decision affects the interest of the plaintiff.*

E *(3) On injunction Government need not be restrained before a judgment of a court of competent jurisdiction is respected.*

*(4) The plaintiff has however satisfied the court on the declaration that the decision of the then Governor contained in the Press Release - issued on behalf of the then Government by the Deputy Governor on the 18th F of September, 1980 as based on the findings of Aboderin Commission of Inquiry is void.*

*(5) Semble, the plaintiff has also satisfied the court for the declaration that the Akesin both by law as set out in the Oyo State Legal Notice No. 22 (Amendment) Order 1979 known as the Chiefs (Wearing of beaded crowns) G (Amendment) Order, 1979 and by tradition and usage, is entitled to wear a beaded crown. The Akesin of Ora by status will continue to wear his crown since “the king never dies.”*

*Counsel will now address me on costs.”*

H Being dissatisfied with various aspects of the judgment the parties, each appealed to the Court of Appeal which latter court in its judgment concluded: per Kutigi. J.C.A. (as he then was):

*“All in all I make the following order in these appeals:-*

*1. Appeal by the 1st and 2nd defendants is hereby dismissed.*

*2. Appeal by the 3rd defendant is also dismissed.*



3. *Plaintiffs appeal partially succeeds and*

(i) *An order setting aside the findings and report of Ademola Commission of Inquiry in so far as it affects the plaintiff's interest is hereby made.*

(ii) *An injunction restraining the 1st defendant, all his agents, officers and other servants from giving effect to the said decisions or otherwise acting thereon to the prejudice of the plaintiff is hereby granted.* B

4. *Subject to para. 3 above the judgment of the High Court delivered on 27th September, 1985 is confirmed.*

5. *The plaintiff is awarded costs of this appeal assessed at four hundred (N400.00) Naira - 200.00 against the 1st and 2nd defendants jointly and N200.00 against the 3rd defendant."* C

The parties were still dissatisfied even with the judgment of the Court of Appeal. The 3rd defendant, with the leave of this Court, appealed against that part of the judgment of the Court of Appeal dismissing his appeal and allowing part of plaintiff's appeal. His six grounds of appeal without their particulars read as follows:- D

(1) *The learned appellate justices erred in law in holding that the learned trial Judge was right in granting prayer 7 of the relief i.e. a declaration that the plaintiff (Akesin) being a descendant of Oduduwa is traditionally entitled to Wear beaded crown when the report and findings of the Aboderin Commission of inquiry was not set aside by the trial court and the appellate court.* E

(2) *The learned Appellate Justices erred in law in setting aside the report of Ademola Chieftaincy Commission of Inquiry given in 1977 in so far as it affects the plaintiff when they have no jurisdiction to entertain the action.*

(3) *The learned appellate Justices erred in law in holding that by tradition and usage the plaintiff (the Akesin) is entitled to wear a headed crown when the proceedings and the report of Aboderin Commission of Inquiry which held a contrary view have neither been set aside by the trial court or the Court of Appeal and it remains binding on the parties until otherwise set aside.* F

(4). *The learned appellate Justices erred in law when they held: 'I would in the circumstances as a whole therefore not hesitate to set aside the report of Ademola Chieftaincy Commission of inquiry in so far as it affects the plaintiff. And I do set it aside.'* G

(5) *The learned appellate Justices erred in law when they granted H injunction against the 1st defendant, all his agents, officer and other servants from giving effect to the said decisions or otherwise acting thereon to the prejudice of the plaintiff.*

(6) *The Court of Appeal erred in law when it set aside the Report of*

*the Ademola Chieftaincy Declaration Review Commission in so far as it affects the plaintiff.”*

The plaintiff with leave of this Court also appealed against that part of the judgment of the Court of Appeal refusing some of his claims. His grounds of appeal read:-

B “(1) *The learned appellate Justices erred in law when they held that the lower court was right to have refused to set aside report of Aboderin Commission of Inquiry.*

(2) *The learned appellate Justice erred in law when they held that the plaintiff/appellant failed to prove that the Aboderin Commission was C influenced in anyway by the contents of any Exhibits or biased in any way in reaching its conclusion.*

(3) *The learned appellate Justices erred in law when they held that the attendance of the appellant at the proceedings of Aboderin Commission amounted to a waiver of any irregularity in the setting up of the commission D and that the non publication of the instrument setting up the commission was a mere irregularity and not a condition precedent to the functioning of the commission.”*

(Particulars are omitted)

Attempts by the 1st and 2nd defendants to appeal failed because E their applications to this court for extension of time to appeal and for leave to appeal, etc. failed for non-prosecution. On the demise of the original plaintiff, this court on application made to it substituted the present plaintiff in his stead.

Pursuant to the rules of this Court the plaintiff and the 3rd defendant F filed and exchanged their respective briefs of argument in respect of the two appeals; and 3rd defendant also filed a reply brief. The 1st and 2nd defendants did not file any brief even though they were named as persons directly affected by the appeals in the two Notices of Appeal filed by the appellants herein and served with the necessary papers. Learned counsel appearing for G them at the oral hearing of the appeals was, in consequence, not heard.

In respect of the 3rd defendant’s appeal, the following five questions are posed in his brief as calling for determination:

“1. *Whether or not the Court of Appeal had jurisdiction to entertain a chieftaincy dispute in the 1977 Ademola Report and/or to set it aside H having regard to S. 158(a) and S. 163(3) of the 1963 Constitution of the Federation of Nigeria and S. 24 of the Chiefs Law of the then Western Region of Nigeria.*

2. *Whether or not the Court of Appeal was right in affirming a declaration that the Akesin is entitled to wear a beaded crown when the*

Gov. of Oyo State v. Folayan (1995) 9 KLR Ogundare JSC 1669  
*report and findings of the Aboderin Commission of Inquiry to the contrary were not set aside, are conclusive and remain binding on the parties.*

3. *Whether or not the Court of Appeal was right in affirming that the Press Release (based on the Aboderin Report and findings) is void and to predicate its decision thereon after having refused claims 1 and 3 founded on the said, report and findings which remain unimpeached.*

4. *Whether or not having regard to Issues 1, 2 and 3 above, the Court of Appeal was correct in granting an injunction against the 1st defendant all his agents.....and preventing them from giving effect to a part of the 1977 Ademola Report or acting thereon to the prejudice of the plaintiff.*

5. *Whether or not on the principle of 'issue estoppel' and/or 'res judicata', the plaintiff could validly re-open the litigation on the Ademola Report after his previous unsuccessful action in HOS/58/78 on the same issue/s."*

Although the plaintiff who is respondent in respect of that appeal set out four questions in his respondent's brief, I am satisfied that having regard to the grounds of appeal and the judgment appealed against the questions as set out in the 3rd defendant's brief are adequate enough for the consideration of his appeal and will, therefore, be adopted. The plaintiff in respect of his own appeal (that is, the cross-appeal) has set out only one issue in his brief as calling for determination. The issue reads:-

*"Whether having regard to the law and the materials before it, the Court of Appeal was right in refusing to set aside the report of the Aboderin Commission of Inquiry."*

Although the 3rd defendant in his respondent's brief in respect of the cross appeal broke down the above issue into two, I shall consider the plaintiff's appeal on the one issue set out by him.

I begin with the 3rd defendant's appeal which is the main appeal.

Question 1:

The Ademola Commission of Inquiry was set up by the Oyo State Government in 1976 to review disputed chieftaincy declarations in parts of Oyo State. The Asaoni chieftaincy title was one of the chieftaincies referred to the Commission. The Commission did its work and in 1977 submitted reports which the Government acted upon. In its report on the Asaoni Chieftaincy, the Commission recommended some minor changes in the existing declaration relating thereto. One of such amendments affected the title of the Asaoni. The original plaintiff in these proceedings was unhappy about the Asaoni's new title and instituted an action which he lost. He again instituted the present proceedings and sought to have the Ademola Commission Report set aside. The 3rd defendant now contends that the Court had no jurisdiction to entertain the claim basing his contention on Sections 158(4)(a) and 161(3) of the Constitution of the Federation, 1963. Now section 158(4)(a) provided:

*“(4) Where immediately before the date of the commencement of this Constitution any proceedings on appeal from a decision of the Federal Supreme Court are pending or any right to bring such proceedings has accrued, the proceedings or right shall abate on that date in so far as any question for determination in the relevant proceedings is:-*

B *(a) a chieftaincy question;”*  
*and section 161(3) also provided:*

*Notwithstanding anything in any other provision of this Constitution.....no chieftaincy question shall be entertained by any court of law in Nigeria.....”*

C The two sections above effectively ousted the jurisdiction of the court in chieftaincy matters. See *Enwezor v. Onyejekwe & Ors.* (1964) NSCC 9.

That was the position before the 1979 Constitution came into effect on 1st October, 1979. The court now has jurisdiction over such matters. It is contended by the 3rd defendant that the law applicable to plaintiff’s claim in D respect of the Ademola Commission would be the 1963 Constitution under which the jurisdiction of the court was ousted. The plaintiff does not seriously challenge this contention and, in my respectful view, the contention is well taken. It is beyond dispute that the law applicable to a cause of action is a law prevailing at the time the cause of action arose notwithstanding that that E law had been repealed at the time the action is being tried. See: *Mustapha v. Governor of Lagos State* (1987) 2 NWLR (Pt...) 539; *Fatola v. Mustapha* (1985) 2 NWLR (Pt.7) 438; *Alao v. Akano* (1988) B INSCC 329; (1988) 1 NWLR (Pt.71) 431; *Uwaifo v. Attorney-General Bendel State* (1982) 7 S.C. 124. Whatever cause of action the plaintiff might have in respect of the Ademola Commission F arose when the Commission submitted its report in 1977. It is, therefore, the 1963 Constitution that would determine whether or not the court had jurisdiction.

It is however, contended by the plaintiff that the findings and recommendations of the commission changing the title of the Asaoni of Okewu-Ora G to Asaoni of Ora was not a chieftaincy question excluded from the court’s jurisdiction by the 1963 Constitution. The expression “chieftaincy question” used in section 158(4)(a) and 161(3) was defined in section 165(I) of the 1963 Constitution to mean:

*“Any question as to the validity of the selection, appointment, ap-  
H proval of appointment, recognition, installation, grading, deposition or abdication of a chief”*

In my respectful view, the issues referred to the Ademola Commission are chieftaincy questions within the meaning of the above definition. By section 4(2) of the Chiefs Law. Cap. 21 Laws of Oyo State 1978, a chieftaincy

declaration is a statement of the customary law relating to the appointment etc of a recognized chief. It follows, therefore, that any question relating to such a declaration is a chieftaincy question. See *Enwezor v. Onyejekwe & Ors.* (1964) NSCC 9; *Chief Abaekere, the Arinmo & Ors v. The Minister for Chieftaincy Affairs Western Nigeria & Ors.* (1963) WNLR 53 HC affirmed by this court in SC.606/64 on 4th May, 1966. B

In my respectful view, therefore, the plaintiff's cause of action in respect of the Ademola Commission having arisen before 1st October, 1979 and the issue in respect of which a declaration was sought by the plaintiff related to a chieftaincy question, plaintiff's claim (4) came within the provisions of the 1963 constitution and the jurisdiction of the court was effectively C ousted from entertaining it. The two courts below ought, therefore, to have struck out plaintiff's claim (4) for want of jurisdiction.

I hereby strike it out.

Question 2 & 3:

These two questions relate to the Aboderin Commission of Inquiry. D Plaintiff's claims (1) and (3) sought a declaration "*that the appointment and proceedings of the Aboderin Commission of Inquiry are unconstitutional, irregular, contrary to natural justice, null and void and that all actions based on the findings are void and of no effect.....*" and an order "*setting aside the report and findings of the Aboderin Commission, the conclusion of E the consequential action of the Oyo State Government on the report and findings.*" The claims were dismissed by the learned trial Judge. On appeal by the plaintiff to the Court of Appeal the trial court's decision was affirmed. It follows that the two courts confirmed the validity of the appointment and proceedings of the Aboderin Commission as well as its findings and action F taken by the 1st defendant in respect of those findings.

The learned trial Judge however appeared to have granted claim (2) when he found:-

"In sum, I hold that the plaintiff has not satisfied the court on his G reliefs to:

(1) *Set aside the report and findings of the Aboderin Commission of Inquiry, the conclusions and the consequential actions of the Oyo State Government on the report and findings.*

(2) *An order setting aside the report and findings of the Ademola Commission of Inquiry wholly or partly in so far as its decision affects the H interest of the plaintiff.*

(3) *On injunction, Government need not be restrained before a judgment of a court of competent jurisdiction is respected.*

(4) *The plaintiff has however satisfied the court on the declaration*

*that the decision of the then Governor contained in the Press Release - issued on behalf of the then Government by the Deputy Governor on the 18th of September, 1980 as based on the findings of Aboderin Commission of Inquiry is void."*

Finding (4) was affirmed by the court below. The question arises - is this finding not inconsistent with the earlier findings of the trial court on claims (1) and (3)? This is the complaint in Question 3. The plaintiff's claims are for a judicial review of the Aboderin Commission. The courts below having found nothing wrong with the setting up of the commission, and the conduct of its affairs and thereby refusing claims (1) and (3) the grant of claim (2) would be inconsistent with that decision. In the press release issued by the then Deputy Governor of the State, Government conveyed to the public its decisions on the findings of the Aboderin Commission. The trial court and the Court of Appeal refused to set aside those findings as the case for their being set aside was not made by the plaintiff. It seems strange, therefore, that both courts would turn round to declare the same decisions embodied in a press release as void. I have no hesitation whatsoever in setting aside that part of the decision of the trial court and that part of the judgment of the Court of Appeal affirming it.

The learned trial Judge also found and declared:-

“(5) *Seemle, the plaintiff has also satisfied the court for the declaration that the Akesin both by law as set out in the Oyo State Legal Notice No. 22 (Amendment) Order, 1979 known as the Chiefs (Wearing of beaded crowns) (Amendment) Order, 1979 and by tradition and usage, is entitled to wear a beaded crown. The usage is entitled to wear a beaded crown. The Akesin of Ora by status will continue to wear his crown since “the king never dies.”*

This declaration was affirmed by the court below and it is the subject of the complaint under Question 2. The question now is: - are the courts below right in granting such a declaration having regard to their dismissal of plaintiff's claims (1) and (3)?

As stated earlier in this judgment, the plaintiff's case is for a judicial review of the Aboderin Commission. In relation to matters within a public body's field of judgment the court conducts its review from the body's stand-point and must not intervene solely on the basis that it would itself have acted differently. The following principles are to be borne in mind by a reviewing court:-

- (a) judicial review is not an appeal;
- (b) the court must not substitute its judgment for that of the public body whose decision is being reviewed;
- (c) the correct focus is not upon the decision but the manner in

which it was reached:

(d) what matters is legality and not correctness of the decision and

(e) the reviewing court is not concerned with the merits of a target activity.

In a judicial review the court must not stray into the realms of appellate jurisdiction for that would involve the court in a wrongful usurpation of power - See R. v. Secretary for the Home Department, Ex parte Brind (1991) 1 AC 696, 762G; 767G. The power of the court as a reviewing tribunal is better clearly stated by Lord Green M.R. in Associated Provincial Picture Houses v. Wednesbury Corporation (1948) 1 KB 223, 234 when the noble Master of the Rolls said:

*"The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by action in excess of the powers which parliament has confided in them."*

In exercise of his power of judicial review the court has no jurisdiction to substitute its own opinion for that of the public body whose decision is being reviewed for it is not part of the purpose of judicial review to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question:- Chief Constable of the North Wales Police v. Evans (1982) 1 WLR 1155, 160F per Lord Hailsham. What the court is concerned with is the manner by which the decision being impugned was reached. It is its legality, not its wisdom that the court has to look into. For the jurisdiction being exercised by the court is not an appellate jurisdiction but rather a supervisory one.

Coming to the case before us, it would appear that the courts below went beyond the limits of their supervisory jurisdiction by substituting their own opinion as to the right of the Akesin to wear a beaded crown for that of the Aboderin Commission which was constituted specifically to determine that matter and which went about its duty in a manner which the courts below have now found to be unimpeachable. For this added reason, therefore, I must also hold that the declaration granted by the trial court and affirmed by the court below was wrongly made and should be set aside.

Question (4):

In view of my decision on Question (1) it follows that the injunction granted by the court below restraining the 1st defendant etc. from giving effect to the finding of the Ademola Commission was made without jurisdiction and. Therefore must equally be set aside. This apart, it does not appear that the issue of injunction which was refused by the trial court was ever

raised in the plaintiff's cross appeal to the court below. True enough the relief sought by the plaintiff from the Court of Appeal was the granting to the plaintiff of all the reliefs claimed by him but not granted by the lower court, but there was no ground of appeal in his Notice of Appeal challenging the refusal to grant an injunction in his favour nor was the question of injunction one of the issues put before the court below by the plaintiff. The court below, with profound respect, was, therefore, in error to have suo motu raised the issue of injunction and grant same without hearing the parties on it.

Question (5):

In view of the decision I have arrived at on Question (1), Question (5) has become purely academic and I do not intend to go any further into it. Suffice it to say that the decision I arrived at on the question (1) is the same decision that Olowofoyeku, J., arrived at in Suit HOS/58/78 (Exhibit 3a), the earlier suit instituted by the original plaintiff against the 1st and 2nd defendants herein among others, challenging the findings of the Ademola Commission on the title of the Asaoni. The original plaintiff lost that case which was dismissed by the trial judge. It would appear there was no appeal against the dismissal.

Cross-Appeal:

On the plaintiff's cross-appeal, his main grouse is that the issue of real likelihood of bias raised by him against the Aboderin Commission was not properly considered. This issue was based on the evidence that the 1st defendant or his officials exchanged some official correspondence giving the impression that the 1st defendant had made up his mind on the issue of the right of the Akesin to wear beaded crown. There was no evidence adduced at the trial to show that the Commission was ever aware of this exchange of correspondence. I cannot see therefore the merit in the argument that the Commission was tainted with a real likelihood of bias. I, therefore, find no merit whatsoever in the plaintiff's cross-appeal.

For the reasons I give above I agree with my learned brother Wali, J.S.C. that the main appeal be allowed and the cross-appeal dismissed. Consequently, I too allow the main appeal, set aside the judgment of the court below in so far as it found in favour of the plaintiff in respect of any of his claims: I dismiss plaintiff's claims in toto. I do not find merit in the plaintiff's cross-appeal which I also dismiss.

I abide by the order for costs made in the lead judgment of my learned brother Wali, J.S.C.



**MOHAMMED.JSC**

I have had the privilege of reading the draft opinion of my learned brother, Wali, J.S.C., in the judgment just read. I entirely agree with him that the lower court was in error to find in favour of any of the claims filed by the plaintiff before the trial High Court. I also agree that the cross-appeal is without any merit at all. For the reasons given in the lead judgment, which I adopt as mine, the main appeal is allowed and the cross-appeal is dismissed. I abide by the order made by my learned brother on costs.

**ONU JSC**

Having been privileged to have a preview of the judgment of my learned brother, Wali, J.S.C. just delivered I agree with him that the appeal against the main appeal is meritorious and therefore succeeds. By the same token, I agree with my learned brother that the cross-appeal is devoid of any iota of merit and must perforce fail.

In his treatment of the main appeal and cross-appeal of the parties hereto, my learned brother has so ably and meticulously stated the facts and background thereto that I do not wish to delve into them here. Suffice it to say, that in my brief comments, I will only highlight some of the points which I feel deserve emphasis or elaboration.

I consider it pertinent, however, that before taking the issues serially, the following preliminary matters need to be gone into to put the case in its true setting. The first point is that the appellant - the Asaoni of Ora (hereinafter re-characterised as "the 3rd defendant") was the 3rd defendant in the trial High Court (Coram Ibidapo-Obe, J.). while the cross-appellant - the Akesin of Ora (hereinafter recharacterised as "the plaintiff") was the plaintiff. The Governor of Oyo State and the Attorney-General of Oyo State were 1st and 2nd defendants respectively. The Court of Appeal dismissed the 3rd defendant's appeal but upheld the plaintiff's appeal only in part. All parties filed notices of appeal to this court. In my consideration of the appeal which was argued on 5th June, 1995. I intend to stick to all six issues formulated or distilled from the six grounds which the 3rd appellant filed and which I prefer to the plaintiff. It is also pertinent to point out that at the hearing of the appeal, since the 1st and 2nd defendants filed no brief of argument, their counsel, S.O. Ogunniyi, Esq. Director of Litigation and Advisory Services, Ministry of Justice, Oyo State, was not heard in argument thus making them passive respondents. In any case, the Attorney-General (the 2nd defendant in the instant case) had been sued with the Governor (1st defendant) ostensibly, since he is invariably made a nominal party in civil cases in which action is brought against the

Government. See *Ezemo v. A.G of Bendel State* (1986) 4 NWLR (Pt.36) 448. I will now proceed to consider the issues in their order of sequence.

Issue 1:

Issue 1 asks whether or not the Court of Appeal had jurisdiction to entertain a chieftaincy dispute reference to in the 1077 Ademola Report and/or to set it aside having regard to the provisions of S.158(4)(a) and S.161 (3) of the 1963 Constitution of the Federation of Nigeria and S.24 of the Chiefs Law of the then Western Region of Nigeria.

Now, section 158(4)(a) of the Constitution of the Federation of Nigeria, 1963 provided that:-

*"Where immediately before the date of the commencement of this Constitution any proceedings on appeal from a decision of the Federal Supreme Court are pending or any right to bring such proceedings has accrued, the proceedings or right shall abate on that date in so far as any question for determination in the relevant proceedings is:-*

*(a) a Chieftaincy question"*

Section 163(3) of the same Constitution (*ibid*) stated as follows:-

*"(3) Notwithstanding anything in any other provision of this Constitution (including in particular sections 32 and 53 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 .....shall be conclusive evidence as to the matters set out in that statement."*

Section 24 of the Chiefs Law, Cap. 19 Laws of Western Region of Nigeria 1959 stipulated that:-

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

*(a) instituted for the determination of any question relating to the selection appointment, installation, deposition, suspension or abdication of a Chief; or*

*(b) instituted for the recovery or delivery up of any property in connection with the selection, appointment, installation, deposition, suspension, or abdication of a chief."*

Provided that any recognised Chief whose appointment has been approved by the Governor in Council or any minor chief whose appointment has been approved in accordance with Part III shall not be precluded from taking action in a court of competent jurisdiction for the recovery or

delivery of such property and related damages:

(c) (Not applicable)

(d) Calling in question anything done by the Governor with respect to a Chief or Chieftaincy (whether before or after the application of this law to such Chief or Chieftaincy) under the provisions of the appointment and deposition of Chiefs Ordinance.” (The italics above is mine for emphasis). B

True it is that apart from Exhibit 7 i.e. Legal Notice No. 22, which listed the plaintiff as No. 77 and as one of the Chiefs entitled to wear beaded crown, plaintiff called evidence of the tradition relating to the wearing of beaded crown through P.W. 1, the Orangun of Ila. It is also correct to say that all C witnesses called by the plaintiff stated positively that Akesin originally came from Ife, is a descendant of Oduduwa, and therefore by tradition, entitled to wear a beaded crown. It was based on the evidence led in the trial court from which it held that:

“*Semble, the plaintiff has also satisfied the court for the declaration that the Akesin both by law as set out in the Oyo State Legal Notice No. 22 (Amendment) Order, 1979 known as the Chiefs (Wearing of beaded crowns) (Amendment) Order, 1979 and by tradition and usage, is entitled to wear a beaded crown. The usage is entitled to wear a beaded crown. The Akesin of Ora by Status will continue to wear his crown since “‘the king does not die.”* E

This finding of fact the court below did indeed uphold when it went on inexorably to say as follows:-

“*Infact a closer look at the terms of reference of Ademola Commission of Inquiry as contained in Ex. 17 makes one wonder whether they are capable of covering the type of recommendation. I leave it at that. I would in the circumstances as a whole therefore not hesitate to set aside the report of Ademola Commission of Inquiry in so far as it affects the plaintiff. And I do set it aside.*” F

In making the above finding and pronouncement, it appears to me crystal clear, that the court below was seriously in error by purporting to G assume jurisdiction over a chieftaincy matter which arose before 1st October, 1979 when the Constitution of the Federation of Nigeria, 1979 (hereinafter referred to as ‘the 1979 Constitution for short) had no application. It should be borne in mind in this wise that the jurisdiction of all courts in Nigeria by virtue of sections 158(4)(a) and 161(3) of the 1963 Constitution as well as Section 24 H of the Chiefs Law (ibid), was ousted over chieftaincy disputes. Be it noted that a person’s vested right must be determined by the law applicable when the right vested and when the cause of action arose; not the law when the proceedings are instituted or judgment given. See: Amavo Ltd. v. Bendel Textiles

Mills Ltd (1991) 8 NWLR (Pt.207) 37 at 51; Osadebay v. A.-G., Bendel State (1991) 1 NWLR (Pt.169) 525 at 555 and Tukur v. Government of Gongola State (1989) 4 NWLR (Pt.117) 517 at 581 and A.-G. Fed. V. Sode (1990) 1 NWLR (Pt.128) 500, 526, 534. It is of no consequence for the determination of that B vested right that the law was subsequently repealed. See: Mustapha v. Government of Lagos State (1987) 2 NWLR (Pt.58) 539 and Fatola v. Mustapha (1985) 2 NWLR (Pt.7) 438. By its tenor, Exhibit 7 purporting to confer on the plaintiff as one on the list of those to wear beaded crowns, being a legal notice, is a subsidiary legislation. A subsidiary legislation derives its validity C and authority from a substantive law, in this case, Exhibit 7 deriving its authority from the Chiefs Law of Oyo State as it does, has not the capacity to extend such authority, See Din v. Attorney-General of the Federation (1988) 4 NWLR (Pt.87) 147. Nor has it ever been the case for the provisions of an ordinary statute to render nugatory the relevant provisions of the Constitution. See D Ishola v. Ajiboye (1994) 6 NWLR (Pt.352) 506 at 621: (1994) 19 LRCN 35. Thus, Exhibit 7 cannot override sections 158(4)(a) and 161(3) of the 1963 Constitution, the Supreme Law of the land then applicable, which ousted the jurisdiction of the courts from entertaining chieftaincy matters. I therefore agree with the submission of learned Senior Advocate for the 3rd defendant that the E court below ought to have distanced itself from the Ademola Commission of Inquiry Report of 1977 (Exhibit 17) over which it lacked jurisdiction to make a pronouncement, let alone to go as far as to set it aside in so far as it affected the plaintiff. It was therefore a grave error on the part of the court below to hold as it did that:-

F *“In fact a closer look at the terms of reference of Ademola Commission of Inquiry as contained in Exh. 17 makes one wonder whether they are capable of covering the type of recommendation herein challenged. I would in the circumstances as a whole therefore not hesitate to set aside the report of Ademola Commission of Inquiry in so far as it affects the plaintiff. And I do G set it aside.”*

Moreover, it having been shown on the printed Record that in 1980, the plaintiff proceeded to challenge the validity of the Ademola Commission of Enquiry Report but failed to set it aside, its findings and recommendations as well as the consequential actions of the Government or the grant of an H injunction in his favour (See Exhibit 34), by the application of the maxim “ut sit finis litium interest republicae” (it is in the interest of parties that there must be an end to litigation See Adigun v. A.-G. of Oyo State (1987) 2 NWLR (Pt.56) 197 at 231 the parties are precluded from taking out another suit in pursuit of the same issue or issues. The court below was therefore wrong in setting aside

the Ademola Report as it affects the plaintiff. See *Okere v. Nwoke* (1991) 6 NWLR (pt.209) 127; *Udeze v. Chidebe* (1990) 1 NWLR (Pt. 125) 141; *Bala v. Bankole* (1986) 3 NWLR (Pt.27) 141; *Aro v. Fabolude* (1983) 1 SCNLR 58; (1983) 2 S.C. 75 and *Nwawubu v. Enemu* (1988) 2 NWLR (Pt.78) 581. The issue is accordingly answered in the negative.

Issues No. 2 and 3.

B

While issue 2 queries whether the Court below was right in affirming a declaration that the Akesin is entitled to wear a beaded crown when the report and findings of the Aboderin Commission of Inquiry to the contrary were not set aside, are conclusive and remain binding on the parties. Issue 3 asks whether or not the court below was right in affirming that the press Release (based on the Aboderin Report and findings) is void and to predicate its decision thereon after having refused claims 1 and 3 founded on the said report and findings which remain unimpeachable.

In considering these two issues together, it is pertinent to say from the onset that the court below left intact the Aboderin Commission of Inquiry Report, thus confirming the trial court's refusal to set same aside. The Plaintiff's claims 1 and 3 were refused. While in Claim 1 what the plaintiff asked for was inter alia:-

*(1) Declaration that the appointment and proceedings of the Aboderin Commission of Enquiry are unconstitutional, irregular, contrary to Natural Justice, null and void and that all actions based on the findings are void and of no effect....."*

Claim 3 on the other hand, sought:-

*"An order setting aside the report and findings of the Aboderin Commission of Enquiry, the conclusions and the consequential actions of the Oyo State Government on the report and findings."*

The court below having rightly affirmed the refusal of the trial court to set the Aboderin Commission Report aside, any comments by the court below regarding the Press Release adverse to that report, is symptomatic of the court below blowing hot and cold at the same time. See *Ezomo v. A.G. of Bendel State* (supra) at page 462. In the instant case, the Aboderin recommendations were yet to be accepted by the Government of Oyo State, but prominent among them, is the categorical recommendation that:-

*"The Asaoni shall take precedence over the Akesin in all matters as the paramount ruler and that on the death of the plaintiff an Akesin will no longer be entitled to wear a headed crown."*

The government having not yet accepted the recommendations of that Commission of Enquiry, which was in fact set up to settle once and for all times complaints emanating from Legal Notice No. 22, those recommenda

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tions are legally not binding on the Government and the parties until accepted. See *Njoku & Anor v. Nnamani* (1953) 14 WACA 357; *Oyelade v. Araoye & Anor* (1968) NMLR 41. The Press Release by the Deputy Governor is a separate non-legal document different from the Commission's Report. The court below was therefore in error, in my opinion, when it held that the Aboderin Report has nothing to do with granting the plaintiff's reliefs which reliefs indict the said report. The Press Release being part of the consequential actions of the Oyo State Government pending its acceptance of the Aboderin Report and findings, the act of the court below in declaring it void means that it was turning round erroneously, to use the Press Release to upset the report. See claim 3 of the plaintiff's reliefs set out above. The Press Release is neither a legal instrument nor a subsidiary legislation although it derived its existence from the Aboderin Report which is yet to be implemented. It is for the above reasons that I take the view that the two courts below, having refused to set the Aboderin Commission of Enquiry Report aside, the court below should not turn round to approbate and reprobate or engage in self contradiction at the same time by saying that the Press Release which was culled from the report, was itself void. See: *Obiora v. Osele* (1989) 1 NWLR (Pt. 97) 279 at 299-330 and *Oke v. Atoloye* (1986) 1 NWLR (Pt. 15) 241.

True it is that on the principle decided in the cases of Chief Karimu Ajayi Arubo v. Fatai Ayinla Aiyeleru & 5 Ors (1993) 3 NWLR (Pt. 280) 126 at 145 and Alhaji L. S. Afisi & 4 Ors. v. Chief Kadiri Kilani Lawal & 6 Ors. (1992) 1 NWLR (Pt. 217) 350 at 366 to which our attention was drawn at the oral hearing of this appeal on 5th June, 1995 by learned counsel for the 3rd defendant, that a tribunal of inquiry is inferior to both the High Court and the Supreme Court which are vested by the constitution with unlimited powers to adjudicate on the rights of parties who appear before them and see to the execution and enforcement of their decision vide section 6 of the 1979 Constitution. However, once a party gets a final judgment in his favour before a court of competent jurisdiction, such a judgment is effective, conclusive and binding on the parties and their privies and can only be upset on appeal, and a tribunal of inquiry, not being an appellate court, is incompetent to review, overrule or set aside such a judgment. In this wise, I agree with the submission of learned counsel for the 3rd defendant that the above two cases are irrelevant to the case in hand. They would have been relevant had the trial court set aside the Aboderin Commission of Enquiry Report and the court below affirmed the same. The mere fact that the instrument establishing the Aboderin Commission of Enquiry was not gazetted, however, does not mean that it has been rejected by the Government. Nor, in my view, did the Press Release on it do

violence to the Report itself pending its acceptance. On the Ademola Commission of Enquiry Report, it is sufficient to say as earlier pointed out, that the provisions of the 1979 Constitution are inapplicable while those of the 1963 Constitution in sections 158(4)(a) and 161(3) as well as section 24 of Chiefs Law Cap. 19 of 1959, applied to oust the jurisdiction of the High Court and the court below to hear the suit in relation thereto. See *Enwezor v. Onyejekwe* (1964) 1 All NLR 14.

The Government of Oyo State in its wisdom can take any necessary action or step to implement the Aboderin Report. That Report being the ‘fons et origo’ and a document from which the Press Release emanated, the latter is but a consequential action, which cannot be said to subvert the findings of that report that is yet to be implemented by the Government. The answers to the issues are therefore rendered in the negative.

Issue 4:

Having earlier held elsewhere in this judgment that it was erroneous of the court below to have set aside that part of the Ademola Report in so far as it affected the plaintiff for want of jurisdiction, it is enough to say here that the 3rd defendant’s complaint that the court below was wrong in granting injunction against the 1st defendant and his agents when the Aboderin Commission of Enquiry Report was not set aside and when the plaintiff did not appeal against the grant of injunction by the trial court is, in my respectful view, justified. This is because the injunction, although a consequential relief, was predicated on the erroneous setting aside of the Ademola Report in so far as it affected the plaintiff.

Even though the contention that the plaintiff did not appeal against the grant of the injunction by the trial court would not arise here, the fact that the Ademola Report was wrongly adjudicated upon by the court below (for want of jurisdiction), the injunction based on the illegal adjudication against the 1st defendant and his agents, etc., is of no legal consequence, is ineffective and void. Be it noted, however, that as the Aboderin Commission of Enquiry from its terms of reference is merely advisory, its decisions and recommendations will have no binding effect until accepted and confirmed by the authority that set it up, and which authority in the meantime, is not precluded from expressing its views thereon pending implementation. See *Nwabia v. Adiri* (1958) SCNLR 451. 454. My answer to the issue is therefore rendered in the negative.

Issue 5:

This issue asks whether or not on the principle of ‘issue estoppel’ and/or ‘res judicata.’ the plaintiff could validly re-open the litigation on the

Ademola Report after his previous unsuccessful action in HOS/58/78 (Exh. 3(a) on the same issue/s. This issue would no longer strictly arise since the court had no jurisdiction in the first place to entertain it, let alone pronounce on it vide issue 1 (supra). In the result, the 3rd appellant's main appeal succeeds and it is accordingly allowed.

B Cross-Appeal:

The lone issue formulated at the instance of the plaintiff, appellant herein, in this cross-appeal against the 3rd defendant/respondent, is:

*"Whether having regard to the law and the materials before it, the Court of Appeal was right in refusing to set aside the report of the Aboderin*

C *Commission of Inquiry"*

It being recalled that the court below declined to declare "the appointment and proceedings of the Aboderin Commission void" but however set aside the Report of the Ademola Commission as it affected the plaintiff, though suo motu granting him an injunction; upheld the rest of the trial court's D judgment and proceeded to dismiss the appeals of the 1st, 2nd and 3rd defendants therein, I take the view that the plaintiff's lone issue set out above is much too narrow and not expansive enough for the argument canvassed in support thereof. It is in this regard that I express a preference for the two issues formulated at the 3rd defendant/respondent's instance, to wit:

E 1. Whether or not the Court of Appeal was right in refusing to set aside the Aboderin Commission of Enquiry proceedings and Report.

2. Whether or not the non-publication of the instrument of appointment of the Aboderin Commission in the gazette rendered its proceedings void.

F I take the firm view that it is wrong on the part of the plaintiff from page 3 et seq of his brief, to have reverted to arguing the appeal on the grounds rather than issues in breach of Order 6 rule 5(1)(a) and (b) of the Supreme Court Rules. See also *Chinweze v. Masi* (1989) 1 NWLR (Pt.97) 254; *Obioma & Ors. v. Olomu & Ors.* (1978) 3 S.C. 1 and *Western Steel Works v. Iron G & Steel Workers Union* (1987) 1 NWLR (Pt.49) 284.

I will commence my treatment of the two issues submitted for our consideration by 3rd defendant which I adopt, with issue 1 thus:

Issue 1:

H The grounds upon which the plaintiff attacked the setting up of the proceedings and findings of the Aboderin Commission and for the same to be set aside were:

(1) The then Commission lacked the jurisdiction to embark upon the inquiry as the publication of the instrument of its appointment is a condition precedent which was not fulfilled.



(2) That the Commission did not act judicially by unfairly shutting out evidence of P.W. 6, P.W.1 and P.W.S that favoured the plaintiff.

(3) That sufficient consideration and weight was not given to the admission of the 3rd defendant in his evidence under cross-examination that his evidence before the Aboderin Commission was substantially untrue.

Concerning allegations that (a) some old men could not attend the Inquiry due to old age, and (b) that the Commission did not visit the portion of land, learned Senior Advocate for the plaintiff argued that both courts below either failed to give proper consideration thereto, leading to a refusal by the court below, to set aside the findings of the Aboderin Commission.

With regard to the plaintiff's allegations that "the Commission did not act judicially by unfairly shutting out evidence," it is sufficient to say that there was abundant evidence before the trial court that the commission did not exclude either the old men or the Orangun of Ila or the Alafin of Oyo or any other person from its public sitting. Nor was it necessary for the Commission to visit any land before coming to a view on the competing allegations/counter-allegations of who the grantor was. To further elucidate the point, in answer to paragraph 13 of the plaintiff's Amended Statement of Claim, he pleaded:-

*"The instrument of appointment of the said Commission was not published by the then Governor and the then Governor did not claim or purport to act under the Commissions of Inquiry law, the plaintiff will contend that he did not act under that or any other law."*

The 3rd defendant in answer thereto in paragraphs 13 and 14 of his statement of defence pleaded thus:-

*"13. Both the 3rd defendant and the plaintiff participated fully on (sic) the proceedings before the said Commission of Inquiry among other F things by:-*

*(a) Submitting Memoranda*

*(b) Giving evidence, during which various documents were tendered.*

*(c) Calling witnesses to give evidence on their behalf and cross-examining witnesses.*

*(d) Submitting written addresses to the said Commission.*

*14. At no time did the plaintiff during the proceedings contend and/or complained about the facts on the said paragraphs (a), (b), (c), or at all."*

Evidence, it must be pointed out was therefore led by the defence H and relevant documents tendered in proof thereof.

The submissions made by the learned counsel for the plaintiff in this regard have therefore no merit. The answer to issue 1 is accordingly rendered in the positive.

Issue 2:

On non-publication of the instrument of appointment of the commission, it is enough to remark that the plaintiff having submitted to the Commission's jurisdiction by his attendance thereat; leading evidence before B it and having failed to question if at that point in time, relying now on non-publication, is non-sequitur. The essence of publication as the court below indeed acknowledged was to notify the public of its appointment. The conclusion therefore reached by the court below to the effect that "the main purpose of publication in official gazette is to publicize government activities" cannot C be faulted. Since the parties were put on notice and fully heard wherein the plaintiff fully participated, he cannot now be heard to complain. Indeed, he is estopped from complaining about want of publication in the gazette. See section 150 of the Evidence Act. The plaintiff is deemed to have waived any perceived irregularity by his voluntary participation in the Commission's proceedings. See *Ariori v. Elemo* (1983) 1 SCNLR 1; *Odu'a Investment Co. Ltd. v. Talabi* (1991) 1 NWLR (Pt.170) 761 and *Arubo v. Aiyeleru* (supra). It is in this regard that I share the 3rd defendant's view that the plaintiff's claim is an attempt to rely on mere technicalities to overcome the unfavourable conclusion which the Commission rightly reached about him. See *Nnaji v. Chukwu* E (1988) 3 NWLR (Pt.81) 184; *Obasi Nig. Ltd. v. Wilbros. Nig. Ltd.* (1991) 3 NWLR (Pt.181) 606; *Nwobodo v. Onoh* (1984) 1 SCNLR 1; (1984) 1 S.C.1 and *Stitch v. A.-G. Fed.* (1986) 5 NWLR (Pt.46) 100. In this also wise, the case of *Skenconsult Limited v. Godwin Sekondy Ukey* (1981) 1 S.C. 6 at 26 cited to us by learned counsel for the plaintiff is, in my respectful view, inapposite.

F In the light of all I have said hereinbefore, the plaintiff's other submissions on bias or likelihood of bias on the part of the Commission. See *Olaleke Obadara & Ors. v. The President, Ibadan West District Council Grade 'B' Court, Iddo* (1965) NMLR 39; failure of the Commission to act judicially similar complaints of improprieties committed by the Commission, are of mere G academic purports and meant only for abstract considerations. See: *Oyeneye v. Odugbesan* (1972) 4 S.C. 244; *Bakare v. A.C.B. Ltd* (1986) 3 NWLR (Pt.26) 47; *Overseas Construction Co. (Nigeria) Ltd. v. Creek Enterprises (Nigeria) Ltd. & Anor* (1985) 3 NWLR (Pt.13) 407 and *Fawehinmi v. Akilu* (1987) 12 SC.136, 213; (1987) 4 NWLR (Pt.67) 797.

H In the light of the above, the several cases on bias, of the likelihood of same, cited for our consideration terminating with the case of *State Civil Service Commission v. Buzugbe* (1984) 7 SC. 19 at 43-44 are, in my respectful view, of no relevance and applicability to the instant case.

As learned counsel for 3rd defendant rightly put it, the fact that the

government's announcement to the effect that:-

*"For the benefit of the general public, government has decided to publish the report of the commission of inquiry"* which report has been inhibited or held back, was all due to the case in hand. With the case over, nothing precludes the Government from implementing its recommendations and findings.

B

My answer to Issue 2 is also accordingly rendered in the negative. Consequently, the plaintiff's cross-appeal fails.

For the reasons given and the fuller ones contained in the judgment of my learned brother, Wali, J.S.C. I allow the 3rd defendant's main appeal and dismiss the plaintiff's cross-appeal which fails, with the same consequential C orders including those as to costs contained therein.

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