

**SUPREME COURT OF NIGERIA**  
13TH DECEMBER, 1996. SC. 56/1993  
**CORAM:- S. M. A. BELGORE, I. L. KUTIGI, M. E. OGUNDARE,**  
**U. MOHAMMED, S. U. ONU, JJSC.**

TIMOTHY ADEILO ADEFULU & 16 ORS. .... DEFENDANTS/  
APPELLANTS

AND

CHIEF O. O. OKULAJA & 6 ORS. .... PLAINTIFFS/RESPONDENTS

For themselves and the entire  
members of Agaigi Ruling House)

8. COMMISSIONER FOR

CHIEFTAINCY AFFAIRS .....DEFENDANT/RESPONDENT

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***CHIEFTAINCY MATTERS*** - Appointment of a chief- Where declared null void by the Court - The vacancy that arose remained unfilled - And no new vacancy is created.

***CHIEFTAINCY MATTERS*** - Steps to appointing a chief- Where two of the steps were validly concluded - Effect of Court's null and void declaration - Is for the final step of the exercise to be performed.

***CHIEFTAINCY MATTERS*** - Judgment - Whether there is anything in the judgment - That calls on the Kingmakers to act - On the previous nomination list presented by the entitled ruling house.

***JUDGMENTS*** - Natural consequence of court's decision - Ought to be implemented by the party concerned - Without waiting for an Order of the Court.

***JUDGMENTS*** - Null and void declaration - Made by the Supreme Court concerning a chieftaincy appointment - Implies that the appointment was never made.

**FACTS**

The parties to the present case were mainly same parties to a previous chieftaincy matter that proceeded from the trial High Court to the Supreme Court which decided the matter in suit No. SC/5/1988. The major controversy was that the 1st appellant who was not in the list forwarded to the kingmakers by the entitled ruling house, was wrong-

fully appointed by the kingmakers and approved by the Governor as the Olofin of Ilisan Remo in Ogun State. The action filed against this wrongful appointment was upheld by the Supreme Court in the said previous suit. A splinter section of tin ruling house went back to nominate the same appellant who was again appointed to same chieftaincy position in question.

In the present action challenging the validity of this second appointment, the trial court held that the appointment was valid. The Court of Appeal overruled the trial court's decision. On appeal to the Supreme Court, the apex court had to consider whether the proper thing was for the ruling house to continue the previous nomination exercise by acting on the proper list originally presented to it.

### **ISSUES FOR DETERMINATION**

*"1. Whether there was any fresh vacancy in the Olofin of Ilisan Chieftaincy apart from that of 1981 having regard to the supreme court decision in Adefulu & Others vs. Oyesile & others (supra) and the provisions of the Chiefs Law.*

*2. If the answer to Issue No. 1 above is in the affirmative, whether it is open to the Ruling House to nominate the 1st appellant upon afresh exercise initiated by the second appellant having regard to the Adefulu case (supra) and the Chiefs Law."*

**HELD** (Dismissing the appeal per lead judgment of **OGUNDARE JSC** Kutigi JSC Dissenting)

### ***Appointment of a chief***

1. I agree entirely with the views expressed by their Lordships of the Court below. Having declared the first appointment of the first Defendant/appellant null and void, the effect, in law, is that he was never the Olofin of Ilisan and the vacancy that arose in 1980 remained unfilled, the fact that he de facto, at one time held the office notwithstanding. The de facto situation would not derogate from the legal consequences of the nullification, by the courts, of his appointment. If the judgment of the Supreme Court in 1989 created a new vacancy, that vacancy would have to be filled by the ruling house next in turn to the Agaigi ruling House from where the 1st Defendant hails. The fact that that other ruling house was not called upon to fill the supposed vacancy shows clearly that the appellants knew that they were still filling the vacancy created by the demise in 1980 of the then Olofin of Ilisan-Remo. (p. 2082 H)

### ***Steps to appointing a chief***

2. There being no second vacancy, therefore, the exercise to fill the va-

cancy arising in 1980 and which was begun in 1981 should be followed to its conclusion. Of the three distinct steps that have to be taken to fill the vacancy, two (that is invitation by the Secretary to the Local Government and nomination of candidates by the Agaigi ruling house) were validly concluded in February 1981. It was the third step, id est, the appointment stage by the kingmakers, that remained to be concluded. It becomes necessary, B therefore, that, following the judgment of the Supreme Court, the Kingmakers of Ilishan ought to meet to perform their own duty and conclude the appointment stage. (p. 2083 C)

***Judgments - whether kingmakers should act on previous list***

3. It has been suggested that there is nothing in the judgment of the court of appeal and the Supreme Court in the earlier proceedings that calls on the kingmakers to act on the nomination list sent to them by the Agaigi ruling house in 1981. Surely this suggestion cannot be right. Neither the Court of Appeal nor the Supreme Court declared the whole exercise of 1981 invalid nor did either Court order the whole exercise to commence de novo. Had that been the case, it might, perhaps, not to be open to anyone to question what was done in 1990, that is invitation to the ruling house by the secretary of the Local Government and the subsequent purported meeting of a splinter group of the ruling house. (p. 2083 E)

***Natural consequence of court's decision***

4. It is clear from the facts of the present case that the first two stages in the filling of the vacancy in the Olofin of Ilishan title were validly conducted. The defect in the 1981 exercise lay with the third stage, the appointment stage, where the kingmakers acted ultra vires their powers in appointing someone who was never nominated by the Agaigi Ruling House. Following the judgment of the Supreme Court in December 1989 the body of kingmakers ought to have met immediately thereafter to consider the 1981 list of four candidates properly and validly placed before them. One does not need an order of the Supreme Court for this purpose because it is a natural consequence of the decision (and the reasoning leading to that decision) of the Supreme Court. (p. 2084 F)

***Null and void declaration***

5. Much consideration was given by the trial judge to the fact that the 1st Defendant/Appellant "occupied the throne of Olofin of Ilishan-Remo de facto from March 1981 up to December 1989". With profound respect to the learned trial judge I think, he was, without realizing it, swimming in

a deep sea. When an appointment is declared null and void, all it means is that the appointment was never made and all acts of the purported appointee when he de facto held the appointment are unlawful, null and void and of no affect. (p. 2085 A)

**B NOTABLE POINTS OF INTEREST**

**KUTIGI JSC (Dissenting)**

***Court not to grant relief not claimed***

1. It is absolutely clear therefore that the Plaintiffs in the case never sought for any other declaration, order or relief to the effect that - *The four majority candidates nominated by the Agaigi Ruling House in 1981 be the only candidates for consideration in a subsequent selection or nomination exercise, or that the meeting of the Kingmakers should be re-convened to consider only the four 1981 majority candidates.* It is doubtless that for any court of law to have granted a relief in a term or form suggested above, would have amounted to granting a litigant what was not or never claimed. A court of Law has no power to do that kind of thing. (p. 2092 A)

***1981 List of chieftaincy candidates is no longer relevant***

2. The 1981 list of nominations is clearly in my view, therefore spent. Consequently, there was no list of nominations to go back to when the Supreme Court on 8/12/89 declared the appointment of the 1st Defendant who was the 5th on the list of six names, as the Olofin of Ilishan-Remo null and void. The secretary of the Ijebu-Remo Local Government in my view therefore acted properly and lawfully when, after the Supreme Court judgment in 1989 above, he called for fresh nominations for appointment to the stool of Olofin of Ilishan-Remo. (p. 2092 H)

**REPRESENTATION**

E. O. Sofunde, S.A.N. (M.I. Itanafi with him) for 1st Appellant  
 G L. O. Fagbemi, S.A.N (I.O. Olorundare with him) for 4th - 17th Appellants  
 Kehinde Sofola, SAN with A. Idris for Plaintiffs/Respondents

**CASES REFERRED TO**

H Adefulu v. Oyesile (1989) 5 NWLR (Pt. 122) page 3771  
 Amida v. T. Osoboja (1984) 7 SC. 68 at page 76  
 Melifonwu v. Egbuji (1982) 9 SC. 145  
 Aladegbemi v. Fasanmade (1988) 1 NSCC 1087 at page 1101  
 Zogby v. State 53 Misc. 2d 740; 279 N.Y.S. 2d 665, 668

Oguebe v. Chukwudile (1979) ANLR 38

Shitta-Bey v. Federal Public Service Commission (1981) 1 SC 40 at p. 60

Obioma v. Olomu (1978) 3 SC. 1

Elumeze v. Elumeze (1969) 1 All NLR 311)

Osafire v. Odi (1990) 3 NWLR (Part 137) 130

Abaye v. Ofili (1986) 1 NWLR (Part 15) 134 B

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### **STATUTES & RULES REFERRED TO**

High Court (Civil Procedure) Rules of Ogun State 0. 35

Supreme Court Rules 0. 6 r. 8

Chiefs Law Cap20 Laws of Ogun State 1978 ss.15(1),17(2),20(2) & (3) C

### **LEAD JUDGMENT BY OGUNDARE JSC**

Sometime in 1980 the Chieftaincy title of the Olofin of Ilisan Remo in Ogun State became vacant, consequent upon which the then Secretary to the Ijebu Remo Local Government (Mr. J.I. Solaja), in February, 1981 invited the Agaigi Ruling House to nominate candidates for the consideration of the kingmakers for appointment as the new Olofin of Ilisan Remo. By the chieftaincy declaration relating to the title it was the turn of the Agaigi Ruling House to fill the vacancy. The ruling house met on 25th February, 1981 and nominated four candidates namely: E

1. Rabiufujamade.
2. Abel Olufemi Osude
3. Kola Ileke and
4. Lamina Ogun Fakoya.

One Timothy Adeilo Adefulu and one Alhaji Rufai Awodein were proposed at the meeting of the ruling house as candidates but the proposals were rejected by majority of 82 to 15. Hence, their names were not included in the list of candidates nominated by the Agaigi ruling house. A certificate of nomination of the four candidates nominated by the ruling house was forwarded to the kingmakers through the Secretary to the Local Government for consideration; a copy of the certificate was also forwarded to each of the kingmakers. The kingmakers met on 17/3/81 for the purpose of considering the candidates submitted to them with a view to making an appointment. The Secretary to the Local Government was in attendance at this meeting as he was at that of the ruling house. Rather than confining themselves to the list of four candidates submitted to them by the Agaigi ruling house, the head of the kingmakers presented six names which included those of Timothy Adeilo Adefulu and Rufai Awodein, the two unsuccessful candidates at the ruling house level. Despite the protest of the Secretary to the F  
G  
H

Local Government the kingmakers went ahead and appointed Adefulu as the Olofin of Ilisan. His name was forwarded to the Governor for approval. Notwithstanding the protest of the Agaigi ruling house to the Governor of Ogun State the appointment by the kingmakers of Adefulu was approved by the Governor. The Agaigi ruling house then instituted an action claiming against B the Governor of Ogun State, the Attorney-General of Ogun State, the kingmakers of Ilishan Remo and Timothy Adeilo Adefulu:-

*“1. A declaration that the appointment, the purported approval and the installation of the 1st defendant as the new Olofin of Ilisham Remo are irregular, unlawful and therefore, null and void as same were C not done in accordance with the provisions of the western region (Ogun State) of Nigeria Chiefs Law and the relevant Chieftaincy Declaration in respect of succession to the stool of Olofin of Ilisan Remo.*

*2. Injunction restraining the first defendant from parading himself as the Olofin of Ilisan Remo and the other defendants from recognizing the said first defendant as the Olofin of Ilishan Remo.”*

The action went through the three tiers of courts, that is, the High Court of Ogun State, the Court of Appeal and the Supreme Court. In a judgment delivered by this Court on 8th December, 1989, (See Adefulu & Ors. v. Oyesile & Ors (1989) 5 NWLR (Pt.122) page 377, this Court E unanimously affirmed the decision of the Court of Appeal setting aside the appointment of Adefulu as the Olofin of Ilisan Remo. It declared:-

*“1. that the appointment and purported approval and installation of the 1st appellant as the Olofin of Ilishan Remo are irregular, unlawful and therefore null and void and of no effect as same were not F done in accordance with the provisions of the Western Region (Ogun State) of Nigeria Chiefs Law and the relevant Chieftaincy Declaration in respect of the succession to the stool of Olofin of Ilisan Remo; and*

*2. ordered that the 1st appellant is restrained from parading himself as the Olofin of Ilishan Remo and that the 2nd to 13th appellants as G well as the 5th and 6th respondents are restrained from recognizing the 1st appellant as the Olofin of Ilishan Remo”*

Following the said judgment of this Court, the Secretary of the Ijebu Remo Local Government invited the Agaigi ruling house once again to present candidates to fill the vacancy existing in the Olofin of Ilishan H Remo Chieftaincy title. A section of the family met on 5/3/90 and nominated Timothy Adeilo Adefulu as the only candidate. His name was forwarded to the kingmakers who, in turn at their meeting, appointed him and forwarded his name to the Governor of Ogun State for approval. The Agaigi ruling house was again dissatisfied with the turn of events

and on 13th March, 1990, in the High Court of Ogun State instituted the action leading to this appeal, claiming:-

*“(a) Declaration that the purported nomination of Timothy Adeilo Adefulu by a splinter group led by Alhaji Lawal Balogun on Monday the 5th day of March, 1990 and the purported appointment of the said Timothy Adeilo Adefulu as the Olofin of Ilishan from Agaigi Ruling House B are unlawful and therefore, null and void.*

*(b) Injunction restraining the Secretary, Ijebu-Remo Local Government from forwarding the name of Timothy Adeilo Adefulu to the Commissioner for Chieftaincy Affairs for approval by the Ogun State Executive Council and the Military Governor of Ogun State from approving the said appointment and the said Timothy Adeilo Adefulu from parading himself as Olofin of Ilishan Remo.”*

Seven persons (including the four persons nominated by the ruling house in February, 1981) instituted the action on behalf of the Agaigi ruling house. Timothy Adeilo Adefulu, the Secretary of the Ijebu Remo Local Government, D the Commissioner for Chieftaincy Affairs, the Military Governor of Ogun State and the kingmakers of Ilishan were joined as co-defendants in the action.

Pleadings were duly filed and exchanged. At the trial, the parties agreed to the settlement of issues pursuant to Order 35 of the High Court (Civil Procedure) Rules of Ogun State in consequence of which the following issues were set down: E

*“1. Whether it is open to the 1st defendant to be nominated by the Agaigi Ruling House as a person to fill the vacancy in the Olofin of Ilishan Chieftaincy having regard to the judgments in HCS/25/31, CA/I/122/85 and SC/5/1988 and the provisions of the Chiefs Law Cap. 20 F Laws of Ogun State of Nigeria, 1978.*

*2. Whether the 2nd defendant was right in inviting fresh nominations from the Agaigi ruling house after the judgment of the Supreme Court in Suit No. SC/5/1988.*

*3. Whether the vacancy created in the Olofin of Ilishan Chieftaincy G in 1981 as a result of which the Agaigi Ruling House was invited by the Secretary, Ijebu-Remo Local Government in February, 1981 to nominate candidates to fill the vacancy was filled by the 1st defendant and if so whether a new vacancy was created on the 8th of December, 1989.”*

No evidence was taken but learned counsel for the parties addressed the H court. In a reserved judgment, the learned trial Judge resolved the three issues in favour of the defendants and dismissed plaintiffs claims. Being dissatisfied with the judgment the plaintiffs appealed to the Court of Appeal. That court in an unanimous decision allowed the appeal, set aside

the judgment of the trial High Court and granted plaintiff' claims. It is against this judgment that the defendants have appealed to this Court.

Pursuant to the Rules of this Court, Briefs of Arguments were filed and exchanged. And at the oral hearing before us learned counsel appeared for the 1st defendant and 4th to 17th defendants and the plaintiffs but counsel for the 2nd and 3rd defendants was absent. As brief has been filed on their behalf we considered their appeal argued on their brief and heard arguments from learned counsel for the other parties - See: Order 6 rule 8 of the Rules of this Court.

The 1st defendant/appellant that is, Timothy Adeilo Adefulu, in his brief, submits the following question for determination:-

*"Whether the second selection, appointment and installation of the 1st appellant as the Olofin of Ilishan-Remo ought to be interfered with by any court of law having regard to the decision in suit No. CA/1/204/90 affirmed by this Honourable Court in Suit No. SC/5/1988 and the provisions of the Chiefs Law Cap. 20 Laws of the Ogun State of Nigeria 1978?"*

The 2nd and 3rd defendants, that is, the Secretary Ijebu Remo Local Government and the Military Governor of Ogun State in their own brief submit the following question for determination:-

*"Whether it was open to the 1st appellant (Timothy Adeilo Adefulu) to be nominated by the Agaigi Ruling House to fill the vacancy in the Olofin of Ilishan Chieftaincy in 1990 having regard to the judgment of the Supreme Court in Adefulu & Ors. v. Oyesile & Ors (1989) 5 NWLR (Pt. 122) 377 and the provisions of the Chiefs Law, 1978."*

The 4th to 17th defendants/appellants set out in their own brief the following two questions as calling for determination:-

*"1. Whether there was any fresh vacancy in the Olofin of Ilishan Chieftaincy apart from that of 1981 having regard to the Supreme Court decision in Adefulu & ors v. Oyesile & Ors. (supra) and the provisions of the Chiefs Law.*

*2. If the answer to issue No.1 above is in the affirmative, whether, it is open to the ruling house to nominate the 1st appellant upon a fresh exercise initiated by the 2nd appellant having regard to the Adefulu case (supra) and the Chiefs Law."*

The plaintiffs/respondents in their own brief adopt the two questions formulated by the 4th to the 17th defendants/appellants. I will for the purpose of this judgment adopt the questions formulated in the brief of the 4th-17th appellants as they, in my respectful view, adequately cover the only question set out in the brief of the 1st defendant/appellant and that of the 2nd and 3rd defendants/appellants.



The facts of this case which have been set out above are simple enough and are for most part undisputed. Following the demise in 1980 of the then Olofin of Ilishan Remo, a vacancy occurred in the title. It is not in dispute that the Olofin of Ilishan is a recognised chieftaincy under the Chiefs Law Cap. 20 Laws of Ogun State 1978. Section 15(1) of the Law set out the procedure to fill a vacancy in a recognised ruling house B chieftaincy, such as the Olofin of Ilishan Remo is. It provides:

*“15(1) Where a vacancy occurs in a ruling house chieftaincy and a declaration has effect with respect to that chieftaincy:-*

*(a) the secretary of the competent council shall announce the name of the ruling house entitled according to customary law to provide C a candidate or candidates, as the case may be, to fill that vacancy*

*(b) not later than fourteen days after the announcement by the secretary, the members of the ruling house, acting in accordance with the declaration, shall submit the name of a candidate or the names of candi- D dates, as the case may be, to the kingmakers;*

*(c) If within the time prescribed by paragraph (b) of this subsection, the ruling house named in the announcement fails to submit the name or names of a candidate or candidates, and there is more than one ruling house, the secretary shall make an announcement accordingly and the ruling house next entitled according to the order of rotation contained E in the declaration shall be entitled to submit a name or names within the period of fourteen days immediately following such announcement, and so on according to the same procedure, until the name of a candidate or candidates is submitted to the kingmakers;*

*(d) it shall be lawful for the secretary to attend as an observer F any meeting of the ruling house mentioned in sub-paragraphs (b) and (c) of this subsection upon directives issued in that behalf by the Commissioner for Local Government and Chieftaincy Affairs;*

*(e) Within not more than seven days after the submission of the name of a candidate or candidates the kingmakers shall proceed to select G a person to fill the vacancy in accordance with the provisions of paragraph (e) (sic) of this subsection;*

*(f)(i) if the name of only one candidate is submitted who appears to the kingmakers to be qualified and not disqualified in accordance with section 14, they shall declare him to be appointed; H*

*(ii) if the names of more than one candidate are submitted who appear to the kingmakers to be qualified and not disqualified in accordance with section 14, the names of those candidates shall be submitted to the vote of the kingmakers and the candidate who obtains the majority*

*of votes of the kingmakers present and voting shall be declared appointed;*

*(iii) in voting upon candidates the kingmakers shall have regard to the relative ability, character and popular support of each candidate;*

*(iv) if the name of only one candidate is submitted and it appears to the kingmakers that he is not qualified or is disqualified in accordance with section 14, or if, in the case of a chieftaincy in respect of which there is only one ruling house, no candidate is submitted to the kingmakers, they shall inform the ruling house and the secretary accordingly and the ruling house shall be entitled to submit a further name or names within fourteen days of being so informed and thereafter the procedure contained in paragraphs (c) to (e) of this subsection shall apply."*

By the above provisions, there are clearly three distinct steps to take in filing a vacancy. The first step is the announcement by the Secretary of the competent council (in this case Ijebu-Remo Local Government) of the name of the ruling house entitled to provide candidate/s to fill the vacancy. This step was taken by Mr. Solaja the then Secretary of the Ijebu Remo Local Government in February, 1981.

The second step is the nomination stage and it involves the nomination of candidate/s by a ruling house whose turn it is to present a candidate or candidates (in this case the Agaigi Ruling House). That stage, on the undisputed facts and by the judgment of the Court of Appeal in CA/I/122/85 given on 25th June, 1987 and the Supreme Court in SC5/1988 given on 8th December, 1989 and reported in (1989) 5 NWLR (Pt.122) 377, was concluded by the Agaigi Ruling House meeting on 25th February, 1981 and nominating four candidates. The third stage is the appointment stage when the kingmakers would have to consider the candidates nominated by the ruling house and appoint one of them. The Ilishan-Remo kingmakers met on 7/3/81 for this purpose but, rather than consider the four names nominated by the ruling house, considered two other names and going by the dictates of the Ifa Oracle appointed the 1st defendant/appellant. The proceedings of this stage were successfully challenged by the ruling house in the Judgment of the two appellate courts above referred to. Following the judgment of the final appellate court (the Supreme Court), the whole exercise was commenced afresh, that is, from stage one. This was challenged again by the ruling house as being an incompetent exercise.

The trial High Court (Sonoiki, J.) observed and held:-

*"With all respects to all the learned counsel in this case, I make bold to say that the Supreme Court judgment is very clear. That judgment related to the nomination exercise carried out in 1981 and as (sic) more. So also is the order of injunction. The argument that it is only the four*

*candidates validly nominated in 1981 that should be called upon in filing the present vacancy is merely attractive but not acceptable to this court for the following reasons:-*

*(a) The Supreme Court nowhere stated that it is the four candidates it held to be validly nominated in 1981 who should be called upon to fill the vacancy after 8th December, 1989.* B

*(b) There was no claim to that effect before the Supreme Court.*

*(c) The Supreme Court having declared 1st defendant's appointment etc. as null and void, the 2nd defendant has to comply in all respects with the provisions of the Chiefs Law especially those relating to the period fixed for each particular stage of the exercise i.e. the 2nd defendant has to keep to the time-table set out in the Chiefs Law religiously.* C

*(d) The Supreme Court as the highest Court in the land, is very much interested in the observances of the provisions of the laws of the land and to that extent will not be seen as encouraging a violation of the faithful observance of the provisions of the Chiefs Law of Ogun State.* D

*(e) It will be against common sense and reason (after a period of almost nine years) to call on only the four majority candidates of 1981 to proceed with selection exercise for the following reasons:-*

*(i) What, if any or most or all of them have died;*

*(ii) What, if most of the kingmakers have died or have changed their minds? (In this case learned counsel for the plaintiffs conceded that seven of the original kingmakers had died).* E

*(iii) What, if there are fresh members of the family who are now interested in the throne and who were not then interested? Is it fair to shut them out for any reason whatsoever?* F

*(f) Having suffered the humiliation of being thrown out of the throne since 8th December, 1989, would it not accord with the principle of equity to give the 1st defendant an opportunity of testing his popularity among, or acceptance by, the family once again on the time tested statement of fact that time is the healer of wounds?* G

*To follow the line of argument of learned counsel of plaintiffs will lead to a gross violation of the provision of the Chiefs Law of Ogun State a situation which so (sic) Court of the land (not the least the highest Court in the Federation) will encourage.*

*There is nowhere in the decision of the Supreme Court delivered H on 8th December, 1989 and quoted above where the 1st defendant was barred from presenting himself as a candidate in a fresh exercise or to be nominated afresh as a person to fill the vacancy in the Olofin of Ilishan chieftaincy. That being the case, the 2nd defendant was quite in order in*

*inviting fresh nominations from the Agaigi Ruling House after the judgment of the Supreme Court on 8th December, 1989.*

*In actual fact, the 2nd defendant was quite fair to have thrown the door wide open to all members of Agaigi Ruling House. With the above, I have answered the first two issues in the affirmative.”*

B He went on:

*“On the third issue, I have no difficulty in holding that the 1st defendant occupied the throne of Olofin of Ilishan Remo de facto from March, 1981, up to 7th December, 1989.*

*What is the position de jure?”*

C Relying on the dictum of Bello, J.S.C. (as he then was) in *Alhaji S.I. Amida & Ors. v. T. Osobola* (1984) 7 SC 68 at page 76 and *Odiase v. Agho* (1972) 1 All NLR 170 at P. 176; *Melifonwu & Ors. v. Egbuyi & Ors.* (1982) 9 SC 145 and *Oba Lawani Aladegebemi & Anor v. Oba John Fasanmade* in (1988) 3 NWLR (Pt. 81) 129 Per Agbaje, J.S.C. the learned Judge held:-

D *“That judgment of the High Court remained binding until it was set aside by the Court of Appeal on the 25th June, 1987. In effect, the 1st defendant in this case was the de jure Olofin of Ilishan Remo up to 24th June, 1987.*

*While the Court of Appeal set aside the judgment of the lower court, one could hastily conclude that the 1st defendant was no longer the de jure Olofin of Ilishan-Remo. But a monumental incident occurred. That same court granted a stay of execution of its own judgment and that stay order inured till 8th December, 1989, when the Supreme Court held that the appointment, etc of the 1st defendant/appellant was null and void.*

*By reason of the order for stay of execution of the judgment of the Court of Appeal I hold that even though the appointment etc of the 1st defendant was held null and void by the Supreme Court that stay of execution order gave legal backing to the stay of the 1st defendant on the throne till 8th December, 1989. It was a monumental order indeed. I would, however, readily concede that with effect from 8th December, 1989, the 1st defendant had ceased both factually and legally to be the Olofin of Ilishan-Remo.”*

He finally held:

H *“a new vacancy occurred on 8th December, 1989, and that the 1st defendant effectively (although now unlawfully) occupied the throne of Olofin of Ilishan-Remo from March, 1981, till 8th December, 1989.”*

On appeal to the Court of Appeal R.D. Muhammad, J.C.A. in his lead judgment (with which the other justices agreed) summarised the

contention of the parties before that court in these words:-

*“The appellants' contention is that in the light of the Supreme Court judgment, the 2nd respondent should not have sent another invitation for nomination because the Agaigi Ruling House has already validly nominated four persons as candidates. It is also their contention that the 1st respondent cannot be considered for nomination until the perpetual B injunction granted against him by the Supreme Court is discharged.*

*On the other hand all the respondents contended that since the Supreme Court did not state that the 1981 exercise should be used so the 2nd respondent was right to call for fresh nomination. They also contended that even if the 1981 nomination is valid, it is now spent by virtue C of the Chiefs Law Cap. 20 Laws of Ogun State, 1978. They further contended that the Supreme Court judgment created a second vacancy and it was open to the 1st respondent to be presented again since the injunction was tied to the invalidity of his appointment and not his disqualification as a person.”* D

In resolving the contentions, the learned Justice of the Court of Appeal observed:

*“I will first deal with the submissions of the learned Senior Advocate and the other counsel for the respondents that the appointment of the 1st respondent was valid until it was nullified in December, 1989 by the E Supreme Court. Their argument is that since the Ogun State Government has approved the appointment, the act of approval, though irregular was valid until set aside. The following authorities were cited in support:-*

*Smith v. East Elloe Rural District Council (1956) A.C. 736 at 769-770, Durrayappah v. Fernando (1967) A.C. 337 at 352 & 353 and F Hoffman La Roche (supra).*

*They also argued that the judgment of the High Court Sagamu also remained valid until it was set aside by the Court of Appeal. See: Odiase v. Agho (1972) 1 All NLR 170 at 176 and Amuda & Ors. v. Osobola (1984) 7 SC 68 at 76 and since the Court of Appeal stayed execution of its G judgment, the 1st respondent validly remained the Olofin of Ilishan Remo until the judgment of the Supreme Court.*

*I very much agree that a judgment of Court remains valid until it is set aside by a higher court. However in my opinion this principle of law cannot be applied in our present appeal. In the first place the judgment of the High Court has already been set aside. The appointment of the 1st respondent has already been declared null and void by the Supreme Court. The nullification relates back to the whole exercise of appointing, purported approval, etc. In respect of the 1st respondent. The effect of the Supreme*

*Court's judgment, in my opinion, is that the 1st respondent has never validly occupied the stool of Olofin of Ilishan Remo chieftaincy. It is also absurd to say that the judgment should only be effective from 8th December, 1989 because the Supreme Court delivered its judgment on that day. It is well settled that where a Court of Appeal sets aside a judgment of a lower court, B the decision of the lower court is wiped out having been discharged by the judgment of the Court of Appeal. See: Chief Bola Ige v. Dr. Victor Olunloyo (1984) 1 SCNLR 158 where Anigbolu, J.S.C. stated at page 178 thus-*

*I agree with the view expressed.....that the judgment of an appeal court, allowing an appeal, has the effect of substituting the C Appeal Court Judgment for the judgment of the court below set aside, making the decision appealed against disappear altogether.*

*From the above, it could be seen that the moment the Supreme Court delivered its judgment it has the effect of wiping out the decision of the Sagamu High Court and discharging the stay of execution granted D by the Court of Appeal. The judgment relates back to the day the case was first filed at the Sagamu High Court."*

On the issue of there arising a second vacancy, Muhammad, J.C.A. observed:  
*"It is true that the 1st respondent occupied this stool from 1981 to 1989. But the occupation has been declared null and void. This means E he was occupying the stool illegally during the said period. As such the nullification of his appointment by the Supreme Court cannot be construed to create a second vacancy for the simple reason that the original vacancy was never validly filled."*

Mr Sofunde, SAN learned counsel for the 1st defendant/appel-  
 F lant contends in his brief, and oral argument that nowhere in the judgment of either the Court of Appeal in CA/I/122/85 or of the Supreme Court in SC.5/1988 was it said that the 1981 invitation for the nomination of a candidate to fill the vacancy must be the one to be acted upon in the post-judgment exercise nor did any of the said judgments say that the list of names submitted to the G kingmakers in 1981 was the one which must be acted upon in the subsequent exercise. He further submits that the issue as to whether fresh invitation for nominations could be sent out or not was never raised in the series of the aforementioned judgments starting in the High Court and culminating in the Supreme Court and that consequently that issue was never decided. The H learned Senior Advocate also refers to the time-table contained in Sec. 15(1) of the Chiefs Law and submits that anything not done in accordance with the timetable will be illegal. He observes that as the invitation and nomination made in 1981 would now be out of date for the kingmakers to act upon the proper thing is for a fresh exercise to be embarked upon as was done after the

1989 judgment of the Supreme Court. Learned Senior Advocate refers also to Sections 17(2), 20(1) and 20(3) of the Law and submits:-

*“The effect of the combination of the provisions so set out is that the fact of not complying with section 15 in relation to time does not necessarily invalidate what is done but the Executive Council (Governor at the time material to this action) has the discretion to refuse to approve an appointment made without complying with the provisions as to time limits and in fact such appointment may be set aside.*

*It must be borne in mind that the power to approve or refuse to approve and set aside an appointment is an exercise of discretion vested in the Executive council which the courts cannot lawfully interfere with unless the Executive Council acts contrary to the rules of natural justice or takes into account irrelevant material in coming to its decision. Accordingly, any decision by this court to the effect that the invitation given to the Agaigi Ruling House in 1981 is not spent because of the provisions of section 17(2), which save it from being invalid for irregularity, would be creating a situation where, at the discretion of the Executive Council, after such exercise has been upheld by this Honourable Court, it could refuse to approve and go on to set aside such appointment based on it by virtue of section 20(3)(a). Accordingly, this honourable court is urged to adopt an alternative approach which would not end up with it giving its stamp of approval to steps taken which may, at the discretion of the Executive Council, be set aside. See the following cases which establish that a court will not act in vain. They are:-*

*(1) Agbaje & Ors. v. Agboluaje (1970)*

*1 All NLR 21 at 25 to 25;*

*(2) Abubakari v. Smith (1973) Volume 8*

*NSCC 451 at 457; (1976) 6 SC 31*

*In other words, this honourable court is asked to refuse to enforce the first exercise as the Executive Council may turn around and set it aside. It should be left to the Executive Council to decide the stand it will take.”*

The sum total of learned Senior Advocate’s submissions is that the nomination list of 1981 should be regarded as spent and a new nomination list was therefore, desirable after the 1989 judgment of the Supreme Court.

In the brief of the 2nd and 3rd appellants, it is submitted that the 1989 judgment of the Supreme Court is tied only to the 1981 appointment exercise and that the Supreme Court did not decide that the 1981 nominations should be acted upon in the post-judgment exercise. It is further submitted that, in the circumstance, it would be wrong to expect

the kingmakers to consider only the four nominations in 1981 as candidates to fill the vacancy and that therefore the Secretary to the Ijebu Remo Local Government acted rightly when he sent a fresh invitation in 1990 to the Agaigi ruling house to nominate a candidate or candidates to fill the vacancy. In the alternative, it is submitted that the nomination exercise conducted in 1981 has since lapsed in view of the provisions of section 15(1) of the Chiefs Law which prescribes time limits within which each stage of the exercise is to be performed and that, therefore, the kingmakers would not be acting legally if they proceeded to act on the 1981 nominations. It is further submitted that section 17(2) would not necessarily validate the act of the kingmakers having regard to section 20(3)(a). It is finally submitted as follows:-

*“The Supreme Court is therefore urged in view of the foregoing to adopt an approach which will ensure that this honourable court does not act in vain. It is in the light of the above that it is respectively submitted that the court of appeal erred in law when it held that it was not open to the 1st appellant to be nominated by Agaigi Ruling House in the post judgment exercise in 1990.”*

The reply brief of the 2nd and 3rd appellants has not added much to the arguments contained in their original brief.

The 4th to 17th appellants argue strenuously in support of the decision of the High Court particularly as to the de facto situation in Ilishan. It is argued as follows:-

*“1. The Court of Appeal with respect, however, misconstrued the effect of the Supreme Court judgment. It is submitted that a distinction ought to be drawn between the legal effect of a judgment and its practical effect. While it is conceded that the effect of the Supreme Court decision is to nullify the appointment of the 1st appellant with effect from 13th February, 1985 (the date of the High Court decision in HCS/25/81) that judgment relates only to the legal position.*

*2. There is, however, also the practical or defacto position. It should be considered that between 1981 and 1989 the 1st appellant was the putative Olofin of Ilishan. This situation was aided more especially through the ruling of the Court of Appeal dated 14th December, 1987 which suspended the operation of the injunction granted in its earlier judgment dated 25th June, 1987. The learned trial Judge in Suit No. HCS/26/90 recognised this fact when he held at page 62 of the record thus:-*

*“on the third issue I have no difficulty in holding that the 1st defendant occupied the throne of Olofin of Ilishan-Remo de facto from March, 1981 up to 7th December, 1989.*

*(3) It should be considered that throughout the period under*



consideration the 1st appellant occupied the stool of Olofin, he exercised the rights and privileges qua Olofin of Ilishan, including performance of traditional rites, receiving salary and loan from the Ogun State Government receiving pre-requisites from the Osugbo cult and wearing coral beads. Some of these rights and privileges are indicated at pages 145, 159 and 222 of the record. Further, it is always presumed that the occupant of a stool will always exercise the foregoing rights and privileges. See the *Queen v. The Governor in Council W.N. Ex Parte Adebo* (1962) WNLR 93 at 98 where it was held:

‘Further it is a matter of judicial knowledge I think, that, as in this case, the office of chief often, if not invariably has appurtenant to it a right to salary and other rights.’

The question then is, should this Honourable Court ignore all these factual situations? It is submitted respectfully that this court ought not to obliterate all these facts.

(4) If this Honourable Court agrees with the above submission, the position would then be that even though the 1st appellant never validly occupied the throne of Olofin of Ilishan, nevertheless he was in actual fact and for all practical purposes on the throne between 1981 and 1989.

This honourable court graphically brought out the distinction between the legal effect and the factual practical effect of an act in *Osafire & Another v. Odi & Another* (1990) 3 NWLR (Pt. 137) 130 at pages 154A-155A, 163E-F, 165A, 169E-F, 170A and 177D. It is therefore, with respect, submitted that the Court of Appeal was wrong not to have drawn this distinction which are like two parallel lines that can never meet.

(6) It might be interesting to ask what will be the effect of the Supreme Court judgment on the acts carried out by the 1st appellant between 1981 and 1989 qua Olofin of Ilishan for example meetings he had attended, honorary and chieftaincy titles he has awarded, traditional rites he has performed, etc. It is respectfully submitted that the judgment will have no such significant effect other than to prevent him from further performing such rights and privileges. If then the acts done during that period would not be affected by the invalidity of the 1st appellant’s appointment, a fortiori the Court ought not to ignore the fact that he occupied the chieftaincy at that time. See: *Abaye v. Ofili & Anor* (1986) 1 NWLR (Pt.15) 134 at page 153G.

(7) It is submitted that the conclusion from the foregoing is that the effect of the decision in *Adefulu & Ors. v. Oyesile & Ors* (supra) was to create a fresh vacancy in the chieftaincy of Olofin of Ilishan with effect from 8th December, 1989.”

It is the further submission of the 4th to the 17th appellants that the list of candidates nominated by the Agaigi Ruling House in 1981 is now spent and that the kingmakers cannot now lawfully act on it, having regard to section 15(1) of the Chiefs Law. Mr. Fagbemi, SAN learned leading counsel for the 4th to 17th appellants submits that the judgment of the Supreme Court in SC.5/88 cannot be a bar to a fresh nomination exercise.

Mr. Kehinde Sofola, SAN both in his brief and in oral argument, argues strenuously in favour of the views expressed by the Court of Appeal as against those of the trial high Court. It is learned Senior Advocate's submission that the vacancy which occurred in 1980 remains up till today unfilled. He further submits that the effect of the nullification by the Supreme Court of the appointment of the 1st defendant/appellant as the Olofin of Ilishan is that whatever act he performed when he held the title unlawfully would be null and void and have no effect. Learned Senior Advocate urges us to dismiss the appeal and affirm the judgment of the court below. It is his view that following the judgment of the Supreme Court in 1989 the kingmakers ought to meet to make an appointment from the list of candidates submitted to them in 1981 by the Agaigi ruling house.

I have given deep consideration to the submissions of learned counsel in this case. I will deal first with the issue as to whether by the judgment of this Court in the earlier proceedings relating to this Chieftaincy dispute, that is, SC.5/1988, a fresh vacancy was created in the Olofin of Ilishan Chieftaincy. The learned trial Judge, in a judgment based more on sentiments than on law, was of the view that there was a new vacancy created on 8th December, 1989 when the Supreme Court gave its judgment in the earlier proceedings. The court below thought differently.

Muhammad, J.C.A. said:-

*"It is true that the 1st respondent occupied this stool from 1981 to 1989. But the occupation has been declared null and void. This means he was occupying the stool illegally during the said period. As such the nullification of his appointment by the Supreme Court cannot be construed to create a second vacancy for the simple reason that the original vacancy was never validly filled."*

Ogwuegbu, J.C.A. (as he then was) in his own judgment observed:

*"When the appointment of the 1st respondent was declared null and void and of no effect, it cannot be said that the 1st respondent occupied the stool for any moment in the eyes of the law as to create a new vacancy which would require fresh exercise by the Agaigi Ruling House."*

**I agree entirely with the views expressed by their Lordships of the court below. Having declared the appointment of the 1st defendant/appellant null**

and void, the effect, in law, is that he was never the Olofin of Ilishan and the vacancy that arose in 1980 remained unfilled, the fact that he de facto, at one time, held the office notwithstanding. The de facto situation would not derogate from the legal consequences of the nullification, by the courts, of his appointment. If the judgment of the Supreme Court in 1989 created a new vacancy, that new vacancy would have to be filled by the ruling house next in turn to the Agaigi ruling house from where the 1st defendant hails. The fact that that other ruling house was not called upon to fill the supposed vacancy shows clearly that the appellants knew that they were still filling the vacancy created by the demise in 1980 of the then Olofin of Ilishan-Remo.

There being no second vacancy, therefore, the exercise to fill the vacancy arising in 1980 and which was begun in 1981 should be followed to its conclusion. Of the three distinct steps that have to be taken to fill the vacancy, two (that is invitation by the Secretary to the Local Government and nomination of candidates by the Agaigi ruling house) were validly concluded in February, 1981. It was the third step, id est the appointment stage by the kingmakers, that remained to be concluded. It becomes necessary, therefore, that, following the judgment of the Supreme Court, the kingmakers of Ilishan ought to meet to perform their own duty and conclude the appointment stage. It has been suggested that there is nothing in the judgment of the Court of Appeal and the Supreme Court in the earlier proceedings that calls on the kingmakers to act on the nomination list sent to them by the Agaigi ruling house in 1981. Surely, this suggestion cannot be right. Neither the Court of Appeal nor the Supreme Court declared the whole exercise of 1981 invalid nor did either court order the whole exercise to commence de novo. Had that been the case, it might perhaps, not be open to anyone to question what was done in 1990, that is invitation to the ruling house by the Secretary of the Local Government and the subsequent purported meeting of a splinter group of the ruling house.

When an appellate court nullifies a judgment as for want of jurisdiction or for any other cause, the case is not commenced de novo by the filing of a new writ of summons, etc. What is commenced de novo is the trial. The original writ of summons and the pleadings (where they are not tainted with similar fatal defects) are unaffected by the pronouncement of nullity. Examples abound in our Law Reports. I refer, for example, to *Uttah v. Independence Brewery Ltd.* (1974) 2 SC 7 where an action was properly commenced at Umuahia High Court in the former Eastern Nigeria. Pleadings which were filed were also properly ordered and filed as

they were filed sometime in November, 1966 before the commencement of the Biafran rebellion. The action nevertheless proceeded in the so called “High Court of Biafra” from December 28, 1967 when the trial Judge made an order appointing a referee. The referee delivered a report. The matter was continued and concluded by the same judge after the end of the rebellion in the High Court of Umuahia Division of the East Central State. On appeal to the Supreme Court, Elias, C.J.N in delivering the judgment of the court, at page 10 of the report held:-

*“It seems clear to us that the action was properly commenced within time and according to the rules of the High Court of Eastern Nigeria as these existed up to and including May 26, 1967 but that, subsequently to that date, all the proceedings in the case before the High Court of the illegal regime must also be declared a nullity. The justice of the case demands, however, that, since it was properly before a competent court prior to the intervention of the rebellion which made it impossible for the case to proceed, the present case should be remitted back to the newly constituted Umuahia High Court for a retrial from the point in May, 1967 when the proceedings were interrupted.”*

See: also Oguebe & Anor v. Chukwudile & Ors. (1979) ANLR 38 and Odi & Anor v. Osafire & Anor (1985) 1 NWLR (Pt. 1) 17 where this Court declared the judgment of the Court of Appeal null and void because the said judgment was delivered outside the 3 months period laid down in section 258(1) of the Constitution, the rehearing of the appeal before the Court of Appeal was in respect of the oral hearing. It was never suggested (and I would have been surprised if it had been) that a new notice of appeal and new written briefs of arguments had to be filed. As these had been properly filed, the rehearing of the appeal before the Court of Appeal was only limited to the oral hearing and judgment which was the defective step in the previous abortive process. So, it is in my respectful view, in this case. **It is clear from the facts of the present case that the first two stages in the filling of the vacancy in the Olofin of Ilishan title were validly conducted. The defect in the 1981 exercise lay with the third stage, the appointment stage, where the kingmakers acted ultra vires their powers in appointing someone who was never nominated by the Agaigi Ruling House. Following the judgment of the Supreme Court in December, 1989 the body of kingmakers ought to have met immediately thereafter to consider the 1981 list of four candidates properly and validly placed before them. One does not need an order of the Supreme Court for this purpose because it is a natural consequence of the decision (and the reasoning leading to that decision) of the Supreme Court.**

**Much consideration was given by the trial Judge to the fact that the 1st defendant/appellant “occupied the throne of Olofin of Ilishan-Remo defacto from March 1981 up to 7 December, 1989”. With profound respect to the learned trial Judge I think, he was, without realising it swimming in a deep sea. When an appointment is declared null and void, all it means is that the appointment was never made and all acts of the purported appointee when he de facto held the appointment is unlawful, null and void and of no effect.”** The result of a decree of nullity of marriage is that not only are the parties not now married, but they never were” - Per Russell, J. In Re Wombwell’s settlement (1922) 2 CD 298 at p. 305. As it was put in an American case, Zogby v. State 53 Misc 2d 740; 279 NYS 2d 665,668.

*“Null and void’ means that which binds no one or is incapable of giving rise to any rights or obligations under any circumstances, or that which is of no effect.”*

By the judgment of the Court of Appeal in 1987, and affirmed by the Supreme Court in 1989, declaring the 1981 appointment of the 1st appellant null and void, that appointment had no force or effect; it had no legal efficacy and became incapable of confirmation or ratification. It is not merely voidable but void ab initio that, from its beginning. A nullified appointment cannot in my respectful view, be a legal foundation upon which any lawful right could be hoisted. It may, however, be that the doctrine of necessity or implied mandate may apply to give validity to some acts of a usurper during the period of his de facto control of the office, that issue will only come up for consideration when the validity of his acts is called into question. That is not the case here and I express no opinion on it. I think it rather unwise to go into that issue in the present proceedings, for it does not arise. Much is entailed in determining the validity of acts of a usurper committed or performed when in de facto control of the office he has usurped. The person whose appointment is declared to be null and void is no more than a usurper during the time he de facto held that office. The nullification of the appointment of the 1st defendant by the judgment of the Court of Appeal and that of the Supreme Court relates back to the time the appointment was made in 1981 and approval given by the Governor of Ogun State and the vacancy he purportedly filled by that supposed, pretended, attempted or unlawful appointment remained intact.

The suggestion has also been made that the 1981 nomination list is spent and reliance for this is placed on section 15(1) of the Chiefs Law. The fallacy of that argument rests with section 17(2) of the law which provides:-

*“2. Subject to the provisions of subsection (1) of this section, the performance, after the expiration of the period prescribed, of any function under section 15 by the Secretary or Kingsmakers or any function under section 16 by any persons entitled to nominate, select or appoint to a vacancy shall not, by reason only of its being performed out of time, be invalid.”*

B Section 17(2) is clear and unambiguous and it clearly makes the time stated in section 15(1) not to be of the essence of the validity of the steps therein to be taken. After all, the kingmakers just did not go to sleep; there was a long drawn legal tussle that passed through the three tiers of courts in a period of 9 years!

C A veiled threat is issued by the appellants in their briefs that the Governor (now the Military Administrator) might not approve an appointment made from the 1981 list of candidates and that, therefore, the court should not insist on that list being used for the purpose of filling the vacancy in this case; it may amount to the court acting in vain, they argue. This threat is rather D unfortunate and disturbing. I know that their Lordships of the Court below have given adequate answer to this veiled threat.

Muhammad, J.C.A. observed:-

*“It is clear from the wordings of S. 20(3)(a) that the law gives the executive council a discretion to either approve or set aside an ap- E pointment. This discretion properly belongs to the Executive Council and it will not be interfered with by the Courts. How this discretion is exercised by the executive council is none of the court’s business as long as it is exercised in accordance with the law. It is not the duty of the courts to anticipate which way the executive council will decide and then shape its F judgment to coincide with the decision of the executive council.”*

Ogwuegbu, J.C.A. equally observed:-

*“When the appointment of the 1st respondent was declared null and void and of no effect, it cannot be said that the 1st respondent occu- G pied the stool for any moment in the eyes of the law as to create a new vacancy which would require fresh exercise by the Agaigi ruling house.*

*I agree entirely that it is not part of adjudicative function of the court to speculate on how the other organs of government be it the execu- tive or the legislature will react in the performance of their own functions with regard to our decision in a matter which is properly before us. They H too are expected to act in accordance with the law and give effect to the decisions of the courts of the law.”*

Salami, J.C.A. in a similar vein, too remarked:

*“The power given by this sub-section is vested in Executive Council of the state concerned. It is a discretionary power which is exercisable*

by the Executive Council in pursuance of its power to maintain law and order. It is the duty of courts to do substantial justice by correctly interpreting our legislation without regard to possible reaction of the executive arm of government. To attempt to anticipate government on the issue tantamount to speculation and courts are not given to speculations. The danger inherent in the approach canvassed by the learned counsel B for the respondents is the injustice that would be brought on those four appellants should the Executive Council be prepared to appoint one of them in spite of the hiatus."

I agree with the views of their Lordships in the passages above. Section 20(1) of the Law provides:-

"20(1) Subject to the provisions of this section, the Governor may approve or set aside an appointment of a recognised chief."

Subsection (3) of section 20 also provides:-

(3) In determining whether to approve or set aside an appointment under this section the Governor may have regard to:-

(a) Whether the provisions of section 15 or section 16 have been complied with;

(b) Whether any candidate was qualified or disqualified in accordance with the provisions of section 14;

(c) Whether the customary law relating to the appointment has been complied with;

(d) Whether the kingmakers, in the case of a ruling house chieftaincy, had due regard to the ability, character or popular support of any candidate; or

(e) Whether the appointment was obtained corruptly or by the undue influence of any person;

and may, notwithstanding that it appears to it the appointment has been made in accordance with the provisions of this law, set aside an appointment if it is satisfied that it is in the interest of peace, order and good government to do so."

I do not believe that any Governor would, in the exercise of his discretion given in sub-sections (1) and (3) of section 20, act capriciously, and in utter disregard of the spirit of the law. The court of justice does not go by speculation: Panalpina v. Wariboko (1975) 2 SC 29 at 35. The duty of the court is to apply the law and to see to it that justice is done to both parties. I can only end this part of my judgment by quoting from Idigbe, J.S.C. in Shitta-Bey v. Federal Public Service Commission (1981) 1 SC 40 at P. 60 where the noble learned Justice of the Supreme Court, said:

"Coercion 'we are told' is not always necessary to ensure that the

law is obeyed. Litigants will often be content to ascertain their legal rights and duties safe in the knowledge that, once the law is determined, it will be observed. This is particularly true of public bodies, which cannot withstand the public criticism which, normally, should follow upon disregard of their legal obligations' (See Griffith and Street: Administrative law 4th Edition (1967) at P. 241). 'Legal obligations' to which reference is made in the foregoing quotation, of course, include obligation to maintain the rule of law, as well as, not to be in contempt of decisions of competent courts and I agree with Coker, J.C.A. (whose judgment I set out earlier on - see the relevant portion, margin, 'C') that it is, indeed, 'contemptuous' on the part of the respondent as a public body to refuse to implement a declaratory order made in its presence by a competent court in a suit to which it was a party."

I trust the Military Administrator will ponder over these words. From all I have been saying above, Question (1) must be answered in the negative. And as Question (2) is predicated on Question (1) being answered in the affirmative, that question no longer arises. I need however, reiterate what Ogwuegbu, J.C.A. said in his judgment and with which I agree:

*"The Supreme Court having declared the purported approval of the 1st respondent null and void and of no effect, the said judgment did not for ever disqualify the 1st respondent from being considered for nomination when the stool becomes vacant in future but after the existing vacancy must have been filled having regard to the nominations made by the Agaigi Ruling House on 25/2/81 which the kingmakers brushed aside and proceeded to select the 1st respondent who was not nominated by the ruling house.*

*The decision of the Supreme Court in my view, wipes out the futile or abortive exercise embarked upon by the kingmakers in nominating the 1st respondent who was not proposed by the ruling house."*

Finally, I find no substance whatsoever in the appeals of the appellants. They are accordingly dismissed and the judgment of the Court below granting the claims of the plaintiffs/respondents is affirmed. I may, in conclusion, observe that it is time the people of Ilishan-Remo had a lawfully appointed Oba.

I think the 1st appellant has tinkered enough with the process of appointing one. The Secretary of the appropriate Local Government should summon a meeting of the kingmakers without delay and place before them the list of candidates nominated in February, 1981, by the Agaigi Ruling House, for their consideration with a view to their appointing one of the said candidates as required by the Chiefs Law and forward same to the Military Administrator for his approval.



I award to the plaintiff/respondents costs assessed at N1,000.00 against each set of appellants.

### **BELGORE JSC**

My learned brother, Ogundare, J.S.C., has in his lead judgment set out succinctly the genesis of this case now on appeal before us, once the Supreme Court had found nothing wrong in the nomination to the stool of Olofin of Ilishan by the family whose turn it was to nominate, the kingmakers tampering with such nomination by adding the name of the first appellant is a nullity. The decision of the Kingsmakers to the Governor and containing the name of a person not nominated by the nominating family and approved by all amounted to nullity. What the secretary to the Local Government ought to do under the circumstance was to send back to the Kingmakers, the Agaigi Family's nominees of 25th February, 1981, to wit:

1. Rabi Fajumade
2. Abel Olufemi Osude
3. Kola Ileke, and
4. Lamido Ogun Fakoya

for their consideration and decision to advise the Governor.

The Agaigi Family's nominations of 25th February, 1981 remains valid and unless all the four names are no longer available the Secretary to the Local Government by asking for fresh nominations acted ultra vires and nominations on that new request are null and void.

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### **KUTIGI JSC (Dissenting)**

At the Shagamu High Court the plaintiffs sought for the following reliefs-

*“(a) Declaration that the purported nomination of Timothy Adeilo Adefulu by a splinter group led by Alhaji Lawal Balogun on Monday the 5th day of March, 1990 and the purported appointment of the said Timothy Adeilo Adefulu as the Olofin of Ilishan from Agaigi Ruling House as unlawful, and therefore null and void.*

*“(b) Injunction restraining the Secretary Ijebu-Remo Local Government from forwarding the name of Timothy Adeilo Adefulu to the Commissioner for Chieftaincy Affairs for approval by the Ogun State Executive Council and the Military Governor of Ogun State from approving the said Timothy Adeilo Adefulu from parading himself as Olofin of Ilishan-Remo.”*

Pleadings were ordered, filed and exchanged. When the case came up for hearing the parties agreed that on the pleadings there was no

need for any oral evidence. They agreed and settled the issues for determination by the High Court as follows:-

“1. Whether it is open to the 1st defendant to be nominated by the Agaigi Ruling House as a person to fill the vacancy in the Olofin of Ilishan chieftaincy having regard to the judgments in HCS/25/81, CAI/B 122/85 and SC/5/1988 and the provisions of the Chief Law Cap.20 Laws of Ogun State of Nigeria 1978.

2. Whether the 2nd defendant was right in inviting fresh nominations from the Agaigi Ruling House after the judgment of the Supreme Court in Suit No. SC/5/1988.

3. Whether the vacancy created in the Olofin of Ilishan Chieftaincy in 1981 as a result of which the Agaigi Ruling House was invited by the Secretary, Ijebu-Remo Local Government in February 1981 to nominate candidates to fill the vacancy was filled by the 1st defendant and if so whether a new vacancy new created on the 8th of December, 1989.”

Thereafter counsel on both sides addressed the court on these issues. The learned trial Judge in a reserved judgment answered the three issues above in the positive and consequently dismissed plaintiffs claims. Aggrieved by the decision of the High Court the plaintiff appealed to the Court of Appeal, Ibadan Judicial Division. The Court of Appeal unanimously allowed the appeal, reversed the judgment of the High Court and gave judgment in favour of the plaintiffs. In conclusion it ordered thus-

“1. Declaration that the purported nomination of Timothy Adeilo Adefulu by a splinter group led by Alhaji Lawal Balogun on Monday the 5th day of March, 1990, and the purported appointment of the said Timothy Adeilo Adefulu as the Olofin of Ilishan from Agaigi Ruling House as unlawful, and therefore null and void.

2. Injunction restraining the Secretary, Ijebu-Remo Local Government from forwarding the name of Timothy Adeilo Adefulu to the Commissioner for Chieftaincy Affairs for approval by the Ogun State Executive Council and the Military Governor of Ogun State from approving the said Timothy Adeilo Adefulu from parading himself as Olofin of Ilishan-Remo.”

Dissatisfied with the judgment of the Court of Appeal, the defendants have now appealed to this court.

I think this appeal can conveniently be disposed of on the single issue of whether or not the judgment of the Supreme Court in case No. SC/5/1988 delivered on 8/12/89 now reported as Adefulu & Orsv. Oyesile & Ors (1989) 5 NWLR (Pt.122) 377 decided I repeat decided, that only the four candidates validly nominated by the Agaigi Ruling House in 1981 should be the only candidates to be considered for next immediate ap-

pointment as the Olofin of Ilishan Remo consequent upon the annulment of the 1981 appointment of Timothy Adeilo Adefulu by the Supreme Court in that case.

The facts in Adefulu & Ors v. Oyesile & Ors (supra) are quite simple. On the Chieftaincy title of the Olofin of Ilishan-Remo becoming vacant, the Secretary to the Ijebu- Remo Local Government sent a notice to the Agaigi B Ruling House calling for the nomination: of a candidate or candidates for the consideration of the kingmakers for appointment as a new Olofin of Ilishan-Remo. A meeting of the Ruling House was duly convened. At the meeting four persons were jointly nominated and approved by bloc votes of 82 of the 97 members who were present at the meeting. After the voting, two other names C (including that of the 1st defendant) were proposed as candidates. The proposal was opposed by some members of the Ruling House. As a result the proposal was put to vote and was defeated by 82 votes to 15. The six nominations made at the meeting stood thus-

1. Rabiya Fujamade) D
2. Mr. Abel Olu Osude)
3. Mr. Kola odubawo) Majority Candidates
4. Mr. Lamina Fakoya)
5. Mr. Timothy Adeilo Adefulu)
6. Alhaji Rufai Awodein) Minority Candidates E

At the meeting of the king makers all the six candidates above (including of course the 1st defendant the 5th on the list) were all considered. The Kingmakers decided and picked the 1st defendant as the Odofin of Ilishan-Remo and the government of Ogun State approved the appointment. The members of the Ruling House protested and filed this F suit. The learned trial High Court judge dismissed their claims. On appeal, the Court of Appeal allowed the appeal and set aside the judgment of the High Court. Hence the present appeal.

In Adefulu & Ors v. Oyesile & Ors (supra) the Supreme Court awarded to the plaintiffs therein only the two reliefs claimed by them in G the following terms-

*“1. Declared that the appointment and purported approval and installation of the 1st appellant as the Olofin of Ilishan-Remo are irregular, unlawful and therefore null and void and of no effect as same were not done, in accordance with the provisions of the Western Region (Ogun H State) of Nigeria Chiefs Law and the relevant Chieftaincy Declaration in respect of the succession to the stool of Olofin of Ilishan-Remo; and*

*2. Ordered that the 1st appellant is restrained from parading himself as the Olofin of Ilishan-Remo and the 2nd to 13th appellants as*

well as the 5th and 6th respondents are restrained from recognising the 1st appellant as the Olofin of Ilishan-Remo.”

It is absolutely clear therefore that the plaintiffs in the case never sought for any other declaration, order or relief to the effect that

The four majority candidates nominated by the Agaigi Ruling House B in 1981 be the only candidates for consideration in a subsequent selection or nomination exercise, or that the meeting of the King makers should be re-convened to consider or reconsider only the four 1981 majority candidates.

It is doubtless that for any court of law to have granted a relief in a term or form suggested above, would have amounted to granting a C litigant what was not or never claimed. A court of law has no power to do that kind of thing (see for example Obioma & Ors v. Olomu & Ors. (1978) 3 SC.1 Elumeze v. Elumeze (1969) 1 All NLR 311).

The plaintiffs therefore ought not to be allowed as at today by this ingenious device of interpreting a previous judgment to obtain indirectly and D through the back door, a relief which ought to have been claimed and which was never claimed in the earlier suit between the parties. We have in the recent past heard of “legislative judgment”. We are now faced with “interpretative judgment” if I may be pardoned for calling it so. I will resist any attempt in that direction and very strenuously too.

E It is also significant to state here now that again the plaintiffs have not deemed it fit to seek for a relief to “*direct or compel the kingmakers to meet again to consider only the four 1981 majority candidates.*” That omission, as in the previous suit, is to me clearly fatal. I do not think we can rightly award to any litigant what is not claimed. And F we cannot award it either under the guise of “interpretation” of a previous judgment concerning the parties.

Further, it should be borne in mind and it is clear from the judgment of the Supreme Court too, that during the 1981 nomination exercise, the kingmakers did in fact consider the four candidates who had the support of the majority of G the Ruling House along with two others (including the 1st defendant) who had the majority support of the Ruling House. The 1st defendant won and the remaining five lost at the crucial kingmakers’ meeting. So, for all intents and purposes it cannot be argued that the kingmakers did not consider the four majority candidates or any candidate at all during the 1981 exercise. The 1981 H list of nomination is clearly in my view, therefore spent. Consequently, there was no list of nominations to go back to when the Supreme Court on 8/12/89 declared the appointment of the 1st defendant who was the 5th on the list of six names, as the Olofin of Ilishan-Remo null and void. The secretary of the Ijebu-Remo Local Government in my view therefore acted properly and law-

fully when, after the Supreme Court judgment in 1989 above, he called for fresh nominations for appointment to the stool of Olofin of Ilishan-Remo. That was as it should have been. I cannot myself imagine that the Supreme Court would have intended the parties to have gone back to the 1981 majority nominations when it delivered its judgment on 8/12/89 nine years after such an exercise was carried out by the Agaigi Ruling B House!

It is significant also to observe that another seven years had elapsed since the Supreme Court delivered its judgment in the case on 8/12/89. As at today we therefore have on our hands a total of some 16 years since the 1981 nominations by the Agaigi Ruling House. It will to my mind, be an absurdity in today's Nigeria, to say that the parties should still go back to the 1981 list of candidates or nominations for an appointment to be made this month December 1996, or thereafter. There is nothing sacrosanct or inviolable in the 1981 exercise if I may say so. The 1981 list as I observed above, was acted upon and duly considered by D the kingmakers in 1981 despite the fact that the list contained the names of two minority candidates who were probably not supposed to have been listed along. If one of the four majority candidates had won, probably no one would have bothered to complain.

In the circumstances I have no difficulty whatsoever in agreeing E with the learned trial judge when he said in his judgment on pages 59-61 of the record that-

*"The Supreme Court decision is not ambiguous in any way. It declared the appointment and purported approval of the present 1st defendant in 1981 as the Olofin of Ilishan-Remo as irregular, unlawful, F therefore null and void and of no effect. It also restrained the present 1st defendant from parading himself as the Olofin and that the kingmakers as well as the Attorney-General and Governor of Ogun State from recognising the present 1st defendant as the Olofin of Ilishan-Remo. That judgment was given on the 8th day of December, 1989. G*

*There is nowhere in the present pleadings that the order of the Supreme Court was defied by the 1st defendant or any of the parties*

.....  
 .....

H  
 All that emerges from the pleadings and the Writ of Summons is that there was a nomination exercise for filling the vacant stool of the Olofin of Ilishan-Remo on 5th March, 1990 and two of the issues settled were to determine whether the 1st defendant could be nominated afresh

as a candidate of Agaigi Ruling House and whether the 2nd defendant was right in inviting fresh nominations from the Agaigi Ruling House after the Supreme Court judgment quoted above.

With all respects to all the learned counsel in this case, I make bold to say that the Supreme Court judgment is very clear. That judgment related to the nomination exercise carried out in 1981 and no more. So also is the order of injunction. The argument that it is only the four candidates validly nominated in 1981 that *should be called upon in filling the present vacancy is merely attractive but not acceptable to this court for the following reasons-*

(a) *The Supreme Court nowhere stated that it is the four candidates it held to be validly nominated in 1981 who should be called upon to fill the vacancy after 8th December, 1989.*

(b) *There was no claim to that effect before the Supreme Court.*

(c) *The Supreme Court having declared 1st defendant's appointment etc. as null and void, the 2nd defendant has to comply in all respects with the provisions of the Chief Law.....*

(d) *The Supreme Court as the highest court in the land, is very much interested in the observances of the provisions of the laws of the land*

.....

(e) *It will be against common sense and reason (after a period of almost nine years) to call on only the four majority candidates of 1981 to proceed with the selection exercise for the following reasons-*

(i) *What, if any or most or all of them had died?*

(ii) *What, if most of the Kingmakers have died or changed their minds? In this case learned counsel for the plaintiffs conceded that seven of the original Kingmakers had died.*

(iii) *What, if there are fresh members of the family who are now interested in the throne and who were not then interested. Is it fair to shut them out for any reason whatsoever?*

(f) *Having suffered the humiliation of being thrown out of the throne since 8th December, 1989, would it not accord with the principle of equity to give the 1st defendant an opportunity of testing his popularity among, or acceptance by, the family once again on the time tested statement of fact that time is the healer of wounds?*

.....

*There is nowhere in the decision of the Supreme Court delivered on 8th*

*December, 1989, and quoted above where the 1st defendant was barred from presenting himself as a candidate in a fresh exercise or to be nominated afresh as a person to fill the vacancy in the Olofin of Ilishan Chieftaincy. That being the case, the 2nd defendant was quite in order in inviting fresh nominations from the Agaigi Ruling House after the judgment of the Supreme Court on 8th December, 1989. In actual fact, the 2nd defendant was quite fair to have thrown the door wide open to all members of Agaigi Ruling House.”* B

To sum up, I will allow this appeal and set aside the judgment of the Court of Appeal and affirm the decision of the high court and dismiss the claims of the plaintiffs because C

(1) The Supreme Court judgment in Adefulu & Ors v. Oyesile & Ors (supra) did not say that only the 1981 four majority candidates should be used to fill the vacancy in Olofin of Ilishan Chieftaincy in the post-judgment exercise.

(2) The 1981 majority list of candidates was spent as the kingmakers did actually consider the four candidates along with that of the 1st defendant and one other person, who were the minority candidates. D

(3) It was and still open to the 1st defendant to be nominated by the Agaigi Ruling House to fill the vacancy in the Olofin of Ilishan Chieftaincy after the Supreme Court’s judgment. E

(4) The 2nd defendant acted properly and in accordance with the Chiefs Law in inviting fresh nominations from the Agaigi Ruling House after the judgment of the Supreme Court referred to above.

(5) It will be an absurdity and a gross violation of the right of the 1st defendant to be nominated by the Agaigi Ruling House, to impose the 1981 list of nominations on the Kingmakers in a post-1989 exercise. F

For the avoidance of doubt I affirm the judgment of Sonoiki J., delivered on the 1st day of June, 1990 and dismiss plaintiffs claims in their entirety. Each set of appellants is awarded costs of N1,000.00. G

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### MOHAMMED JSC

I have had a preview of the judgment just delivered by my learned brother, Ogundare, J.S.C., and I agree with him that there is no merit in this appeal. It is accordingly dismissed. I abide by all the consequential H orders made in the lead judgment.

### ONU JSC

I had before now the privilege to read in draft the judgment of my learned brother Ogundare, J.S.C and I share his view both in law and on the facts in their comprehensive consideration and treatment that this appeal lacks merit and ought to fail.

B I need only add hereunder a few comments of mine in expatiation as my humble contribution as follows:-

C Sequel to the dismissal of 1st appellant's appeal to the Supreme Court on 8th December, 1989 in Suit No. SC.5/1988 (to which I will come later), the latter vacated the office of Olofin of Ilisan-Remo. Thereafter, by another exercise held on 3rd March 1990 conducted by a splinter group of the Agaigi Ruling House he was again selected and appointed the Olofin of Ilisan-Remo. The exercise led the respondents herein in Suit HCS/26/1990 to commence another round of action against the appellants in the Ogun State High Court holden at Sagamu on the 21st day of March, 1990 for the following reliefs:-

D *"(a) Declaration that the purported nomination of Timothy Adeilo Adefulu by a splinter group led by Alhaji Lawal Balogun on Monday the 5th day of March, 1990 and the said Timothy Adeilo Adefulu as the Olofin of Ilisan from Agaigi ruling House are unlawful, and therefore null and void.*

E *(b) Injunction restraining the Secretary, Ijebu-Remo Local (sic) "Government from forwarding the name of Timothy Adeilo Adefulu to the Commissioner for Chieftaincy affairs for approval by the Ogun State Executive Council and the Military Governor of Ogun State from approving the said appointment and the said Timothy Adeilo Adefulu from*  
F *parading himself as the Olofin of Ilisan Remo."* The three issues set out below upon which the parties were agreed, were all answered in the affirmative by the learned trial Judge, (Sonoiki, J.) in the appellants favour and who thus dismissed the respondents action. The three issues were:-

G *"1. Whether it is open to the 1st defendant to be nominated by the Agaigi Ruling House as a person to fill the vacancy in the Olofin of Ilisan Chieftaincy having regard to the judgment in HCS/25/81, CA/1/122/85 and SC.5/1988 and the provisions of the Chiefs Law Cap.20 Law (sic) of Ogun State of Nigeria 1978.*

H *2. Whether the 2nd defendant was right in inviting fresh nominations from the Agaigi Ruling House after the judgment of the Supreme Court in Suit No. SC.5/1988.*

*3. Whether the vacancy created in the Olofin of Ilisan Chieftaincy in 1981 as a result of which the Agaigi Ruling House was invited by the Secretary, Ijebu-Remo Local Government in February, 1981 to nominate*



*candidates to fill the vacancy was filled by the 1st defendant and if so whether a new vacancy was created on the 8th of December, 1989.”*

The respondents who were aggrieved by this decision of the High Court appealed to the Court of Appeal (hereinafter referred to as the court below) which in suit No. CA/1/204/90, allowed the appeal on 19th March, 1992 wherein it rejected the submissions of the 1st appellant, B inter alia that:-

*(i) as the judgment of this Honourable Court in Suit No. SC.5/1988 created a second vacancy in the Olofin of Ilishan-Remo Chieftaincy the 2nd appellant was obliged to set the ball rolling afresh to fill the vacancy so created and/or*

*(ii) Since there was a time table prescribed by law for the filing of a vacancy under which the initial notice issued in 1981 was spent by effluxion of time, a new notice had to be issued and all steps thereafter taken afresh.* C

Being dissatisfied with the decision of the court below, with a particular regard to the list of candidates submitted to the king makers in 1981, the 1st appellant has appealed to this court on three grounds of appeal contained in his Notice of Appeal dated 2nd June, 1992. D

The lone issue submitted as arising for the determination of this court at 1st appellant’s instance runs thus:

*“Whether the second selection, appointment and installation of the 1st appellant as the Olofin of Ilishan Remo ought to be interferred with by any court of law having regard to the decision in suit number CA/1/204/90 affirmed by this Honourable Court in suit number SC.5/1988 and the provisions of the Chiefs Law Cap.20 Laws of the Ogun State of Nigeria, 1978? Could there be fresh invitation by the Secretary Ijebu-Remo Local Government to the Agaigi Ruling House to present a candidate to fill the vacancy in the Olofin of Ilishan Chieftaincy?”* E F

On behalf of 2nd and 3rd appellants and 4th to 17th appellants respectively, one and two issues for each set, which clearly are co-terminus in purport with the lone one filed on behalf of the 1st appellant, have been proffered. I most respectfully adopt the lone issue submitted on 1st appellant’s behalf for the purpose of my consideration of this appeal. G

Before I embark on considering the lone issue posed above, however, I wish to stress that this court’s earlier decision No.SC.5/1988 reported as Adefulu & Ors v. Oyesile & Ors (1989)5 NWLR (Pt.122) 377 decided with reference to the provisions of the Chiefs Law, Cap.20 Laws of Ogun State of Nigeria, leaves no one in doubt and no stone unturned as to its purport to wit: H

*Firstly, that the announcement and nomination of the four can-*

didates viz:

- (a) Rabiū Fujamade
- (b) Mr. Abel Olufemi Osude
- (c) Mr. Kola Ileke
- (d) Mr. Lamina Ogun Fakoya

B conducted by the members of the Agaigi Ruling House on 25th February, 1981 in their unfettered and uninhibited exercise of their right to vote and be voted for constituted such valid exercise of their rights.

C Secondly, that the ‘thinkers’ with the Agaigi Ruling House list above by the later addition or injection of two new names i.e. those of one Alhaji Rufai Awodein and the 1st appellant, to swell the number of nominated members to six at the King makers state or level, was in breach of the Chiefs Law and the relevant Chieftaincy Declaration and was by the same token null and void. See section 15(1) (a) and (b) of the Ogun State Chiefs Law (ibid).

D Thirdly, that the conclusion arrived at by this court (per Uwais, J.S.C. as he then was) to the effect that it be accordingly

E *“1. Declared that the appointment and purported approval and installation of the 1st appellant as the Olofin of Ilishan-Remo are irregular, unlawful and therefore null and void and of no effect as same were not done in accordance with the provisions of the Western Region (Ogun State) of Nigeria Chiefs Law and the relevant Chieftaincy Declaration in respect of the succession to the stool of Olofin of Ilishan-Remo; and*

F *2. Ordered that the 1st appellant is restrained from parading himself as Olofin of Ilishan-Remo and that the 2nd to 13th appellants as well as the 5th and 6th respondents are restrained from recognizing the 1st appellant as the Olofin of Ilishan-Remo.”*  
is clear, unequivocal and unambiguous.

G Now, to the argument proffered on the issue wherein it has been contended on behalf of the 1st appellant both in his Brief and through the oral submission of Mr. E. O. Sofunde, learned Senior Advocate, inter alia, as follows:-

H That since the Supreme Court in the Adefulu v. Oyesile case (supra) (hereinafter referred to shortly as ‘the judgment’) did not hold that it is only the call for nomination made in 1981 that could be acted upon by the family and others, the Secretary to the Local Government was in order when he called for fresh nominations in 1990, and that in any event, the court will not act in vain, since at all events, it will be impracticable to comply with the provisions of the Chiefs Law which requires that the Kingmakers should select a person to fill a vacancy

within a stipulated period. For these reasons, it is argued that one vacancy occurred in 1981 and another occurred since the judgment in 1989.

The 2nd and 3rd appellants who were not represented, in their joint Brief earlier prepared and filed by a Principal State Counsel, have argued that the disqualification of the 1st appellant was only in respect of the 1981 appointment exercise, and that the judgment did not restrain the 1st appellant from being nominated or appointed in the subsequent exercise. It is their further contention that the Supreme Court did not hold that the 1981 nomination should be acted upon after the judgment. That furthermore, even if the Supreme Court had declared valid the nominations of the four candidates during that exercise, such exercise has since lapsed by virtue of section 15(1) of the Chiefs Law, which the kingmakers would in any case be unable to comply with in 1989.

The 4th to the 17th appellants for their part, have argued in their Brief and in the oral submission of their counsel, Mr. L. O. Fagbemi, SAN., that a vacancy occurred in 1981 and another in 1989 following the judgment. They therefore are urging this court to hold that the judgment related only to the legal position, as it was incapable in practical terms to affect the concrete acts which the 1st appellant performed as the Olofin of Ilishan-Remo. I agree with Mr. Kehinde Sofola, SAN., who submitted on behalf of the respondents that 4th to 17th appellants cannot be correct in their proposition that all the acts performed by the 1st appellant must be held valid simply because he had performed them. I am of the view that such acts, inclusive of meetings over which 1st appellant had presided or honorary titles he might have conferred as without legal authority and for that reason a complete nullity. The case of *Osafire & anor. v. Odi & anor* (1990) 3 NWLR (Pt.137) 130 relied on but which is not authority for that proposition ought, in my view, to be distinguished.

Thus, I am in complete agreement with the submission of the Learned Senior Advocate for the respondents that when the Supreme Court made the declaration that the purported nomination and appointment of the 1st appellant as the Olofin were null and void, they can have no other effect than that whatever acts he performed from the day of such nomination and/or appointment until the judgment of the Supreme Court delivered on 8th December, 1989, were null and void and of no effect. In other words that there was a total vacuum during that period; it being immaterial, in my view whether he performed some traditional rites, received salary and loans from the Ogun State Government or did such other acts as may be dubbed "factual situations."

The answer to the question I would answer in the affirmative for the

sheer reason that it is not the court's duty to obliterate the facts alleged. Even if they were performed, they were so performed by someone who had no ostensible authority and no court can give any stamp of authority to clothe those acts with legality. In this regard the case of Abaye v. Ofili (1986) 1 NWLR (Pt.15) 134 does not in my view support the 1st appellant's unlawful occupation of the stool of Olofin. That case deals with a repealed statute which cannot be equated with unlawful acts of the executive performed under and by virtue of powers properly granted pursuant to the extant provisions of a valid statute. The submission by the 4th to the 17th appellants that the de facto performance by the 1st appellant of the duties of the Olofin for a period must amount in law to a period of reign by him is unsustainable. The effect of the judgment was to destool the 1st appellant with the result that the whole period when he was occupying the Olofin stool must in law be regarded as a continuation of the vacancy which occurred in 1981 and still continues. It is therefore fallacious to suggest that the destoolment of the 1st appellant by the judgment of 1989 created a new vacancy. See the case of Alhaji K. Akibu & Ors v. Alhaji Oduntan & Ors (1991) 2 NWLR (Pt.171) 1 at pages 13 and 14 in which it was held that once a judgment is given on a chieftaincy stool, the person against whom that judgment was given must vacate the stool, and he is not entitled to an equitable relief by way of stay of execution. In the instant case, for instance, the 1st appellant if he had any doubt at all about the judgment could have sought a declaratory order of the court that he is entitled for consideration in a subsequent exercise. This he never did. Thus, the full rigours of the judgment passed against him persist. For, as Muhammed, J.C.A. in his lead judgment (concurring in by Ogwuegbu, J.C.A) as he then was, and Salami, J.C.A. pungently put it in the court below: thus:-

*"The appointment of 1st respondent has already been declared null and void by the Supreme Court. The nullification relates back to the whole exercise of appointing, purported approval, etc. in respect of the 1st respondent. The effect of the Supreme Court's judgment, in my opinion, is that the 1st respondent has never validly occupied the stool of Olofin of Ilishan-Remo Chieftaincy. It is also absurd to say that the judgment should be effective from 8th December, 1989 because the Supreme Court delivered its judgment on that day. It is well settled that where a Court of Appeal sets aside a judgment of a lower court, the decision of the lower court is wiped out ... the moment the Supreme Court delivered its judgment it has the effect of wiping out the decision of the Sagamu High Court ... The judgment relates back to the day the case was first filed at the Sagamu High Court."* See Odiase v. Agho (1972) 1 All NLR 170 at 176. See also

Chief Bola Ige v. Dr. Victor Olunloye (1984) 1 SCNLR. 158 at 178, where the Supreme Court (per Aniagolu, J.S.C held:

*“I agree with the view expressed ... that the judgment of an Appeal Court, allowing an appeal, has the effect of substituting the Appeal Court judgment for the judgment of the court below set aside, making the decision appealed against disappear altogether.”*

It is further contended on 1st appellant’s behalf that the issue as to whether fresh invitation for nomination could be sent out or not was never raised; had it been raised, it is argued, the parties would have had the opportunity of proffering argument thereon and the court can or should make such a finding that no new invitation could be sent out. Now, since the 1st appellant has not indicated whose duty it was to put the point in issue, it is irrelevant to the respondents’ case in the earlier suit, that had the matter been one of importance to the 1st appellant, he would have raised it from the onset.

The kernel of Mr. Sofunde, learned Senior Advocate for the 1st appellant’s oral argument was that the combination of the decisions of the High Court and the Court below, to wit: Suits HCS/25/81 and CA/1/122/85, did not preclude a fresh nomination. He further contended that the 1st appellant’s nomination, selection and subsequent appointment as Olofin of Ilishan-Remo was nullified in the Supreme Court because of the fault in the nomination procedure which did not amount to a personal disability attaching to him (1st appellant). It was also argued further that both the earlier decisions of the court below and the Supreme Court had ordered that the list be submitted to the king makers and not that 1st appellant was disqualified, adding that because of the time factor as provided in the Chiefs Laws Cap.20 for fresh appointment following the first nomination list, would be irregular which irregularity, the executive council in exercise of its discretion, was at liberty to approve or reject within the narrow confines of the Chiefs Law, (ibid) particularly by virtue of section 17 thereof.

Mr. Fagbemi, S.A.N. submitted on behalf of the 4th to 17th appellants after adopting the brief he filed on their behalf that he had had the benefit of the oral and written arguments of his learned friend, Mr. Sofunde, S.A.N. and he would respectfully adopt the same as his. He added that the Supreme Court judgment which found against the appellants but more particularly against the 1st appellant, cannot bar a fresh nomination exercise, relying for this proposition on the conclusion arrived at by Uwais, J.S.C, as he then was, at pages 387 paragraph and pages 407 - 408 of the judgment as well as the contribution thereto by Agbaje, J.S.C. at page 412 of the Report from which it cannot be safely

said that it was not the decision of the Supreme Court that the nomination referred to the 1st appellant but rather the family entitled to nominate. While Mr. Sofunde, learned Senior Counsel for the 1st appellant concluded by submitting firstly, that there was no need for them to counter-claim and that their case stood or fell on the case itself as presented, based on the interpretation of the Chiefs Law (ibid); and secondly, the case from inception in the High Court was fought (as indeed can be seen at page 46 of the Record) on the issues. Learned Senior Advocate, Mr. Fagbemi for the 4th to the 17th appellants, submitted that his reply was focused on the provisions of sections 17(2) and 20(3) of the Chiefs Law, adding that all that section 17(2) (ibid) provides was permissive. They both urged us to allow the appeal of the 1st, 4th, 17th appellants.

With due respect, I do not agree with the submissions of the learned Senior Advocates for the appellants taken either separately or together that the 1st appellant must have been nominated to fill a vacancy which occurred in 1989 or 1990 on the premise that the 1981 nominations are spent and that there being no power the kingmakers to act on the 1981 nominations, they could only act on subsequent nominations, to wit: those of 1990 when a vacancy occurred. I do not share the views so ingeniously stated by both learned Senior Advocates because the only vacancy which existed and which still exists in the Olofin-Illishan Chieftaincy is the one which occurred on the demise of the last Olofin in 1981. It is for this reason that I am of the confirmed view that Muhammad, J.C.A. in the court below was correct when he said inter alia, that-

*"From the above, it could be seen that the moment the Supreme Court delivered its judgment it has the effect of wiping out the decision of the Sagamu High Court and discharging the stay of execution granted by the Court of Appeal."*

See Nwokedi v. Osele (1955-56) WRNLR 87. The learned Justice further down in his judgment put the nail into the coffin when he said with an air of finality thus:

*"It is true that 1st respondent [1st appellant] occupied this stool from 1981 to 1989. But the occupation has been declared null and void. This means he was occupying the stool illegally during the said period. As such the nullification of his appointment by the Supreme Court cannot be construed to create a second vacancy for the simple reason that the original vacancy was never validly filled."* (parenthesis is mine).

It is in the light of the above that I do not also agree with learned Senior Advocate for the 1st appellant when he argued that the 1981 nomination exercise was spent.

The argument to my mind, is based on the wrongly conceived notion that the provisions of the Chiefs Law, Cap.20 (ibid) can no longer be complied with since the nomination exercise in 1981 cannot now be followed by the other procedural steps which have to be taken as laid down in that law. The Law in section 15(1)(a) and (b) states that “where a vacancy occurs in a ruling house chieftaincy” as in the instant case:

(a) the competent secretary shall within 14 days of the occurrence of such vacancy announce the name of the entitled Ruling House and request that the House shall provide a candidate or candidates;

(b) within 14 days thereafter, the Ruling House shall submit the name of one candidate to fill the vacancy. If the Ruling House fails to submit the name or names of candidates within the period of 14 days then the Secretary is to call upon the next Ruling House, and so on. Within 7 days of the submission of such name/names the Kingmakers are to proceed to select a candidate to fill the vacancy.

The argument proffered at the instance of the 1st appellant that since it is no longer possible to comply within the time frame set out above, vacancy which occurred in 1981 ceased to exist, is to me fallacious. It is in my view inconceivable that such a vacancy can be held to have vanished when section 17(2) of the said Law provides a saving clause, to wit: that

“ .... the performance, after the expiration of the period prescribed, of any function under section 15 by the Secretary or kingmakers or any function under section 16 by the persons entitled to nominate, select or appoint to a vacancy shall not, by reason of its being performed out of time be invalid.”

What in effect it means is that the fact that the Ruling House is unable to submit a name or names of candidates within a further 14 days period will not vitiate the selection by the kingmakers of candidate subsequently or the subsequent appointment exercise at its discretion of such a candidate vide Section 20(3) of the Law, if only to avert chaos or anarchy when such delays are occasioned. In the instant case, were the postulation that a new vacancy occurred in 1989 or 1990 following the Supreme Court judgment and not a falling back on the 1981 nomination to have had sway, the right in the Agaigi Ruling House to produce a candidate or candidates ought, in fact, to have lapsed and it would have been the right of another Ruling House to nominate a candidate or candidates for the Olofin Chieftaincy stool. Since the latter event is not what the appellant postulate has arisen, the vacancy which occurred in 1981 and which still subsists to this day, would not and cannot, in my view, amount to fresh

vacancy consequent on the Supreme judgment. Nor was it open to the Agaigi Ruling House to nominate the 1st appellant on a fresh exercise that might have been initiated to fill the Olofin Chieftaincy vacancy, having regard to the judgment of the Supreme Court and the Chiefs Law (ibid). As there is no law which can be held to vacate the nominations of 1981, and in as much as in the 1989 exercise the processes for the appointment of the Olofin had reached the third stage, to wit: the forwarding of nomination to the king makers with a Certificate of Nomination at whose (the King makers' stage) the processes to be followed were subverted and it was by reason of such subversion that led the Supreme Court to declare 1st appellant's appointment as null and void, it became incumbent on the kingmakers after the Supreme Court judgment to proceed to vote on the four candidates (not six, inclusive of 1st appellant) whose names were lawfully before them and to nominate one of the four for the approval of the government. There was no room, in my firm view, for the name of the 1st appellant to come into that list. It is in this light that I regard as preposterous and untenable the argument of the 2nd and 3rd appellants that it was clear intention of the Ogun State Government not to approve the use of the 1981 nomination exercise when it ordered that appointment exercise should commence de novo. The words of wisdom and caution uttered in the lead judgment are enough, I hope, for the executive council of Ogun State to tread warily in this long drawn and acrimony-inducing matter.

It is for these and the fuller reasons set out in the judgment of my learned brother Ogundare, J.S.C that I too answer the lone issue in the negative, dismiss the appeal and abide by the consequential orders inclusive of those relating to costs.

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