

**SUPREME COURT OF NIGERIA**

6TH DECEMBER, 1996. SC. 74/1995

**CORAM:- M. L. UWAIS CJN, A. B. WALI, M. E. OGUNDARE,  
E. O. OGWUEGBU, S. U. ONU, Y. O. ADIO, A. I. IGUH, JJSC.**

ALHAJI AWWAL IBRAHIM ..... APPELLANT  
AND  
GALADIMA SHUAIBU BARDE  
& 9 ORS. .... RESPONDENTS

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***APPEALS*** - Chieftaincy matters - Whether Court of Appeal was in error - By failing to set aside the trial court's decision.

***CHIEFTAINCY MATTERS*** - Governor's Order - That created chieftaincy electoral college - Where power to make the Order was not available under the section relied upon - Whether any other enabling legislation will be Considered.

***EVIDENCE*** - Customary law - Derogation from a well established custom - Is not sufficient to elevate the derogatory act - To a custom the court should take judicial notice of.

***LEGISLATION*** - Procedure for passing bills - Were complied with - Whether the law in question was validly passed.

***LEGISLATION*** - Power of Governor to make Order - Where not available under the section relied upon in making the Order - Whether any other enabling legislation will be considered.

***LEGISLATION*** - Power to make Order - Where the Governor's Order is gazetted - Whether the Order was properly made

***STATUTES*** - Object and intention of a statutes - Where found to be clear - he statute will not be nullified - By virtue of the draftsman's unskillfulness.

**FACTS**

The appellant was the 7th defendant in a chieftaincy matter contested before the Niger State High Court Suleja. Upon the death of the incumbent Emir of Suleja, the Chairman of the Suleja Local Government wrote the State Governor towards effecting the appointment of a new

Emir. Upon a reply from the Governor, the Kingmakers commenced the process of selecting a new Emir. They selected the 4th respondent as the only successful candidate and later selected two other names so as to comply with the Governor's instruction. The Governor rejected the three names forwarded to him on the ground that the kingmaking body was not properly constituted in accordance with the native law and custom. The Governor subsequently made an Order by virtue of which he created an electoral college empowered to nominate the new Emir. The Order which was contained in the Gazette had a retrospective effect. The electoral college forwarded 4 names in order of preference. The Governor caused the appellant who topped the list to be installed as the new Emir of Suleja.

Being aggrieved, the 1st - 4th respondents filed an action before the High Court against the defendants to set aside all the role played by the Governor in installing the appellant as the new Emir. The trial court granted all the declarations and held that the 4th Respondent is the validly nominated successor to the throne of Emir of Suleja. The defendants appealed to the Court of Appeal which dismissed their appeal by a majority judgment. The 7th defendant alone has further appealed to the Supreme Court raising 3 issues.

### **ISSUES FOR DETERMINATION**

*"1. Whether the majority of the Court below were right when they upheld the trial Court's decision that the Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993, NSLN 3 of 1993 was illegal, null and void.*

*2. Whether the Court below is not in error when by a majority it held that the trial court was right in holding that the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order NSLN No. 2 of 1993 was illegal, null and void.*

*3. Whether the court below was not in error in not ordering the dismissal in the entirety of all the claims made by the 1st to 4th Respondents in the High Court in so far as they affect the rights of or relate to the Appellant."*

**HELD** (Allowing the appeal per lead judgment of **UWAIS CJN Ogundare JSC** dissenting)

### **Derogation from a well established custom**

1. Again with respect, this finding of the learned trial judge is erroneous. The custom as stated in the Chronicle of Abuja is clear. It is the Madawaki that has the authority to co-opt the Kuyambana and the Chief Mallams as advisers but not the Galadima. The fact that the Galadima and the Chief

Mallams, with Kuyambana excluded, selected the late Emir as a derogation the custom stated in the A Chronicle of Abuja. There was no credible evidence which established that the Galadima enjoyed or can exercise the authority as the Madawaki under the customary law of the people of when the latter is unable to perform his function as a kingmaker. Further more, the custom, according to the definition in section 2 subsec-11 of the Evidence Act, Cap. 112 of the Laws of the Federation of Nigeria 1990, must be such a rule, which in a particular district or place has, from long usage, obtained the force of a law. It follows that the fact that in 1979 the Galadima together with Salanke, Chief Imam and Magajin Mallam selected the late Alhaji Ibrahim Dodo Musa as the Emir of Suleja is not sufficient to prove that they were qualified under the customary law to select 4th Respondent. Again, before a court can take judicial notice of a custom, as the learned trial judge did, the circumstances mentioned under section 14 subsection (2) of the Evidence Act, Cap. 112 of the laws of the Federation of Nigeria, 1990 must exist. (p. 1853 E)

### ***Procedure for passing bills***

2. It is very clear from the Exhibits that the proper procedure for passing bills in house of Assembly of Niger State had been followed and that the Law was assented to by the then Governor of Niger State on 22nd. All the learned counsel in the case have conceded that the properly passed and assented to by the Governor and, therefore, it is a valid law. Consequently I will set aside the decision of the Court of Appeal in this respect which upheld the decision of the trial court that the Law was illegal, null and void. (p. 1861 C)

### ***Power of Governor to make Order***

3. The preamble to the 1993 Order, which is quoted above, states that the Governor was exercising the powers conferred upon him by Section 4(2) of the Chiefs (Appointment and Deposition) Law of Niger State and any other power enabling him in that behalf, to make the 1993 Order. Section 4 Chiefs (Appointment and Deposition) Law, Cap. 19 has been quoted above. It is common ground between the parties that the provisions of section 4 subsection (2) of Cap. 19 have no application to the Order because the Chieftaincy contemplated under the section is different from the Emirship of Suleja. It is, therefore, clear from that angle that the Governor had no power under section 4 subsection (2) of Cap. 19 to make the Order. It then becomes necessary to examine whether he had the power under any enabling legislation. (p. 1865 D)

***Object and intention of a statute***

4. It is clear from the foregoing that the object of passing the 1993 Law was to enable the Governor of Niger State to have powers which he did not previously have with regard to the method of appointing chiefs. It is settled that where the main object and intention of a statute are clear it must not be reduced to a nullity by the draftsman's unskillfulness. Besides, it has always been accepted that a statute should be so construed as to achieve the object it was intended to serve. (p. 1868 B)

***Where Governor's Order is gazetted***

5. It seems to me both from the meaning of the word "prescribe" and the intendment of section 31 of the Interpretation Law, that the Governor of Niger State had the power to make the 1993 Order and I so hold. The fact that the 1993 Order had been produced and had been printed by the Government Printer of Niger State since it is contained in Niger State Gazette No. 2 Volume 18 of 20th September, 1993 is, by virtue of Section 27 of the Interpretation Law, Cap. 61, prima facie evidence that it was duly made. The word "duly" according to the Concise Oxford English Dictionary means "rightly, properly made." The evidence being prima facie is, therefore, rebuttable. The question then is: has the 1993 Order been shown to have been unduly or improperly made? The answer is in the negative. I, therefore, hold that the 1993 Order was properly made. (pp. 1869 D & 1870 A)

***Failure to set aside trial court's decision***

6. I have already held, while considering issue No. 2 above, that the 1993 Order was validly made by the Governor who had the authority to make subsidiary legislation under the Chiefs (Appointment and Deposition) Law, Cap. 19 as amended by the 1993 Law. The Court of Appeal, was therefore, in error when it failed to dismiss (*sic allow*) the Appellant's appeal and it also refused to set aside the decision of the learned trial Judge, (p. 1870 G)

***NOTABLE POINTS OF INTEREST******UWAIS CJN******1. Intention expressed in the words of a statute***

It is a cardinal rule of the construction of statutes that statutes should be construed according to the intention expressed in the statutes themselves. If the words of the statutes are themselves precise and unambiguous, then, no more is necessary than to expound the words in their natural and ordinary sense. The words of the statutes do alone, in such a case, best declare the intention of the lawmaker. (p. 1867 C)

## ***2. Retrospective legislation - When applicable***

With regard to the retrospective nature of statutes, the Legislature is competent to make retrospective legislation - See *Smith v. Callender*. (1901) A.C. 297 at p. 305. The retrospective nature of a statute may concern the whole provisions of the statute, as where the commencement date so indicates; or may concern only a section of the statute where a statute is passed for the purpose of supplying an obvious omission in a former statute; the subsequent statute has relation back to the time when the prior Act was passed. Where a statute is in its nature declaratory, the presumption against constraining it retrospectively is inapplicable if by necessary implication from the language employed that the legislature intended a particular section to have retrospective operation, the courts will give it such an operation. (p. 1867 E)

## ***OGUNDARE JSC (Dissenting)***

### ***3. Where trial court's finding is not challenged***

I have highlighted above the evidence adduced on custom and the finding of the learned trial Judge on it in so far as it relates to the 1993 exercise to appoint a new Emir. That finding was not challenged either in the Court below or in this Court and I can see no justification for not adopting it in determining whether Exhibit 7 could have been validly made under section 3(1) (A) of the Chiefs (Appointment and Deposition) Law of Niger State (as amended by NSLN No.3 of 1993). (p. 1904 F)

### ***4. Governor's chieftaincy Order is invalid***

The sum total of all I have been saying is that, viewed from whichever angle, Exhibit 7 does not come within the contemplation of section 2 of NSLN No.3 of 1993 and it is, therefore, in my respectful view, not validated by section 3 thereof. Acts validated by section 3 of NSLN No.3 of 1993 are acts which could lawfully and validly have been done under subsection (1)(A) of section 3 of Cap 19 (as amended). It is, therefore, my view and I so hold, that the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order 1993 (Exhibit 7) remains invalid, notwithstanding section 3 of the Chiefs (Appointment and Deposition) Law (Amendment) Law, No.3 of 1993 which, in my respectful view, has not validated the said order. This is not a case where a valid legislation which is in conflict with customary law has abrogated the latter. This is a case where a valid legislation gives a power to be exercised in a particular contingency. Unless that power is exercised in that contingency, the exercise is invalid. (p. 1908 E)

***5. Court of Appeal was not in error by failing to dismiss plaintiffs' claim***

With this conclusion, my answer to Question (3) will be in the negative, id est, the Court below was not in error in not ordering the dismissal in the entirety of Plaintiffs' claims. The appointment of the 7th Appellant was made pursuant to Exhibit 7 and as Exhibit 7 is invalid, the appointment made pursuant thereto must equally be invalid. (p. 1908 H)

**REPRESENTATION**

Kehinde Sofola, SAN (with A. D. Sodangi; Y. M. Yunusa; M. J. Kallamu and A. Idris) for the Appellant  
 Chief A.T. Ajala, SAN, (with him A.O. Okolo; I. Usman; S.I. Ameh and A. A. Ibrahim) for the 1st to 4th Respondents  
 A. Bellow, D.P.P., Niger State, (with him N.S. Wali, Director Civil Litigation and M. Abdul, Director Legal Drafting) for the 5th to 10th Respondents.

D

**CASES REFERRED TO**

The State v. Gwonto (1983) 3 S.C. 62 at p. 76 per Eso. J.S.C.  
 Carson v. Carson (1964) 1 All E.R. 681 at p. 686 G - H  
 Onea v. Egbuchi (1970-71) ECSLR 80  
 E Kimdey v. Military Governor of Gongola State (1988) 1 N.S.C.C. 827  
 Sharp v. Wakefield (1888) 22 Q.B.D. 239  
 Kotoye v. Saraki (1994) 12 KLR 226  
 Smith v. Callender (1901) A.C. 297 at p. 305  
 A-G v. Theobald (1890) 24 Q.B.D. 557  
 F Lane v. Lane (1896) p. 133  
 Rabi v. Kano State (1980) 8-11 S.C. 130  
 Egbunike v. Muonweokwu (1962) 1 All N.L.R. 46  
 Bronik Motors v. WEMA Bank (1983) 1 SCNLR 296, 321  
 Fashanu v. Adekoya (1974) 6 SC 83  
 G Johnson v. Williams (1935) 2 WACA 248; 2 WACA 253 P.C.  
 Carew v. Carew (1896) 2 Ch. 311  
 Owonyin v. Omotosho (1961) NSCC 179, 183  
 Woluchem v. Wokoma (1974) 3 S.C. 153, 172

**H STATUTES REFERRED TO**

Chiefs appointment and Deposition Law Cap. 20 Laws of Northern Nigeria 1963s. 3(2)  
 Evidence Act Cap 112 LFN 1990 ss. 59, 2(1), 113  
 Chiefs (Appointment and Deposition) Law Cap. 19 Laws of Niger State

1989 ss. 3(1), 4(1)& (2)

Interpretation Law Cap. 52 Laws of Northern Nigeria 1963 s. 53

Constitution of the Federal Republic of Nigeria s. 5(2) (b)

State Government (Basic Constitutional and Transitional Provisions) Decree No. 50 of 1991 ss. 48(1) (b), 31 (1)&(2)

B

### **LEAD JUDGMENT BY UWAIS CJN**

The appellant in this case was the 7th defendant in the High Court. The 5th, 6th, 7th, 8th, 9th and 10th respondents were respectively the 1st, 2nd, 3rd, 4th, 5th and 6th defendants in the High Court. The plaintiffs were the 1st, 2nd, 3rd and 4th respondents herein. The plaintiffs' claims C against the defendants were as follows:-

*"(1) A declaration that the purported rejection of the nomination and or appointment of Bashir Suleiman Barau as the new Emir of Suleja by the 1st defendant as being against the tradition and custom of the people of Suleja is illegal ultra vires the first defendant, unconstitutional and void. D*

*(2) A declaration that the reconstitution of Suleja Emirate Council by the 1st defendant is illegal, void and of no effect their (sic) being a validly constituted Council of Kingmakers in accordance with the tradition and custom of the people of Suleja.*

*(3) A declaration that 4th, 5th, and 6th defendants are not traditional E kingmakers and therefore not competent to perform the function of the Kingmakers for Suleja Emirate Council.*

*(4) A declaration that the 1st, 2nd, 3rd, 4th, 5th plaintiffs are the Kingmakers for Suleja and therefore the only persons allowed by law, the tradition and custom of the people of Suleja to carry out such functions. F*

*(5) A declaration that Bashir Suleiman Barau is the validly nominated successor to the throne of Emir of Suleja.*

*(6) A declaration that the purported Order of the first defendant as reflected by the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order, 1993 which was given a retroactive effect is unconstitu- G tional, illegal, null and void.*

*(7) A declaration that the purported nomination of the 7th defendant as the Emir of Suleja by the 4th, 5th, and 6th defendants and the subsequent approval by the 1st defendant is ultra vires, illegal, null and void and contrary to the established tradition. H*

The plaintiffs called six witnesses while the 1st to 6th defendants called three witnesses (D.W.1, D.W.2 and D.W.3) and the 7th defendant called only D.W.4 as his witness.

The facts of the case which are not in dispute may be narrated as

follows. Alhaji Ibrahim Dodo Musa was the Emir of Suleja in 1993. He died on the 5th day of July, 1993. The then Chairman of Suleja Local Government, Alhaji Shuaibu Mohammed Liman Iya (D.W.3) wrote a letter (Exhibit 3) to the then Governor of Niger State on the selection and appointment of a new Emir of Suleja. The letter reads:-

B *"Ref: No. SLG/SEC/71/Vol.1/301  
Local Government Secretariat,  
Suleja.  
9th July, 1993.*

C *His Excellency,  
The Executive Governor,  
Niger State.  
Through:-*

D *Your Excellency,  
The Deputy Governor,  
Niger State,  
Minna.*

*Sir,*

*"RE: SELECTION AND APPOINTMENT OF A NEW EMIR OF  
ZAZZAU SULEJA*

E *I am humbly and formally writing you in respect of the above  
subject. This became necessary as a result of the death of Alhaji Ibrahim  
Dodo Musa, the immediate past Emir, in the early hours of Monday, 5th  
July, 1993.*

F *The death of Alhaji Ibrahim Dodo Musa, by the powers conferred  
on Your Excellency on the appointment of Chiefs as regulated by the Nige-  
ria (Constitution) Orders in Council and by the Appointment and Deposi-  
tion of Chiefs Ordinance, has made it necessary for you to assemble the  
traditional selectors to choose a successor.*

G *It is the customary law and custom of the Traditional Institution of  
Suleja that a Chief be chosen from among the following ruling houses:*

*(a) Abu Jatau ruling house, and*

*(b) Abu Kwaka ruling house.*

*The late Alhaji Ibrahim Dodo Musa belonged to Abu Jatau's rul-  
ing house. The new Emir should therefore come from Abu Kwaka's house.*

H *The selection of the new Emir is the responsibility of the traditional  
kingmakers whose composition is as follows: (1) The Chief Imam  
(2) The Salanke (3) The Magajin Mallam (4) The Galadima*

*The Administrator or Chairman of the Local Government is to  
serve as the Secretary.*

*However, the guidelines and criteria for the selection of such vacant position is determined though, by the existing laws and customs, Your Excellency shall highlight certain conditions that may be required of a successor with a view to sustaining the stability and peaceful co-existence of society.*

*Your Excellency, I am by this submission requesting you to formally give me the approval and official directive to summon the meeting of the Traditional Kingmakers in order to commence sitting for the selection of a successor to the throne.*

*I sincerely hope that Your Excellency would give an urgent attention to this subject-matter in view of its sensitive nature.*

*Yours obediently,*

*(Sgd.)*

**ALHAJI SHU' AIBU MOHAMMED LIMAN IYA**

**CHAIRMAN,**

**SULEJA LOCAL GOVERNMENT."**

A reply (Exhibit 8) to the letter was written on 13th July, 1993 by a Director-General (Aliyu Wali) in the Office of the Deputy-Governor of Niger State. The letter which was copied to His Royal Highness the Etsu Nupe, Chairman Niger State Council of Traditional Rulers, the Chairmen of Suleja Local Government and Gurara Local Government among others, reads as follows:-

**"NIGER STATE GOVERNMENT OF NIGERIA**

*Deputy Governor's Office,*

*Government House,*

*Ref: DLG/EM/S.5/S.23/Vol.1/6 P.M.B. 43, Minna,*

*Niger State,*

*Nigeria.*

*13th July, 1993*

**OFFICE OF THE DEPUTY GOVERNOR**

*The Secretary,*

*Suleja Emirate Council,*

*Suleja.*

**RE: SELECTION AND APPOINTMENT OF A NEW EMIR OF ZAZZAU SULEJA**

*I wish to refer to the letter of the Chairman Suleja Local Government Ref No.: SLG/SEC/71/Vol.1/301 of 9th July, 1993 on the above subject matter of which copy was sent to you and to convey the approval of His Excellency the Executive Governor of Niger State Dr. Mohammed Inuwa for the selection Committee (Traditional Kingmakers) of Emir of Zazzau*

*Suleja to set the machinery for the selection of a new Emir of Zazzau Suleja who is to succeed the late Alhaji Ibrahim Dodo Musa.*

*The work of the Committee will be in accordance with the existing Zagizagi tradition/custom and the existing law on Chiefs appointment and deposition is regulated by the Nigerian (Constitution) orders in Council.*

B (sic)

*In addition to this, the Committee should put into consideration the educational qualifications and exposure of the candidates to be selected as additional essential ingredients.*

*The Director Local Government Affairs Deputy Governor's Office (Alhaji Aliyu Tahir Kontagora) will supervise the whole affairs (sic) while Hamidu Kadikutu Acting Director (Political) Governor's Office will serve as the Secretary.*

*(b) The Chairmen of Suleja and Gurara Local Governments will serve as observers.*

D 5. *The selection Committee (Kingmakers) which has the following members: - (a) The Galadima (b) The Liman Juma'a (Chief Imam) (c) The Salanke (d) The Magajin Mallam has one week to forward three (3) names of candidates to the Office of Deputy Governor with effect from the date of this letter.*

E 6. *The State Government believes that the task ahead of you is not an easy one. I pray to the Almighty Allah for his protection and good guidance to enable the committee succeed in its assignment (Amen).*

*(Sgd.)*

*(ALIYU WALI)*

F *Director General."*

The kingmakers, as constituted, consisting of the Galadima of Suleja (1st respondent), the Chief Imam of Suleja, the Salanke of Suleja (2nd respondent) and the Magajin Malam of Suleja (3rd respondent) together with two observers (the Chairmen of Suleja Local Government and Gurara Local Government) and two representatives, namely Alhaji Tahir Kontagora (as Monitoring Officer) and Hamidu A. A. Kadi- Kuta, Director (Political Affairs, as Secretary) met on the 14th July, 1993. They compiled a list of 42 candidates from Abu Kwaka Ruling House who were considered as eligible candidates. A short list of 7 candidates was further made from amongst the 42 and the appellant as well as the 4th respondent were in the short list. The meeting which was inconclusive on that day continued on 15th July, 1993. The 4th respondent was selected by the kingmakers as the only successful candidate. The Chairman of Suleja Local Government observed at the meeting that the kingmakers did not comply with Govern-

ment directive to select three candidates. The kingmakers kept to their decision. Another meeting of the kingmakers was held on 21st July, 1993 for the purpose of adopting the minutes of the earlier meeting. After adapting, the minutes the 1st respondent observed that the kingmakers did not fully comply with the Government directive that 3 candidates should be selected. The Kingmakers reluctantly agreed to select two, additional candidates from the short list, namely Alhaji Adamu Katsina and Alhaji Muhammadu Kabir. All the three candidates are the sons of Alhaji Sulaiman Barau, late Emir of Suleja who was succeeded by the late Emir Alhaji Ibrahim Dodo Musa. A report on all the meetings held on 14th, 15th, 21st and 22nd of July, 1993 was submitted to the Governor of Niger State (5th C respondent). The reaction of the 5th respondent was made known to the Secretary of Suleja Emirate Council in a letter dated the 17th September, 1993 (Exhibit 9). The letter reads thus:-

*"GOVERNOR'S OFFICE, NIGER STATE*

*Secretary to the State Govt.,  
P.M.B.109,  
Minna, Niger State,  
Nigeria.*

D

*Our Ref: SSG/PRM/S/86/V.III/380 17th September, 1993  
The Secretary,  
Emirate Council,  
Suleja Emirate Council,  
Suleja.*

E

*RE: REPORT OF THE COMMITTEE ON THE NOMINATION  
OF A NEW EMIR OF ZAZZAU, SULEJA*

F

*In exercise of the powers conferred on Dr. Musa Mohammed Inuwa as the Governor of Niger State by virtue of Section 3, subsection 2 of Chiefs (Appointment and Deposition) Law, Cap. 20 of the "Laws of Northern Nigeria, 1963", I write to inform you that the report of the Committee and the nomination of a new Emir of Zazzau, Suleja has been rejected by him on the following grounds:-*

*(i) The Kingmaking body was not constituted in accordance with the native law and custom;*

*(ii) It is observed that three, out of the seven kingmakers could not partake in the nomination exercise for "being members of the royal family". Even then it is further discovered that only one member, i.e. the Galadima of Suleja had the voting power while the remaining three were supposed to be mere observers or at best, advisers.*

*Any further developments on the Chieftaincy issue will be com-*

(Sgd.)

NUHU GALADIMA

Secretary to the State Government.”

Earlier on 10th September, 1993, the 5th respondent wrote a letter (Exhibit 1) to His Royal Highness, the Etsu Nupe as Chairman of the Niger State Council of Chiefs. The letter reads as follows:-

“NIGER STATE GOVERNMENT OF NIGERIA

Office,

Government House,

P.M.B. 43, Minna,

Niger State,

Nigeria.

Ref: GHNS/S/043 10th September, 1993

OFFICE OF THE GOVERNOR

Your Royal Highness,

Alhaji (Dr.) Umaru Sanda Ndayako,

The Etsu of Nupe and Chairman,

Niger State Council of Chiefs (Sic),

Wadata Palace,

Bida.

RE: REPORT OF THE COMMITTEE ON THE NOMINATION OF A NEW  
EMIR OF ZAZZAU, SULEJA

I wish to draw your attention to some neglected aspects of the report I received from the Committee on the Nomination of a new Emir of Zazzau, Suleja with a view that you will put your heads together to examine the matters critically in all their ramifications and make more comprehensive recommendations which will provide more permanent solutions to the distortions in the report for Government’s consideration and acceptance.

You may wish to agree with me that an established tradition which limits the consideration of eligible candidates to contest the vacant stool of Emir to only the “children of the last Emir whose ruling house it is to produce the next Emir (successor)” cannot be accepted in this our modern times since it seeks to illiminate (sic) many competent contestants in the royal lineage. You may also agree with me that a selection methodology which accepts that a particular prince in the next ruling house should succeed him is faulty since no due consideration is given to competency (sic) and other leadership qualities.

3. Your royal highness, apart from the fact that the kingmakers of Suleja leaned heavily on the above criteria, their report was so favourably biased towards certain candidates as could be judged from the numerous

*complaints received from those other eligible candidates.*

4. *It is also said to observe that three out of the seven kingmakers could not partake in the nomination exercise for being "members of the royal family."*

5. *By law, I am the final arbiter in this matter but would require your wise counsel to arrive at a final decision in selecting an Emir whose sense of judgment and shrewd decisions could withstand the test of time in the Emirate. It is in this regard that I am compelled to refer this succession issue to your council for consideration and re-nomination of Three eligible candidates taking cognisance of the following facts about Suleja town and its environs which were ignored by the kingmakers:-*

i. *Suleja and its environs had in recent times experienced unprecedented influx of population into the area from other parts of the country as a result of its proximity to the Federal Capital Territory of Abuja. This means that some social amenities and other facilities provided by the State Government are over-stretched to a position of near hopelessness which makes the Emirate difficult to govern.*

ii. *The traditional nature of the inhabitants of the Emirate has been altered. There is now consideration (sic) social and religious mixing hence a potential area of disturbance. Thus a competent Emir would be required with a view to contain any likely social or economic upheavals.*

iii. *To a large extent also, the indigenous settlers have been displaced on their land by non-indigenes as a result of the influx. These non-indigenes are much better off (sic) in terms of economic activities.*

6. *For all these and in order for the Government to maintain its grip in the Emirate it is my sincere desire to install a traditional ruler who would be able to handle squarely the enormous tasks ahead.*

7. *I wish you God's guidance in your nominations and hope to get your response on or before 18th September, 1993.*

*(Sgd.)*

*DR. MUSA MOHAMMED INUWA*

*Executive Governor,*

*Niger State.*

The Niger State Council of Traditional Rulers met on 14th September, 1993. A copy of the minutes of the council was forwarded to 5th respondent by its Chairman on 17th September, 1993 under the cover of a letter (Exhibit 9) which states thus:-

*"REF. NO. BEC/135/Vol.1/35*

*C/o Bida Emirate Council,  
Etsu Nupe's Palace,  
Bida, Niger State (Nigeria)*

17th September, 1993

NIGER STATE COUNCIL OF TRADITIONAL RULERS

Dr. Musa Mohammed Inuwa,  
Executive Governor,  
Niger State,

B Minna.

Your Excellency,

"I refer to your letter Ref. No. GHNS/S/043 dated 10th September, 1993 by which you requested me to place the matter of the appointment of a new Emir of Suleja before Niger State Council of Chiefs for the council to deliberate and re-nominate suitable candidates for you to consider for appointment. I am pleased to inform you that the Council met on Tuesday, 14th September, 1993 at the Palace of His Royal Highness, the Emir of Minna in Minna and considered thoroughly the matter.

2. I attach herewith the minutes of that meeting which contains the views of the Council on the various aspects of the matter as well as the new Emir of Suleja.

3. It is my hope and fervent prayer that you will weigh carefully the views and pieces of advice of the Council before you take your final decision on the matter.

E Thank you.

(Sgd.)

(Alhaji Umaru Sanda Ndayako, CFR)

Etsu Nupe/Chairman,

Niger State Council of Traditional  
Rulers."

F

Paragraph 9 of the minutes reads in part as follows:-

".....The various communities in the North had charged families of most of these kingmakers with this responsibility since the establishment of the dynasties of the Emirates. It has therefore, been their specialty and they have by and large not failed in holding this trust. In fact, it was the view of the Council that communities would not accept any ruler who had not been nominated by majority of their kingmakers. Members felt therefore, that though Mr. Governor was the final arbiter in the matter as had been all his predecessors-in-office who were heads of governments from pre-colonial days, it would be better and wiser if like them he did not make any appointment without ensuring that he carried with him the main body of kingmakers at the least Council agreed also that it was not its duty nor was it proper for it to make nominations of persons to be considered for appointment as Emirs of particular places. In fact, it had no competence

*or expertise to do so. The Council's responsibility was to consider the nominations submitted to Government by kingmakers and advise Government accordingly.*"(Underlining mine)

Paragraph 12, which is the concluding part of the minutes states:-

*"12. In view of the foregoing, Council decided to recommend strongly to His Excellency, the Executive Governor of Niger State to approve the appointment of Mallam Muhammadu Bashir as the new Emir of Suleja, in the interest of justice, fairplay and democracy as well as to ensure the continued existence of peace and harmony, development and progress in Suleja Emirate."*

On 20th September, 1993, the 5th respondent made an Order C title of the "Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order, 1993 N.S.L.N. No.2 of 1993." The commencement date of the Order was made retrospective with effect from 16th September, 1993. The Order created an electoral college which was empowered to nominate a new Emir in the event of death, resignation or deposition of the D Emir of Suleja. The electoral college consisted of:-

- (a) Galadima Zazzau Suleja (1st respondent)
- (b) Sarkin Yaki Zazzau Suleja (9th respondent)
- (c) Tafida Zazzau Suleja (10th respondent)
- (d) Santali Zazzau Suleja (8th respondent)
- (e) Salanke (2nd respondent)
- (f) Liman Juma'a
- (g) Magajin Mallam (3rd respondent)

E

Following the rejection in Exhibit 9 of the candidates earlier nominated, a meeting of the newly constituted electoral college was summoned F for 22nd September, 1993 to nominate an acceptable candidate for the emirship of Suleja. The electoral college met on that day as scheduled. Present at the meeting were the 8th, 9th and 10th respondents. The 1st, 2nd, 3rd respondents and Liman Juma'a were absent. The Chairmen of Suleja Local Government and Gurara Local Government were present at G the meeting as observers and so also Alhaji Aliyu Tahir Kontagora (Director Local Government Affairs) as Supervisor and Alhaji Usman Isah (Director CASS) as Secretary to the meeting. As a quorum had been formed according to the Secretary, the meeting was held. All the 8 candidates previously short listed by the meeting of 14th, 15th and 21st July, 1993 were consid- H ered by the new kingmakers. Four of the 8 candidates were further short listed as most suitable and were listed as follows in order of preference:-

- (1) Alhaji Muhammad Awwal Ibrahim (appellant)
- (2) Alhaji Muhammad Rabi'u Ishaq

(3) Alhaji Muhammadu Bashir Suleiman Barau (4th respondent)

(4) Alhaji Muhammad Inuwa Ishaq

Consequent upon this decision the 5th respondent approved the selection of the appellant. He was appointed with effect from 23rd September, 1993 as the new Emir of Suleja and was traditionally installed by B being turbaned by the 1st respondent who stated under cross-examination that he so acted under coercion.

In the meanwhile a bill titled "Chiefs (Appointment and Deposition) Law (Amendment) Law", was presented to the House of Assembly of Niger State. After going through the prescribed procedure the bill was passed C into law and was assented to by the 5th respondent on 22nd October, 1993. (Exhibits SC 1 and SC2).

The 1st, 2nd, 3rd and 4th respondents felt aggrieved by the appointment of the appellant as Emir of Suleja. They, therefore, filed a writ of summons together with an ex-parte motion on 22nd September, 1993 in D the High Court of Niger State holden at Suleja. The motion ex parte was for an injunction to restrain all the defendants, as respondents "jointly and severally from nominating, approving and or appointing any person to the vacant stool of the Emir of Suleja. Secondly to restrain the respondents either by themselves their agents or privies from doing any act calculated to E jeopardise the function of the applicants as the traditional kingmakers of Suleja." The defendants were put on notice. The motion was heard and it was dismissed on 7th October, 1993. With regard to the substantive action the learned trial Judge (Oyewo J.) entered judgment for the plaintiffs and made the following declarations and order:-

F *"On the whole, I am satisfied that the plaintiffs have proved their case on the balance of probability and I make the following declarations.*

*(1) That the reconstitution of Suleja Emirate Council by the 1st defendant is illegal, void and of no effect, there being a validly constituted council of kingmakers in accordance with the tradition and custom of the G people of Suleja.*

*(2) That the 4th, 5th and 6th defendants are not traditional kingmakers and therefore, not competent to perform the function of the kingmakers for Suleja Emirate Council.*

*(3) That Bashir Suleiman Barau is the validly nominated successor to the throne of Emir of Suleja.*

*(4) That the purported Order of the first defendant as reflected by the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order, 1993 which was a retroactive effect (sic) is illegal, null and void.*

*(5) That the purported nomination of the 7th defendant and the*

*subsequent approval by the 1st defendant is ultra vires, illegal, null and void and contrary to the established tradition.*

*I do not intend to make other declarations sought for in the plaintiffs' statement of claim as the above declarations I make above have taken care of the remaining declarations prayed for in the above pleading.*

*At the close of evidence of the 1st plaintiff during examination-in-chief, he prayed the court to "make the government of Niger State to immediately appoint Muhammed Bashir Suleifuan as the Emir of Suleja."*

*Since I have declared that Bashir Suleiman Barau is the validly nominated successor to the throne of Emir of Suleja, I hereby direct the Niger State Government to appoint him as the Emir of Suleja, immediately."*

The appellant herein together with the 5th to 10th respondents herein appealed to the court below. At the hearing of the appeal in that court, the "Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993 N.S.L.N. No.3 of 1993 was produced and admitted. The Court of Appeal by majority of 2 to 1 (Mahmud Mohammed and Opene, JJ.C.A. with Abdullahi, J.C.A. dissenting) dismissed the appeal.

The appellant herein alone decided to appeal further before us against the decision of the Court of Appeal. Three issues for determination have been postulated in the appellants brief. They read:-

- "1. Whether the majority of the court below were right when they upheld the trial court's decision that the Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993, NSLN3 of 1993 was illegal, null and void.*
- 2. Whether the court below is not in error when by a majority it held that the trial court was right in holding that the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order NSLN No.2 of 1993 was illegal, null and void.*
- 3. Whether the court below was not in error in not ordering the dismissal in the entirety of all the claims made by the 1st to 4th respondents in the High Court in so far as they affect the rights of or relate to the appellant."*

The 1st to 4th respondents herein have filed their brief of argument in which they adopted the issues formulated by the appellant. The 5th to 10th respondents herein have also filed a so called brief in which they stated, "*we hereby adopt in its entirety the brief of argument of Chief A. T. Ajala, SAN, Counsel to 1st - 4th respondents. We urge the Supreme H Court of Nigeria to dismiss in its entirety the appellants appeal for lack of merit and affirm the decision of the court below accordingly.*"

#### Customary Law

Evidence of the customary law applicable to the Emirship of Suleja

(formerly Abuja) was copiously adduced before the High Court. Briefly the evidence is as follows. There are two ruling houses in Suleja, namely Abu Jatau and Abu Kwaka. The emirship alternates between the ruling houses. The late Emir of Suleja, Alhaji Ibrahim Dodo Musa belonged to the Abu Jatau ruling house. Therefore his successor by the customary law was to come from Abu Kwaka ruling house. The appellant as well as the 4th respondent belong to the ruling house of Abu Kwaka. Whenever the stool of the emir becomes vacant it is the duty of kingmakers to select from amongst the princes of the next ruling house the person to become the new emir. Where the immediately preceding emir indicated, while alive, which prince was to succeed him, the kingmakers in selecting the new emir would respect the wish of his predecessor. Where, however, no such indication was given it would become open to the kingmakers to select the successor from among the eligible princes. The kingmakers consist of the following title holders, the Madawaki, the Galadima, the Wambai and the Dallatu. Conflicting pieces of evidence had been adduced which variously show that the Liman Juma, the Salanke, the Magajin Malam are kingmakers themselves or advisers to the kingmakers. Unfortunately this conflict was not resolved by the learned trial Judge, for he made no finding as to who are the kingmakers under normal circumstances. I shall return to this later in the course of this judgment.

The Princes of Suleja can be given the titles of Madawaki, Galadima, Wambai and Dallatu but are disqualified from playing the role of kingmakers in selecting a new Emir. In 1979 the late Emir of Suleja, Alhaji Ibrahim Dodo Musa was selected as Emir by Galadima, Chief Imam, Salanke and Magajin Malam as the title holders then of Madawaki, Wambai and Dallatu being princes were disqualified.

A book written by D.W.4 and late Alhaji Hassan titled "A Chronicle of Abuja" published by African Universities Press and translated from Hausa to English by Frank Heath was tendered in evidence as Exhibit 10. This book was referred to by the 1st respondent (as P.W.6), D.W.3 and D.W.4, in their testimonies as most authoritative on the custom of Suleja. 1st respondent, as P.W.6, stated under cross-examination as follows:

*"It is true I refer to a diagram on (sic) Abuja Cronocle (sic) as testified to by P.W.3. I have a copy of the book and the authors of the book are Alhaji Shuaibu Naibi and Hassan Dallatu. The book deals with the history of Abuja (now Suleja) people. This is the book. Suleja people consider it as authoritative."* (Italics mine)

In his evidence-in-chief, D.W.3, Alhaji Shuaibu Liman, said:-  
*"I discover that my earlier communication to the State Government on the*

*composition of kingmaking body which was earlier put at four was in error.*

*After going through the Abuja Chronicle, which is the historical documentation of the origin, custom, norms and values of the people of Abuja. now Suleja. It became clear that actually the membership was not properly constituted.*

*..... The composition I gave at paragraph 1 page 2 of Exhibit 3 is B an error in (sic) my part.” (Underlining mine)*

Again under cross-examination, D.W.3 stated:

*“Part of the series of the investigation (sic) I conducted was reference to Chronicle of Abuja and personal contact with prominent citizens and individuals who are concersent (sic) with the history of Suleja.” C*

D.W.4 said in his evidence-in-chief that he was a co-author of Exhibit 10, the Chronicle of Abuja. Under cross-examination he said:-

*“Exhibit 10 represents an authentic custom and tradition (sic) of Zagi-Zagi custom of Suleja but not all.*

*Page 12 of Exhibit 10 is a true version of Zagi-Zagi custom of D Suleja. Page 74 of Exhibit 10 is a true version of Zagi-Zagi custom.....*

*What is contained in page 77 of Exhibit 10 is correct.”*

Section 59 of the Evidence Act, Cap. 112 of the Laws of the Federation of Nigeria, 1990 provides:-

*“59. In deciding questions of native law and custom the opinions E of native chiefs or other persons having special knowledge of native law and custom and any book or manuscript recognised by natives as a legal authority are relevant.”*

Now on page 74 of Exhibit 10, referred to by D.W.4, the following F appears:-

#### ***“1. THE CHIEF COUNCILLORS***

*The Madawaki. He was next in importance to the Emir and was, under him, Commander of the Army to protect the land from the enemies. He was in charge of one half of the town, the part built to the east of the Wuchichiri stream. He advised the Emir upon the appointment or dismissal G of the title-holders; he replied to the Emir’s address on Feast Days; he summoned the Chief Councillors and the Turbanned Councillors to their meetings. With the other Chief Councillors he chose the new Emir, but later, if any of these were themselves members of the Ruling Houses then he called upon the Kuyambana and the Chief Malams to help him. H*

*The Galadima. He was always a eunuch, and was left in charge of the town when the Emir and the other chiefs went out to war. He arranged the marriages and naming of the Children of the Ruling Houses.*

*The Wambai. He was always a eunuch and in addition to his duties as*

*adviser, he took part in the naming of the children. He was also responsible for seeing that the private latrines and urinals of the Emir and his Wives were kept clean.*

*The Dallatu. When the Emir goes to war, he was responsible for building his quarters in the war camp where, too, he performed all those duties which Galadima performed in the town.*" (Underlining mine)

These are the kingmakers according to the A Chronicle of Abuja. The Kuyambana and the Chief Malams whose assistance the Madawaki may call upon when the other kingmakers are disqualified have been described on pp. 74 and pp. 76-77 of the A Chronicle of Abuja as testified by C D.W.4, as follows:-

## *"2. THE TURBANED COUNCILLORS*

*The Kuyambana. He was the Madawaki's chief adviser in all matters.*

## D *7. THE IMAMS*

*The Liman Juma. He is the Chief Imam. He goes to the house of every ordinary family in the town where a death has occurred in order to say the prayers. He officiates at the service in the Mosque on Fridays. He was sometimes consulted in the choice of a new Emir.*

E *The Salanke. He officiates at the prayer-ground of Idi, and prays at the death bed of all chiefs and title-holders; he was sometimes consulted about the choice of a successor to the Emir.*

*The Magajin Malam. The representative of the Shehu of Borno. It is he who actually installs the new Emir.*

F *The Magatakarda. The Chief Scribe and private Imam of the Emir's Household. He opens the Book at the Feast of the Month of Full Bellies."*

In his judgment the learned trial Judge found as follows:-

*"Witnesses for both parties agree that Abuja Chronicle, Exhibit 10, is authoritative book on the history of Abuja.*

G *.....*

*It is glaring from above that the only kingmaker who is not a prince at the time of death of last Emir was the 1st plaintiff. It is also glaring from page 74 lines 17 and 18 and page 76 line 52 and page 77 lines 1 to 8 that Kuyambana and the Chief Mallams are advisers.*

H *In view of the circumstance, I am of the opinion that the only remaining kingmaker, that is PW.6 can sit with one or more of the Chief Maliams and Kuyambana and select an Emir."* (Underlining mine)

With respect, this finding is palpably wrong in view of the statement in the sections of the A Chronicle of Abuja which the learned trial

Judge quoted earlier.

It is the Madawaki and not the Galadima that is empowered under the customary law to invite Kuyambana and the Chief Mallams to help him in choosing a new Emir if the three other kingmakers - Galadima, Wambai and Dallatu are disqualified.

The learned trial Judge went on to state further thus:-

*"I am reinforced in this opinion of mine by what happened during the selection of late Emir, Alhaji Ibrahim Dodo Musa. According to P.W.4 (sic) who is the only witness called by 7th defendant, those who took part in the selection exercise of the late Emir Alhaji Dodo Musa are:-*

*(1) Galadima; (2) Salanke; (3) Imam; and (4) Magajin Mallam. Even though D.W.4 testified that the participation of the Mallams was not regular, I do not believe him in that.....*

*after late Alhaji Dodo Musa had been duly selected by Galadima and the three mallams in 1979, he was duly installed as the Emir of Suleja and there was no complaint by any body that the exercise was not in accord with the native law and custom of the people.*

*In view of the foregoing, I hold that the body comprising of Galadima and the three Mallams are (sic) properly constituted for the exercise of selecting a new Emir of Suleja after the death of Alhaji Ibrahim Dodo Musa."*

**Again with respect, this finding of the learned trial Judge is erroneous. The custom as stated in the Chronicle of Abuja is clear. It is the Madawaki that has the authority to co-opt the Kuyambana and the Chief Mallams as advisers but not the Galadima. The fact that the Galadima and the Chief Mallams, with Kuyambana excluded, selected the later Emir is a derogation from the custom stated in the A Chronicle of Abuja. There was no credible evidence which established that the Galadima enjoyed or can exercise the same authority as the Madawaki under the customary law of the people of Suleja when the latter is unable to perform his function as a kingmaker. Furthermore, custom, according to the definition in section 2 subsection (1) of the Evidence Act, Cap. 112 of the Law of the Federation of Nigeria, 1990, must be such a rule, which in a particular district or place has, from long usage, obtained the force of a law. It follows that the fact that in 1979 the Galadima together with Salanke, Chief Imam and Magajin Mallam selected the late Alhaji Ibrahim Dodo Musa as the Emir of Suleja is not sufficient to prove that they were qualified under the customary law to select the 4th respondent. Again, before a court can take judicial notice of a custom, as the learned trial Judge did, the**

**circumstances mentioned under section 14 subsection (2) of the Evidence Act. Cap. 112 of the Laws of the Federation of Nigeria 1990 must exist.** The subsection provides:-

“(2) A custom may be judicially noticed by the court if it has been acted upon by a court of superior or co-ordinate jurisdiction in the same area to an extent which justifies the court asked to apply it in assuming that the persons or the class of persons concerned in that area look upon the same as binding in relation to circumstances similar to those under consideration.”

It follows from all the foregoing that the reasons given by the Governor, in his letter Exhibit 9 quoted above, for rejecting the selection of the 4th respondent were legally correct and unassailable.

The Court of Appeal did not avert to this important aspect of the case in upholding the decision of the learned trial Judge to grant all the declarations sought by the plaintiffs.

D Statutory Legislation

Section 3 subsection (1) of Chiefs (Appointment and Deposition) Law, Cap. 19 of the Laws of Niger State of Nigeria, 1989 provides:-

“3(1) *“(1) Upon the death, resignation or deposition of any chief or of any head chief other than a chief of a kind referred to in section 4, the Governor may appoint as the successor of such chief or head chief, any person appointed in that behalf by those entitled by customary (sic) so to appoint in accordance with customary law; and if no appointment is made before the expiration of such interval as is usual under customary law, the Governor may himself appoint such person as he may deem fit and proper to carry out such duties incidental to the chieftaincy as it may be necessary to perform.”*

Similarly section 4 subsections (1) and (2) of the same Law, Cap. 19 provides:

“4(1) *The provisions of section 3 shall not apply to the office of a chief or head chief which -*

*(a) has not originated from customary law but has been created by legislation or administrative act of a competent authority;*

*(b) is recognised as such by the Governor;*

*but the provisions of subsections (2) and (3) of this section shall apply thereto.*

*(2) Upon the death, resignation or deposition of any chief or head chief of a kind described in subsection (1) the Governor may approve as the successor of such Chief or head chief, as the case may be, any persons appointed in that behalf by those entitled to appoint in accordance with*

*the provisions of any order made by the Governor prescribing the method of appointment of such a chief or head chief; and if no appointment is made before the expiration of any such order the Governor may himself appoint such person as he may deem fit and proper to carry out such duties incidental to the chieftaincy as it may be necessary to perform."*

The preamble to the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order, 1993, NSLN No.2 of 1993 reads:-

*"In exercise of the powers conferred by section 4 (2) of the Chiefs (Appointment and Deposition) Law of Niger State and all other powers enabling me in that behalf, I, Dr. Musa Muhammad Inuwa, the Executive Governor of Niger State of Nigeria, make the following order."*

Section 3 thereof provides:-

*"3.(1) Upon the death, resignation or deposition of Emir of Suleja the successor of the Emir shall be selected by an Electoral College consisting of the following:-*

*(a) Galadima Zazzau Suleja (b) Sarkin Yaki Zazzau Suleja (c) Tafida D Zazzau Suleja (d) Santali Zazzau Suleja (e) Salanke (f) Liman Juma'a and (g) Magajin Mallam.*

*(2) The holders of the title of Salanke, Liman Juma'a and Magajin Mallam who are members of the Electoral College shall not be entitled to vote but shall maintain and discharge their traditional functions."*

And Sections 5,6, 7, 8,9, 10 and 11 of the Order read:-

*"5. Where any title holder mentioned in Section 3(1) is also a prince or indicates his interest to contest for Emirship of Suleja, such title holder shall cease to be a member of the Electoral College.*

*6. The Chairman of the Electoral College shall be elected by the members of the Electoral College from among themselves.*

*7(1) On the death, resignation or deposition of the Emir of Suleja, the Chairman of Suleja Local Government Council shall after one calendar month summon a meeting of the Electoral College.*

*(2) All members of the Electoral College shall be notified in writing and be given not more than two days notice of the meeting summoned in accordance with subsection (1).*

*(3) Three members of the Electoral College with voting powers, shall constitute a quorum for any meeting of the Electoral College.*

*8. A person who is entitled under native law and custom and who is an adult son of royal origin from the Ruling House of Suleja, other than the ruling house of which the last Emir of Suleja is a member, shall be eligible to contest for the Emirship of Suleja.*

*9. (1) Where there is a meeting of the Electoral College, the mem-*

bers shall nominate not more than five (5) persons from the list of the contestants before them.

(2) If five persons are nominated in accordance within subsection (1), the Chairman of the Electoral College shall conduct an election at which the members of the Electoral College shall vote and three (3) of the B candidates for whom the most votes have been cast shall be the person elected by the Electoral College.

10.(1) The Electoral College shall through its Chairman, notify the Governor of the result of the election within three (3) days of the conclusion of the election.

C (2) The Governor shall appoint one person as the Emir of Suleja from the list of the candidates submitted to him under subsection (1).

11. A person appointed by the Governor shall be the person chosen as the Emir of Suleja."

Although the Order was made on 20th September, 1993, Section D 1 thereof provides that it "shall come into operation on 16th September, 1993." In other words the Order had retrospective effect.

During the proceedings in the High Court, reference to Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993 N.S.L.N. No.3 of 1993 was made by learned counsel for the appellant in his address. The E learned trial Judge adverted to the address, for he stated thus in his judgment:-

"Mr. Sodangi - counsel to 7th defendant also referred to amended Chief (Appointment and Deposition Law 1993) (sic) but has not produced the law."

F but made no use whatsoever of the law. The point was raised in the Court of Appeal and the law was produced before it by learned counsel for the 2nd to 7th appellants thereat. The law which was contained in Niger State Gazette No.8 Volume 18 of 25th November, 1993 was admitted by the Court of Appeal. In his judgment Mahmud Mohammed, J.C.A. with G whom Opene, J.C.A. agreed, remarked as follows:-

"It is quite clear from the 1st, 2nd and 3rd schedules to the said law as published in the Gazette that the date the law was assented to by the Governor is not stated. The name of the Governor who assented to the said law is not there either. More serious perhaps is the absence of the H name of the Clerk to the then Niger State House of Assembly in the column provided in the said law certifying that the same had been duly passed by the House of Assembly in accordance with the Constitution.

Therefore on the face of the said law, having regard to the absence of the name of Governor signifying his assent to the Bill to become law and the date

*of such signification, coupled with the absence of the name of the Clerk to the Niger State House of Assembly certifying that the law was duly passed by the Niger State House of Assembly, the said law published as Legal Notice No.3 of 1993 cannot be regarded as law enacted by the House of Assembly within the meaning of S. 277 (1) OF THE CONSTITUTION. Thus, not being law, the publication cannot confer power on the 2nd appellant to issue the Order Exhibit 7 B under which the 1st appellant was appointed."*

In arguing the appeal before us learned counsel for the appellant Mr. Sofola, Senior Advocate of Nigeria, sought leave to adduce additional documentary evidence, to show that the 1993 Law was duly passed by the Niger State House of Assembly and assented to by the then Governor of Niger State. As the documents in his possession were photocopies of the original copies, Chief Ajala, learned Senior Advocate of Nigeria, for the 1st to 4th respondents, raised objection to their being produced by Mr. Sofola. We, therefore, asked the parties concerned including the learned Director of Public Prosecutions for Niger State, Mallam A. D Bello, if they had any objection to our issuing summons in the interest of justice to the persons having proper custody of the original documents to produce them. All the counsel for the parties gave their consent. We therefore, issued summons to the Chief Judge and Grand Kadi of Niger State, who by virtue of the provisions of section 10 of the Legislation (Administrative Procedure) Law, Cap. 68 of the Laws of Niger State of Nigeria, 1989, should have in their custody the original copies of the Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993. Section 10 of Cap. 68 provides:

*"10. The Clerk to the Legislature shall transmit to the Chief Judge, the Grand Khadi and the Attorney-General of the State to be enrolled in the High Court of Justice, the Sharia Court of Appeal and the Ministry of Justice, respectively, a transcript each, authenticated under the Public Seal of Niger State and by the signature of the Governor of every such Law assented to by the Governor."*

The enrolled copies of the Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993 in the custody of the Chief Judge and Grand Kadi were produced by the Chief Registrars of the High Court and the Sharia Court of Appeal of Niger State on 3rd October, 1996 and were admitted as Exhibits SC. 1 and SC. 2 respectively. Similarly, the Clerk to the defunct Niger State House of Assembly, Alhaji Ndagi Musa Ladan, produced the original copies of the following documents:-

*(1) A Letter by the Attorney-General of Niger State to the Speaker of the House of Assembly of Niger State dated 18th October 1993 submit-*

ting 45 copies of a bill proposing an amendment of the Chiefs (Appointment and Deposition) Law.

(2) Order Paper of the Niger State House of Assembly for Friday 22nd October, 1993 which shows that the Bill entitled the Niger State Chiefs (Appointment and Deposition) Law had been listed for Second Reading.

(3) Minutes of Meeting of Committee of the Niger State House of Assembly on Local Government and Chieftaincy Matters held on 21st October, 1993 to consider the Bill for a law to amend the Chiefs (Appointment and Deposition) Law, 1993.

(4) Official Report of the House of Assembly of Niger State of Thursday, 21st October, 1993 whose contents include the Presentation of a Bill Chiefs (Appointment and Deposition) Law (Amendment) Law for First Reading.

(5) Niger State House of Assembly Members Attendance Register of 21st October, 1993 which shows that 25 out of the 38 Members of the House of Assembly of Niger State attended the Meeting of the House on that day.

(6) Official Report of the House of Assembly of Niger State of 22nd October, 1993 whose contents include the presentation of a Bill for a Law to amend the Chiefs (Appointment and Deposition) Law to be considered in Committee of the whole House of Assembly for Second Reading.

(7) Niger State House of Assembly Members Attendance Register of 22nd October, 1993 which shows that 25 out of the 38 members of the House of Assembly of Niger State attended the Meeting of the House on that day.

(8) A letter dated 3rd November, 1993 from the Clerk to House of Assembly of Niger State to the Grand Kadi of Niger State forwarding to the latter a copy of the Chiefs (Appointment and Deposition) Law (Amendment) Law 1993 duly assented to by the Governor of Niger State.

(9) A letter dated 3rd November, 1993 from the Clerk to the House of Assembly of Niger State to the Chief Judge of Niger State forwarding to the latter a copy of the Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993 duly assented to by the Governor of Niger State.

All the documents were admitted as Exhibits SC3, SC4, SC5, SC6, SC7, SC8, SC9, SC10 and SC11 respectively.

Now Sections 2 and 3 of the Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993, (Exhibits SC. 1 and SC. 2) whose commencement date was 22nd October, 1993 provide as follows:-

“2. The Chiefs (Appointment and Deposition) Law (hereinafter

referred to as "the principal Law") is amended by the insertion of the following subsections:

"3(1)(A) Notwithstanding any law or custom to the contrary, where in the opinion of the Governor, a person who is entitled under native law and custom to appoint a Chief or head Chief suffers a disability of a kind that disentitles him under native law and custom to appoint a Chief or B Head Chief the Governor may by order

(i) appoint another person to act in place of that person; or

(ii) prescribe the method of appointment of such Chief or head Chief

3. Every act or thing done by the Governor before the commence- C ment of this bill that would have been lawful if section 2 of this bill had been in force at the time when it was done and all acts which are the consequence of that act are hereby validated and declared to have been lawfully done."

In his judgment Mahmud Mohammed, J.C.A. observed as follows:- D

"I wish to observe at this stage that even if the said law had been duly passed in accordance with the Constitution the purported amendment to the then existing provision of the 1963 Chiefs (Appointment and Deposition) Law would still not have been achieved. This is because the wordings of S.2 of the said Amendment Law which is the enacting clause which reads - E

"2. The Chiefs (Appointment and Deposition) Law (hereinafter referred to as "The Principal Law") is amended by the insertion of the following subsections:-

has not in fact amended any section of the 1993 Chiefs (Appointment and Deposition) Law of Niger State. The mere insertions of subsections without F specifying the sections under which the subsections were to be inserted had rendered the proposed amendment incomprehensible particularly when it was only one subsection (1) (A) that was inserted while the other two were mere paragraphs and not subsections. Furthermore S.3 of the said Amendment Law has no status in the law as the enacting clause had not intro- G duced it as a new section of the law to be amended. The result of course is obvious. The 1963 Chiefs (Appointment and Deposition) Law of Niger State remained intact and I so declare. In effect what was published as Legal Notice No.3 of 1993 by the Niger State Government Printer in the state Gazette No.3 Volume 18 of 25th November 1993 is not law but a H mere piece of document bearing the title of law and the Government Printer himself was fully aware of this fact by refusing to give the document the status of law it does not deserve. The result of this conclusion is of course plain. The purported Chiefs (Appointment and Deposition) (Amendment)

*Law 1993 not being a Law passed by the Niger State House of Assembly within the meaning of S.277(1) OF THE 1979 CONSTITUTION, could not have conferred any valid power on the 2nd appellant as the executive Governor of Niger State to promulgate the Order Exhibit 7.*

*Although it was argued by the learned senior counsel for the 1st appellant that having regard to the significance of the phrase “and all other powers enabling so in that behalf”, and the provisions of S.5(2) of the 1979 CONSTITUTION which conferred executive powers on State Governors, the 2nd appellant had executive powers to issue the order Exhibit 7, that view of the learned senior counsel has no support in the Constitution itself. This is because the same S.5(2) of the 1979 CONSTITUTION which vested executive powers in the State Governors with regard to the running of the affairs of their respective States also enjoined them to exercise that power not only in accordance with the Constitution, but also in accordance with the laws duly passed or deemed to have been duly passed by the State House of Assembly.....*

*However in the present case, the 2nd appellant in promulgating the Order Exhibit 7 was not dealing with a matter in respect of which the Niger State House of Assembly was yet to make law upon to warrant the exercise of such executive powers to issue executive orders. The Niger State Chiefs (Appointment and Deposition) Law 1963 is by virtue of 5.274 of the 1979 Constitution an existing law deemed to have been passed by the Niger State House of Assembly. While S.4(2) of that law had empowered the Governor to issue the order as the type in Exhibit 7 to determine the method of appointment of Chiefs under the section, S.3(1) of the same law had denied him that power and in that respect it is the provision of the same S.5(2) OF THE 1979 CONSTITUTION that enjoined the Governor to comply with the provision of S.3(1) of the Chiefs (Appointment and Deposition) Law 1963 regarding the appointment of Chiefs under that section until the section is amended. Certainly by issuing the order Exhibit 7 in exercising his executive powers under clear provisions of S.3(1) of the law which does not empower the issuing of such order, the fact that the order was said to have been issued in exercise of all other powers enabling the 2nd appellant in that behalf would not confer any validity on the order, nor validate any action taken by the 2nd appellant under the order. I would thus resolve the first issue for determination in this appeal in the negative. That is, the learned trial Judge was not in error when he held that the nomination and subsequent approval of the appointment of the 1st appellant as the Emir of Suleja were ultra vires, illegal, null and void, because they were done by virtue of the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order NSLN No.2 of 1993*

*which itself was illegal, null and void."*

Issue No.1

The question here is whether the Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993, NSLN No.3 of 1993 is illegal, null and void. The Court of Appeal based its decision on the fact that the 1993 Law was not assented to by the Governor of Niger State; the date it was assented to was not clear, the name of the Governor was not stated in the Law nor was the name of the Clerk to the House of Assembly also clear in the certification to the Law. With the admission of Exhibits SCI to SCII as additional evidence all the doubts entertained by the Court of Appeal have been removed. ***It is very clear from the Exhibits that the proper procedure for passing bills in the House of Assembly of Niger State had been followed and that the Law was assented to by the then Governor of Niger State on 22nd October, 1993. All the learned counsels in the case have conceded that the 1993 Law was properly passed and assented to by the Governor and, therefore, it is a valid Law. Consequently, I will set aside the decision of the Court of Appeal in this respect which upheld the decision of the trial Court that the Law was illegal, null and void.***

Issue No.2

This issue is similar to the first issue. It is: Whether the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order, 1993 NSLN No.2 of 1993 was illegal, null and void. In his judgment Mahmud Mohammed, J.C.A. considered the validity of the Order on the hypothesis that the Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993 was valid. He held, as quoted above, that neither the provisions of section 4 (2) nor those of section 3(1) of the Chiefs (Appointment and Deposition) Law, 1963, Cap. 20 of the Laws of Northern Nigeria, 1963 which are the same as sections 4(2) and 3(1) of the Chiefs (Appointment and Deposition) Law, Cap. 19 of the Laws of Niger State, 1989, empowered the Governor of Niger State to make the Order. He observed that although the 1993 Law purported to amend the principal Law it in fact did not do so. To quote his words again:-

*"The mere insertions of subsections without specifying the sections under which the subsections were to be inserted had rendered the proposed amendment incomprehensible particularly when it was only one subsection (1) (A) that was inserted while the other two were mere paragraphs and not subsections. Furthermore S.3 of the said Amendment Law has no status in the law as the enacting clause had not introduced it as a new section of the law to be amended. The result of course is obvious. The 1963 Chiefs (Ap-*

*pointment and Deposition) Law remain intact and I so DECLARE ... The purported Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993 not being a Law passed by the Niger State House of Assembly within the meaning of S.277(1) OF THE 1979 CONSTITUTION, could not have conferred any valid power on the 2nd appellant as the Executive Governor of Niger State to promulgate the Order, Exhibit 7 ..... the fact that the Order was said to have been issued in exercise of all other powers enabling the 2nd appellant in that behalf would not confer any validity on the Order, nor validate any action taken by the 2nd appellant under the Order; ”*

The learned Justice concluded by upholding the decision of the trial court that the Chiefs (Appointment and Deposition) (Appointment of Emir of Suleja) Order, 1993, N.S.L.N. No.2 of 1993 was illegal, null and void.

Mr. Sofola, learned counsel for the appellant contends that the Court of Appeal (per Mahmud Mohammed, J.C.A.) appeared not to appreciate that it was its duty to make sure that the clear intentions of the Legislature, regardless of defect in form, are given effect by Courts. Learned Senior Advocate argued that the provisions of the Order were not ambiguous and the learned Justice did not base his conclusion on ambiguity. He canvassed that the 1993 Law introduced a new subsection 3(1) (A) to the Chiefs (Appointment and Deposition) Law, and in the normal order of things the new subsection follows next to subsection 3(1) of the principal law. Learned Senior Advocate, submitted that he could not see how the addition of a subsection or of a new section to a Law cannot be regarded as an amendment to the law. To hold otherwise would require the straining of language and extraordinary reasoning. He cited in support the provisions of section 53 of the Interpretation Law, Cap. 52 of the Laws of Northern Nigeria, 1963 which are the same as those of section 11 of the Interpretation Law, Cap. 61 of the Laws of Niger Estate, 1989. The section states in part:

*“When any law amends or adds to any law, the amending law shall, so far as is consistent with the tenor thereof, and unless the contrary intention appears, be construed as one with the amended law ..... ”*

He argued further that the intention of the Legislature is very clear and it is to insert a new subsection to the existing law, and to make legal any action taken before the amending law was passed by the Legislature and which otherwise might have been unlawful. He cited, in support of his submission that technicalities should not be allowed to stand in the path of justice, the decisions of this Court in the cases of *The State v. Gwonto* (1983) SCNLR 142; (1983) 3 SC. 62 at p. 76 per Eso, J.S.C. and *Philip Obiora v. Paul Osele*, (1989) 1 NWLR (Pt. 97) 279 at p. 302 per Oputa, J.S.C.

Arguing further, learned counsel stated that there was nothing wrong in making a retroactive legislation such as the 1993 Law, in order to validate the Order. He cited the case of *Ebiriukwu v. Ohanyereuwa* (1959) SCNLR 540; (1959) 4 FSC 212; *Carson v. Carson* (1964) 1 All E.R. 681 at p. 686 G - H and *Dennis Osadebay v. A-G. of Bendel State*. (1991) 1 NWLR (Pt. 169) 525 at p. 568 in support of the argument. Mr. Sofola also urged that due regard should be given to the phrase "all other powers enabling him in that behalf" which is contained in the preamble to the 1993 Order. He submitted that it will not be proper to consider the rightness or otherwise of the exercise by the Governor to make the Order being challenged without due regard to the power contained in the phrase. He referred to the Latin maxim: *Omnia praesumuntur legitime facta donec probetur in contrarium*, which means all things are presumed to have been legitimately done, until the contrary is proved; and argued that before the Governor could be held to have acted outside his power, it must be shown that he could not have derived his powers from any other source than the Chiefs (Appointment and Deposition) Law. He equated the position in this case with those in the cases of *Re Baker's Estate* (1879) 1 Ch. D 165 and *Oguchi Onea & Ors. v. Nweke Agbuchi & Ors.* (1970-71) ECSLR 80 where a motion was filed under a wrong Court Rule but was not struck out as it could have been brought under another Rule and so it was heard on its merit; Mr. Sofola referred to the provisions of Section 5 subsection (2) of the 1979 Constitution and submitted that the Governor had the power to make the 1993 Order.

In replying, Chief Ajala, learned Senior Advocate, for the 1st to 4th respondents, submitted that the Court of Appeal was not in error in affirming the decision of the learned trial Judge, that the nomination and subsequent approval of the appointment of the appellant as the Emir of Suleja were *ultra vires*, illegal, null and void. He argued that the 1993 Order not only violated the native law and custom of the people of Suleja but also violated the express provisions of Section 3(1) of the Chiefs (Appointment and Deposition) Law, Cap. 20 of the Laws of Northern Nigeria G 1963. He said that Section 4(1) and (2) of the 1963 Law under which the 1993 Order was made does not apply to the Chieftaincy of Suleja which had been shown to have been based on a specific native law and custom. He cited the case of *Kimdey & Ors. v. Military Governor of Gongola State* (1988) 2 NWLR (Pt. 77) 445; (1988) 1 NSCC 827 to illustrate the point. On the Constitutional power of the Governor, under Section 5(2) of the 1979 Constitution, Chief Ajala submitted that the Governor could not exercise that power in respect of appointment of chiefs since section 3(1) of the Chiefs (Appointment and Deposition) Law had been enacted to take care

of the situation. He argued that the 1993 law took effect from the date of its enactment and that since section 1 thereof provides that it came into operation on 22nd October, 1993, the 1993 Order which came into force earlier on 16th September, 1993 cannot be saved or validated by the 1993 Law. He referred to section 4 of the Interpretation Law, Cap. 52 of the Laws of Northern Nigeria, 1963 and the cases of *Sharp v. Wakefield* (1888) 22 Q.B.D. 239 and *Kotoye v. Mrs. Saraki & Anor*, (1994) 7 NWLR (Pt. 357) 414 at pp. 458 G - H; 459 A - B and 460 A - B as well as Maxwell on Interpretation of Statutes. 12th Edition, Pp. 251 - 252 in support of his argument. Section 4 of Cap. 52 provides:-

C       *"4. Where any law, or any part of a Law, or any notice, order, regulation, rule of Court, Warrant, Scheme, or letters patent made, granted or issued under a power conferred by any law, or by any competent authority, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the*  
D *next day preceding such day."*

Section 4 of the Interpretation Law, Cap. 61 of the Laws of Niger State of Nigeria, 1989 contains the same provisions as these.

Arguing further, Chief Ajala, stated that the 1993 Law did not alter the effect of Section 3 subsection (1) of the Chiefs (Appointment and  
E Deposition) Law, Cap. 20 because it merely provided for section 3(1) A to be added to cap. 20. He contended that since Section 3(1) A is in conflict with Section 3(1) of Cap. 20, the former section becomes absurd and therefore both sections 2 and 3 of the 1993 Law are ultra vires and invalid. Learned Senior Advocate contested that as the cause of action in this case  
F arose before the enactment of the 1993 Law, its provisions are not applicable to the case. He cited in support the case of *Adigun v. Ayinde & Ors.* (1993) 8 NWLR (Pt.313) 516; (1993) 11 SCNJ 1 at pp. 16, 19,23, and 24.

Finally, Chief Ajala submitted that when the 1993 Order is read together with Section 4 subsection (2) of the Chiefs (Appointment and  
G Deposition) Law, Cap. 20 it would be seen that provision had already been made to meet what section 3 of the 1993 Law had intended. Furthermore section 3 of the 1993 Law has not specifically made reference to the 1993 Order and therefore could not be said to apply to the Order. He cited the cases *Iffie & Ors. v. A.G. Bendel State.* (1987) 4 NWLR (pt. 67) 972 at p. 990 D-G and *Finnih*  
H *v. Imade.* (1992) 1 NWLR (pt. 219) 511 at pp. 537H and 538A.

Now, it is no more in dispute that the Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993, N.S.L.N. No.3 of 1993 was passed by the House of Assembly of Niger State and was given assent by the Governor of Niger State and that the Law came into operation on the

22nd day of October, 1993. The question now is whether the Chiefs Appointment and Deposition (Appointment of Emir of Suleja) Order, 1993, N.S.L.R. No.2 of 1993 is valid.

There is no doubt whatsoever that the 1993 Order was made by the Governor of Niger State on the 20th day of September 1993 and it was intended to have retrospective operation, with effect from 16th September, 1993. These facts are contained in Niger State of Nigeria Gazette No.1 Volume 18 of 20th September, 1993. By Section 113 of the Evidence Act, Cap. 112 of the Laws of the Federation of Nigeria 1990, the Laws of a State may be proved by the production of the State Gazettes in which the Laws are published. Such Gazettes are prima facie proof of any fact of a public nature which the laws are intended to notify. What needs to be ascertained is whether the Governor of Niger State had in fact the power to make the Order. If he had the power, the Order would be valid. On the other hand if he did not have the power the Order would be invalid unless of course there is another legislation which validates the action of the Governor in making the Order.

***The preamble to the 1993 Order, which is quoted above, states that the governor was exercising the powers conferred upon him by section 4(2) of the Chiefs (Appointment and Deposition) Law of Niger State, and any other powers enabling him in that behalf, to make the 1993 Order. Section 4 subsection (2) of the Chiefs (Appointment and Deposition) Law, Cap. 19 has been quoted above. It is common ground between the parties that the provisions of section 4 sub-section (2) of Cap. 19 have no application to the Order because the Chieftaincy contemplated under the section is different from the Emirship of Suleja. It is therefore, clear from that angle that the Governor had no power under section 4 subsection (2) of Cap. 19 to make the order. It then becomes necessary to examine whether he had the power under any enabling legislation.***

It had been argued by Mr. Sofola, for the appellant, that Section 3 subsection (1) of Cap 19 gave the necessary power to the Governor. Chief Ajala, for the 1st to 4th respondents, had argued otherwise. He contended that the Kingmakers of Suleja had met under the Chairmanship of the Galadima and had selected the 4th respondent as the new Emir of Suleja, and therefore the provisions of section 3 (1) are not applicable.

A close examination of section 3(1) will reveal that it does not give any power to the Governor to make any Order rather it empowers the Governor to appoint as Emir of Suleja, any person appointed by the kingmakers of Suleja if those kingmakers are “entitled by customary (sic) so

to appoint in accordance with customary law.” And where no appointment had been made by the kingmakers within a period prescribed by the customary law, the Governor might himself appoint such person as he might deem fit.

Mr. Sofola had fallen back on the provisions of Section 5 sub-B section (2) (b) of the Constitution of the Federal Republic of Nigeria, Cap. 62 of the Laws of Nigeria, 1990 which provides:

*“(2) Subject to the provisions of this Constitution, the execution powers of a State -*

*(b) shall extend to the execution and maintenance of this Constitution, all laws made by the House of Assembly of the State and all other matters with respect to which the House of Assembly has for the time being power to make laws.”*

With respect, the whole of section 5 of Cap. 62 was suspended in 1984 by the Constitution (Suspension and Modification) Decree, No.1 of D 1984 and so the Governor of Niger State could not have exercised any power under the Section. However, a similar provision is contained in section 48 subsection (1) (b) of the State Government (Basic Constitutional and Transitional Provisions) Decree No. 50 of 1991, which was applicable and it provides:-

E *“48-(1) Subject to the provisions of this Decree, the executive powers of a state*

*(b) shall extend to the execution and maintenance of this Decree, all laws made by the House of Assembly of that State and to all matters with respect to which the House of Assembly has for the time being power F to make laws; but such executive powers shall be exercised as not to impede or prejudice the exercise of the executive powers of the Federation or endanger the continuance of a Federal system of government in Nigeria.”*

Although the provisions empowered the Governor to execute and maintain “all matters with respect to which the House of Assembly has for G the time being power to make laws,” those provisions, if read together with those of Section 31 subsections (1) and (2) of the State (Basic Constitutional and Transitional Provisions) Decree No. 50 of 1991, cannot be construed to have given the Governor of Niger State the enabling power to make the 1993 Order. Section 31 sub-sections (1) and (2) provided:

H *“31(1) The Legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.*

*(2) The House of Assembly of a State shall have power to make laws for the peace Order and good government of the State or any part thereof with respect to the following matters, that is -*

*(a) any matter not included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1979, as amended;*

*(b) any matter included in the Concurrent Legislative List set out in Schedule 1 to this Decree to the extent prescribed therein; and*

*(c) any matter with respect to which it is empowered to make laws B in accordance with the provisions of this Decree.”*

The question that follows is: what other law conferred on the Governor the power to make the 1993 Order? It remains to examine the provisions of Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993 NSLN No.3 of 1993; but before doing so it is necessary to advert to C the relevant principles of interpretation.

It is a cardinal rule of the construction of statutes that statutes should be construed according to the intention expressed in the statutes themselves. If the words of the statutes are themselves precise and unambiguous, then, no more is necessary than to expound the words in their D natural and ordinary sense. The words of the statutes do alone, in such a case, best declare the intention of the lawmaker - See Ahmad v. Kassim (1958) SCNLR 58; (1958) 1 NSCC II; Capper v. Baldwin (1965) 2Q.B. 53 at p. 61; Cargo ex Argos, (1873) L.R. 5 P.C.134 at p. 153. In the case of Barnes v. Jarvis (1953) 1 W.L.R. 649. Lord Goddard C.J. stated that a E certain amount of common sense must be applied in construing statutes and the object of the statute has to be considered.

With regard to the retrospective nature of statutes, the Legislature is competent to make retrospective legislation - See Smith v. Callander, (1901) A.C. 297 at p. 305. The retrospective nature of a statute may F concern the whole provisions of the Statute, as where the commencement date so indicates; or may concern only a section of the statute - see Lauri v. Renad. (1892) 3 Ch. 402 at p. 421; Pardo v. Bingham, (1868 -69) 4 L.R.Ch. App. 735 at p. 739 and West v. Gwynne (1911) 2 Ch. 1. Where a statute is passed for the purpose of supplying an obvious omission in a G former statute, the subsequent statute has relation back to the time when the prior Act was passed - see p. 395 of Craies on Statute Law. 7th Edition. Where a statute is in its nature declaratory, the presumption against construing it retrospectively is inapplicable - See A - G v. Theobald (1890) 24 Q.B.D. 557. If by necessary implication from the language employed that H the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation- Lane v. Lane (1896) P. 133.

Now, the heading to N.S.L.N. No.3 of 1993 reads: “LAW TO PROVIDE FOR THE AMENDMENT OF THE CHIEFS (APPOINTMENT

AND DEPOSITION) LAW CAP. 20 LAWS OF NIGER STATE. Immediately after section 3 of the 1993 Law, the objectives and reasons for enacting the 1993 law are stated: They are as follows:

*"The purpose of this law is to amend the Chiefs (Appointment and Deposition) Law, Cap. 20 Laws of Niger State in Order to vest power on the Executive Governor of Niger State to prescribe the method by which a Chief or head chief may be appointed where those entitled under native law and custom or having regard to the principles of Natural Justice, Equity and good conscience, they are unable to discharge their functions."*

**It is clear from the foregoing that the object of passing the 1993 Law was to enable the Governor or Niger State to have powers which he did not previously have with regard to the method of appointing chiefs.**

**It is settled that where the main object and intention of a statute are clear it must not be reduced to a nullity by the draftsman's unskillfulness. Beside, it has always been accepted that a statute should be so**

**construed as to achieve the object it was intended to serve-** See *Cramas Properties Ltd. v. Connaught Fur Trimmings Ltd.* (1965) 1 WLR 892; *Nokes v. Doncaster Amalgamated Collieries Ltd.* (1940) A.C. 1014; *Nafiu Rabiu v. Kano State*, (1980) 8 - 11 SC. 130; (1982) 2 NCLR 117 and *F.C.S.C v. Laoye* (1989) 2 NWLR (Pt. 106) 652 at p. 686 C - F.

The opening provisions of Section 2 of the 1993 Law states:

*"The Chiefs (Appointment and Deposition) Law, (herein after referred to as "the principal Law") is amended by the insertion of the following subsection."*

Although the section does not state the year of enactment of Chiefs (Appointment and Deposition) Law, there can be no doubt from both the heading of the Law and the objectives and the reasons for the 1993 Law that the Law concerned is Cap. 20 of the Laws of Northern Nigeria 1963 applicable to Niger State which is the same as Cap. 19 of the Laws of Niger State, 1989.

There is no doubt that the opening provisions are inelegantly drafted. If Section 3(1) (A) is to be inserted, it is not stated under which section of the principal law. But since there is Section 3(1) in the principal law, I think it is a matter of common sense that the new section 3(1)(A) is meant to come under Section 3 of the principal law by following Section 3(1) of the principal law. In other words section 3(1)(A) is meant to be subsection (1)A of Section 3 of the principal law. By virtue of Section 3 subsection (1)A (ii) of the principal law, as amended, the Governor was empowered to prescribe a method of appointment of the Emir of Suleja. Does the word "prescribe" "In section 3 subsection (1)A of the Chiefs (Appointment and

Deposition) Law, Cap. 19, as amended, give the Governor the power to enact any subsidiary legislation concerning such method of appointment? The word bears in its ordinary natural meaning contained in the Concise Oxford English Dictionary, 7th Edition as being: "To lay down or impose authoritatively" and in the Shorter Oxford English Dictionary, as being: "To lay down as a rule or direction to be followed," Webster New Twentieth Century Dictionary, 2nd Edition describes the word as: "To set down or give rules, directions etc." Blacks Law Dictionary, 5th Edition defines the word as follows: "To lay down authoritatively as a guide, direction or rule, to impose as peremptory order; to dictate, to point, to direct, to give direction or rule of action, to give law."

Section 31 of the Interpretation Law, Cap. 61 of the Laws of Niger State, 1989 provides:-

*"31. Where in any law power is given to any person to do or enforce the doing of any act or thing all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing."*

***It seems to me both from the meaning of the word "prescribe" and the intendment of Section 31 of the Interpretation Law, that the Governor of Niger State had the power to make the 1993 Order and I so hold.***

Section 3 of the 1993 Law provides:-

*"3. Every Act or thing done by the Governor before the commencement of this law that would have been lawful if Section 2 of this law had been in force at the time when it was done and all acts which are the consequence of that are hereby validated and declared to have been lawfully done."*

Now what this section intended to validate is anything that the Governor did before the 22nd October, 1993 which would have been lawful if Section 3 subsection (1) A (ii) of the principal law, as amended, had been in force. The new subsection as already held, did give the Governor the power to make subsidiary legislation with regard to the method of appointing any Chief including the Emir of Suleja.

I am also aware of Section 27 of the Interpretation Law, Cap. 61 of the Laws of Niger State, 1989 which provides:

*"27. The production of a copy of the Gazette containing any order, regulation, rule of court, proclamation, Government or public notice, or State notice or State public notice or of any copy of any order, regulation, rule of court, proclamation, Government or public notice or State notice or State public notice purporting to be printed by the Government Printer shall be prima facie evi-*

*dence, in all courts and for all purposes whatsoever, of due making and tenor of such order, regulation, rule of court, proclamation, Government or public notice, or State notice or State public notice."*

**The fact that the 1993 Order had been produced and had been printed by the Government Printer of Niger State since it is contained in Niger State Gazette No. 2 Volume 18 of 20th September, 1993 is by virtue of Section 27 of the Interpretation Law, Cap. 61, prima facie evidence that it was duly made. The word "duly" according to the Concise Oxford English Dictionary means "rightly, properly made." The evidence being prima facie is, therefore, rebuttable. The question then is: has the 1993 Order been shown to have been unduly or improperly made? The answer is in the negative. I, therefore, hold that the 1993 Order was properly made**

Issue No.3

The question here is whether the Court of Appeal was in error for not dismissing the claims brought by the 1st to 4th respondents in the High Court against the appellant. This issue was formulated on the premise that Mahmud Mohammed, J.C.A., with whom Opene, J.C.A. agreed, held as follows:-

*".....the appeal as it affects the judgment and findings of the learned trial Judge that the nomination and subsequent approval of the appointment of the 1st appellant, Alhaji Awwal Ibrahim as the Emir of Suleja were ultra vires, illegal, null and void, because they were done by virtue of the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order N.S.L.N. No.2 of 1993 which in itself was illegal, null and void, shall be and is hereby dismissed."*

Learned Senior Advocate, for the appellant, based his argument on the proposition that if this Court holds that the 1993 law, was a valid and subsisting law and that the 1993 Order was validly made; then, all the claims by the 1st to 4th respondents before the trial Court against the appellant had failed and should have been dismissed. It is obvious that the submission has force. **I have already held, while considering issue No.2 above, that the 1993 Order was validly made by the Governor who had the authority to make subsidiary legislation under the Chiefs (Appointment and Deposition) Law, Cap. 19 as amended by the 1993 Law. The Court of Appeal was, therefore, in error when it failed to dismiss the appellant's appeal and it also refused to set aside the decision of the learned trial Judge.**

Conclusion

In the light of the foregoing, the appeal before us succeeds. I hold

that the selection of the 4th respondent by the purported kingmakers for appointment as Emir of Suleja was wrongfully done since the kingmakers were not properly constituted in accordance with the native law and custom of the people of Suleja as contained in the Chronicle of Abuja (Exhibit 10). I hold that the Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993, N.S.L.N. No.3 of 1993 was properly enacted, having been passed by the House of Assembly of Niger State and assented to by the Governor of Niger State. I also hold that the lower courts were wrong in declaring the Appointment and Deposition of Chiefs (Appointment of the Emir of Suleja) Order, 1993, N.S.L.N. No.2 of 1993 illegal, null and void.

In the case of Egbunike v. Muonweokwu (1962) 1 All NLR 46 Taylor, F.J. held as follows on p. 51.

*"A declaratory judgment is discretionary. It is a form of judgment which should be granted only in circumstances in which the Court is of opinion that the party seeking it is, when all the facts are taken into account, fully entitled to the exercise of the Court's discretion in his favour."*

In the circumstances of this case no declaration can be granted. I hereby allow the appeal and set aside the decisions of the High Court and the Court of Appeal. I disallow, in their entirety, the declarations sought by the 1st to 4th respondents. The appellant is hereby awarded N1,000.00 costs against the 1st, 2nd, 3rd and 4th respondents, jointly and severally.

### WALI JSC

I have been privileged to read before now, the lead judgment of my learned brother Uwais CJN with which I entirely agree and hereby adopt same as mine.

The majority judgment of the Court of Appeal which affirmed the decision of the trial court that Exhibit 7 was illegal, was based on the fact that the Chiefs (Appointment and Deposition) Law (Amendment) Law, NSNL No.3 of 1993 of Niger State, was not enacted according to law. This doubt has now been cleared with putting in Exhibits SC I-SC II, as additional evidence. This was done with the consent of all the parties involved in this appeal. Since the Chiefs (Appointment and Deposition) Law (Amendment) Law has now been proved to be a valid law, Exhibit 7 which was validated by the said Law was therefore validly made by the Executive Governor of Niger State of Nigeria.

The fact that no one complained against the procedure adopted in the appointments of two previous Emirs of Suleja (formerly Abuja) in

apparent contravention of the customary law is not sufficient exercise to promote it to be or render such contravention to become, the valid customary law. See: S.14 (2) of the Evidence Act, (Cap.112) Laws of the Federation of Nigeria 1990 and in particular, s.2(1) which defines custom as follows:-

*“is a rule which in a particular district has from long usage, obtained the force of law.”*

See: Larinde v. Afiko & Anor 6 WACA 108 Buraimo & Ors v. Gbamboye & Ors. 15 NLR 139 and Amissah v. Krabah 2 WACA 30.

By amending S.3(1) of the Chiefs (Appointment and Deposition) Law of Niger State with NSLN No. 3 of 1993, the Governor is, by S.3(1) A of the C Amendment, particularly S.3(1) A (ii), conferred with powers to prescribe the method of appointing a new Emir of Suleja, since the majority of the Kingmakers entitled to appoint under native law and custom suffer disability to do so. By Exhibit 7, which was made to be retrospective by the express provision of S.3 of the Amendment Law, the Governor prescribed the procedure of appointing D a new Emir. Exhibit 7 being a subsidiary legislation, has the force of law and overrides any other customary law.

The act of appointing princes and giving them title of Kingmakers by the previous Emirs as of recent, throws the whole custom of appointing a successor to the emirship throne of Suleja into disarray and utter confusion. The Governor's action of amending the law by prescribing a system for appointing an Emir of Suleja should be seen and understood as a worthy effort of streamlining and stabilising the customary law.

For the reasons ably stated in the lead judgment of the Hon. Chief Justice of Nigeria which I have earlier adopted, I also hereby allow the F appeal and subscribe to the consequential orders made therein.

### **OGUNDARE JSC(Dissenting)**

This appeal relates to the filling of the vacancy occurring in the G chieftaincy of the Emir of Suleja occasioned by the death on 5th July 1993 of the former Emir, Alhaji Ibrahim Dodo Musa. By a letter dated 9th July 1993 (Exhibit 3), the Chairman of the Suleja Local Government formally informed the Governor of the State (Niger) of the death of Alhaji Ibrahim Dodo Musa and requesting the Governor's approval and official directive H to the summoning of the four kingmakers therein mentioned, that is, the Chief Imam, the Salanke, the Magajin Mallam and the Galadima, in order to commence sitting for the selection of a new Emir. By his letter dated 13th July 1993 (Exhibit 8), the Deputy Governor conveyed the Governor's approval to the commencement of appointment process by the four

kingmakers and advised them, in their selection process, to take into consideration among other qualities, the educational qualification and exposure of the candidate to be recommended. The Committee of kingmakers met on three different occasions between 14th July and 21st July, 1993 and in attendance at these meetings, as observers, were the Chairmen of the Suleja Local Government and Gurara Local Government and two top Niger State Government officials, one of whom, Hamidu A.A. Kadi-Kuta, Director of Political Affairs acted as Secretary to the Committee. At their second meeting on 15th July the Committee of kingmakers unanimously selected Alhaji Muhammadu Bashir, a 44 years old university graduate and a federal civil servant. At the conclusion of their 3rd and final meeting on 21st July 1993, the committee selected two other candidates, namely Alhaji Adamu Katsina, a 64 year-old District Head of Kwali and a Middle School Leaver and Alhaji Muhammed Kabir, a 44 year old university graduate and federal civil servant. The selection of 3 names was in compliance with the Governor's directive but the kingmakers nevertheless expressed their desire for the appointment of Alhaji Muhammadu Bashir as the new Emir. A report of the committee containing the minutes of the three meetings (Exhibit 6) was signed by the two government officials in attendance as well as the 4 members of the committee of kingmakers and forwarded to the Deputy Governor as directed in Exhibit 8.

By a letter dated 17th September 1993 (Exhibit 9) the Secretary to the State Government, Nuhu Galadima conveyed to the Secretary to the Suleja Emirate Council the rejection, by the Governor, of the nominations made by the committee of kingmakers on the grounds:

*"i. The kingmaking body was not constituted in accordance with the native law and custom;*

*ii. It is observed that three, out of the seven kingmakers could not partake in the nomination exercise for 'being members of the royal family'. Even then it is further discovered that only one member, i.e. the Galadima of Suleja had the voting power while the remaining three were supposed to be mere observers or at best, advisers."*

The letter ended with this paragraph:

*"Any further developments on the Chieftaincy issue will be communicated to you in due course."*

The Governor had on 10th September 1993 addressed a letter (Exhibit 1) to the Chairman of the Niger State Council of Chiefs requesting of the Council "re-nomination of THREE eligible candidates" taking cognisance of certain criteria therein mentioned. The Council met on 14th September 1993 and recommended -

*"In view of the foregoing, Council decided to recommend strongly to His Excellency, the Executive Governor of Niger State to approve the appointment of Mallam Muhammadu Bashir as the new Emir of Suleja, in the interest of justice, fairplay and democracy as well as to ensure the continued existence of peace and harmony, development and progress in B Suleja Emirate."*

Minutes of the Council's meeting containing the recommendation was forwarded to the Governor by the Chairman of the Council (the Etsu Nupe) as per a letter (Exhibit 6) dated 17th September 1993. It is interesting to note also that the legislative council of the Suleja Local Government C met on 13th September 1993 and recommended to the State Government as follows:

*"(a) The State Government should be impress (sic) upon to appoint a new Emir as soon as possible.*

*(b) That the decision of the king makers be regarded.*

D *(c) That the wishes and inspiration (sic) of the people be given utmost consideration.*

*(d) That a copy of this resolution be personally handed over to his Excellency, the Governor of Niger State, HRH, the Chairman Council of Chiefs Niger State, Honourable Niger State House of Assembly, and Former E President General Ibrahim B. Babangida (Rtd.) GCON."*

Notwithstanding these developments, the Governor took the decision to reject the nominations of the committee of kingmakers and had this conveyed, as stated earlier in this judgment, by the Secretary to the State Government in a letter dated 17th September to the Secretary of the Suleja F Emirate Council. Following his decision, the Governor issued an order purportedly under Section 4(2) of Chiefs (Appointment and Deposition) Law of Niger State and entitled. "The Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order, 1993" NSLN No. 2 of 1993 (Exhibit 7) to take effect from 16th September 1993. Paragraph 3(1) thereof G provides for the composition of an electoral college to appoint a new Emir of Suleja and consisting of -

*"(a) Galadima Zazzau Suleja (b) Sarkin Yaki Zazzau Suleja (c) Tafida Zazzau Sulcja (d) Santali Zazzau Suleja (e) Salanke (f) Liman Juma'a; and (g) Magajin Mallam"*

H By Sub-paragraph (2) of paragraph 3 the last three have no voting right but "shall maintain and discharge their traditional functions," whatever that phrase may mean.

Three members of the new electoral college (A.A. Sadauki, Santali Zazzau Suleja, Muhammed G. Kwali, Tafida Zazzau Suleja and Umar Abdulkadir

Sarkin Yakin Zazzau Suleja) met on 22nd September 1993 (see Exhibit 11). The Chairmen of the Suleja and Guarara Local Governments were in attendance as observers. Two officers of the State Government were also at the meeting as Secretary and supervisor respectively. The electoral college nominated, in order of preference, Alhaji Muhammad Awwal Ibrahim, Alhaji Muhammad Rabi'u Ishaq, Alhaji Muhammad Bashir Suleiman Barau B and Alhaji Muhammad Inuwa Ishaq. These names were forwarded to the Governor who appointed Alhaji Muhammad Awwal Ibrahim as the Emir of Suleja in succession to the late Alhaji Ibrahim Dodo Musa.

In consequence, the plaintiffs on 22nd September 1993 instituted the action leading to this appeal claiming the following declarations: C

*“1. A declaration that the purported rejection of the nomination and/or appointment of Bashir Sulaiman Barau as the new Emir of Suleja by the 1st defendant as being against the tradition and custom of the people of Suleja is illegal, ultra vires the 1st defendant unconstitutional and void.*

*2. A declaration that the reconstitution of Suleja Emirate Council D by the 1st defendant is illegal, void and of no effect their (sic) being a validly constituted council of kingmakers in accordance with the tradition and custom of the people of Suleja.*

*3. A declaration that the 4th, 5th and 6th defendants are not traditional kingmakers and therefore not competent to perform the func- E tions of the kingmakers for Suleja Emirate Council.*

*4. A declaration that the 1st, 2nd, 3rd, 4th and 5th plaintiffs are the Kingmakers for Suleja and therefore the only persons allowed by law, the tradition and custom of the people of Suleja to carry out such functions.*

*5. A declaration that Bashir Sulaiman Barau is the validly nomi- F nated successor to the throne of Emir of Suleja.*

*6. A declaration that the purported order of the 1st defendant as reflected by the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order, 1993 which was given a retroactive effect is uncon- G stitutional, illegal, null and void.”*

They joined, as defendants, the Governor of Niger State, the Attorney-General of the State, Nuhu Galadima (Chairman, Suleja Local Government), Alhaji Abubakar Sadauki Santali, Muhammadu Guniya Sarkin Yaki, Ibrahim Adamu Tafida (that is, the three members of the electoral college that met and made nominations to the Governor) and H Alhaji Awwal Ibrahim Mohammed (the newly appointed Emir).

Following the nomination of the 7th defendant as the new Emir, the plaintiffs amended their writ of summons to include a 7th claim, that is to say:

*“7. A declaration that the purported nomination of the 7th defen-*

*dant as the Emir of Suleja by the 4th, 5th and 6th defendants and the subsequent approval by the 1st defendant is ultra-vires, illegal, null and void and contrary to the established tradition."*

Mention may here be made of another development in the whole scenario. During the pendency of the action a Law entitled "The Chiefs B (Appointment and Deposition) Law (Amendment) Law, 1993" was published in the Niger State Gazette No.3 Volume 18 of 25th November 1993 as Niger State Legal Notice No. 3 of 1993. I shall say more on this Law in the course of this judgment.

Pleadings were filed and exchanged and the action proceeded to C trial. At the conclusion of trial and after addresses by learned counsel for the parties the learned trial Judge (Oyewo J.) found in favour of the plaintiffs and entered judgment as follows:

*"On the whole, I am satisfied that the plaintiffs have proved their case on the balance of probability and I make the following declarations:*

D *(1) that the reconstitution of Suleja Emirate Council by the 1st defendant is illegal, void and of no effect, there being a validly constituted council of Kingmakers in accordance with the tradition and custom of the people of Suleja.*

E *(2) That the 4th, 5th and 6th defendants are not traditional kingmakers and therefore not competent to perform the function of the kingmakers for Suleja Emirate Council.*

*(3) That Bashir Sulaiman Barau is the validly nominated successor to the throne of Emir of Suleja.*

F *(4) That the purported Order of the first defendant as reflected by the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order, 1993 which was given a retroactive effect is illegal, null and void.*

G *(5) That the purported nomination of the 7th defendant as the Emir of Suleja by the 4th, 5th and 6th defendants and the subsequent approval by the 1st defendant is ultra vires, illegal, null and void and contrary to the established tradition.*

*I do not intend to make other declarations sought for in the plaintiffs' statement of claim as the above declarations I make above have taken care of the remaining declarations prayed for in the above pleading.*

H *At the close of evidence of the 1st plaintiff during examination in chief, he prayed the court to make the government of Niger State to immediately appoint Mohammed Bashir Suleiman as the Emir of Suleja.'*

*Since I have declared that Bashir Suleiman Barau is the validly nominated successor to the throne of Emir of Suleja, I hereby direct the Niger State Government to appoint him as the Emir of Suleja, immedi-*

ately.”

He found as follows:

1. *“In view of the circumstance, I am of the opinion that the only remaining kingmaker, that is P.W.6 can sit with one or more of the chief mallams and/or Kuyambana and select a new Emir. I am reinforced in this opinion of mine by what happened during the selection of late Emir; Alhaji B Ibrahim Dodo Musa.....*

2. *“In view of the foregoing, I hold that the body comprising of Galadima and the three mallams are properly constituted for the exercise of selecting a new Emir of Suleja after the death of Alhaji Ibrahim Dodo Musa.....*

3. *I am satisfied that the four kingmakers have properly and duly C selected Alhaji Muhammadu Bashir as the Emir of Zazzau, Suleja. ....*

4. *Since the office of the Emir of Suleja has origin, I hold that the Governor can not properly exercise any power under section 4(2) of Chiefs (Appointment and Deposition) Law of Niger State, in respect of Suleja Emirate.*

5. *I hold that the applicable law is section 3 which is in respect of appointment of chiefs in accordance with the native law and custom.....*

6. *Since section 4 of Chiefs (Appointment and Deposition) Law of Niger State is not applicable Exhibit 7 upon which N.S.L.N., No.2 is built can not stand. I accordingly declare Exhibit 7 otherwise known as Appoint- E ment and Deposition of Chiefs (Appointment of Emir of Suleja) Order, 1993 illegal, and therefore null and void .....*

7. *The nomination and installation of the 7th defendant as Emir of Zazzau, Suleja that derives its source of authority from Exhibit 7 will also be declared illegal, null and void since Exhibit 7 has been so declared; and F I so declare.....*

8. *In view of the testimonies of P.W.6 and D.W. 4 and the contests (sic) of Exhibits 6 at page 6, I hold that the 7th defendant is eligible like any other Royal family member of Kwakwa Ruling House to contest for the stool of Emir of Zazzau, Suleja. However a person to be made an Emir will G be a person nominated as such by the traditional kingmakers.”*

The defendants were dissatisfied and appealed to the Court of Appeal.

The issues before the Court of Appeal are as follows:

*“(1) Whether the learned trial Judge was not in error when he held H that the nomination and subsequent approval of the appellant as the Emir of Suleja were ultra vires, illegal, null and void, because they were done by virtue of the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order, NSLN No.2 of 1993 which in itself was illegal, null and*

void.

(2) *Whether the learned trial Judge was not in error by giving the direction that the Niger State Government should appoint the 4th plaintiff as Emir of Suleja immediately.*”

That Court unanimously allowed the appeal on Issue (2) but, by a B split decision, dismissed it on Issue (1). Mahmud Mohammed, J.C.A. in his judgment summed up the decision of the majority (with which Opene, J.C.A. agreed) in these words:

“In sum, this appeal succeeds in part. The appeal against the order of the learned trial Judge directing the Niger State Government to C appoint the 4th plaintiff/respondent is allowed. That order is accordingly **HEREBY SET ASIDE**. However, the appeal as it affects the judgment and findings of the learned trial Judge that the nomination and subsequent approval of the appointment of the 1st appellant, Alhaji Awwal Ibrahim as the Emir of Suleja were ultra vires, illegal, null and void, because they were D done by virtue of the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order NSLN No.2 of 1993 which in itself was illegal, null and void, **SHALL BE AND IS HEREBY DISMISSED.**”

Abdullahi J.C.A., who dissented, allowed the appeal in its entirety and set aside the judgment of the trial High Court.

E The 7th defendant was naturally unhappy with this outcome; but the other defendants appeared content. As it turned out, only the 7th defendant has further appealed to this Court upon the following 4 grounds of appeal which read:

“(1) *The Court below (Mohammed and Opene JJ.C.A.) erred in F law in failing to confine itself to the issues raised and argued by the parties during the hearing of the appeal and also failed to give all parties the opportunity of being heard on the said issues raised by it thereby occasioning a miscarriage of justice.*

#### **PARTICULARS OF ERROR**

G (a) *The various serious and substantial issues raised by the Court below in its judgments in respect of the 1993 Amendment Law produced to it on the day of hearing of the appeal which it held was a piece of document bearing the title of law.*

H (b) *The said issues raised affect the jurisdiction and competence of the Court below.*

(c) *The said issues were not raised in the Court of trial neither did they form the basis of the judgment of the Court of trial.*

(d) *The Court of trial did not make any pronouncement on the said issues raised by the Court below in its judgment.*

(e) *The said issues raised were not argued in the Court of trial and in the Court below.*

(2) *The Court below (Mohammed and Opene JJ.C.A.) erred in law by holding that the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order 1993 is illegal, null and void and thereby came to a wrong decision.*

B

**PARTICULARS OF ERROR**

(a) *The learned trial Judge held that:*

*'Since section 4 of Chiefs (Appointment and Deposition) Law of Niger State is not applicable, Exhibit 7 upon which NSLN No.2 is built cannot stand. I accordingly declare Exhibit 7 otherwise known as Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order 1993 is illegal and therefore null and void.'*

(b) *The learned trial Judge came to his conclusion on the sole ground that the Order was purported to have been made by the Governor of Niger State under section 4(2) of the Chiefs (Appointment and Deposition) Law of Niger State, 1993.*

(c) *The learned trial Judge failed to consider that the Order says that the Governor was acting not only under section 4 but also under 'all other powers enabling him in that behalf'.*

(d) *Section 5(2) of the 1979 Constitution vests executive powers of the State in the Governor and such powers in law include the power to see to it that peace and order reign within the state.*

(e) *Elaborate provisions made under Section 3 of the Law include the provision that when no appointment is made within a reasonable period, the Governor himself may appoint somebody and consequently the setting of a machinery to enable him to appoint a proper person as Emir is proper and legal in the circumstances.*

(f) *There is a misunderstanding of the matters stated above on the part of the lower Court.*

(3) *The Court below (Mohammed and Opene JJ.C.A.) erred in law in failing to consider all the issues properly raised and heard before it and to give them a dispassionate consideration, and its judgment does not reflect that this had been done as required by law thereby occasioning a miscarriage of justice.*

**PARTICULARS OF ERROR**

H

(a) *The submissions on the cannon of construction.*

(b) *The issue of Exhibit 7 for the purpose of setting up the necessary machinery to enable the Executive Governor of the state to appoint a fit and proper person as Emir.*

(c) *The issue that native law and custom could legally be altered or abrogated by statute.*

(d) *The inferences to be drawn from findings of facts by trial Courts when such findings are based on facts not pleaded.*

(e) *The failure of the learned trial Judge to consider the 1993 Amendment law solely on the ground that counsel for the 1st appellant did not produce it when he was not so requested and when the learned trial Judge ruled that he did not want oral addresses from counsel at the conclusion of the trial of the case but instead ordered written addresses to be submitted. Further the 1993 Law was pleaded by the appellant at page 280 of the record and the parties and the Court of trial were given adequate notice thereof.*

(f) *The learned trial Judge held that:-*

*'Since the office of the Emir of Suleja has origin, I hold that the Governor cannot properly exercise any power under Section 4(2) of the Chiefs (Appointment and Deposition) Law of Niger State in respect of Suleja Emirate.*

*I hold that the applicable law is Section 3 which is in respect of appointment of Chiefs in accordance with native law and custom'*

*It was submitted that the learned trial Judge was wrong to hold that the Order is illegal, null and void having regard to the phrase 'all other powers enabling him in that behalf' and that the Court below was wrong in not allowing the appeal on this ground when there was no cross-appeal before it.*

(4) *The Court below (Mohammed and Opene JJ.C.A.) erred in law in misunderstanding the duty of the Appeal Court as laid down in Oroke v. Ede (1964) NNLR 118 and thereby came to an erroneous decision.*

#### **PARTICULARS OF ERROR**

(a) *The duty of the Appeal Court is to see if any error has been made in the trial.*

(b) *It is not the duty of the Appeal Court to try cases.*

(c) *Cases are tried in the Courts of first instance where the parties are required to make out their cases.*

(d) *Parties are not allowed to make new cases in the Appeal Court.*

(e) *The Appeal Court does not make out cases for the parties but limits itself to the cases presented by the parties.*

(f) *The Court below made a new case for the respondents."*

Pursuant to the rules of this Court, written Briefs of argument were filed and exchanged by the 7th defendant as appellant (and shall hereinafter be so referred), 1st-4th plaintiffs as plaintiffs/respondents and 1st-3rd

defendants as 5th-7th respondents. No brief was filed on behalf of the 4th-6th defendants but at the hearing, Mr. A Bello learned Director of Public Prosecutions of Niger State appeared for all the defendants/respondents. The Brief filed on behalf of the 1st-3rd defendants can hardly, however, be described as a Brief. All that is contained therein reads:

*“Though the 5th-7th respondents are satisfied with the judgment of the Court of Appeal, Kaduna, we hereby adopt in its entirety the brief of argument of chief A. T. Ajala SAN, counsel to 1st-4th respondents. We urge the Supreme Court of Nigeria to dismiss in its entirety the appellant’s appeal for lack of merit and affirm the decision of the court below accordingly.”*

The above reflects the attitude of all the defendants/respondents to this appeal.

In the appellant’s brief the following questions are set out as calling for determination in this appeal, that is to say:

*“1. Whether the majority of the Court below were right when they upheld the trial Court’s decision that the Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993, NSLN 3 of 1993 was illegal, null and void.*

*2. Whether the Court below is not in error when by a majority it held that the trial Court was right in holding that the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order NSLN No.2 of 1993 was illegal, null and void.*

*3. Whether the Court below was not in error in not ordering the dismissal in the entirety of all the claims made by the 1st to 4th respondents in the High Court in so far as they affect the rights of or relate to the appellant.”*

The plaintiffs/respondents adopted these questions in their brief.

Validity of Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993 NSLN 3 of 1993.

It is not entirely correct, as postulated in Question (1), to say that the trial court decided that the Chiefs (Appointment and Deposition) Law (Amendment) Law 1993 of Niger State (hereinafter is referred to simply as NSLN No.3 of 1993) “was illegal, null and void.” The true position is that, although reference was made to the Law at the trial by learned counsel for the appellant, the learned trial Judge did not anywhere in his judgment consider it nor make any findings on it. This is all he said concerning the Law in his judgment:

*“Mr Sodangi - Counsel to 7th defendant also referred to amended*

*Chief (Appointment and Deposition) Law 1993 but has not produced the law."*

Be that as it may, however, Mahmud Mohammed, J.C.A. made the following comments on the law. After setting it out in-extenso, the learned Justice of Appeal observed:

B *"It is quite clear from the 1st, 2nd and 3rd schedules to the said law as published in the Gazette that the date the law was assented to by the Governor is not stated. The name of the Governor who assented to the said law is not there either. More serious perhaps is the absence of the name of the Clerk to the then Niger State House of Assembly in the column*  
C *provided in the said law certifying that the same had been duly passed by the House of Assembly in accordance with the Constitution."*

He then found:

*"Therefore on the face of the said law, having regard to the absence of the name of the Governor signifying his assent to the Bill to become law and the*  
D *date of such signification, coupled with the absence of the name of the Clerk to the Niger State House of Assembly certifying that the law was duly passed by the Niger State House of Assembly, the said law published as Legal Notice No.3 of 1993 cannot be regarded as law enacted by the House of Assembly within the meaning of S.277(1) OF THE 1979 CONSTITUTION. This not being law, the*  
E *publication cannot confer power on the 2nd appellant to issue the Order Exhibit 7 under which the 1st appellant was appointed."*

The learned Justice of Appeal did not stop here; he observed further as follows:

I wish to observe at this stage that even if the said law had been duly  
F passed in accordance with the Constitution the purported amendment to the then existing provision of the 1963 Chiefs (Appointment and Deposition) Law would still not have been achieved. This is because the word ings of S.2 of the said Amendment Law which is the enacting clause which reads-

G *'2. The Chiefs (Appointment and Deposition) Law (hereinafter referred to as 'The Principal Law') is amended by the insertion of the following subsections:-*

*had not in fact amended any section of the 1963 Chiefs (Appointment and Deposition) Law of Niger State. The mere insertions of subsections without*  
H *specifying the sections under which the subsections were to be inserted has rendered the proposed amendment incomprehensible particularly when it was only one subsection (1) (A) that was inserted while the other two were mere paragraphs and not subsections. Further more S.3 of the said Amendment Law has no status in the law as the enacting clause had not intro-*

duced it as a new section of the law to be amended. The result of course is obvious. The 1963 Chiefs (Appointment and Deposition) Law of Niger State remained intact and ISO DECLEARÉ. In effect what was published as Legal Notice No.3 of 1993 by the Niger State Government Printer in the State Gazette No.3 Volume 18 of 25th November 1993 is not law but a mere piece of document bearing the title of law and the Government Printer himself was fully aware of this fact by refusing to give the document the status of law it does not deserve.

Opene, J.C.A. made observations not too dissimilar to Mohammed J.C.A. 's. Both of them declared the Law as not validly made. Abdullahi, J .C.A. in his minority judgment, made no finding on it. He observed: C

*"The same problem would appear to arise with regard to the submission of the learned senior counsel for respondents in relation to the applicability of the Chief's (Appointment and Deposition) (Amendment) Law, 1993. It is clear that the learned Senior counsel regarded and treated the Amendment Law, 1993 as a Bill, which had not enjoyed the legislative D trappings of the Niger State House of Assembly even though the Law was shown to have been published in the Niger State of Nigeria Gazette No.3, Vol. 18 of 25th November, 1993 as N.S.L.N. No.3 of 1993. The learned trial Judge also did not consider it at all, and made no finding on it. He merely stated in his judgment at page 147 lines 23-25 as follows: E*

*'Mr. Sodangi counsel to 7th defendant also referred to amended Chief (Appointment and Deposition Law 1993) but has not produced the law.*

*It is clear that the whole thing was left hanging on the air and I shall leave it there as well."* F

At the oral hearing of the appeal before us, we ordered the Niger State Chief Judge, the Niger State Grand Khadi and Alhaji Ndagi Musa Ladan, former clerk of the House of Assembly of Niger State, to produce copies of the Law and other relating documents in their possession. At the resumed sitting of the Court the documents requested were produced and, G with the consent of all counsel for the parties, were admitted in evidence and marked Exhibits SC1 - SC11. These new pieces of evidence, which were not made available at the trial notwithstanding that the plaintiffs subpoenaed the Secretary to the Niger State Government to produce the documents but the latter failed to appear and did not produce them, nor at H the Court below, prove conclusively that the NSNL No.3 of 1993 was duly passed into law as provided for in Section 12 of the State Government (Basic Constitutional and Transitional Provisions) Decree, 1991, Decree No. 50 of 1991 under which State Administrations were then set up. The

Law is therefore valid. And to that extent I hold that the judgment of the Court below is erroneous. The other reason given by Mohammed J.C.A. for declaring it invalid is, with utmost respect, incomprehensible and therefore, untenable. I notice that both in their Briefs and oral addresses, learned counsel made reference to sections of the 1979 Constitution. This, of course, is erroneous as the relevant sections of the Constitution were then not in force but Decree No. 50 of 1991.

Validity of the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order 1993. NSLN No.2 of 1993.

This Order was tendered at the trial as Exhibit 7 and shall hereinafter be referred to simply as Exhibit 7. As stated earlier in this judgment, following his rejection of the recommendation of the committee of kingmakers, the 1st defendant, on 20th September 1993, made Exhibit 7 to take effect from 16th September 1993 wherein he set up an electoral college for the nomination of the Emir of Suleja. As the validity of this order is crucial to the conclusion I finally reach in this appeal, I will set it out in extenso. It reads:

*"N.S.L.N. No.2 of 1993.*

*CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA,  
STATE GOVERNMENT (BASIC CONSTITUTIONAL AND TRANSI-*  
E *TIONAL PROVISION) DECREE, 1991*

*CHIEFS (APPOINTMENT AND DEPOSITION) LAW CAP 20  
LAWS OF NIGER STATE, 1993*

*THE APPOINTMENT AND DEPOSITION OF CHIEFS (APPOINT-*  
MENT OF EMIR OF SULEJA) ORDER 1993

F *CHIEFS (APPOINTMENT AND DEPOSITION) LAW OF NIGER STATE  
1993.*

*Date of Commencement, 16th September, 1993.*

*In exercise of the powers conferred by section 4(2) of the Chiefs  
(Appointment and Deposition) Law of Niger State and all other powers*  
G *enabling me in that behalf, I, Dr Musa Muhammad Inuwa, the Executive  
Governor of Niger State of Nigeria, make the following order:-*

*1. This order may be cited as the Appointment and Deposition of  
Chiefs (Appointment Emir of Suleja) Order, 1993 and shall come into op-*  
eration on 16th September, 1993.

H *2. In this order unless the context otherwise requires:*

*"State" means Niger State;*

*"Governor" means the Executive Governor of Niger State;*

*"Council of Chiefs" means the State Council of Chiefs;*

*"Electoral College" means the Electoral College referred to in sec-*

tion 3.

3(1) Upon the death, resignation or deposition Emir of Suleja the successor of the Emir shall be selected by an Electoral College consisting of the following: (a) Galadima Zazzau Suleja (b) Sarkin Yaki Zazzau Suleja (c) Tafida Zazzau Suleja (d) Santali Zazzau Suleja (e) Salanke (f) Liman Juma'a and (g) Magajin Mallam

B

(2) The holders of the title of Salanke, Liman Juma'a and Magajin Mallam who are members the Electoral College shall not be entitled to vote but shall maintain and discharge their traditional functions.

4. The Chairmen of Suleja Local Government Council and Gurara Local Government Council shall be present at the election of Emir of Suleja, as observers.

5. Where any title holder mentioned in Section 3(1) is also a prince or indicates his interest to contest for Emiratehip of Suleja, such title holder shall cease to be a member of the electoral college.

6. The Chairman of the Electoral College Chairman Electoral College from among themselves

D

7(1) On the death, resignation or deposition of Meeting Emir of Suleja, the Chairman of Suleja Local Government Council shall after one calendar month summon a meeting of the College.

(2) All members Electoral College shall be notified in writing and be given not more than two days notice of the meeting summons in accordance with subsection (1).

(3) Three members of the Electoral College with voting powers, shall constitute a quorum for any meeting of the Electoral College.

- Eligibility to contest

F

8. A person who is entitled under native law and custom and who is an adult son of royal origin from the Ruling House of Suleja, other than the ruling house which the last Emir of Suleja is a member, shall be eligible to contest for the Emirship of Suleja.

9(1) Where there is a meeting of the Electoral College, not more than five (5) persons from the list of the contestants shall appear before them.

(2) If five persons are nominated in accordance with subsection (1), the Chairman of the Electoral College shall conduct an election at which the members of the Electoral College shall vote and three (3) of the candidates for whom the most votes have been cast shall be the person elected by Electoral College.

H

10(1) The Electoral College shall through its Chairman, notify the Governor of the result of the election within three (3) days of the conclusion of the election.

(2) *The Governor shall appoint one person as Emir of Suleja from the list of candidates submitted to him under subsection (1).*

11. *A person appointed by the Governor shall be the person chosen as the Emir of Suleja.*

12. *Any order or Instrument made under the Chief (Appointment and Deposition) Law Cap 20 Laws of Niger State 1963 in respect of the appointment of the Emir of Suleja which is inconsistent with this order is hereby repealed.*

*MADE AT MINNA this 20th September, 1993.*

*DR. MUSA MUHAMMAD INUWA*

C *The Executive Governor  
Niger State of Nigeria”*

Section 4 of the Chiefs (Appointment and Deposition) Law, Cap 19 Laws of Niger State 1989 under which Exhibit 7 was purportedly made, provides:-

D *“4. (1) The provisions of section 3 shall not apply to the office of a chief or head chief which -*

*(a) has not originated from customary law but has been created by legislation or administrative act of a competent authority;*

*(b) is recognized as such by the Governor;*

E *but the provisions of sub-section (2) and (3) of this section shall apply thereto.*

*(2) Upon the death, resignation or deposition of any chief or head chief of a kind described in subsection (1) the Governor may approve as the successor of such chief or head chief, as the case may be, any person appointed in that behalf by those entitled to appoint in accordance with the provisions of any order made by the Governor prescribing the method of appointment of such a chief or head chief; and if no appointment is made before the expiration of any interval prescribed in any such order the Governor may himself appoint such person as he may deem fit and proper to carry out such duties incidental to the chieftaincy as it may be necessary to perform.*

H *(3) In the case of any dispute the Governor, after due inquiry and consultation with the persons concerned in the selection, shall be the sole Judge as to whether any appointment of any chief or head chief has been in accordance with any such order.”*

It is abundantly clear, and this is not disputed by any party to these proceedings, that the Emir of Suleja title is not a creation of any statute or administrative act of any competent authority but has its origin in the customary law of Suleja. That being so, the Governor would have no power to

make an order as in Exhibit 7 pursuant to sub-section (2) of section 4. The parties were agreed on this in the Court below. One can, therefore, not fault the decisions of the two Courts below in this respect.

But the Governor, in making Exhibit 7 also, purported to have made it in exercise of:

*“all other powers enabling me in that behalf”*

B

I shall, therefore, consider section 3(1) of the Law which provides -

*“3(1) Upon the death, resignation or deposition of any Chief or of any head chief other than a chief of a kind referred to in section 4, the Governor may appoint as the successor of such chief or head chief any person appointed in that behalf by those entitled by customary law so to appoint in accordance with customary law; and if no appointment is made before the expiration of such interval as is usual under customary law, the governor may himself appoint such person as he may deem fit and proper to carry out such duties incidental to the chieftaincy as it may be necessary to perform.”*

D

Again, it is crystal clear, and this also is not being disputed by the parties in their respective submissions, that the Governor could not have validly made Exhibit 7 under section 3(1) which only required him to appoint anyone appointed by those entitled by customary law so to do, or in default of an appointment being made by such people within a given interval, he the Governor, to make such appointment Exhibit 7 was not for such a purpose as is envisaged in the Law. The result is that Exhibit 7 even under section 3(1) is invalid. To this extent, also, I agree with the Court below in the view it (majority) held on the validity of Exhibit 7. As our attention has not been drawn to any other law empowering the Governor to make Exhibit 7, I have come to the conclusion that at the time he made Exhibit 7 he had no power to make it Exhibit 7 was therefore invalid. I must, with profound respect, say that I cannot subscribe to the view of His Lordship, Abdullahi, J.C.A. that-

*“.....Exhibit 7, the Appointment and Deposition of Chief (Appointment of Emir of Suleja) Order, 1993 is a VALID ORDER UNDER S.3 OF THE CHIEFS (APPOINTMENT AND DEPOSITION) LAW CAP 20, 1963 LAWS OF NORTHERN NIGERIA applicable to Niger State.”*

In so far as he held Exhibit 7 valid under the law existing at the time the order was made, he was in error.

H

This, however, is not the end of the matter. It was canvassed both in the Court below and in this Court that section 3 of NSLN No.3 of 1993 has validated Exhibit 7. Their Lordships of the Court below (Mohammed and Opene JJ.C.A.), having held that NSLN No.3 of 1993 was invalid,

also held that Exhibit 7, a fortiori, was not validated by it. As Mohammed J.C.A. put it.

*"The result of this conclusion is of course plain. The purported Chiefs (Appointment and Deposition) (Amendment) Law 1993 not being a law passed by the Niger State House of Assembly within the meaning of S. 277(1) OF THE 1979 CONSTITUTION could not have conferred any valid power on the 2nd appellant as the Executive Governor of Niger State to promulgate the Order Exhibit 7."*

The appellant, in his brief, has submitted as hereunder:

*"If this Honourable Court holds that the Amendment Law was validly made, as we have submitted, then whether the Order, NSLN No.2 of 1993, was properly made under section 3(1) or section 4(2) of the original Law would be of no importance. For its existence would have been covered by virtue of the combined effect of sections 2 and 3 of the Amendment Law. It is, of course, conceded that the Order was made before the Amendment Law was signed into Law but in our submission, there can be nothing wrong in the enacting of a remedial statute to be retroactive to cover purely administrative acts earlier carried out. Further, it is respectfully submitted that it is not the function of a Court, in the circumstances such as in this case, to declare null and void enacted legislation of the type concerned in this case."*

*The date of commencement of a statute may be, and in many cases is, different from the date of the effective application of all or some of its provisions to the conduct of persons coming under its provisions. In deed, the date of commencement of a statute is usually the date it is signed into law unless the statute itself contains provisions carrying different intentions of the Legislature. See Ebiriukwu v. Ohanyereuwa (1959)4 FSC212; (1959)SCNLR 540. It is once again submitted that save in provisions relating to criminal sections there is nothing in our law which bars a Legislature from making the provisions in a statute to govern past or future conduct."*

*With particular reference to retrospectivity of statutes, Scarman, L.J. said in Carson v. Carson (1964) 1 All E.R. 681 at page 686 G-H that:- 'the rule against retrospective effect of statutes is not a rigid or inflexible rule but is one to be applied always in the light of the language of the statute and the subject-matter with which the statute is dealing.'*

*It is necessary to make reference to what Karibi-Whyte, J.S.C. said in Dennis Osadebay v. The Attorney-General of Bendel State (1991) 1 NWLR (Pt. 169) 525 at 568 thus:-*

*'The rationale for an enabling or parent legislation is to give validity to the subsidiary legislation. The general principle of retrospectivity is to*

*enable the legislation take into account matters which had happened before it came into existence and with which it is intended to deal. Hence, where the language of the enactment is not ambiguous and the dominant intention(s) so demand, the retrospective effect must be given to them.'*

*In this case, although the Order was made to take effect on September 16, 1993, the law which was made with effect from October, 26, 1993, gave cover in its section 3 to all acts done or performed under section 3 of the Principal Law before it came into effect as in the Osadebay case. It is for all above reasons that the Order NSLN No.2 of 1993 was lawfully made by the State Governor and therefore valid and of full effect."*

In his oral submission Mr. Sofola, SAN, learned leading counsel for the appellant referred to section 3 of 1993 and observed that it was a validation legislation that had taken care of Exhibit 7.

The sum total of the submissions of Chief Ajala, for the plaintiffs/respondents is that Exhibit 7 was not validated by NSLN No.3 of 1993.

Before I go on I need set out NSLN No.3 of 1993. It provides: D

*"1. This Law may be cited as the Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993 and shall come into operation on 22nd day of October, 1993.*

*2. The Chiefs (Appointment and Deposition) Law (hereinafter referred to as "the Principal Law") is amended by the insertion of the following subsection:-*

*"3(1)(A) Notwithstanding any law or custom to the contrary, where in the opinion of the Governor, a person who is entitled under native law and custom to appoint a Chief or head Chief suffers a disability of a kind that disentitled him under native law and custom to appoint a Chief or Head Chief, the Governor may by order -*

*(i) appoint another person to act in place of that person or*

*(ii) prescribe the method of appointment of such Chief or Head Chief."*

*3. Every act or thing done by the Governor before the commencement of this Law that would have been lawful if section 2 of this law had been in force at the time when it was done and all acts which are the consequence of that act are hereby validated and declared to have been lawfully done."*

(Underlining mine)

The principles of interpretation of statutes are well known and I need not go into a treatise on that. Suffice it to say for our present purpose that it is settled that (1) where the wording of a statute is found to be clear and unambiguous it is neither necessary nor permissible to look further; Nabhan

H

v. Nabhan (1967) 1 All NLR 47, 54; and (2) the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares either expressly or by clear implication. This court in Adeshina v. Lemonu (1965) 1 All NLR 233; 248-249 approved the following statement in Maxwell on the Interpretation of Statutes (10th ed) p. 81:

B *“One of these presumptions is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed. It is in the last degree*  
 C *improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness, and to give any such effect to general words, simply because they have a meaning that would lead thereto when used in either their widest, their usual, or their natural sense, would be to*  
 D *give them a meaning other than that which was actually intended. General words and phrases, therefore, however wide and comprehensive they may be in their literal sense, must, usually, be construed as being limited to the actual objects of the Act. It would be ‘perfectly monstrous’ to construe the general words of the Act so as to alter the previous policy of the law. In*  
 E *construing the words of an Act of Parliament we are justified in assuming the legislature did not intend to go against the ordinary rules of law, unless the language they have used obliges the court to come to the conclusion that they did so intend.”*

The objective and reasons for the NSLN No.3 of 1993 are set out  
 F in the Gazette legal notice by which the Law was published. While it is true that in the interpretation of a statute the Court has to bear in mind the objects which such provisions were intended to serve (see Bronik Motors v. WEMA Bank (1983) 1 SCNLR 296, 321), they cannot be used to control the language used in the statute - Uwaifo v. Attorney-General of Bendel  
 G State (1982) 7 SC 124.

Section 3 seeks to validate anything done by the Governor prior to the coming into effect of the Law provided such an act would have been lawfully done if section 2 of the Law had been in force at the time it was done. For the purpose of the present proceedings the act here concerned is  
 H the issuance, by the Governor, of Exhibit 7. The question that therefore arises is: Could the Governor have validly issued Exhibit 7 if at the time he did, Section 2 NSLN No.3 of 1993 was in force? The answer would only be in the affirmative if it could be shown that any person who was entitled under native law and custom to appoint the Emir of Suleja suffered “a

disability of a kind that disentitled him under the said native law and custom” to make the appointment. Exhibit 7 is a subsidiary legislation. There is, however, nothing in it to inform of the reason for its issuance. It is to the evidence and the findings, if any, of the learned trial Judge that we must now fall upon to resolve the issue that has now arisen for consideration.

For the plaintiffs, P.W.3, Aliu Tahir Kontagora and 1st plaintiff B (P.W.6) Alhaji Shuaibu Barde, Galadima of Suleja gave evidence of customary law. For the defence, 6th defendant (D.W.1) Alhaji Ibrahim Adamu, Tafida of Suleja, D.W.3 Alhaji Shuaibu Liman and D.W.2, Alhaji Shuaibu Naibi Madawaki of Suleja testified on the customary law of Suleja as to the persons entitled under customary law of the community, to appoint the C Emir.

P.W.3 was at the relevant time an official in the Governor’s office, Minna. He was the Director Local Government Council and Chieftaincy Affairs. He supervised the first exercise by the committee of kingmakers for the appointment of the Emir. On his admission, he is not an indigene of D Suleja and he is “not vast” in Suleja customary law. He only repeated what 1st plaintiff told him in the course of his official duty. I can find nothing useful in his evidence.

1st Plaintiff (p.W.6) testified thus:

*“In Suleja Emirate Council, there are two ruling houses* E

*1. Abu Jatau ruling house*

*2. Abu Kwaka ruling House.”*

He gave his functions as -

*“1. Member of the traditional council*

*2. Senior kingmaker, of Suleja Emirate.”* F

He continued:

*“I performed the above role during the lifetime of the late Emir, Alhaji Dodo Musa. I was the Chairman of the kingmakers during the selection of Alhaji Ibrahim Dodo Musa as the Emir of Suleja in 1979.”*

He narrated the part he played in the appointment of the 4th G plaintiff as the Emir. On the relevant customary law he deposed:

*“The traditional method of selection of an Emir of Zazzau Suleja formally Abuja is divided into two.*

*1. The Emir himself, before his death would name his successor, which the kingmakers automatically complies with. In the absence of this, H the kingmakers have to sit and select a suitable candidate from the Ruling House whose turn it is to produce the new Emir.”*

On who is entitled to be considered for appointment, he said:

*“Though it is not written, it is a known fact that any man who*

*belongs to the royal family is eligible to contest but not necessarily eligible for consideration by the kingmaker. Consideration is always given first to those whose father was an Emir. If there is not any suitable candidate among them, then the Emir's brothers' children are considered."*

Cross-examined, the Galadima testified:

B *"Since 1960, traditionally there are seven kingmakers.*

*THEY ARE:-*

*(1) Madaki (2) Galadima (3) Wambai (4) Dallatu (5) Liman (6) Salanke and (7) Magajin Mallam.*

*The Madaki of Suleja is a royal body. Today the Madaki of Suleja is Alhaji Shuaibi Naibi. I cannot remember when Alhaji Shuaibi Naibi was appointed Madaki of Suleja, but was appointed much earlier than I was appointed. Galadima Suleja Alhaji Aliyu Bissalla is the Wambai of Suleja today.*

D *Alhaji Awwal Ibrahim was the Dallatu of Suleja up till the time of death of Alhaji Dodo Musa.*

*They are part of the people I regard as kingmakers.*

*As at 5th July, 1993 when Alhaji Dodo Musa died, both Alhaji Awwal Ibrahim and Aliyu Bissalla were occupying their positions of Dallatu and Wambai of Suleja respectively. As at 5th July, 1993 Alhaji Shuaibu Naibi, Alhaji Awwal Ibrahim and Alhaji Aliyu Bissalla were traditional coun-*  
E *cillors but not kingmakers because they themselves were interested in the throne.*

*I now say that what I said is that traditionally there are seven kingmakers. The titles are:-*(1) Madaki (2) Galadima (3) The Wambai  
F (4) The Dallatu (5) The Liman (6) The Salanke and (7) Magajin Mallam, provided that none of them belongs to the royal family.

*As at 1960 there were seven kingmakers but some of them were princes. The princes as at 1960 were: (1) Isiaku Galadima (2) Mallam Bako Wambai (3) Alhaji Hassan Dallatu only Madaki was not a prince.*

G *Princes who occupy the above offices, they do not automatically become kingmakers.*

*Princes who occupy the above posts are referred to as traditional coun-*  
*cillors and not kingmakers because they will never be called upon to*  
*select an Emir.*

H *If the Galadima happens to be a prince, he cannot be called a kingmaker.*

*The kingmakers have great functions. Upon the death of an Emir they immediately begin their homework. One of such work is praying for a suitable candidate to occupy the vacant position. Intelligently applying the*

wishes of the people. And when the government permits them to select an Emir, they gather together and honestly, sincerely select a competent person.

*If some of the traditional councillors are appointed members of the Emirate Council, such persons can combine the two jobs.*

*I still maintain that the holder of the title of Galadima can not be called a kingmaker if he is a prince.*

*The same applies to the holder of the title of Madaki, Wambai and Dallatu."*

(Underlinings are mine)

On what happened in 1979 when the late Emir Alhaji Dodo Musa was elected, the witness deposed:

*"During the exercise for the election to the throne of a new Emir of Suleja in 1979, the Madaki, Dallatu and Wambai did not take part in the election of late Emir Alhaji Dodo Musa, being members of the royal family.*

*There was no change in the composition of the kingmakers at that time but only Galadima and the three mallams conducted the exercise in the presence of the then Secretary to the Local Government.*

*The number of kingmakers was reduced from seven to four during the 1979 exercise.*

*There is no rigidity as to who is to be a kingmaker. Anybody can be appointed to occupy the office of a kingmaker. The person who appoints a kingmaker is the incumbent Emir. There is hierarchy among kingmakers. The Liman Juma'a and Magajin are members of the kingmaking body* .....

*Alhaji Awwal Ibrahim. Alhaji Shuaibu Naibi and Alhaji Aliyu Bissalla were not kingmakers and they are not even now but they are holding titles of kingmakers.*

*A kingmaker who is a member of the royal family can not participate in selection exercise of a new Emir.*

*That is what paragraph 1(1) of Exhibit 9b is saying.*

*Where some kingmakers are members of the royal family and therefore cannot participate, the holder of the title Kuyambana will be invited to participate in the selection of a new Emir provided he, the Kuyambana is not of the royal blood."*

(Underlinings are mine)

Concluding his evidence on customary law, he deposed:

*"The composition of the new body at page 3 of Exhibit 7 is not proper. Sariki Yaki, Tafida and Santali were not appointed kingmakers by the Emir, so they are not supposed to be members of the kingmaking body."*

The sum total of the evidence of this witness, in my respectful view, is that according to customary law of Suleja only holders of the titles of Madaki, Galadima, Wambai, Dallatu, Liman, Salanke and Magajin Mallam who are not members of the royal family that are kingmakers at any given time. Holders of such titles who are princes are not kingmakers but traditional councillors.

The 6th defendant gave evidence as DW 1. He deposed thus:

*"The late Emir Alhaji Dodo Musa appointed me as Tafida Suleja in 1980. As Tafida of Suleja, I am conversant with the procedure for the selection of an Emir in Suleja.*

*In the past those that used to appoint the Emir of Suleja were (1) Madaki (2) Galadima (3) Wambai and (4) Dallatu*

*There are mallams namely:- (1) Liman luma'a (2) Salanke (3) Magajin Mallam*

*After the four people I mentioned above have selected a new Emir, the four people will call upon Magajin Mallam and present a new Emir to him. The Magajin Mallam will turban the new Emir.*

*The Limam Juma'a will then pray. The Salanke will also pray. The Galadima will then take the new Emir on a horse to a palace.*

*The three mallams have no function as regards the selection of a new Emir. That is the position up till today."*

Cross-examined, he testified thus:

*"I do not know how the late Emir, Alhaji Dodo Musa was appointed. I am the 1st Tafida of Suleja.*

*This is the first time a Tafida has participated in the selection of an Emir of Suleja."*

Needless to say that, on his own showing, not much assistance could be derived from his testimony but appears to confirm the list of 7 title holders given by 1st plaintiff.

D.W.3, Alhaji Shuaibu Liman was the Chairman of the Suleja Local Government at the relevant time. It was he who set in motion the exercise for the appointment of a new Emir following the demise of the Emir Alhaji Dodo Musa. He wrote Exhibit 3 to the Governor wherein he said:

*"It is the customary law and custom of the Traditional Institution of Suleja that a Chief be chosen from among the following ruling houses -*

*(a) Abu Jatau ruling house, and  
(b) Abu Kwaka ruling house.*

*The late Alhaji Ibrahim Dodo Musa belonged to Abu Jatau's ruling house. The new Emir should therefore, come from Abu Kwaka's house.*

*The selection of the new Emir is the responsibility of the Tradi-*

*tional kingmakers whose composition is as follows: (1) The Chief Imam (2) The Salanke (3) The Magajin Mallam (4) The Galadima*

*The Administrator or Chairman of the Local Government is to serve as the Secretary*

*In his testimony at the trial he now said:*

*"I received another correspondence from the State Government B rejecting the report. The letter of rejection was as a result of improper manner at which the composition of the kingmakers was made. I was served with a copy of the letter of rejection.*

*Exhibit 9 identified. My reaction was to go further into investigation and details of the most proper structure or constitution of the kingmaking C body which is supposed to be in accordance with customs and laws of Zagi-Zagi of Suleja.*

*The outcome of my investigation reveals to me clearly that having communicated with the State Government that there was a kingmaking body that was vested with the responsibility of choosing a new Emir; the D rejection by the Government enabled me to discover that the membership of traditional kingmakers are seven in number, out of which four were to exercise voting powers while the remaining three who were virtually Ulamas or scholars are to discharge their functions based on their traditional titles especially as spiritual leaders.*

*The first four that have voting powers were (1) The Madawaki (2) The Wambai (3) The Dallatu (4) The Galadima*

*All these four have voting powers in electing a new Emir. While the remaining three are (1) Liman Juma's (2) The Salanke (3) The Magajin Mallam*

*I discover that my earlier communication to the State Govern- F ment on the composition of the kingmaking body which was earlier put at four was in error.*

*After going through the Abuja Chronicle, which is the historical documentation of the origin, custom, norms and values of the people of Abuja, now Suleja, it becomes clear that actually the membership was not G properly constituted.*

*Exhibit 10 identified as Abuja chronicle.*

*Exhibit 3 is the letter I wrote.*

*The composition I gave at paragraph 1 page 2 of Exhibit 3 is a '1 error on my part.'*

*(Underlinings mine)*

*The less said about this witness the better.*

*The most important witness on the custom of the people of Suleja was D.W.4, Alhaji Shuaibu Naibi. I say this because he is the Madaki of*

Suleja and a co-author of the Abuja Chronicle, Exhibit 10, a book that is given much credence on the history and culture of Suleja. He is also the only witness called by the appellant in support of his case. He testified thus:

- "I am member of the emirate Council. I live at Anguwa Dan Zaria,*
- B *Suleja. I know Alhaji Shuaibu Barde, Galadima Suleja ..*  
*He is the Galadima of Suleja and also a member of the Emirate Council, Suleja. He is one of the kingmakers.*  
*I know Alhaji Salanke Idris Maimako. He is the Salanke of Suleja. He has no role to play in the selection of an Emir.*
- C *He is not a member of the kingmakers but an adviser on religious matters. Alhaji Idris Maimako is the second plaintiff. I know Magaji Mallam, he is the 3rd plaintiff. He is not a member of the kingmakers but an adviser on religious matters. Alhaji Idris Maimako is the second plaintiff. I know Magaji Mallam, he is the 3rd plaintiff.*
- D *He is not a member of the Emirate Council. He has no role but if an Emir is chosen, he is to bath him.*  
*I know Alhaji Bashir Suleiman Barau. He is the 4th plaintiff. He is a prince.*  
*I know Alhaji Mohammed Awwal Ibrahim, the 7th defendant He*
- E *is a prince.*  
*I know the Madawaki of Suleja. I am 85 years old. I was turbanned Madawaki Zazzau on 5th May, 1971, that is about 23 years ago.*  
*I am conversant to historical antecedent of Suleja custom. There are four traditional kingmakers in Suleja Emirate. They are,*
- F *(1) Madawaki (2) Galadima (3) Wambai and (4) Dallatu*  
*There is only one kingmaker now because the remaining three kingmakers are princes.*  
*The only one remaining as kingmaker now is Galadima.*  
*The three kingmakers who are now princes are:-*
- G *(1) Madawaki (2) Wambai and (3) Dallatu.*  
*In the situation where you have princes as kingmakers, what is normally done is they look into the Emirate Council for those who are not princes and join them with the Galadima.*  
*Alternatively, they look for title holders called Rawani and joined*
- H *them with Galadima.*  
*As at the time when Emir Musa Angulu died in 1994 (sic), there were princes among the kingmakers.*  
*At that time Madawaki was not a prince. Two persons were chosen from the Emirate Council.*

*They were Sarking Yaki and Aikali. At that time Alkali was under Native Authority. Those two people, that is Sarkin Yamma and Alkali were joined with Madawaki and they constitute the body of kingmakers that chose the late Suleiman Barau as the Emir.*

*During the selection of late Alhaji Ibrahim Dodo Musa. Those who took part in the selection of the Emir were. '- (1) Galadima (2) The Salanke B (3) Imam and (4) Magajin Mallam*

*The participation of Salanke Magaji mallam and Liman in the selection of the then new Emir; Alhaji Ibrahim Dodo Musa was not according to the custom of Zazzau, Suleja.*

*After the death of Alhaji Dodo Musa, the only eligible kingmaker C was the Galadima. I was not invited to participate in the selection exercise after the death of Alhaji Dodo Musa, since I am a prince."*

(Underlinings mine)

Continuing, he said:

*"After the selection of an Emir, the Galadima of Zazzau Suleja is D to turban the new Emir. The Galadima of Zazzau, Suleja turbaned Alhaji Awwal Ibrahim as the new Emir of Suleja. He turbanned the new Emir, Alhaji Awwal at Anguwan Galadima. It was at the time that Salanke, Magajin Mallam and Limman would play their roles.*

*He added:*

*"In our tradition, Galadima is in charge of the whole town while Madawaki is in charge of defence."*

Cross-examined, he deposed:

*"Exhibit 10 represents an authentic custom and tradition of Zagi-Zagi custom of Suleja but not all."*

(Italics mine)

To further questions he answered:

*"Page 12 of Exhibit 10 is a true version of Zagi-Zagi custom of Zazzau Suleja.*

*Page 74 of Exhibit 10 is a true version of Zagi-Zagi custom.*

*Kuyambana is one of the Rawani. If the people referred to such as the Magajin Mallam. the Immamand Salanke did not perform their functions. then any Emir so appointed without such functions is not appointed in accordance with Zagi-Zagi custom of Zazzau, Suleja.*

*I have never witnessed the installation of an Emir. I did not witness H or see any title holder performing such functions on the installation of Alhaji Awwal Ibrahim as the new Emir of Suleja.*

*I did not do anything when Salanke, Magajin Mallam and Liman participated in the appointment of late Emir Alhaji Dodo Musa.*

*I do not know when the title Santali of Suleja came into existence. I do not know when the title Sarking Yaki came into existence. It was long before I was born. It is not one of the twelve Rawanis.*

*The title Tafida is foreign to us.*

(Underlinings mine)

B Further cross-examined, he deposed thus:

*"The Emir appoints the four title holders, namely, Galadima, Madawaki, Dallatu and Wambai. If they are not princes, they are automatically kingmakers.*

*Any foreign title imported to king making body is not allowed. Any other title apart from those of Galadima, Madawaki, Dallatu and Wambai, is not allowed in the selection exercise.*

*What is contained in page 77 of Exhibit 10 is correct. I stated therein that Magajin Mallam is the representative of Shehu of Bomu and that it is he who installs the new Emir."*

D (Italics mine)

Concluding his evidence, the witness deposed:

*"If I were not a prince, my title would have entitled me to participate in the selection of new Emir at the time of the death of Alhaji Dodo Musa. The same thing applies to the 7th defendant and Alhaji Bissala*

E *Wambai of Suleja.*

*I was not happy about the participation of Alhaji Adamu Tafida of Suleja D.W.1 in the selection of the new Emir, the 7th defendant. I am also not happy about the participation of Santali and Sarkin Yaki.*

*When Adarnu was appointed Tafida to Suleja by Alhaji Dodo Musa, it was not for the purpose of being a kingmaker. Tafida could perform other functions apart from being a kingmaker. The installation of a new Emir is not the sole responsibility of a single person. Other title holders have role to play. Magajin Mallam is also one of those who have role to play in the installation."*

G (Underlinings mine)

This witness would appear to have confirmed the evidence of the 1st plaintiff that a holder of any of the four principal king making titles to Madawaki, Galadima, Wambai and Dallatu who is a prince is not a kingmaker and he is, therefore, not eligible to take part in the selection of an Emir. He also admitted that Salanke, Magajin Mallam and Liman took part along with the Galadima, in the election of late Emir Alhaji Dodo Musa. Although he was not happy that the Tafida, Santali and Sarkin Yaki took part in the election of the appellant in the second exercise of 1993, yet he admitted that the Sarkin Yaki and the Alkali joined the Madawaki (who

was not then a prince and, therefore, a kingmaker) in the election of Emir Musa Angulu some years ago.

Perhaps this is a convenient stage to comment on Exhibit 10, the Abuja Chronicle. According to some of the witnesses, the book is regarded in Suleja as authentic account of the history and culture of the people of the area. Section 59 (former 58) of the Evidence Act which provides- B

*"59. In deciding questions of native law and custom the opinions of native chiefs or other persons having special knowledge of native law and custom and any book or manuscript recognised by natives as a legal authority are relevant."*

makes the book admissible - it being relevant; see *Adeseye v. Taiwo* (1956) C SCNLR 265; 1 F.S.C. 84; but it is not conclusive. "No doubt the legal proposition that where there is oral as well as documentary evidence, documentary evidence should be as a hanger from which to assess oral testimony is a sound one." - per Nnaemeka Agu, J.S.C. in *Kimdey & Ors. v. Military Governor of Gongola State & Ors.* (1988) 2 NWLR (Pt.77) 445; (1988) 1 NSCC D 827, 851. The learned Justice of the Supreme Court referred to *Fashanu v. Adekoya* (1974) 6 S.C. 83 where Coker J.S.C. observed at pages 91-92:

*"Undoubtedly, the duty of the court in ascertaining the truth in those circumstances is all but easy and the best of logic may be as availing to one of the parties as it is to the other. But there was produced by both parties a large body of documentary evidence containing a number of letters and other documents and, as argued by learned counsel for the plaintiff, it is the duty of the learned trial Judge in a case like the present to test the probability of the case of either of the parties by reference to relevant documents which represent evidence of some more or less permanent or perhaps unassailable character."* E F

The difference in this case, however, is that a co-author of the book (D.W.4) testified at the trial and admitted, in effect, that the book does not contain all about the custom and tradition of Suleja. For ease of reference, this is what he said under oath: G

*"Exhibit 10 represents an authentic custom and tradition of Zagi-Zagi custom of Suleja but not all."* (Underlining is mine for emphasis)

With such a limitation placed by the author of the book on the usefulness of his work, the learned trial Judge was justified to look into the evidence for what was not contained in the book. The evidence of 1st H plaintiff and D.W.4 appear to be more detailed on the method of appointing an Emir than what is contained at page 74 of the book. On page 74 is contained:

*With the other Chief Councillors he (that is the Madawaki) chose*

*the new Emir, but later, if any of these were themselves members of the Ruling Houses then he called upon the Kuyambana and the Chief Mallams to help him."*

(Underlinings and brackets are mine)

The learned trial Judge, after a careful evaluation of the evidence  
B of Vital witnesses, made a specific finding of fact to the effect:

*"In view of the foregoing, I hold that the body comprising of Galadima and the three mallams are properly constituted for the exercise of selecting a new Emir of Suleja after the death of Alhaji Ibrahim Dodo Musa."*

He added:

C *"I am satisfied that the four kingmakers have properly and duly selected Alhaji Muhammadu Bashir as the Emir of Zazzau, Suleja."*

In coming to this finding, he reasoned thus:

*"Witnesses for both parties agree that Abuja Chronicle Exhibit 10 is an authoritative book on the history of Abuja."*

D *In this regard, I refer to the evidence of P.W.6, D.W.3 and D.W.4.*

*It is indicated at page 74 lines 15 to 18 of Exhibit 10 that it is one of the duties of Madawaki and other Chief councillors to choose a new Emir, but later if any of these were themselves members of the Ruling House, then he called upon the Kuyambana and the Chief Mallams to help him.*

E *The name of the Chief councillors are given as Madawaki, Galadima, Wambai and Dallatu.*

*It is also indicated at page 76 line 52 and page 77 lines 1 to 8 that both the Liman Juma' a and Salanke were sometimes consulted about the choice of a successor to the Emir and that Magajin Mallam who is the  
F representative of the Shehu of Bomu, actually installs the new Emir.*

*D.W.4 testified that Salanke is not a member of the kingmakers but an adviser on religious matters. He testified further that Magajin Mallam has no role to play but if an Emir is chosen, he is to bath him.*

*D.W.4 stated further than in a situation where you have princes as  
G kingmakers, what is normally done is, they look into the Emirate council for those who are not princes and join them with the Galadima. Alternatively they look for title holders called Rawana and joined them with Galadima. Unfortunately, the witness and his counsel have not referred me to any page on Exhibit 10 that support the above assertion. I should be wary in  
H accepting D.W.4's oral evidence in view of what he said in his oral testimony, to wit, that Magajin Mallam has no role to play but if a new Emir is chosen, he is to wash him. Whereas he wrote at page 77 lines 7 and 8 of Exhibit 10, of which which he is a co-author, that it is Magajin Mallam that actually installs the Emir.*

*It is glaring from above that the only kingmaker who is not a prince at the time of death of last Emir was the 1st plaintiff. It is also glaring from page 74 lines 17 and 18 and page 76 line 52 and page 77 lines 1 to 8 that Kuyambana and the Chief Mallams are advisers.*

*In view of the circumstance, I am of the opinion that the only remaining kingmaker, that is P.W.6, can sit with one or more of the Chief B Mallams and or Kuyambana and select a new Emir. I am reinforced in this opinion of mine by what happened during the selection of late Emir, Alhaji Ibrahim Dodo Musa. According to D.W.4 who is the only witness called by 7th defendant, those who took part in the selection exercise of the late Emir Alhaji Dodo Musa are:-(1) Galadima (2) The Salanke (3) Imam and C (7) Magajin Mallam*

*Even though D.W.4 testified that the participation of the Mallams was not regular, I do not believe him on that.*

*P.W.6 also confirm the above testimony when he said under cross-examination,*

*'During the exercise for the selection to the throne of a new Emir of Suleja in 1979, the Madaki, Dallatu and Wambai did not take part in the selection of late Emir, Alhaji Dodo Musa, being members of the royal family.*

*There was no change in the composition of the kingmakers at that time but only Galadima and the three Mallams conducted the exercise in the presence of the then Secretary to the Local Government."*

*After late Alhaji Dodo Musa had been duly selected by Galadima and the three Mallams in 1979, he was duly installed as the Emir of Suleja and there was no complaint by anybody that the exercise was not in accord F with the native law and custom of the people."*

This reasoning, in my respectful view, is dispassionate and the finding made upon it is very logical and reasonable; it flows naturally from the grain of evidence led, particularly about events in recent time. What one can discern from the evidence, including Exhibit 10, the Abuja Chronicle, is that the most powerful title holders in the kingdom (other than the Emir) are the 4 Chief councillors of Madawaki, Galadima, Wambai and Dallatu; they can be princes or non-princes. Apart from their respective duties, they elect an Emir (whenever a vacancy occurs in that office), if they are not princes. Where any of them is a prince, he is not a kingmaker but remains a traditional Councillor of the Emirate Council. The wisdom of the people in excluding princes from the election of an Emir is, in my humble view, laudable. Princes, by their exclusion, do not become judges in their own cause. The people thus observe one of the important pillars of the rules of natural

justice, an indication that these rules are not alien to our indigenous system of governance.

It is an elementary and fundamental principle of our jurisprudence that there is a presumption of correctness of the findings of fact of the trial court; the presumption must be displaced to justify a reversal of those findings. The reason for this is not far-fetched. Since the trial court has the singular advantage, which an appellate court has not, of watching the demeanour of witnesses, the duty is preserved to it to make primary findings of fact by the evaluation of the evidence before it. Equally so, a finding of fact which is not challenged on appeal is taken as correct and will not be interfered with by an appellate court. Our law reports are replete with numerous authorities that establish these principles. See, for example, Johnson v. Williams (1935) 2 WACA 248; 2 WACA 253 P.C.; Kisiedu & Ors. v. Dampreh & Ors. (1935) 2 WACA 281; 286 P.C.; Kalu Ekpezu v. Kalu Ndem (1991) 6 NWLR (pt.196) 229; Ebba v. Ogodo (1984) 1 SCNLR 372, 378-D 9 where Ese J.S.C. stated the functions of the trial and appellate courts in these words:

*"In this country, trial is usually, unlike in England, without a jury and the trial Judge has the singular experience and duty of taking a lone decision on the evidence for the purpose of determining the facts, from his advantage of seeing and hearing simultaneously the witnesses. Unless the trial court has failed to make use of this singular advantage, and for that reason thereof the Court of Appeal finds that the decision is perverse, the Court of Appeal, whose opportunity is confined to printed record, is obliged to, and must accord to the finding of facts, by the trial court, the greatest weight and due respect. That indeed is the division of labour, and a sensible one at that, between the trial court and the appellate courts,"*

In a recent case, David Akpan & Anor v. Udo Utin & Ors. (1996) 7 NWLR (Pt.463) 634, 664 B-F I stated the principles in these words:

*"There is a welter of decided cases laying down the following principles among others:-*

*(1) The appraisal and ascription of probative values to oral evidence is the primary duty of a court of trial and a Court of Appeal would only interfere if the trial court had made an improper use of the opportunity of hearing and seeing the witnesses or had drawn wrong conclusions from proved facts. See: Balogun v. Agboola (1974) 10 S.C. 111; Iwenofu v. Iwenofu (1975) 9-11 S.C. 79.*

*(2) A Court of Appeal should not disturb a finding of fact by a trial court unless that court is satisfied that there has been a misconception of facts in evidence or that such finding is unsound. See Rosenje v. Bakare*

(1973) 5 S.C. 131; Sanyaolu v. The State (1976) 5 S.C. 37.

(3) Findings of fact by a trial court supported by evidence rightly accepted by the court should not be disturbed on appeal by an appellate court on the ground that it would have come to a different conclusion on the facts - see Ogundulu v. Philips (1973) 2 SC. 71; Egri v. Uperi (1973) 11 SC 299; Onowan v. Iserhien (1976) 9-10 SC 95; Nasiru v. C.O.P (1980) 1- B 2 SC 94; Woluchem v. Gudi (1981) 5 SC. 291.

(4) Unless the Court of Appeal finds that the decision is perverse, it, because the opportunity it has is confined to the printed record, is obliged to, and must accord to the finding of fact, by the trial court, the greatest weight and due respect. C

(5) Where the question does not affect the issue of credibility of witnesses, the Court of Appeal itself will obviously be in as good a position as the trial court, for in such a case, the trial court has no advantage over the Court of Appeal."

Again Eso, J.S.C. in Ebba v. Ogodo (supra) at P. 381 observed: D

"An appeal court, in applying these principles should, I venture to suggest -

(a) start with an attitude to the trial court, as the only court which has, principally, the duty to make findings of fact from the evidence 'oral and or documentary' before it, also that the trial court is the court that has been specially suited, by its peculiar constitution, set-up and rules, so to do. (The trial Judge sees the witnesses and has the exclusive advantage to observe their demeanour); E

(b) then find out whether the conclusion which has been arrived at by the trial court is justifiable, when it is re-examined against the very premise F and/or the controversy vel non which formed the basis of the conclusion arrived at by the trial court;

(c) where the conclusion is arrived at without any real controversy, e.g. in the case of documentary evidence, or where it does involve a controversy the controversy is limited only to number, complexity or contradiction G or interpretation of the document or further where there is oral evidence but it involves merely an admission by the adversary or there is an unchallenged piece of oral evidence, the court of appeal should consider itself to be in as good a position as the trial court, in so far as the evaluation of such evidence as aforesaid in this paragraph is concerned; H

(d) where the decision is arrived at, after there has been an examination of a controversy (and this is the commonest aspect) as where the opposing parties produce witnesses in the case to contradict each other by oral evidence, then the court of appeal should appreciate that the following

will be relevant:

(i) *Credibility of Witnesses based on demeanour of the witnesses only:- Here, the trial court is the sole judge as the observation of the demeanour of witnesses has to be peculiar and exclusive to the trial court which advantage is not and can never be available to the appellate court.*

B (ii) *Credibility of Witnesses based on factors other than demeanour:- The court of appeal should examine those factors which the trial court examined as a result of which it made the inference which led to its finding and determine whether that trial court has made use of its singular advantage of seeing and hearing the witnesses before making its finding especially having regard to the inference that could reasonably be made by a just and reasonable tribunal from the same factors.* "

And Obaseki, J.S.C. in the said case also observed at pages 388-389 thus:

"This court has times without number emphasised that it is no business of the appeal court to substitute its view of the evidence for that of the learned trial Judge and I find it again necessary to point out that miscarriage of justice will definitely result from adopting such a course of action when it is unwarranted. The need to ensure that justice is not miscarried should always dominate the attitude and thinking of appeal courts when dealing with appeals raising questions of fact. See Victor Woluchem & Ors. v. Chief Simeon Gudi & Ors. (1981) 5 S.C. 291 at 326; Akinlaye v. Eyilola (1968) NMLR 92 at 95 S.C.; Obisanya v. Nwoko (1974) 6 S.C. 33 at 80 S.C.; Lawal v. Dawodu (1972) 1 All NLR (pt.2) 270 at 286; Kakarah v. Imonikhe (1974) 4 S.C. 151; Mogaji v. Odofoin (1978) 4 S.C. 91.

The authorities clearly show that where findings of fact are concerned interference by an appellate court is circumscribed within narrow and limited dimensions.

I have highlighted above the evidence adduced on custom and the finding of the learned trial Judge on it in so far as it relates to the 1993 exercise to appoint a new Emir. That finding was not challenged either in the court below or in this court and I can see no justification for not adopting it in determining whether Exhibit 7 could have been validly made under section 3(1)(A) of the Chiefs (Appointment and Deposition) Law of Niger State (as amended by NSLN No.3 of 1993). As stated earlier, there is no recital in Exhibit 7 - as one would expect - that any kingmaker suffered a disability to empower the Governor to make Exhibit 7. Nor was there any evidence that any of the 4 title holders the learned trial Judge found to properly constitute the body of kingmakers suffered a disability either.

It is suggested that as the present holders of the titles of the Madawaki, the Wambai and Dallatu are princes they suffer a disability of a

kind that disentitled them, under customary law, to join in appointing an Emir. I find myself unable to accept this suggestion. The word “disability” is not defined in the Law but in the Shorter Oxford English Dictionary, it is defined as meaning:

*“Incapacity in the eye of the law, or created by the law; legal disqualification;”*

In my respectful view, the expression “legal incapacity or disqualification” implies that the person referred to or in view has the right vested in him, but is prevented by some impediment from exercising it. Such is the case of infants, persons of unsound mind, bankrupts, prisoners, etc.

In *re Carew*, *Carew v. Carew* (1896) 2 Ch. 311, a testator, subject to a life estate to his wife, gave half his residuary estate to his son; but in case the son should at the death of the wife be “under any legal disability in consequence whereof he would be hindered in or prevented from taking the same for his own personal and exclusive benefit”, the testator gave the same over to the son’s wife and children. Shortly before the widow’s death the son, who was one of the executors, was found indebted to the estate in ‘a35188, and an order was made directing him to pay that sum, and declaring his interest under the will liable to make it good. He had also heavily incumbered his interest. Held (by the Court of Appeal in England) (affirming the decision of Stirling J.) that “legal disability” meant a disability of the person arising from act of law, and that neither the charge by the order nor the mortgage created such a legal disability as would cause the gift over to take effect. Lindley, L.J. observed at p. 315:

*“There is no context to show more precisely than the clause itself does what the testator really meant. The first of the above constructions is the more literal of the two; but it is open to the objection that the meaning of being under a legal disability is not free from ambiguity. Such words have no precise technical meaning. But the explanations given of “ability” in Comyns’ Digest, and of “disability” in Jacob’s and Tomlins’ Law Dictionaries, lead me to infer that legal disability would include bankruptcy, conviction for felony, attainder for treason, and lunacy. Infancy need not be considered, as the son was over twenty-one when the will was made. An alienation would not create a legal disability, still less would a mortgage or charge.*

Lopes, L.J. at p. 316 also observed:

*“I think the limitations in this will are alternative limitations, and the important words are: under any legal disability in consequence whereof he would be hindered in or prevented from taking the same for his own personal exclusive benefit. The governing words there are, in my judgment,*

*'legal disability.' What did the testator mean by legal disability"? I think he meant a disability by act of law; not a disability created by Carew himself, but a personal disability imposed on him by the law, not voluntarily created, but imposed in invitum, such, for instance, as bankruptcy, or conviction for felony, or attainder for treason, and, in my judgment, also lunacy.*

B *I cannot think having regard to the words used in the will, that the testator ever intended that those words should include a mortgage or a charge, or that he ever thought of those being such a disability as he was dealing with."*

In the same vein, Kay L.J. opined at page 319:

C *"I think the words 'legal disability' means a bankruptcy, or possibly a felony, some condition of the legatee in consequence of which the law deprives him of his property; not a mere charge created by judgment and execution, or imposed by a decree of a court."*

Turning now to the appeal on hand it would appear to me that the D words:

*"a person who is entitled under native law and custom to appoint a Chief or Head Chief suffers a disability of a kind that disentitled him under native law and custom to appoint a Chief or Head Chief"*

must necessarily refer to a person who is eligible to be a kingmaker. The E right to be a kingmaker must be vested in that person and he is only prevented from exercising that right by some impediment imposed by customary law. There is no evidence before us of any impediment imposed by customary law on a kingmaker. The evidence we have is that a prince is never a kingmaker, whatever title he holds in the kingdom. His is one of F eligibility and not disability. He has no right vested in him as a kingmaker because he is never one. It may be that he can suffer a disability as a councillor or even as an Emir, but not as a kingmaker as he is not eligible to be one. The word 'eligible' is defined in Black's Law Dictionary as meaning:

G *"Fit and proper to be chosen; qualified to be elected. Capable of serving, legally qualified to serve. Capable of being chosen, as a candidate for office. Also, qualified and capable of holding office."*

The evidence of 1st plaintiff (the Galadima of Suleja) for the plain tiffs and of D.W.4, Alhaji Shuaibu Naibi, the Madawaki of Suleja, for the appellant are ad idem on the point that a prince of Suleja is not qualified to be a H kingmaker for the election of an Emir, the traditional office he holds notwithstanding. The totality of the evidence in this case, particularly the conduct of the people of Suleja, leans heavily in favour of the view that it is the custom of the people that where the 4 principal councillors or at least 2 of them are eligible to be kingmakers they together form the body to choose

an Emir bringing in, perhaps, the Salanke, the Magajin Mallam and the Chief Imam as advisers. But where there is only one kingmaker available in that the other principal traditional councillors, being princes, are not eligible to act as kingmakers, that only kingmaker available invites other title holders who are not otherwise disqualified, such as being princes, to join him in the exercise of electing a new Emir. This was what happened in 1944 when the Sarkin Yaki and the Alkali were chosen from the Emirate Council to join the only available kingmaker, the Madawaki, in electing Emir Musa Angulu (see the evidence of D.W.4). This was also what happened in 1979 when the Salanke, the Magajin Mallam and the Chief Imam joined the only available kingmaker, the Galadima, in electing Emir Dodo Musa. It is significant to observe that there were no protests at the time to any of these elections, a clear indication of the acceptability of the system to the people of the emirate. After all, customary law is a mirror of accepted usage-Owonyin & Ors. v. Omotosho (1961) 2 SCNLR 57; (1961) NSCC 179,183 per Bairamian, F.J. (as he then was). And as Karibi-Whyte, J.S.C. put it in Kimdey & Ors. v. Military Governor of Gongola State & Ors. (supra) at page 840.

*“One of the characteristics of native law and which provides for its resilience is its flexibility and capacity for adaptation. It modifies itself to accord with changing social conditions. In the old case of Lewis v. Bankole (1908) 1 NLR 100-101 Osborne CJ said:*

*‘One of the most striking features of West African native custom ..... is its flexibility; it appears to have been always subject to motives of expediency, and it shows unquestionable adaptability to altered circumstances without entirely losing its character.’”*

I think from the evidence of the custom of Suleja on the appointment of an Emir, that custom comes within the above comments.

As a prince is not “entitled under native law and custom to appoint” an Emir of Suleja, it follows that the case of the holders of the titles of Madawaki, Wambai and Dallatu, in 1993, was not one of disability under sub-section (1)(A) of Section 3 of the Chiefs (Appointment and Deposition) Law (as amended) and the Governor could not lawfully and validly issue Exhibit 7 under that sub-section if it were then in force.

There is yet another reason why Exhibit 7 could not have been validly made under section 2 of NSLN No. 3 of 1993 (that is section 3(1)(A) of the principal law, as amended). The section only provides for an ad hoc assignment where an appointment is to be made and it is discovered that one or some of the kingmakers who would make the appointment suffered a disability under customary law that would prevent him/them from acting. On such an occasion the Governor could appoint others in the place of the

disabled kingmakers or prescribe a method for an appointment to be made. But what has Exhibit 7 achieved? It provides a method for all time. for the appointment of the Emir of Suleja; it is not limited to the appointment of a successor to Emir Dodo Musa alone. It excludes the Madawaki, Wambai and Dallatu from the electoral college even where holders of these titles are not princes. Paragraph 3(1) of Exhibit 7 bears this out. Paragraph 5 provides for disqualification of members of the electoral college who are princes. - this goes to support my viewpoint that disqualification on the ground of being a prince is not a disability but a question of eligibility. Exhibit 7 even provides for eligibility to contest for the office of emir (see paragraph 8). C Surely, Exhibit 7 cannot be an order envisaged in section 2 of NSLN No.3 of 1993.

Lastly, even if the holders in 1993 of the titles of Madawaki, Wambai and Dallatu could be said to suffer such disability as to bring them within the contemplation of section 2 of NSLN No.3 of 1993, the Governor, by Exhibit 8 approved the appointment of "the Galadima, the Liman Jama'a (Chief Imam), the Salanke and the Magajin Malam" to constitute the selection committee to appoint the new Emir and prescribed the method of appointment. That act of the Governor was validated by section 3 of NSLN No.3 of 1993. That body having performed and concluded their E functions, there was no longer any room for Exhibit 7. Though he rejected the report of the body, the Governor did not at anytime dissolve it.

The sum total of all I have been saying is that, viewed from whichever angle, Exhibit 7 does not come within the contemplation of section 2 of NSLN No.3 of 1993 and it is, therefore, in my respectful view, not validated by section 3 thereof. Acts validated by section 3 of NSLN No.3 of 1993 are acts which could lawfully and validly have been done under subsection (1)(A) of section 3 of Cap. 19 (as amended). It is, therefore, my view, and I so hold, that the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order 1993 (Exhibit 7) remains invalid, notwithstanding section 3 of the Chiefs (Appointment and Deposition) Law (Amendment) Law, No.3 of 1993 which in my respectful view has not validated the said order. This is not a case where a valid legislation which is in conflict with customary law has abrogated the latter. This is a case where a valid legislation gives a power to be exercised in a particular contingency. H Unless that power is exercised in that contingency, the exercise is invalid.

With this conclusion, my answer to Question (3) will be in the negative, id est, the court below was not in error in not ordering the dismissal in the entirety of plaintiffs' claims. The appointment of the 7th appellant was made pursuant to Exhibit 7 and as Exhibit 7 is invalid, the

appointment made pursuant thereto must equally be invalid.

Before I end this judgment, I want to comment briefly on the impasse that arose in the filing of the vacancy occasioned by the death of Emir Dodo Musa in July 1993. Under section 3(1) of the Chiefs (Appointment and Deposition) Law Cap. 20 Laws of Northern Nigeria 1963, the Governor was to approve an appointment made by those entitled under customary law to make such an appointment Subsection (1) of Section 3 reads:

*“3(1) Upon the death, resignation or deposition of any Chief or of any head Chief other than a chief or head chief of a kind referred to in section 4 the Governor may approve as the successor of such chief or head chief, as the case may be, any person appointed in that behalf by those entitled by native law and custom so to appoint in accordance with native law and custom; and if no appointment is made before the expiration of such interval as is usual under native law and custom, the Governor may himself appoint such person as he may deem fit and proper to carry out such duties incidental to the chieftaincy as it may be necessary to perform”* D (Underlinings are mine for emphasis)

Under that law, the Governor could not have requested that three names be forwarded to him. It was for him to consider the suitability of the person appointed by the traditional kingmakers and approve. Section 3(1) of the Chiefs (Appointment and Deposition) Law Cap 19 of Niger State 1989 appears to have made some change in the law. For ease of reference, I will quote once again sub-section (1) of section 3, it reads:

*3(1) Upon the death, resignation or deposition of any chief or of any head chief other than a chief of a kind referred to in section 4, the Governor may appoint as the successor of such chief or head chief, any person appointed in that behalf by those entitled by customary law so to appoint in accordance with customary law; and if no appointment is made before the expiration of such interval as is usual under customary law, the governor may himself appoint such person as he may deem fit and proper to carry out such duties incidental to the chieftaincy as it may be necessary to perform.”* G (Underlinings are mine for emphasis)

It does provide for the Governor to appoint someone who has been appointed by the traditional kingmakers. This looks rather absurd. I do not however, intend to dwell further into this as it has not been argued before us H and it does not call for a decision by us. I have only drawn attention to this anomaly to enable the lawmakers to consider possible amendments in order to bring it in line with the provisions of the Northern Nigeria Law and thus reduce the excessive involvement of the Executive in what is primarily

a local affair. I cannot but also comment briefly on the new sub-section (1)(A) of section 3 of the Law (as amended by NSLN No.3 of 1993). This subsection empowers the Governor, notwithstanding the custom of the people, to appoint what I will call, "warrant chiefs" to make an appointment. This, to my mind, is an invitation to chaos. A situation where customary law can be disregarded in the appointment of an emir or other head chief, cannot augur well for the peace of the community. I think the lawmaker of the State should also have a second look at this sub-section.

It is unfortunate that the unnecessary meddlesomeness of the Executive of Niger State in the process of the appointment of the Emir of Suleja has resulted in the impasse we have seen in this matter. As the evidence has eventually revealed, and as the learned trial Judge found, the letter of the Chairman of the Suleja Local Government (Exh. 3) was in consonance with what happened in 1979 and accepted by the people. The Governor gave his approval to the process mentioned in that letter. That process was set in motion and an appointment was made and communicated to the Governor. Had the Governor acted on what was then done, peace would probably have reigned in the area. For some inexplicable reasons, he decided to change gear and sought the advice of the Niger State Council of Traditional Rulers (see exhibit 1). Their royal highnesses met and deliberated on the Governor's letter. They declined, quite wisely in my respectful view, to interfere or intermeddle with the custom of the people by refusing to make nominations of candidates to the Governor as requested. In the final paragraph of their communication with the Governor, they stated:

*"In view of the foregoing, Council decided to recommend strongly to His Excellency, the Executive Governor of Niger State to approve the appointment of Mallam Muhammadu Bashir as the new Emir of Suleja, in the interest of justice, fairplay and democracy as well as to ensure the continued existence of peace and harmony, development and progress in Suleja Emirate.*

As if not to be outdone, members of Council of the Suleja Local Government met and passed a resolution urging the Governor to give effect to the decision of the kingmakers. This resolution was forwarded to the Governor. The Governor however, proceeded to reject the kingmakers' appointment and to issue Exhibit 7 by which he set up an electoral college consisting of seven title holders, three of whom were said to be objectionable by the Madawaki, the only witness called by the appellant at the trial. One of the three titles was even said by the Madawaki to be a foreign title, and the first time that title would be held! To show their resentment, the four original title holders who appointed the 4th plaintiff in the first exercise refused to

participate in the new exercise ordered by the Governor and, as it turned out, the appointment of the appellant was made by the three “objectionable” title holders. That appointment was approved by the Governor. The result in the Community is a matter of public knowledge. While not questioning the good faith of the Governor in the steps he took, I would think that peace would have prevailed in the area if he had allowed himself to be guided by the wisdom of the royal fathers in the State whose advice was given at the Governor’s own request and if he had acceded to the wishes of the people of the area as expressed in the resolution of the elected Suleja Local Government Council. I will say no more on this. B

The final conclusion I reach is that for the reasons I have given in this judgment, and if this appeal rests with me, I would dismiss it and affirm the judgment of the court below. It is for these reasons that I find myself unable to subscribe to the conclusion reached in the lead judgment of my learned brother Uwais, C.J.N., a preview of which I had the privilege of here now. D

I would award to the plaintiff/respondents N1,000.00, costs of this appeal. Appeal allowed.

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### **OGWUEGBU JSC**

I have read in draft the judgment just read by my brother Uwais, CJN. I agree entirely, with his reasoning and conclusion and have nothing further to add. E

Accordingly, I too will allow the appeal and subscribe to all the orders made in the lead judgment. F

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### **ONU JSC**

I had before now the privilege to read in draft the judgment just delivered by my learned brother Uwais, C.O.N. Chief Justice of Nigeria and I am in entire agreement with him that this appeal succeeds and it is allowed by me. G

It is, in my view, pertinent to set out firstly the three issues agitated before this court to which, coincidentally, the parties on all sides are agreed. They are:

*“1. Whether the majority of the court below were right when they upheld the trial court’s decision that the Chiefs (Appointment and Deposition) Law (Amendment Law) 1993 N.S.L.N. 3 of 1993 was illegal, null and void.*

*2. Whether the court below is not in error when by majority it held*

that the trial court was right in holding that the Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Orders N.S.L.N. No.2 of 1993 was illegal, null and void.

3. Whether the court below was not in error in not ordering the dismissal in the entirety of all the claims made by the 1st to 4th respondents in the High Court in so far as they affect the rights of or relate to the appellant."

The court below, it must be pointed out, did not outrightly declare the Chiefs (Appointment and Deposition) Law (Amendment) Law 1993 of Niger State NSLN No.3 of 1993 as illegal, null and void. What it did or rather C said concerning that law was:

"Mr. Sodangi - Counsel to 7th defendant also referred to the amended Chief (Appointment and Deposition) Law 1993 but has not produced it."

The purport of the majority judgment of the Court of Appeal, Kaduna Division (hereinafter referred to as the court below) coram: Mahmud D Mohammed and Opene, J.J.C.A. which affirmed the trial court's decision with Abdullahi, J.C.A. dissenting, was to the effect that exhibit 7 - an order made by the Governor of Niger State under section 4(2) of the Chiefs (Appointment and Deposition) Law of Niger State entitled "The Appointment and Deposition of Chiefs (Appointment of Emir of Suleja) Order, 1993" E NSLN No.2 of 1993 to take effect from 16th September, 1993, was illegal and based on the fact that the Chiefs (Appointment and Deposition) Law (Amendment Law) NSLN No.3 of 1993 of Niger State, was not enacted according to Law. The doubt cast by the Order not being valid, dissolved into thin air when on 3rd October, 1996 at the last hearing of this appeal when this F court admitted (an act which in my view is legally permissible and justifiable based upon the consent of the parties herein) as Exhibits S.C1 to SC.11. These pieces of evidence were neither available at the trial court notwithstanding that the plaintiffs subpoenaed the Secretary to the Niger State Government in vain to produce them nor at the court below in order G to prove conclusively that the Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993, NSLN of 1993 was duly passed into law by the Niger State House of Assembly and assented to as provided for in section 12 of the State Government (Basic Constitutional and Transitional Provisions) Decree, 1991 (Decree No.50 of 1991). The Law is therefore valid.

H Similarly, by the Niger State House of Assembly amending Section 3(1) of the Chiefs (Appointment and Deposition) Law of Niger State NSLN No.3 of 1993 (ibid), the Governor who is by Section 3(1)(A) of the amendment and more particularly Section 3(1) A(ii) of the same law (which I venture to say is not difficult to insert where it belongs in the gazette of the main law

in its serial order) is conferred with the powers to prescribe the method of appointing a new Emir of Suleja and so acted intra vires his powers to give his consent thereto, moreso that in the first selection process wherein the 4th respondent emerged as first choice, some disabilities having been found to attach to the majority of the Kingmakers then present and voting at their meeting - a process that would have rendered Suleja with a vacant emirship stool loomed large. As it is an elementary principle of law that like equity the law does nothing in vain and further that the law does not encourage voidness, (see *Woluchem v. Wokoma* (1974) 3 SC 153, 172). In order not to leave a vacuum, the Governor, backed by the law, to wit: section 4(2) of the Chiefs (Appointment and Deposition) Law, Cap.19 Laws of Niger State 1989 and all other powers enabling him in that behalf, set up another selection process through a new set of Kingmakers with whose composition the trial Judge saw nothing wrong when that body selected the appellant and three others in order of preference as the Emir of Suleja-elect. Of that body the learned trial Judge said, inter alia, as follows:-

*"In view of the circumstances, I am of the opinion that the only remaining Kingmakers, that is PW6, can sit with one or more of the Chief Mallams and Kuyambana and select an Emir."*

The above finding, with due respect, is clearly wrong in view of the preponderance of evidence adduced through 1st Plaintiff (PW6) DW3, particularly D.W.4, extracts from exhibits 10 (Chronicle of Abuja) from which the learned trial Judge had earlier quoted and giving the impression, much against what the exhibit itself contains that it was the Galadima that is empowered under the customary law to invite or co-opt Kuyambana and the Chief Mallams to assist him in choosing a new Emir if the three other Kingmakers- Galadima, Wambai and Dalhatu, are disqualified. He (the learned trial Judge) albeit ruled that appellant's appointment as Emir of Suleja was null and void. Arising from this, the conclusion of the learned trial Judge which the majority judgment of the court below affirmed to the effect that -

(a) *"In view of the foregoing, I hold that the body comprising of Galadima and three mallams are properly constituted for the exercise of selecting a new Emir of Suleja after the death of Alhaji Ibrahim Dodo Musa."*

(b) *"I am satisfied that the four Kingmakers have properly and duly selected Alhaji Muhammadu Bashir as the Emir of Zazzau, Suleja."*

(c) *"Witnesses for both parties agree that Abuja Chronicle Exhibit 10 is an authoritative book on the history of Abuja."*

In this regard, I refer to the evidence of PW6, D.W3 and D.W4" is belied and readily torpedoed and jettisoned by the following extracts from the testimonies of these witnesses. For instance, PW6 (1st plaintiff) said

under cross-examination thus:

*"Since 1960, traditionally, there are seven Kingmakers.*

*They are:-*

*(1) Madaki (2) Galadima (3) Wambai (4) Dallatu (5) Immam (6) Salanke, and (7) Magajin Mallam*

B *As at 5th July, 1993 when Alhaji Dodo Musa died, both Alhaji Awwal Ibrahim and Aliyu Bissalla were occupying their positions of Dallatu and Wambai of Suleja respectively. As at 5th July, 1993 Alhaji Shaibu Naib, Alhaji Awwal Ibrahim and Alhaji Aliyu Bissala were traditional councillors but not Kingmakers because they themselves were interested in the throne."*

C *I now say that what I said is that traditionally there are seven Kingmakers. The titles are:-*

*(1) Madaki (2) Galadima (3) The Wambai (4) The Dallatu (5) The Liman (6) The Salanke and (7) Magajin Mallam. provided that none of them belongs to royal family. ....*

D *The princes as at 1960 were:*

*(1) Isiaku Galadima (2) Mallam Bako Wambai (3) Alhaji Hassan Dallatu only Madaki was not a prince.*

E *Princes who occupy the above offices, they do not automatically become Kingmakers.*

*Princes who occupy the above posts are referred to as traditional councillors and not Kingmakers, because they will never be called upon to select an Emir.*

F *If the Galadima happens to be a prince, he cannot be called a kingmaker.*

*The same applies to the holder of the title of Madaki, Wambai and Dallatu."*

G DW3, Alhaji Shaibu Liman, the Chairman of the Suleja Local Government at the relevant time and the one who set in motion the exercise for the appointment of a new Emir of Suleja by writing a letter, Exhibit 3, to the Governor in his evidence said inter alia:

*"The selection of the new Emir is the responsibility of the Traditional kingmakers whose composition is as follows:-*

H *(1) The Chief Imam (2) The Salanke (3) The Magajin Mallam (4) The Galadima."*

At the trial, this witness said among others:

"I received another correspondence from the State Government rejecting the report. The letter of rejection was as a result of the improper manner at which the composition of the kingmakers was made. I was

*served with a copy of the letter of rejection.*

*Exhibit 9 identified. My reaction was to go further into investigation and details of the most proper structure or constitution of the King making body which is supposed to be in accordance with customs and laws of Zagi-Zagi of Suleja.*

*The outcome of my investigation reveals to me clearly that having communicated with the State Government that there was a Kingmaking body that was vested with the responsibility of choosing a new Emir, the rejection by the Government enabled me to discover that the membership of traditional Kingmakers are seven in number out of which four were to exercise voting powers while the remaining three who were virtually Ulamas or Scholars are to discharge their functions on their traditional titles especially as spiritual leaders.*

*The first four that have voting powers were:*

*(1) The Madawaki (2) The Wambai (3) The Dallatu (4) The Galadima*

*All these four have voting powers in electing a new Emir, while the remaining three are*

*(1) Liman Jum'aa (2) The Salanke (3) The Magajin Mallam.*

*I discover that my earlier communication to the State Government on the composition of the kingbody which was earlier put at four was in error.*

*After going through the Abuja Chronicle which is the historical documentation of the origin, customs, norms and values of the people of Abuja now Suleja, it becomes clear that actually the membership was not properly constituted.*

*Exhibit 10 identified as Abuja chronicle Exhibit B is the letter I wrote. The composition I gave at paragraph 1 page 2 of Exhibit 3 is an error on my part." (Italics mine for emphasis).*

D.W 4, Alhaji Shuaibu Naibi, the Madawaki of Suleja who testified to the effect that he knew Alhaji Bashir Sulciman Barau (4th plaintiff) and Alhaji Muhammed Awwal Ibrahim (the 7th defendant now appellant herein) as princes, said inter alia, as follows:-

*"I am conversant to (sic) historical antecedent of Suleja custom. There are four traditional kingmakers in Suleja Emirate. They are:*

*(1) Madawaki (2) Galadima (3) Wambai and (4) Dallatu There is only one Kingmaker now because the remaining three kingmakers are princes.*

*The only one remaining as kingmaker is Galadima.*

*The three kingmakers who are now princes are:-*

(1) Madawaki (2) Wambai and (3) Dallatu

There is only one kingmaker now because the remaining three kingmakers are princes.

In the situation where you have princes as kingmakers, what is normally done is they look into the Emirate Council for those who are not B princes and join them with the Galadima.

Alternatively, they look for title holders called Rawani and joined them with Galadima.

During the selection of late Alhaji Ibrahim Dodo Musa, those who took part in the selection of the Emir were:-

C (1) Galadima (2) Salanke (3) Imam and (4) Magajin Mallam.

The participation of Salanke Magaji Mallam and Liman in the selection of the then new Emir, Alhaji Ibrahim Dodo Musa was not according to the custom of Zazzau Suleja.

Continuing, he said:

D "After the selection of an Emir the Galadima of Zazzau Suleja is to turban the new Emir. The Galadima of Zazzau, Suleja turbaned Alhaji Awwal Ibrahim as the new Emir of Suleja. He turbanned the new Emir, Alhaji Awwal at Anguwan Galadima. It was at the time that Salanke, Magajin Mallam and Liman would play their roles."

E Cross-examined, he said that-

"Exhibit 10 represents an authentic custom and tradition of Zagi-Zagi, Suleja, but not all." (Underlining is also mine for emphasis).

I have quoted in extenso from the evidence of PW6, DW3 and DW4 above to exemplify the fluidity, flexibility and incompleteness of the F customary law and Exhibit 10 governing the Suleja Emirship selection process, emphasis on DW3 's admission on how defective the first selection of candidates leading to the choice of 4th respondent and how right and valid it was to have enacted Exhibit 7 in order to instill clarity and sanity for all times not ephemerally in order to crystalise the customary law relating to G the selection of the Emir of Suleja; the law being the type which Section 150(1) of the Evidence Act, Cap.112 Laws of the Federation of Nigeria sanctions, to wit:

H *"When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with."*

The maxim here is omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium (everything is presumed to be rightly and duly performed until the contrary is shown). See also *Kimdey & ors v. Military Governor of Gongola State* (1988) 1NSCC. 287; (1988) 2 NWLR

(pt. 77) 445, *Kenrow (Nigeria) Ltd. v. Moss* (1987) 4 NWLR (Pt. 65) 373 and *Ogbuanyinya v. Okudo* (No.2) (1990) 4 NWLR (pt.146) 551 at 570.

In the instant case, it is the importation thereto of motive, sentiment, and morality, in a matter otherwise within the legislative competence of the Niger State Legislature aimed, in my view, at streamlining and formalising customary law relating to succession of the Emirship of Suleja in the like of Chieftaincy Declarations in the South-Western part of Nigeria coming from the two courts below; that have now drawn down some acrimony meant to fan the embers of intra-communal feud. This need not be the case. For come to think of it, the sum total of the evidence adduced in the trial court as to the appointment, who does the appointment, and by what method, of the Emir, of Suleja chieftaincy was a situation which was confused discordant and uncertain. Hence, a law to take care of these such as the one considered herein which became a desideratum.

The learned Senior Advocate for the 1st to 4th respondents had contended inter alia that since section 3(1)(A) of the Chiefs (Appointment and Deposition) Law of Niger State No.3 of 1993 is in conflict with section 3(1) of the Chiefs (Appointment and Deposition) Law Cap.20. the former section becomes absurd and therefore both sections 2 and 3 of the 1993 Law are ultra vires and invalid. The learned S.A.N. further contended that as the cause of action in this case arose before the enactment of the 1993 Law, its provisions are not applicable to the case in hand, citing in support of his proposition the case of *Adigun v. Ayinde & Ors.* (1993) 8 NWLR (Pt.313) 516; (1993) 11 S.C.N.J. 1 at pages 16, 19,23, and 24.

This submission can no longer hold in that by our admitting Exhibits S.C.1 to SC.11 on 3rd October, 1996, it is no more disputed that the Chiefs (Appointment and Deposition) Law (Amendment) Law, 1993 NSLN No.3 of 1993, was passed by the House of Assembly of Niger State and duly assented to by the Governor and that the law came into operation with retrospective effect from 16th September, 1993.

The question now is whether the Chiefs (Appointment and Deposition) (Emir of Suleja) Order, 1993 NSLN No.2 of 1993 i.e. exhibit 7 is valid. It being now beyond dispute that the 1993 Order was made by the Executive Governor of Niger State to achieve certainty and orderliness it cannot now be questioned. Thus, the effect of making Exhibit 7, a subsidiary legislation with retrospective effect, to take care of the appointment process of the Emirship of Suleja, which as I earlier pointed out, has the force of law and now over-rides customary law. This is the moreso, in the instant case where confusion characterising the kingmaker's body charged

with the selection process and which was not helped by declaring what role the customary law vis-a-vis Exhibit 10 (the chronicle of Abuja) played in that process needed to be formalised and codified. The provisions of the Constitution of the Federal Republic of Nigeria, 1979 as amended in section 5(1) and the legislation made pursuant to section 4(2) of the Chiefs (Appointment and Deposition) Law of Niger State Cap.19 governing the situation, invested in the Executive Governor Powers to make laws for the order, peace and good government of Niger State. Since the Chiefs (Appointment and Deposition) Law (Amendment) Law made pursuant to the substantive law in section 12 of the State Government (Basic Constitutional Provisions) Decree 1991 (Decree No.50 of 1991) as held elsewhere in this judgment by me to be intra vires the Governor of Niger State to instil sanity into the controversy-prone Emir of Suleja selection process, the majority judgment of the court below, in my judgment, cannot be allowed to stand. I accordingly set aside that judgment and affirm the decision of Umaru Abdullahi, J.C.A., in that the 1st to 4th respondents - indeed the plaintiffs in the case as made up in the two courts below - had not proved or established same on the balance of probabilities to be entitled to judgment.

For the above reasons and the more detailed and elaborate ones set out in the judgment of the learned Chief Justice of Nigeria, I answer each of issues 1 and 2 in the negative and issue 3 in the affirmative respectively. I abide by the order for costs as contained therein.

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### **ADIO JSC**

I had the advantage of reading, in draft, the judgment just delivered by the Hon. Chief Justice of Nigeria. I entirely agree with it. I too allow the appeal. The judgments of the courts below are hereby set aside. The declarations claimed by the 1st, 2nd 3rd and 4th respondents are hereby dismissed. I abide by the order for costs.

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### **IGUH JSC**

I have had the privilege of reading in draft the judgment just delivered by the Honourable Chief Justice of Nigeria and I am in complete agreement with the reasoning and conclusions therein reached.

I have nothing more to add.

Consequently, I too, allow this appeal and set aside the decisions of both courts below. The declarations claimed by the 1st to 4th respondents are hereby dismissed. I abide by the order in respect of costs made in the leading judgment.