

SUPREME COURT OF NIGERIA
13TH DECEMBER, 1996. SC. 39/1990
CORAM:- A. B. WALI, M. E. OGIJNDARE, U. MOHAMMED,
S. U. ONU, A. I. IGUH, JJSC.

SIMEON OLADOYE 2 ORS (For themselves and on behalf of Oladogba and Lala Ruling Houses of Ijimobal) AND 1. THE ADMINISTRATOR, OSUN STATE 2. ATTORNEY-GENERAL, OSUN STATE 3. OBA OYKYODK, OYESOSIN (Elejigbo of Ejigbo) 4. Tijani Ogunkunle (Representing Atoyebi Family) PLAINTIFFS/ APPELLANTS DEFENDANTS/ RESPONDENTS
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CHIEFTAINCY MATTERS - *Averments made by plaintiffs - Whether supported by the evidence adduced - At the trial.*

CHIEFTAINCY MATTERS - *Concurrent finding - That there are three ruling families - Whether to be interfered with.*

CHIEFTAINCY MATTERS - *Judgment - Whether the grant of some of the claims - Affected the main question between the parties.*

CHIEFTAINCY MATTERS - *Prescribed authority - In respect of a minor chieftaincy - Whether he acted ultra vires - By conducting inquiry - Unto determination of the ruling families.*

FACTS

The Bale of Ijimoba chieftaincy in Osun State, previously having a chieftaincy Declaration was subsequently reduced to a minor chieftaincy having the 3rd defendant as the prescribed authority. Pursuant to a protest made to the 3rd defendant he conducted an inquiry which revealed that there 3 ruling families instead of 2, entitled to the said chieftaincy. The plaintiffs who are members of 2 of the ruling families filed an action before the High Court opposing the addition of the 3rd ruling house. They sought a declaration that theirs are the only two ruling houses entitled to the chieftaincy in issue. They sought 3 other declarations and an injunction.

The trial court dismissed the main claims of the plaintiffs and granted

f the declarations sought on legal technical grounds. Plaintiffs' appeal to the Court of Appeal was dismissed as that court upheld trial court's decision that there are 3 ruling families entitled to the chieftaincy. Being dissatisfied, plaintiffs have further appealed to the Supreme Court raising 5 issues.

ISSUES FOR DETERMINATION

"1. Whether having regard to section 22(3) of the Chiefs Law Cap. 21 Laws of Oyo State of Nigeria, 1978, applicable in Osun State, it is not ultra vires a Prescribed Authority to determine a dispute involving conflicting claims by families aspiring to present candidates to the Chieftaincy as opposed to determining a dispute whether a person has been appointed in accordance with Customary Law applying to the Chieftaincy in dispute?

2. Whether the Court of Appeal was right in declining to re-evaluate the evidence of the parties on the ground that the learned trial Judge had made a finding on the evidence when there was proof that the evaluation made by the learned trial Judge on conflicting traditional histories, and inferences to be drawn from the evidence led was wrong and when in any event the evidence was not one bothering on demeanour of witness? Etc, see p. 2020 H

HELD (Unanimously dismissing the appeal per lead judgment of **OGUNDARE JSC**, Wali JSC disagreeing with a particular opinion)

Whether prescribed authority acted ultra vires

1. In the light of the protest made to the 3rd defendant, I think he was right to conduct an inquiry into finding out the number of families entitled to t chieftaincy. I will, therefore, not say that he acted ultra vires by conducting that inquiry. In any event, it is not the case of the plaintiff that because the 3rd defendant conducted the inquiry, the finding was null and void. (p. 2022 F)

Averments made by plaintiffs

2. The evidence adduced at the trial did not support the above averments. The appellants not only knew of the inquiry conducted by the 3rd defendant but made representations as well. The learned trial Judge would have dismissed claims (2) and (3) but for the reason given by him that a chief-taincy declaration was no longer necessary as the Bale of Ijimoba chief-taincy had been relegated to the status of a minor chief under Part III of the Law. There was therefore no need, according to him, to amend the 1957 declaration pertaining to the title. (p. 2023 G)

Grant of some of the claims

3. There is no appeal against this conclusion. The grant of claims (2) and (3) for the reason given, does not, in my respectful view, affect the main question between the parties which is: how many ruling houses are entitled to the Bale of Ijimoba chieftaincy? The statement of law contained in the 1957 declaration, subject to the answer given to this main question, remains the customary law governing the appointment to the Bale of Ijimoba title. (p. 2024 E)

Concurrent findings

4. These questions relate to the finding of the learned trial Judge, and affirmed by the Court below, that there are three ruling families eligible to nominate, in rotation, candidates to fill any vacancy in the Bale of Ijimoba chieftaincy. The attitude of this Court to concurrent findings of fact of the Courts below has been stated in numerous cases. It is trite that this Court will not interfere with such findings where they are supported by sufficient evidence and cannot be said to be perverse. I have examined the evidence on record in this case and have considered the arguments proffered by the plaintiffs. I can find no good reason for disturbing the finding that there are three ruling houses namely Oladogba, Lala and Atoyebi. That finding is supported by abundant evidence adduced at the trial and it is in no way perverse. Consequently I too affirm the finding. I resolve Questions (2) (5) against the plaintiffs. (p. 2024 G)

NOTABLE POINTS OF INTEREST***WALI JSC******1. Effect of repealed chieftaincy Declaration***

I have been privileged to read before now, the lead judgment of my learned brother Ogundare, JSC, and I agree with his reasoning and conclusion save where he opined thus: “*The statement...*” The repealed declaration is no longer the only customary law for the appointment of the Bale Ijimoba, but it may only serve as a guide to the ascertainment of the proper customary law which has now become an issue of fact to be proved when ever there is dispute as to what the proper customary law is when a new Baale of Ijimoba is to be appointed, until such customary law gains notoriety through superior court decisions when it will be judicially noticed. (p. 2025 C & 2026 B)

ONU JSC***2. Proof of alleged ruling houses***

The onus was on the Appellants who alleged that there were only two ruling

2018 Oladoye v. Administrator Osun State (1996) 12 KLR Ogundare JSC

houses to the Baale of Ijimoba Chieftaincy to prove their exclusive right thereto. The Appellants, having failed to discharge that onus, the trial court, in my view, was right in making a clear finding of fact that there was indeed a third Ruling House which was 4th Respondent's. It was not a way of granting a relief not claimed; rather it was a finding on the evidence of B customary law as adduced through witnesses. (p. 2030 G)

REPRESENTATION

Y. O. Alii (W. Egbewole and K. K. Eleja with him) for Appellants
S. O. Ogunniyi, DL AS (Osun State) for 1st & 2nd Respondents
C M. A. Laogun (A. Laogun with him) for 3rd & 4th Respondents

CASES REFERRED TO

Farinde v. Ajiko W.A.C.A. 108
Amissah v. Krabah 2 W.A.C.A. 30
D Lipede v. Sonekan (1995) 1 N.W.L.R. (Pt. 374) 668
Odojin v. Ayoola (1984) 7 S.C. 11
Mogaji v. Cadbury (Nig.) Ltd. (1985) 2 N.W.L.R. (Pt. 7) 339
Oyeneye v. Odugbesan (1972) 4 S.C. 244
Sanyaolu v. The State (1976) 6 S.C. 37
E Agedegudu v. Ajenifuja (1963) 1 All NLR 109
Alade v. Awo (1975) 4 S.C. 215 at 228
Chukwueke v. Nwankwo (1985) 2 NWLR (Part 6) 195 at 201
Ogbuokwuelu v. Umeanafunkwa (1994) 8 KLR 79
Edewor v. Uwogba (1987) 2 S.C. 49 at 105
F Enang v. Adu (1981) 11-12 S.C. 25 at 42
Nwadike v. Ibekwe (1987) 4 N.W.L.R. (Part 67) 718
Woluchem v. Gudi (1981) 5 S.C. 291 at 326

STATUTES REFERRED TO

G Chiefs Law Cap. 21 Laws of Oyo State 1978 s. 22(3) & (4)
Evidence Act s. 14(1) & (2)

LEAD JUDGMENT BY OGUNDARE JSC

By a writ of summons issued on 8th September, 1986, the plain-H tiffs for themselves and on behalf of the Oladogba and Lala ruling houses of Ijimoba sued the defendants claiming:

"1. Declaration that Oladogba and Lala Ruling Houses are the only ruling houses entitled to the Baale of Ijimoba chieftaincy title.

2. Declaration that the directive of the Governor of Oyo State con-

tained in letter reference No.CB. 141/32/50 of 28th May 1980, purporting to authorise an amendment of the Baale of Ijimoba Chieftaincy declaration of 1957 by the inclusion of Atoyebe as a third ruling house is ultra vires, unconstitutional, null and void and of no effect whatsoever.

3. Declaration that the purported amendment of the Baale of Ijimoba Chieftaincy declaration of 1957 by the Ejigbo Local Government Chief- B taincy Committee sequel to the said Governor's directive is invalid, against the rules of natural justice, null and void and of no effect whatsoever.

4. Declaration that the Bale of Ijimoba Chieftaincy Declaration of 1957 is the only valid customary law regulating appointment to the Baale C of Ijimoba chieftaincy.

5. Injunction restraining the defendants either by themselves or their agents, servants and privies from acting in pursuance of the purported amendment to the Bale of Ijimoba Chieftaincy declaration made by the Ejigbo Local Government Chieftaincy Committee."

Pleadings were filed and exchanged. The case for the plaintiffs is that, D according to the custom of Ijimoba, there are only two ruling, houses, that is, Oladogba and Lala from which the Baale of Ijimoba is appointed. This customary law, they claim, is reflected in the chieftaincy declaration made in 1957 in respect of the chieftaincy. Prior to 1976, the Baale of Ijimoba chieftaincy was a recognized title coming under Part II of the Chiefs Law of E Oyo State. The title was in 1976 reduced in status to a minor chieftaincy with the Elejigbo of Ejigbo as the prescribed authority in respect thereof.

The defence, on the other hand, claims that there are three ruling houses, idest, Oladogba, Lala and Atoyebe and that to that extent, there- F fore, the chieftaincy declaration of 1957 is faulty.

Following the complaint of members of Atoyebe family of their exclusion from the 1957 declaration, the 3rd defendant, the Elejigbo, conducted an inquiry which found that there are three ruling houses. All the three families were informed of the findings of the inquiry and that the findings and recommendations would be forwarded to the State govern- G ment. The government accepted the findings of the inquiry and ordered that steps be taken to amend the declaration to include Atoyebe ruling house after the vacancy occasioned by the death of Baale Akinloye in June 1978 might have been filled by a candidate from the Lala ruling house. Pursuant to the directive of the State Government, Chief Ashiru Jaiyeola H from Lala ruling house was appointed and installed the Baale of Ijimoba in January 1981. The Chieftaincy declaration was subsequently amended to include the Atoyebe family and the plaintiffs being dissatisfied with the amendment, instituted the action leading to this appeal. At the trial of the

action, evidence was led on both sides as to the number of ruling houses eligible to the Baale of Ijimoba Chieftaincy. At the end of the trial and after addresses by learned counsel for the parties, the learned trial Judge, in a reserved judgment, found that there were three ruling houses and in consequence dismissed the 1st and 4th claims of the plaintiffs but granted the orders sought B in the 2nd and 3rd claims. On the 5th claim he found as follows:

"I have on the facts before me held that there are three ruling houses in Baale Ijimoba chieftaincy like the 3rd defendant incidentally concluded in Exhibits L to L6 - the report on his findings following the dispute that arose in 1978 after Baale Akinloye's death. The said findings C were the decision of the 3rd defendant as prescribed authority by virtue of Section 22(3) of the Chiefs Law. Having given the opposing parties the opportunities to be heard, it does not appear to me that the decision can be faulted. The decision, incidentally, like in this judgment, but not the amended declaration to which the Ejigbo Local Government Chieftaincy D Committee was called in to make with the 3rd defendant out of an abundance of caution perhaps, is the binding customary law for the selection of a candidate to fill a vacancy in the Baale Ijimoba chieftaincy. As no declaration under the Chiefs Law can exist, I grant the injunction asked for in the fifth head of claim without prejudice to the orders I have made in this E case and also the force and effect of the decision of the prescribed authority as stated in his report, Exhibits L to L6."

The plaintiffs were unhappy with the judgment of the trial High Court and appealed to the Court of Appeal. Ogwuegbu J.C.A. (as he then was) in the lead judgment of that Court (with which Kutigi, J.C.A. (as he F then was) and Sulu-Gambari J.C.A. agreed) affirmed the finding of the learned trial Judge that there are three ruling houses namely Oladogba, Lala and Atoyebi, that are entitled to the Baale of Ijimoba Chieftaincy. The Court of Appeal dismissed the appeal of the plaintiffs. It is against that judgment that the plaintiffs, with leave of the court below, have further G appealed to this court upon seven grounds of appeal as contained in their amended notice of appeal filed on 14/11/94.

Pursuant to the rules of this court, written briefs of argument were filed and exchanged. In the plaintiffs amended appellants brief, the following questions are set down as calling for determination:

H *"1. Whether having regard to section 22(3) of the Chiefs Law Cap. 21 Laws of Oyo State of Nigeria, 1978, applicable in Osun State, it is not ultra vires a Prescribed Authority to determine a dispute involving conflicting claims by families aspiring to present candidates to the Chieftaincy as opposed to determining a dispute whether a person has been appointed in*

accordance with Customary Law applying to the Chieftaincy in dispute?

2. *Whether the Court of Appeal was right in declining to re-evaluate the evidence of the parties on the ground that the learned trial Judge had made a finding on the evidence when there was proof that the evaluation made by the learned trial Judge on conflicting traditional histories, and inferences to be drawn from the evidence led was wrong and when in any event the evidence was not one bothering on demeanour of witness?*

3. *Whether the Court of Appeal was right in affirming the decision of the trial court on the issue of number of Ruling Houses in Ijimoba and/or question of common ancestry to or between the plaintiffs and the 4th respondent?*

4. *Whether the Court of Appeal was right in affirming the decision of the learned trial judge in view of the inconsistency occasioned by the learned trial Judge's grant of some of the reliefs sought and the refusal of others? and*

5. *Whether the Court of Appeal was right in affirming the decision of the High Court reached without or in excess of jurisdiction by granting to the respondent a relief not claimed by them. "*

The 1st-2nd respondents in their own brief of argument reframed the questions for determination as follows:

"1. *Whether the Prescribed Authority in this case acted ultra vires in view of s. 22(3) of the Chiefs Law of Oyo State, applicable in Osun State?*

2. *Whether the Court of Appeal erred in this case by declining to re-evaluate the evidence of the parties before the trial court?*

3. *Whether the Court of Appeal was right in affirming the decision of the trial court on the issues of (a) common ancestry of the appellants and the 4th respondent and (b) the number of ruling houses traditionally entitled to the Baale of Ijimoba Chieftaincy having regard to the evidence led in this case?*

4. *Whether the Court of Appeal was right in affirming the decision of the High Court even though the court granted some of the reliefs sought and refused others?*

5. *Whether the High Court (as affirmed by the Court of Appeal) granted the 4th respondent's relief not claimed by them and therefore acted in excess of/without jurisdiction in respect of those gratuitous reliefs, if any?"*

The 3rd and 4th respondents in their own brief adopted the five questions as formulated in the plaintiffs brief.

Question (1):

The main submission of the plaintiffs is that the 3rd defendant acted

ultra vires his powers as prescribed authority when he conducted an inquiry to determine the number of ruling houses eligible to present candidates in the event of a vacancy arising in the Bale of Ijimoba chieftaincy. It is contended by the appellants that the power of the 3rd defendant, as prescribed authority, under Section 22(3) of the Chiefs Law of Oyo State is limited only to a determination of a dispute on whether a person has been appointed in accordance with customary law. The learned trial Judge in dealing with the power of a prescribed authority under Section 22(3) of the Law has this to say:

"As regards a minor chieftaincy, the Kingmakers are to appoint a candidate to a vacancy before a prescribed authority appointed by the Executive Council approves such appointment or settles a dispute as to whether a person so appointed to fill the vacant stool has been properly appointed." I think the above passage correctly states the law. For, section 22(3) states:

"Where there is a dispute whether a person has been appointed in accordance with customary law to a minor chieftaincy, a prescribed authority may determine the dispute."

The 3rd defendant however, has not claimed that he was acting under section 22(3) when he conducted an inquiry into the identity of families eligible to present candidates to fill a vacancy in the Baale of Ijimoba chieftaincy. Following the demise of Baale Akinloye in 1978 and the attempted exclusion of the Atoyebi family from presenting a candidate, that family petitioned the 3rd defendant as the paramount ruler of the area and the prescribed authority for the chieftaincy, complaining about the exclusion of their family from the 1957 declaration. If the chieftaincy had not been relegated to the status of a minor chief the petition would have been directed to the Governor of the State. **In the light of the protest made to the 3rd defendant, I think he was right to conduct an inquiry into finding out the number of families entitled to the chieftaincy. I will, therefore, not say that he acted ultra vires by conducting that inquiry. In any event, it is not the case of the plaintiff that because the 3rd defendant conducted the inquiry, the finding was null and void.** The reasons for seeking their claims (2) and (3) are found in paragraphs 25-32 of their statement of claim which read:

"25. Plaintiff aver that in January, 1986, the heads of their respective ruling houses received copies of a letter reference No. CB.141/32/7/122 dated 20th January, 1986, emanating from the Office of the 1st defendant under cover of a letter reference No. 181/30A dated 24th January, 1986 from the Secretary of the Ejigbo Local Government.

26. Plaintiffs say that the Secretary of Ejigbo Local Government

endorsed copies of documents purporting to be an amended declaration in respect of the Baale of Ijimoba chieftaincy to their respective heads of ruling houses under cover of his letter referred to herein. The 4th defendant's family (Atoyebe) was included therein as a third ruling house.

27. Plaintiffs aver that they had no knowledge of any representations made by the Atoyebe family to the Ejigbo Local Government Chieftaincy Committee warranting the amendment of the Baale of Ijimoba Chieftaincy declaration of 1957 by the inclusion of Atoyebe as a ruling house.

28. Plaintiffs say that the documents purporting to be amended declaration in respect of the Baale of Ijimoba chieftaincy were made by the Ejigbo Local Government Chieftaincy Committee of which the 3rd defendant is the chairman.

29. The plaintiffs were not given any opportunity by the Ejigbo Local Government Chieftaincy Committee to correct or contradict any representation made by members of the Atoyebe family which led to the purported amendment by the Committee, contrary to the rules of natural justice.

30. The plaintiffs say that their ruling houses did not receive any correspondence on any investigation into the Baale of Ijimoba chieftaincy declaration nor did members of their ruling houses submit any comments to or attend any committee to investigate the proposed amendment to the declaration.

31. Plaintiffs aver that the Ejigbo Local Government Chieftaincy Committee carried out the amendment exercise in reliance upon a directive from the Office of the 1st defendant contained in a letter reference No. CB.141/32/50 dated 28th May, 1980, purporting to authorise an amendment of the Baale of Ijimoba Chieftaincy Declaration of 1957 by the inclusion of Atoyebe family as a third ruling house.

32. Plaintiffs say that the purported amendment is contrary to the age long tradition, native law, custom and usages of the Ijimoba community. "The evidence adduced at the trial did not support the above averments. The appellants not only knew of the inquiry conducted by the 3rd defendant but made representations as well. The learned trial Judge would have dismissed claims (2) and (3) but for the reason given by him that a chieftaincy declaration was no longer necessary as the Baale of Ijimoba chieftaincy had been relegated to the status of a minor chief under Part III of the Law. There was therefore no need, according to him, to amend the 1957 declaration pertaining to the title. He said:

".....a declaration is not to be amended for its own sake as said in Adigun v. A.G. of Oyo State (1987) 1 NWLR (Pt. 53) 678 at 806 but the

Baale Ijimoba chieftaincy having been derecognised by the Recognised Chieftaincies (Revocation and Miscellaneous Provisions) Order W.S.L.N. No.6 of 1976 as confirmed by O.Y.S.L.N. 18 of 1978, there can be no more existing declaration envisaged under the Chiefs Law of the State but statements of customary law which may guide the prescribed authority in the settlement of dispute in respect of the Baale Ijimoba Chieftaincy. The prescribed authority can however be in court however for not following the applicable customary law that should help him in settling such dispute"The learned Judge added:

"There being no declaration to amend, the directive of the State government to the 3rd defendant to amend a declaration in respect of the Baale Ijimoba Chieftaincy is uncalled for, unnecessary, and therefore null and void as you cannot put something on nothing and expect it to stay - See Macfoy v. U.A.C. Ltd. (1962) A.C. 152 at 160 per Denning L.J., (as he then was)."

D He concluded:

"..... in view of what I have said above it follows that I have to grant the orders in the second and third heads of claim of the plaintiffs as there was no declaration to amend since, 1978, a directive for the amendment of one cannot be given and no amendment can be afortiori made."

E There is no appeal against this conclusion. The grant of claims (2) and (3), for the reason given, does not, in my respectful view, affect the main question between the parties which is: how many ruling houses are entitled to the Baale of Ijimoba chieftaincy? The statement of law contained in the 1957 declaration, subject to the answer given to this main question, remains the customary law governing the appointment to the Baale of Ijimoba title.

I therefore, answer Question (1) in the affirmative.

Questions (2) -(5):

G These questions relate to the finding of the learned trial Judge, and affirmed by the court below, that there are three ruling families eligible to nominate, in rotation, candidates to fill any vacancy in the Baale of Ijimoba chieftaincy. The attitude of this court to concurrent findings of fact of the courts below has been stated in numerous cases. It is trite that this court will not interfere with such findings where they are supported by sufficient evidence and cannot be said to be perverse. I have examined the evidence on record in this case and have considered the arguments proffered by the plaintiffs. I can find no good reason for disturbing the finding that there are three ruling houses namely Oladogba, Lala and

Atoyebi. That finding is supported by abundant evidence adduced at the trial and it is in no way perverse. Consequently I too affirm the finding. I resolve Questions (2) - (5) against the plaintiffs.

In the net result, I find no merit whatsoever in this appeal which is hereby dismissed. I affirm the judgment of the court below and award costs of this appeal assessed at N1,000.00 in favour of each set of respondents. B

WALI JSC

I have been privileged to read before now, the lead judgment of my learned brother Ogundare, J.S.C., and I agree with his reasoning and conclusion save where he opined thus:

“The statement of law contained in the 1957 declaration, subject to the answer given to the main question, remains the customary law governing the appointment to the Baale of Ijimoba title.”

The main issue as stated in the lead judgment is: *“how many ruling houses are entitled to the Baale of Ijimoba Chieftaincy?”* D

The learned trial Judge has in my view stated the purpose for which the repealed declaration, in so far as it affects the Baale of Ijimoba Chieftaincy (when it became a derecognised chieftaincy) can be put to use which he stated:-

“The Baale Ijimoba chieftaincy have been derecognised by the Recognised Chieftaincies (Revocation and Miscellaneous Provisions) Order W.S.L.N. No.6 of 1976 as confirmed by OY.S.L.N. 18 of 1978, there can be no more existing declaration envisaged under the Chiefs Law of the State but statements of customary law which may guide the prescribed authority in the settlement of dispute in respect of the Baale Ijimoba Chieftaincy.” E

“There being no declaration to amend, the directive of the State Government to the 3rd defendant to amend a declaration in respect of the Baale Ijimoba Chieftaincy is uncalled for, unnecessary, and therefore null and void as you cannot put something on nothing and expect it to stay- See Macfoy v. U.A.C. Ltd. (1962) A.C. 152 at 160 per Denning LJ., (as he then was). I therefore do not find the case of Uwegba v. A.G. Bendel State (1986) 1 NWLR (Pt. 16) 303 helpful as in that case a declaration which should normally be treated as a legally binding customary law was being interpreted. That is the effect that our Section 4(1) above of the Chiefs Law i.e. of Oyo State envisages. One may sound a warning here that the provisions under Part II of the Chiefs Law being relied upon by Mr. Adedeji are not applicable to Baale Ijimoba (a part III) chieftaincy but in view of H

what I have said above it follows that I have to grant the orders in the second and third heads of claim of the plaintiffs as there was no declaration to amend since, 1978, a directive for the amendment of one cannot be given and no amendment can be a fortiori made."

The repealed declaration is no longer the only customary law for the appointment of the Baale Ijimoba, but it may only serve as a guide to the ascertainment of the proper customary law which has now become an issue of fact to be proved when ever there is dispute as to what the proper customary law is when a new Baale of Ijimoba is to be appointed, until such customary law gains notoriety through superior court decisions when it will be judicially noticed. See s. 14 (1) and (2) of the Evidence Act (Cap 112), Laws of the Federation of Nigeria 1990. See *Larinde v. Afiko* (1940) 6 WACA 108, and *Amissah v. Krabah* (1931) WACA 30.

In the recent case of *Lipede v. Sonekan* (1995) 1 NWLR (Pt. 374) 668 a similar issue as regards the effect of declaration of customary law on the appointment of a derecognised chieftaincy arose. In that case this court clearly stated that where an enabling law is repealed or revoked any delegated legislation, instrument or order made pursuant thereof becomes of no legal binding effect, except for the right that has accrued prior to the repeal or revocation. See *Odofin v. Ayoola* (1984) 11 SC 72 and *Mogaji v. Cadbury (Nig.) Ltd* (1985) 2 NWLR (Pt. 7) 393, where Onu J.S.C. delivering the lead judgment in *Lipede v. Sonekan* (supra) opined thus on this issue:-

"The gist of the appellant's argument on this issue, which asks whether Exhibit "18" (the registered declaration) has been revoked by W.S.L.N. No.6 of 1976 so as to render it inapplicable to Ashipa Egba Chieftaincy, is that Exhibit"18" remains in full force in its applicability to the minor chieftaincy of Ashipa Egba (governed by Part 3 of the Chiefs Law) notwithstanding the fact that it was expressly and statutorily made to apply to recognised Chieftaincy (governed by Part 2 of the Chiefs Law) (ibid). I fully endorse the respondents argument on this point that to so hold would amount to a clear refusal to recognise the change introduced by the amendment effected by W.S.L.N No.6 of 1976 (ibid). The amendment introduced in my view, was to wipe away the use of registered declarations in respect of the Ashipa Egba Chieftaincy among other minor Chieftaincies which hitherto enjoyed privileges as recognised chieftaincies. This, I hold, accords with the intendment of the law maker. I endorse all that I have said under Issue (b) above. In addition, I am of the view that a declaration such as Exhibit 18 derived its root, existence and validity from section 4 in Part 2 of the Chiefs Law (ibid). It is a piece of delegated legislation made pursu-

ant to the powers conferred by that section. Once, as shown in this case, the application of section 4 itself had been revoked by W.S.L.N. No.6 of 1976, Exhibit 18 has no legal root upon which it can continue to stand."

Uwais, J.S.C. (as he then was) stated the position of the law as follows in his concurring judgment:-

"Now section 4 of the Chiefs Law, Cap. 20 by virtue of which B Exhibit 18 was made, has not been repealed but the Chieftaincy of Ashipa Egba ceases, by the operation of the 1976 revocation Order (W.S.L.N.) No.6 of 1976, to be a recognised chieftaincy. Consequently, Part 2 of the Chiefs Law ceases to apply to the chieftaincy. It follows, by analogy to section 4 subsection (2) (c) of the Interpretation Act, Cap. 192, that Exhibit C 18 (which is a statutory instrument) ceases to have effect. Furthermore, by the repeal of the Recognised Chieftaincies Order, 1959 (W.R.L.N. No. 22 of 1959) by the 1976 Order (W.R.L.N. No.6 of 1976), so far as it applies to the Chieftaincy of Ashipa Egba, Exhibit 18, though not expressly or specifically revoked is deemed to be "spent" and "obsolete".

Exh. A having been rendered obsolete or revoked by the Recognised Chieftaincies (Revocation and Miscellaneous Provisions) Order W.S.L.N. No.6 of 1976 and subsequently confirmed by OY. S.L.N. 18 of 1978 could no longer apply as an existing law, nor could it be amended since it has ceased to exist when the purported amendment was carried out.

I shall also dismiss the appeal for the reasons ably stated in the lead judgment and abide by the consequential orders contained therein, including the one as to costs.

MOHAMMED JSC

I have had the advantage of reading the judgment of my learned brother, Ogundare, J.S.C., in draft and I agree with him that the appellants have failed to convince this court to disturb the concurrent findings of facts from the two lower courts in this appeal. My learned brother has considered all the issues canvassed in his judgment and I adopt his opinion as my own.

This appeal is therefore dismissed. I abide by all the consequential orders made in the lead judgment, including the award of costs.

ONU JSC

I had the advantage to read before now in draft the judgment of my learned brother Ogundare, J.S.C., just delivered. I am in entire agreement with him that this appeal is devoid of any merit and must perforce fail.

I only wish to add the following words of mine in expatiation.

The real matter in difference between the parties to the appeal herein is not strictly the issue relating to the interpretation of section 22(3) of the Chiefs Law, Cap 21 of 1978, Laws of Oyo (now Osun) State but as to the number of Ruling Houses that the Baale of Ijimoa Chieftaincy should have B - two (Oladogba and Lala) as postulated by the appellants, who were plaintiffs in the trial court and who lost all the way in the two courts below before coming up on appeal to this court of three (to wit: Oladogba Atoyebi and Lala) as contended by the respondents, who as defendants in the trial court won through to the Court of Appeal (hereinafter referred to as the C court below)

The appellants have submitted five issues as arising for our determination as follows:-

“(1) Whether having regard to section 22(3) the Chiefs Law Cap. 21 Laws of Oyo State of Nigeria 1978, applicable to Osun State, it is not D ultra vires a prescribed Authority to determine a dispute involving conflicting claims by families aspiring to present candidates to the Chieftaincy as opposed to determining a dispute whether a person has been appointed in accordance with Customary Law applying to the Chieftaincy in dispute?”

(2) Whether the Court of Appeal was right in declining to re-evalu- E ate the evidence of the parties on the ground that the learned trial Judge had made findings on the evidence when there was proof that the evaluation made by the learned trial Judge on conflicting traditional histories, and inference to be drawn from the evidence led was wrong and when in any event the evidence was not one bothering (sic) on demeanour of witness?”

(3) Whether the Court of Appeal was right in affirming the deci- F sion of the trial court on the issue of number of Ruling Houses in Ijimoba and/or question of common ancestry to or between the plaintiff and the 4th respondent?”

(4) Whether the Court of Appeal was right in affirming the deci- G sion of the learned trial Judge in view of the inconsistency occasioned by the learned trial Judge’s grant of some of the reliefs sought and refusal of other? and

(5) Whether the Court of Appeal was right in affirming the deci- H ing to the respondents a relief not claimed by them. ”

The facts of this case have been so ably set out in the lead judgment of my learned brother that I do not deem it necessary to repeat them here. Suffice it to say, that it was sequel to the 3rd respondent complying with the directive of the 1st respondent by appointing Ashiru Jaiyeola of the

Lala Ruling House to the vacant stool of Baale of Ijimoba by firstly applying, not quite correctly though, the provisions of the 1975 declaration of Baale of Ijimoba Chieftaincy (a minor chieftaincy) for the exercise and secondly, by taking steps to include 4th respondent's family as a third Ruling House (Atoyebi), which has led the two other Ruling Houses of Oladogba and Lala (appellants herein) to file the suit giving rise to the instant appeal B and in which they claimed the following reliefs:-

"1. Declaration that Oladogba and Lala Ruling Houses are the only ruling houses entitled to the Baale of Ijimoba Chieftaincy title.

2. Declaration that the directive of the Governor of Oyo State (now Osun State) contained in letter reference No. CB. 141/32/50 of 28th May, C 1980, purporting to authorise an amendment of the Baale of Ijimoba Chieftaincy Declaration of 1957 the inclusion of Atoyebi as a third ruling house is ultra vires, unconstitutional, null and void and of no effect whatsoever.

3. Declaration that the purported amendment of the Baale of Ijimoba Chieftaincy declaration of 1957 by the Ejigbo Local Government Chief- D taincy Committee, sequel to the said Governor's directive is invalid, against the rules of natural justice, null and void and of no effect whatsoever.

4. Declaration that the Bale of Ijimoba Chieftaincy declaration of 1957 is the only customary law regulating appointment to the Baale of Ijimoba Chieftaincy. E

5. Injunction restraining the defendants either by themselves or their agents, servants and privies from acting in pursuance of the purported amendment to the Baale of Ijimoba Chieftaincy declaration made by the Ejigbo Local Government Chieftaincy Committee."

On the first issue which complains against the construction placed F on Section 22(3) of the Chiefs Law Cap. 21 Laws of Oyo State of Nigeria 1978 applicable in Osun State but referable to Part 3 of that Law in relation to Minor Chieftaincy, it is pertinent firstly to set out the purport of sub-section 3 of section 22. It states:

"When there is a dispute whether a person has been appointed in G accordance with customary law to a minor chieftaincy the prescribed authority may determine the dispute."

The dispute envisaged in the above sub-section in the case in hand, is as encapsulated in the appellant's claim before the trial court, which in the absence of a declaration or amended declaration, has been submitted for H judicial determination vis-a-vis the customary law regulating the Baale of Ijimoba chieftaincy. That claim was definitely severable from those granted and since the exclusive right alleged to have resided in the appellants families was not established or proved in the trial court, a view which the court

below affirmed, it was, in my opinion, rightly refused. It is on the above premise that I regard that call to construe Section 22 the way the appellant has invited us to do, as hypothetical and academic since it cannot help in the determination of the main issue which, as I pointed out hereinbefore, turns on the number of the Ruling Houses that were entitled to the Baale of Ijimoba chieftaincy. See Ikenye Dike & ors. v. Obi Nzeka II & 3 ors (1986) 4 NWLR (Pt. 34) 144; Saude v. Abdullahi (1989) 4 NWLR (Pt. 116) 387 at 550; Kosile v. Folarin (1989) 3 NWLR (Pt. 107) 1 at 8; Oyeneye v. Odugbesan (1972) 4 SC 244; Bakare v. A.C.B. (1986) 3 NWLR (Pt.26) 47 and Overseas Construction Co. (Nigeria) Ltd. v. Creek Enterprises (Nig.) Ltd & anor. (1985) 3 NWLR (Pt. 13) 407. In effect, the appellants by so doing are inviting this Court to review concurrent findings of facts in a case which they have not shown either to be perverse, speculative, unsound or otherwise at variance with the evidence led or against the rules of procedure. This Court will, as urged by the 1st and 2nd respondents, decline to interfere with such concurrent decisions. See Enang & ors v. Adu & ors. (1981) 11-12 SC 25 at 42; Okagbue v. Romaine (1982) 5 SC 133 at 170; Ejike v. Nwankwoala (1984) 12 SC 301; Wankey v. The State (1993) 5 NWLR (Pt. 295) 542 at 552 and Sanyaolu v. The State (1976) 5 SC 37, to mention but a few. The principle of resolving conflicts in traditional evidence by reference to events in recent years as decided in Kojo II v. Bonsie & anor (1957) 1 WLR. 1223 at 1226 followed by such decision of this court as Agedegudu v. Ajenifuja (1963) 1 All NLR 109; P.M. Alade v. Lawrence Awo (1975) 4 SC 215 at 228 and more recently in Chukwueke v. Nwankwo (1985) 2 NWLR (Pt. 6) 195 at 201 and Ogbuokwelu v. Umeanafunkwa (1994) 4 NWLR (Pt. 341) 676, does not immunise such evidence from the general duty of the court of trial assigning probative value to all or any kind of evidence adduced, and make findings based on the totality of the cases made out by the parties before it. In the instant case, events in recent years were relied upon by the trial court in finding the 4th respondent's case more probable of the two versions of traditional evidence adduced before it which the court below justifiably, in my view, affirmed. The onus was on the appellant who alleged that there were only two ruling houses to the Baale of Ijimoba Chieftaincy to prove their exclusive right thereto. See Kodilinye v. Mbanefo Odu (1935) 2 WACA 336. The appellant having failed to discharge that onus, the trial court, in my view, was right in making a clear finding of fact that there was indeed a third Ruling House which was 4th respondent's. It was not a way of granting a relief not claimed; rather it was a finding on the evidence of customary law as adduced through witnesses vide Adigun & ors v. A.G, Oyo State & ors (1987) 1 NSCC 346 at 358;

(1987) 1 NWLR (Pt. 53) 678. As Obaseki, J.S.C. in *Adigun v. A-G. Oyo* (supra) said at pages 618 and 698 of the Nigerian Weekly Law Reports (ibid):

“What the appellants seek is a declaration that Ogunmakinde Ande is under customary law of Iwo the only Ruling House. In carrying out this judicial task, the court will from the evidence adduced ascertain and find B whether there is customary law on the matter, what the customary law is and then decide whether on the evidence, Ogunmakinde Ande is the only Ruling House in Iwo from which Oluwo of Iwo can be selected and appointed. It cannot, in my view, be correctly and legally argued that the High Court cannot entertain and adjudicate on such a claim in exercise of its C unlimited jurisdiction vested in it by Section 236(1) of the Constitution of the Federal Republic of Nigeria, 1979.”

Karibi-Whyte, J.S.C put it this way at pages 742-743 in the same Report:

“The declaration sought is under Section 6(6) (b) and Section 236(1) of the Constitution, 1979. It is an exercise of judicial power between D persons for the determination of questions as to the civil rights and obligations of such persons. It is also a civil proceeding in which the existence of a legal right falls for determination - See Attorney-General of Bendel State v. A-G of the Federation & ors. (1982) 3 NCLR 1”

Clearly therefore, the declarations sought by the appellants in the instant E case as reliefs 1 and 4 in the trial court which it declined to grant are declarations sought under Sections 6(6) (b) and 236(1) of the 1979 Constitution (ibid). Consequently, the learned trial Judge has jurisdiction and competence to make the findings of fact which he made and applied to the claim before him and the court below was equally right to affirm that decision appropriately arrived at F intra vires. See also *Edewor v. Uwegba* (1987) 1 NWLR (Pt.50) 313;(1987) 2 S.C.49 at 105 in which Nnamani, J.S.C. dealing with a similar provision in Section 22(3) of the Chiefs Law of the defunct Bendel State (which also derived from the Chiefs Law of the then Western Region of Nigeria) said:

“The dispute envisaged by sub-section 3 of section 22 is one which G arises as to “whether a traditional Chieftaincy title has been conferred on a person in accordance with customary law or whether it has been conferred on the right person.” That is not the dispute in this suit. No traditional chieftaincy title had been conferred on any person if one regards conferment as what the kingmakers would have done in this suit. The dis- H pute was rather as to which sub-clan was entitled to have its candidate conferred with the title.” Underlining is for emphasis.)

Thus, the dispute envisaged in section 22(3) of the Chiefs Law, Cap 21 Laws of Oyo (now Osun) State (ibid) is one which clearly, in my opin-

ion, arises where there were two contesting persons or two rival candidates who have been named, selected or nominated to a minor chieftaincy or whether a person has been appointed in accordance with customary law and related matters. (See *Lipede v. Sonekan* (1995) 1 NWLR (Pt. 374) 668). This much the appellants even conceded in paragraph 5.10 in their brief wherein they stated that-

"While it is conceded that in determining a dispute between two contesting persons the prescribed authority may avail himself of the applicable customary law by virtue of that section, it is highly inconceivable, in the light of that section for a prescribed authority, who is the final approving authority, to equally exercise the power of conducting inquiries into claims by various families aspiring to be included among the ruling houses, and in the process resolve conflicting traditional history, determine the proper families so entitled to present candidate (s) and finally decide which among the competing candidates is most suitable." (Underlining mine for emphasis).

In the case in hand, the dispute which arose after the death of Akinloye, the then immediate past Baale of Ijimoba, was not strictly who of the two contestants, Ashiru Jaiyeola from Lala family and Samuel Olaoye Alabi from Atoyebi family, was to be approved for the chieftaincy but whether the Atoyebi Ruling House should be given recognition as a third Ruling House. This was the dispute before the 3rd respondent and his Committee which eventually led the 4th respondent's petition to the 1st and 3rd respondents to be probed. The findings of the 3rd respondent and his committee after being submitted 1st respondent and receiving approval culminated in the 3rd respondent being directed to fill the vacancy in the Baaleship of Ijimoba Chieftaincy along the lines of the 1957 declaration, and to take further steps to include the family of the 4th respondent, the former act which the learned trial Judge held, rightly in my view, to be null and void but the latter act which the 3rd respondent as the prescribed authority, duly performed. When therefore the trial court held that:-

"The decision i.e. the decision of the 3rd respondent is the binding customary law for the selection of a candidate to fill a vacancy in the Baale of Ijimoba Chieftaincy."

and the court below confirmed the same, both courts, in my firm view, were right to have upheld the 3rd respondent's power/competence as the prescribed authority, to determine the issue of the number of ruling houses in the minor chieftaincy of Baale of Ijimoba under section 22(3) of the Chiefs Law (ibid), moreso as the 1st respondent had earlier in time approved the 3rd respondent chieftaincy Committee's findings and recom-

recommendations on the issue. See also Section 22(4) of the Chiefs Law (ibid) which provides that -

“The decision of the prescribed authority -

(a) to approve or not to approve an appointment to a minor chieftaincy; or

(b) determining a dispute in accordance with sub-section (3) of B this section shall be final and shall not be questioned in any court.”

The above provision the learned trial Judge, rightly in my view, declared null and void in that it would not absolve the prescribed authority from suit where there is a failure on his part to apply the applicable customary law pursuant to section 6(6)(b) of the 1979 Constitution as amended C and modified. See also the purports of sections 2 and 20 of the interpretation Law, Cap 52 Laws of Oyo State (now Osun) State.

Besides, there was no appeal by the appellants against the trial court's conclusion relating to the directive for amendment of the 1957 declaration which had become spent (See Lipede v. Sonekan (supra) and D which it rightly, in my opinion, declared null and void, being no longer applicable to the de-recognised (minor) status of the Baale Ijimoba chieftaincy; and any action taken in respect of it (the 1957 Declaration) by the 3rd respondent, would in any case, have been in vain. See Shitta-Bey v. Federal Public Service Commission (1981) 1 SC 40.(1981) 12 NSCC. 19. E

My answer to Issue No.1 is accordingly in the negative.

My consideration of Issue No.1 above clearly overlaps whatever points are raised in Issues 2 to 5 and this renders their treatment otiose since they would no longer, in my view, arise.

For the reasons I have stated above and the fuller ones contained F in the judgment of my learned brother Ogundare, J.S.C. I too dismiss this appeal and make the same consequential orders inclusive of those as to costs therein contained.

IGUH JSC

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Ogundare, J.S.C. and I agree entirely with him that this appeal is devoid of merit and ought to be dismissed.

The main issue that calls for determination in this appeal turns on H whether or not there are two to three ruling houses in the Baale Ijimoba chieftaincy. The plaintiffs/appellants case is that there are two ruling houses, to wit, the Oladogba and Lala ruling houses whereas the defendants/respondents contend that there are the Oladogba, Lala and Atoyebi ruling

houses in the Baale Ijimoba chieftaincy.

In this regard the learned trial Judge after a careful consideration of the issue found as follows -

"However in view of the features in the defendants evidence as stated above, it would appear the defendants story is more probable than the plaintiffs story which had no answer to most challenging facts in the defendants story. I accept the defendants story and find established that the three families of Oladoba, Lala and Atoyebi descended from the common ancestor Alugbin as father and Laadi as mother of the three male children, namely, Oladogba, Lala and Atoyebi. It follows the three families are related and as such there are three ruling houses in Baale Ijimoba chieftaincy."

The above findings of the trial court were affirmed by the court below and fully justify the reliefs granted by both courts below in favour of the respondents.

The law is that where there are concurrent findings of fact, then unless those findings are found to be perverse; or are not supported by the evidence; or are reached as a result of a wrong approach to the evidence, or a wrong application of some principle of substantive law or procedure, this court, even if disposed to come to a different conclusion upon the printed evidence, cannot do so. *Enang v. Adu* (1981) 11 - 12 Sc. 25 at 42, *Nwadike v. Ibekwe* (1987) 4 NWLR (Pt. 67) 718, *Igwego v. Ezeugo* (1992) 6 NWLR (Pt. 249) 561, *Woluchem v. Gudi* (1981) 5 SC. 291 at 326 etc.

In the present case, the said findings are fully supported by evidence and have not been found to be perverse. They were also not reached as a result of a wrong approach to the evidence or a wrong application of any principle of substantive law or procedure. This court cannot therefore interfere with them.

It is for the above and the more detailed reasons contained in the leading judgment of my learned brother, Ogundare, J.S.C. that I, too, dismiss this appeal. I abide by the order for costs therein made.

H