

**SUPREME COURT OF NIGERIA**  
14TH MAY, 1996. SC. 93/1990  
**CORAM:- A. B. WALI, M. E. OGUNDARE,**  
**U. MOHAMMED, S. U. ONU, A. I. IGUH, JJSC.**

ADEDEJI JOKANOLA ..... PLAINTIFF/APPELLANT

AND

THE MILITARY GOVERNOR OF OYO

STATE & 7 OTHERS ..... DEFENDANTS/RESPONDENTS

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**CHIEFTAINCY MATTERS** - *Registered chieftaincy declaration - In respect of the chieftaincy in issue - Whether there is any Lacuna therein.*

**CHIEFTAINCY MATTERS** - *Custom - Relating to the appointment of a chief - It is the duty of the unsuccessful candidate - To prove non compliance with the custom.*

**CHIEFTAINCY MATTERS** - *Custom - Introduction of a new custom by the appellant - Whether proved to the court's satisfaction.*

**FACTS**

Before the High Court of Oyo State, the plaintiff/appellant filed an action against the defendants/respondents seeking to set aside the appointment of the 8th respondent to the chieftaincy stool of Bale of Lanlate. Appellant who is the Otun Bale of Lanlate sought to establish that in spite of the 1957 Registered Chieftaincy Declaration in respect of that stool, the proper custom is that the Otun Bale automatically succeeds to the throne of the Bale of Lanlate.

The trial court found that the appellant failed to prove the custom set out by him and dismissed his claim. Appellant's appeal to the Court of Appeal was dismissed. Being dissatisfied, appellant has further appealed to the Supreme Court raising 4 issues which that Court reduced to 2 issues.

**ISSUES FOR DETERMINATION**

Whether it is the custom of the chieftaincy of Bale of Lanlate that on the demise of a Bale the Otun Bale or Sobaloju will automatically succeed to the throne left vacant by the deceased.

Whether the 1957 Registered Declaration which was approved by Ademola Commission is exhaustive of the customary law relating to the nomination, selection, appointment and installation of the Bale of Lanlate.

Seep. 928

**HELD** (Unanimously dismissing the appeal per lead judgment of **MO-HAMMED JSC**)

***Registered Chieftaincy Declaration***

1. After considering the pleadings and evidence adduced before the trial High Court it is quite plain that the Court of Appeal is right to say that there is no lacuna in the Registered Declaration reproduced above. (p. 930 B)

***Custom - Relating to the appointment of a chief***

2. It is relevant to emphasize, here that the onus is on the unsuccessful candidate for a chieftaincy to prove that the custom relating to the appointment of a chief has not been complied with: It is evidently clear that even prior to 1957 Declaration it was not the custom of the chieftaincy of Bale of Lanlate to choose the Otun Bale as the automatic successor to a Bale stool. , it has been shown through evidence, some of which was adduced by witnesses for the appellant, that the custom of the chieftaincy does not preclude the Otun Bale and the Bale from coming from the same ruling house. Further, it is abundantly clear that from the previous cases, even where an Otun Bale succeeded to the throne of Bale he had to contest the stool together with other competent candidates. The issue of automatic ascension does not therefore arise. (p. 931 A)

***Introduction of a new chieftaincy custom***

3. The appellant, in this case, introduced a new custom that the Otun Bale is automatically appointed as Bale on the demise of a Bale and that the Otun Bale and the Bale must not come from the same ruling house, at the same time. The appellant failed woefully to prove this custom to the satisfaction of the trial High Court. The Court of Appeal quite rightly agreed with the High Court. The appellant has failed to convince me to disturb the concurrent findings of the two lower courts. (p. 932 C)

**REPRESENTATION**

L. O. Fagbemi, for the appellant

D. O. Adeniran, for the 2nd respondent

Abiola Orioye, for the 3rd, 4th, 5th, 6th, and 8th respondents

7th respondent not in court and not represented

**CASES REFERRED TO**

The Queen: Ex parte Kasalu Adenaiya v. The Governor-in-Council, Western Region (1962) 1 All N.L.R. 299.

Edewor v. Uwegba and ors. (1987)1 N.W.L.R. (Part 50) 31

Agbetoba v. Lagos State Executive Council (1991) 1 N.W.L.R. (Part 188) 664 at 688 and 689

Enang v. Adu (1981) 11-12 S.C.25 at 42

Nwadike v. Ibekwe (1987) 4 N.W.L.R. (Part 67) 718

Igwego v. Ezeugo (1992) 6 N.W.L.R. (Part 249) 561 at 576

National Insurance Corporation of Nigeria v. Power and Industrial Engineering Co. Ltd. (1986) 1 N.W.L.R. (Part 14) I at 36

### ***LEAD JUDGMENT BY MOHAMMED JSC***

The appellant is the Otun Bale of Lanlate and a member of Olabebe ruling house one of the two ruling houses for the appointment of Bale of Lanlate. The other ruling house is Bioku ruling house. In 1957 a Chieftaincy Declaration relating to Bale of Lanlate Chieftaincy was drawn up. The Declaration was registered on 28th November, 1958. It provided for the rotation of the candidature of Bale of Lanlate between Olabebe and Bioku ruling houses.

In 1977 the government of Oyo State set up Ademola Commission of Inquiry which reviewed all the existing chieftaincy declarations in Oyo State. The Commission received memoranda from various interested groups including Olabebe and Bioku ruling houses who presented a joint memorandum. After thorough consideration of all memoranda the Commission affirmed the 1957 chieftaincy Declaration of Bale of Lanlate.

At the demise of Oba Babatunde Aremu, the Bale of Lanlate, on the 7th of October, 1984, the appellant, the 8th respondent, Oyewole Oyediran, and two other members of Olabebe ruling house contested for the vacant stool. At the end of the contest the kingmakers declared Prince Oyediran Oyewole, the 8th respondent, the winner, having scored majority of the votes cast. Thereafter the name of the 8th respondent was forwarded to the Oyo State Government for approval. Dissatisfied with the selection and election of Prince Oyediran Oyewole as the candidate to be appointed the new Bale of Lanlate, the appellant instituted this action against the eight defendants/respondents, listed above, in the High Court of Oyo State and claimed as follows:-

*“(1) Declaration that paragraph V of the Registered Declaration of 1957 relating to Bale of Lanlate Chieftaincy which was retained by Ademola Commission of enquiry and approved by the 1st Defendant in his letter of the 11th of January, 1978 reference No. C. B. 141/169/VOL. V. 557 is contrary to the customary law relating to the Bale of Lanlate Chieftaincy and is therefore invalid.*

*(2) Declaration that according to tradition and customary law of*

*Bale of Lanlate Chieftaincy, the surviving Otun Bale automatically becomes the Bale elect.*

*(3) Declaration that the nomination and selection of the 8th defendant as the Bale of Lanlate by the 4th to 6th defendant is irregular, contrary to the customary law relating to Bale of Lanlate Chieftaincy and invalid.*

*(4) Order of injunction restraining the 1st and 2nd defendants by themselves, their servants, agents or otherwise howsoever from recognising or approving the appointment of the 8th defendant as the Bale of Lanlate.*

*(5) Injunction restraining the 1st to 7th defendants by themselves, their servants, agents or otherwise howsoever from treating or dealing with the 8th defendant as the Bale of Lanlate.*

*(6) Injunction restraining the 8th defendant from acting as or parading himself as the Bale of Lanlate pending the determination of the substantive case."*

The case of the appellant, through the pleadings, is that he was appointed Otun Bale of Lanlate by Oba Babatunde Aremu, in 1976. He averred that according to the custom and tradition of Lanlate, on the demise of a Bale of Lanlate, the Otun of Lanlate is automatically appointed to succeed the deceased Bale, while the next ruling house from which the last Bale came would produce the next Otun Bale. Both Bale and Otun Bale being the most important chieftaincies in Lanlate must not come from the same ruling house at the same time. He further asserted that before the position of Otun was created, the next chief to Bale of Lanlate was the Sobaloju and that the Sobaloju was the automatic choice of Bale of Lanlate when a vacancy in the Baleship occurred.

The appellant submitted that in view of the clear custom of the chieftaincy of Bale of Lanlate, which he narrated above, the 1957 Registered Declaration which merely provided for rotation between the Olabebe and Bioku Ruling Houses did not fully represent the true customary law of Lanlate since it omitted the vital element relating to succession by the Otun and the impossibility of the Otun and Bale coming from the same ruling house at the same time. For these reasons plaintiff's counsel argued that the selection of the 8th respondent who came from the same ruling house with him, as Bale of Lanlate, was invalid, null and void.

The learned trial judge considered the evidence adduced before her and, in a well considered judgment, dismissed the claim of the appellant.

Dissatisfied with the decision of the trial High Court the appellant filed an appeal at the Ibadan Division of the Court of Appeal. There again; the appellant, Mr. Adedeji Jokanola, was not successful. He has now come

before this court on three grounds of appeal.

Chief Afe Babalola, Learned Senior Advocate who prepared the appellant's brief for the prosecution of this appeal raised the following issues for the determination of this appeal;

B “1. *Whether the decision of the Court of Appeal is sustainable considering the failure of the Court to consider and pronounce on germane issues i.e., the effect of what happens to an Otun who survives the tenure of Bale, particularly considering the custom that both Bale and Otun must not come from the same ruling house at the same time.*

C 2. *Whether the decision of the Court of Appeal took into consideration the essential elements of a good custom which must not be repugnant to good reason when the effect of its holding is that both the Bale and Otun could come from the same ruling house.*

D 3. *Whether the Court of Appeal was not wrong in failing to hold that an accepted customary usage or practice of the people of Lanlate where the three successive Otuns become Bale, a practice that spanned over 30 years had hardened into custom cognisable by court to be judicially sanctioned.*

E 4. *Whether the failure of the Bale of Lanlate Chieftaincy Declaration of 1957 to provide for automatic ascension of Otun Bale upon the demise of the incumbent Bale particularly in a situation where the next ruling house would produce Bale and Otun passes to the other ruling house thereby creating a lacuna was not established, as it was the situation in the case of Edewor v. Uwegha (1987) 1 N.W.L.R. (Pt. 50) 313.”*

F Three learned counsel appeared for the three sets of respondents. In their respective briefs each counsel formulated issues which for all intents and purposes are similar to those filed by the learned counsel for the appellant. I do not see it pertinent to reproduce those issues in this judgment.

G The whole arguments of learned counsel for the appellant, in his appeal, boil down to two issues. First, whether it is the custom of the chieftaincy of Bale of Lanlate that on the demise of a Bale the Otun Bale or Sobalaju will automatically succeed to the throne left vacant by the deceased. Secondly, whether the 1957 Registered Declaration which was approved by Ademola Commission is exhaustive of the customary law relating to the nomination, selection, appointment and installation of the H Bale of Lanlate.

In support of these issues Chief Afe Babalola, S.A.N. submitted that there had developed a custom in Lanlate whereby the Otun becomes the Bale upon the demise of the reigning Bale, notwithstanding the provi

sions of the Registered Declaration. Counsel then pointed out that three successive Otuns had become Bales and that the adopted practice had spanned for over 30 years. It is also the learned Senior Advocate's argument that the 1957 Registered Declaration did not adequately provide for this developed custom of the people of Lanlate. Learned counsel thereafter referred to the case of Edewor v. Uwegba (1987) 1 N.W.L.R. (Pt.50) 313 B and submitted that this court had decided that although an existing declaration must be taken to represent the customary law regulating the particular chieftaincy in respect of which it was made, where there is a lacuna in the Declaration other evidence would be taken to fill in the lacuna.

Now, let me pause here and ask; is there any lacuna in the 1957 Registered Declaration in respect of the chieftaincy of Bale of Lanlate as has been submitted by learned counsel for the appellant? The Court of Appeal on this issue reproduced the Registered declaration in its judgment before it resolved that there was no lacuna or gap in the Registered Declaration - Exhibit 1. I think it is relevant to reproduce the Declaration here because it gives a clear picture of the custom of the chieftaincy of Bale of Lanlate which has been embodied in it. It reads as follows: D

**““DECLARATION MADE UNDER SECTION 4(2) OF THE CHIEFS LAW, 1957 OF THE CUSTOMARY LAW REGULATING THE SELECTION TO THE BALE OF LANLATE CHIEFTAINCY.**

*(i) There are two quarters and the identity of each such ruling quarter is: 1 Bioku 2. Olabebe.* E

*(ii) The order of rotation in which the respective ruling quarters are entitled to provide candidates to fill successive vacancies in the chieftaincy shall be:*

*1. Olabebe*

*2. Bioku (last ruling house)* F

*(iii) The persons who may be Proposed as candidates by a ruling quarter entitled to fill a vacancy in the chieftaincy shall be:*

*(a) Male adults*

*(b) Members of the ruling house of the male or female line.* G

*(c) Popular with the people.*

*(iv) There are six (6) Kingmakers as under:*

*1. Chief Otun 4. Chief Ikolaba*

*2. Chief Osi (Chairman) 5. Chief Jagun*

*3. Chief Onitabo 6. Chief Odofin*

*(v) The method of nomination by each ruling quarter is as follows:* H

*The eldest member of the ruling quarter whose turn it is to provide a candidate shall summon a meeting of all adult male and female members of the family to consider applications for nomination. The decision of*

*this meeting shall be conveyed by the eldest member of the kingmakers.*

*Made by the Chieftaincy Committee of the Ibarapa District Council which has been designated as the competent Council by Western Region Legal Notice 61 of 1955, and signed by the Chairman and Secretary of the Committee this 4th day of October, 1957.*

*(Sgd.)*

*Chairman,*

*Chieftaincy Committee  
Ibarapa District Council.*

After considering the pleadings and evidence adduced before the trial High Court it is quite plain that the Court of Appeal is right to say that there is no lacuna in the Registered Declaration reproduced above.

I now turn to the submission of the learned counsel for the appellant in support of averments in the statement of claim that by the custom of the chieftaincy of Bale of Lanlate, on the demise of a Bale the surviving Otun Bale is automatically nominated by the Kingmakers to occupy the stool. Also, that the Bale and Otun must never, according to the custom of the people, come from the same ruling house at the same time. The respondents countered this submission. In paragraphs 9 and 10 of the 2nd respondent's statement of defence the tradition was pleaded thus:

*"With further reference to paragraphs 10, 17, 18, 20 and 21 of the Statement of Claim the 2nd Defendant repeats paragraphs 7 and 8 above and avers that it is not correct to say that the surviving Otun Bale Lanlate must become the Bale of Lanlate when the stool of Bale is vacant.*

*10. The following are examples of people who did not hold the title of Otun Bale of Lanlate before becoming the Bale of Lanlate.*

*(i) Chief Bioku, (ii) Chief Oguntayi, (iii) Chief Oyedokun, (iv) Chief Ebofin, (v) Chief Adio, (vi) Chief Ajadi, (vii) Chief Ojo, (viii) Chief Ajala (ix) Chief Oyewole, (x) Chief Oriola"*

The learned trial judge after reviewing all the evidence adduced before him considered, among other points argued, the issues of automatic ascension to the throne and rotation between the two ruling houses for the titles of Bale and Otun Bale and concluded as follows:

*"I find further that Ebofin, the sixth Bale, was the first to hold the title of Otun Bale, and that this title was conferred on him by the Bale of Ibadan to compensate him when he should have become Bale but Adio, who was the Balogun took his place. Ojo, Ajala, Oyewole and Oriola, all reigned after Ebofin, none of them held the title of Otun. Ojo Ajala and Oyewole held the title of Sobaloju, Oriola, succeeding his brother Oyewole as he did, was neither Otun nor Sobaloju.*

*From these facts it is manifest that prior to the 1957 Declaration it was not the custom to choose the Otun Bale as the next Bale."*

The Court of Appeal quite rightly agreed with the above finding. It is relevant to emphasize here that the onus is on the unsuccessful candidate for a chieftaincy to prove that the custom relating to the appointment of a chief has not been complied with: See *The Queen: Ex parte Kasaju Adenaiya v. The Governor-in-Council, Western Region* (1962) ISCNLR 442; (1962) 1 All N.L.R. 299. It is evidently clear that even prior to 1957 Declaration it was not the custom of the chieftaincy of Bale of Lanlate to choose the Otun Bale as the automatic successor to a Bale stool. Also, it has been shown through evidence, some of which was adduced by the witnesses for the appellant, that the custom of the chieftaincy does not preclude the Otun Bale and the Bale from coming from the same ruling house.

Further, it is abundantly clear that from the previous cases, even where an Otun Bale succeeded to the throne of Bale he had to contest the stool together with other competent candidates. The issue of automatic ascension does not therefore arise.

The custom and practice of appointment of a Bale of Lanlate was reviewed by Ademola Commission of Inquiry when the commission was set up by Oyo State Government in 1977 to review all the existing chieftaincy Declarations in the State:

The two ruling houses prepared a joint memorandum and presented it to the Commission. In it, the custom concerning the nomination and appointment of a Bale of Lanlate which was embodied in the Registered Declaration for the Chieftaincy in 1957 was all Proved by the two ruling houses. In the joint memorandum they prayed for the retention of the custom. The appellant being an Otun Bale and therefore a prominent member of Olabebe Ruling House cannot say that he was unaware of the memorandum.

I will refer now to the case of *Edewor v. Uwegba and Ors.* (1987) 1 NWLR (Pt. 50) 313 which the learned Senior Advocate for the appellant referred to, to buttress his argument that there is a Lacuna in the Lanlate Declaration of 1957. I want to see if the decision therein is helpful to the appellant in the case in hand. In *Edewor v. Uwegba* (supra) the facts in a nutshell were that under the customary law of Agbon, in what was then Bendel State, succession to the chieftaincy of Otota was to be rotated between the clans, and the constitution of the chieftaincy was drawn up to that effect. The office of Otota of Agbon became vacant and Chief J. O. Edewor was nominated by his clan. Another clan nominated another person. There was therefore, an open dispute between the clans. When the appeal in respect of the case was determined in this Court the dispute was summarised in the judgment of Nnamani J.S.C. (of blessed memory) thus:

From the above letters, evidence and minutes of meetings it seems so clear to me that there was real dispute between the parties as to which sub-clan had the turn to nominate the next Otota. There were also certain fundamental issues to sort out as was so poignantly shown in the excerpts I have set down from Exhibit Q. These disputes and fundamental issues could not for the reasons I have given in this judgment be resolved by reference to Exhibit S.C.I, the Declaration of 1962, the letter of 1958 Exhibit C or the Agbon constitution of 1959 Exhibits B and D. Only an Inquiry could, in the circumstances, have resolved them."

Coming back to the case in hand, there is no dispute whatsoever between the Ruling Houses on the selection of a candidate to be dominated for the vacant stool of Bale of Lanlate. Both the appellant and the 8th respondent come from Olabebe ruling house whose turn it is to provide a candidate for the appointment of Bale of Lanlate on the demise of Oba Babatunde Aremu. The appellant, in this case, introduced a new custom that the Otun Bale is automatically appointed as Bale on the demise of a Bale and that the Otun Bale and the Bale must not come from the same ruling house, at the same time. The appellant failed woefully to prove this custom to the satisfaction of the trial High Court. The Court of Appeal quite rightly agreed with the High Court. The appellant has failed to convince me to disturb the concurrent findings of the two lower courts.

This appeal has no merit at all. It is dismissed. The judgment of the Court of Appeal is hereby affirmed. I award N1000 costs in favour of each set of the respondents.

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**WALI JSC**

I have had a preview of the lead judgment of my learned brother Uthman Mohammed, J.S.C., and I entirely agree with his reasoning and conclusion.

For those reasons ably stated in the lead judgment which I hereby adopt as mine. I also dismiss this appeal and adopt the consequential orders in the said judgment.

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**OGUNDARE JSC**

I have had the benefit of a preview of the judgment of my learned brother Mohammed, J.S.C. just read. I agree with his conclusion and the reasoning leading thereto. I too dismiss the appeal as totally lacking in merit. I subscribe to the order for costs by him.

**ONU JSC**

Having read the judgment of my learned brother Mohammed, J.S.C, the draft of which was made available to me, I agree that the appeal lacks merit and ought to fail. I desire, however, to make the following expiation.

It transpired on 26th February, 1996 when this case came up for hearing that the only issue available for canvassing before us by learned counsel for the appellant, was issue No.2 which is predicated on ground 2 of the appeal grounds.

The purport of that issue is:

*"Whether the Court of Appeal was not wrong in failing to hold that, an accepted customary usage or practice of the people of Lanlate whereby the three successive Otuns became Bale, a practice that spanned 30 years had hardened into custom cognisable by the court to be judicially sanctioned."*

I will set about answering this issue briefly by pointing out firstly, that when in 1977 the Ademola Commission of Inquiry was set up to review inter alia, the 1957 Registered Declaration of the Bale of Lanlate Chieftaincy to wit: Exhibit 1, which Declaration is a subsidiary legislation made pursuant to the Chiefs Law, Cap. 21 of Oyo State and deemed to represent the customary law of Lanlate relating to the appointment, selection and/or election of the Bale of Lanlate, that Declaration (Exhibit 1) was upheld and retained without being subjected to an amendment.

Secondly, with Exhibit 1 being left unaltered and with the appellant being wide awake to its implications and fully aware of its provisions, he voluntarily subjected himself with three others including 8th respondent for nomination for the post of Bale of Lanlate; contested and lost to 8th respondent in his bid. Having lost in the contest, appellant commenced the proceedings giving rise to the action on appeal herein, where the gravamen of the appellant's case and indeed the issue before the trial court was that the Otun Bale becomes automatically the Bale of Lanlate on the demise of the Bale. The crux of the respondents' case was that while the selection of the Bale of Lanlate is limited exclusively to only two ruling houses namely, Bioku and Olabebe, the selection of the Bale Lanlate is open to persons inside and outside these ruling houses.'

The learned trial Judge held, inter alia, and rightly in my view, dismissing appellant's claims that "it is manifest that prior to the 1957 Declaration it was not the custom to choose the Otun Bale as the next Bale." The learned trial Judge also further found, inter alia, that all persons, Otun Bale or any other person who had ever succeeded as Bale of Lanlate including the last three namely, Busari Ladiran, Lawal Kehinde and Babatunde Durodola, succeeded to the throne as Bale of Lanlate only

after a keen contest and not automatically.

On appeal to the Court of Appeal, that court (per Kutigi, J.C.A., as he then was writing the lead judgment) upheld, quite justifiably in my view, the decision of the trial court and on the question of automatic succession by the Otun Bale to the Baleship of Lanlate, observed, inter alia, as follows:-

*"I think this submission is misconceived. Nobody said that an Otun should not become a Bale. The point is that one can only become a Bale after contest.....if one accepts the submission of appellant's counsel that the omission to provide in Exhibit "1" that an Otun automatically succeeds a Bale is real rather than imaginary, then there would probably be no need for Exhibit "1" at all to exist."*

I think the learned Justice has made an unimpeachable finding of fact here with which I agree. This is because the very fact that the process whereby an Otun Bale must ultimately submit himself to an election as attested to and confirmed in the two courts below, logically rule out custom standing aloft per se as herein invoked by the appellant, as the applicable law.

Thus, if prior to Exhibit 1 it was manifest that it was not the custom that the Otun Bale was the automatic successor of the Bale, it follows that with the coming into force of that piece of subsidiary legislation, it would not be automatic either that an Otun Bale succeeded the Bale upon the latter's demise - the fact that the last three mentioned Bale's period of reign spanned over 30 years after serving as Otun Bale, giving the appearance of crystallised custom, notwithstanding.

The purpose and usefulness of a registered declaration such as Exhibit 1 as pointed out by Karibi- Whyte, J.S.C., in *Agbetoba v. Lagos State Executive Council* (1991) 1 NWLR (Pt.188) 664 at 688 and 689 is:

*"A registered declaration of the fact will obviate the necessity of proof on each occasion".*

While Muhammad, J.C.A., in *Ayoade v. Military Governor of Ogun State* (1993) 8 NWLR (Pt.309) 111 at 127 and 128, on the other hand, lucidly expatiated on the point this way.

*"The purpose of a registered declaration is to embody in a legally binding written Statement, the Customary Law of particular area, setting out clearly the method regulating the nomination and selection of a candidate to fill a vacancy in the chieftaincy of that area. This is to avoid uncertainty in the Customary Law of the area."* (Italics is mine for emphasis).

Agreeing with the trial court, the court below in this regard held that:

*“The fact that all the Otuns have contested for appointment as Bale implies that the Otun does not become automatically one on the demise of the latter.”*

Clearly therefore, the emphasis laid by the court below on the procedure of contest or election which rather than being erroneous or containing a lacuna, is a re-affirmation of what is adumbrated in Exh.1 re-echoed in the evidence of the witnesses for the appellant as part of the custom of Lanlate up till the present time and it cannot, in my view, be held to be any different from the so-called “accepted usages.”

In the result, it was clearly because appellant lost the race for the Baleship that he became aggrieved and once it is shown that he earlier submitted himself to the electoral process as by law established, the evidence of his entire complaint and insistence on a purported age-old custom as well as the ingenuity of his argument, lack credibility and merit. The decisions of the trial High Court and the court below therefore constitute concurrent findings of fact with which this court, as an appellate court, will be slow to disturb; there being no error of law or procedure or indeed any perverse conclusions arrived at by them shown or pin-pointed, to warrant such interference. See Enang v. Adu (1981) 11-12 SC. 25; Ebba v. Ogodo (1984) 1 SCNLR 372; Ogunsola Ajadi v. Alhaja Ladunni Okenihun (1985) 1 NWLR (Pt.3) 484 and Nwadike v. Ibekwe (1987) 4 NWLR (Pt.67) 718.

It is for these and the fuller reasons contained in the judgment of my learned brother Muhammed, J.S.C., with which I had expressed my concurrence, that I will answer the lone issue in the negative and so dismiss this appeal. I make the same orders as to costs as contained in the lead judgment.

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### IGUH JSC

I have had the privilege of reading in draft the lead judgment just delivered by my learned brother, Mohammed, J.S.C., and I agree entirely that this appeal is devoid of merit and should be dismissed.

The main question that arises for consideration in this appeal is whether the Otun-Bale of Lanlate automatically ascends to the stool of Bale of Lanlate when the latter position falls vacant. The issue, as identified by the appellant in his brief goes thus-

*“Whether the Court of Appeal was not wrong in failing to hold that an accepted customary usage or practice of the people of Lanlate whereby the three successive Otuns became Bale, a practice that spanned over 30 years had hardened into custom cognisable by court to be judicially sanctioned.”*

It is clear in the present case that there is nothing in the 1957 registered Declaration to suggest automatic succession to the stool of Bale by a surviving Otun-Bale. The totality of evidence adduced by the plaintiff and his witnesses, however, appeared to fall in line with this Declaration and supports the contention that the ascension of the Otun-Bale to the throne of Lanlate on the demise of a Bale is not automatic but by contest with other interested members of the Ruling House.

Indeed the evidence before the court was that even the immediate past three Bales, to wit - Busari Ladiran, Lawani Kehinde and Babatunde Durodola went into contest with the other candidates from their family in accordance with the customary law of Lanlate people and emerged victorious. They did not become Bales automatically or merely because they were Otun-Bale but after they subjected themselves to contest and emerged victorious.

On the above issue, the learned trial Judge in evaluating the evidence before the court found as follows -

*"Upon the evidence, I find that the last three reigning Bales, were Busari Ladiran, Lawani Kehinde and Babatunde Durodola and each held the title of Otun Bale before succeeding as Bale. I also find that of these three Bales, only Busari Ladiran became Bale prior to the 1957 Declaration."*

A little later in his judgment, the trial Judge, on the evidence highlighted instances when Bales were appointed without their first becoming Otun, when Sobalajus were appointed Bales and when persons who were neither Otun nor Sobaloju were appointed Bales. Said the court -

*"I find further that Ebofin, the sixth Bale, was the first to hold the title of Otun Bale, and that this title was conferred on him by the Bale of Ibadan to compensate him when he should have become Bale but Adio, who was the Balogun, took his place. Ojo, Ajala, Oyewole and Oriola, all reigned after Ebofin, none of them held the title of Otun, Ojo, Ajala and Oyewole held the title of Sobaloju Oriola, succeeding his brother Oyewole as he did, was neither Otun nor Sobaloju."*

*From these facts it is manifest that prior to the 1957 declaration it was not the custom to choose the Otun Bale as the next Bale."*

The learned trial Judge concluded thus -

*"On the evidence before me I have no doubt at all in holding that the plaintiff has failed completely to show that the holder of the title of Otun Bale must be taken as Bale of Lanlate when that stool becomes vacant. One swallow does not make a summer."*

The Court of Appeal in affirming the above findings of the learned trial Judge commented as follows 'E2'80"

*"A careful perusal of the evidence at the trial clearly showed that the learned trial Judge had properly and carefully appraised the evidence and had given due weight to relevant matters before coming to her conclusions. I think she is right."*

A little later in its judgment, the Court of Appeal observed -

*"Nobody said that an Otun should not become a Bale. The point is that one can only become a Bale after contest as provided for in Exh. 1. Members of the Ruling House whose turn it is to provide a candidate, must first of all summon their own meeting and consider applications for nominations. Their decision is then conveyed to the Kingmakers who then make the selection. In fact the evidence established beyond doubt that the appellant submitted himself for the exercise as outlined in Exh.1. , he vigorously contested and lost. He all along knew that he is the Otun. His family also knew. The 8th defendant/respondent who won also belonged to the same family with him. Exh. 2 - the Minutes of the meeting of the Kingmakers - shows that the appellant scored only one vote while the 8th defendant/respondent scored three votes. The other two contestants scored nill vote each. Only the appellant decided to go to court because he is the Otun. This suit is clearly an "afterthought".*

It was conceived and nurtured after he, the appellant, had lost the contest for the Baleship of Lanlate."

It concluded -

*"I have already said that the trial court was correct when it found that the appellant failed to prove the custom which he alleged existed and that there was no lacuna..... I find no substance in this appeal. The appeal therefore fails and it is hereby dismissed."*

It is trite that where there are concurrent findings of fact, then unless those findings are -

- (1) found to be perverse; or
- (2) not supported by the evidence; or
- (3) reached as a result of a wrong approach to the evidence; or
- (4) a result of a wrong application of a principle of substantive law or procedure,

this court, even if disposed to come to a different conclusion upon the printed evidence cannot do so. See Enang v. Adu (1981) 11 - 12 S.C. 25 at 42, Nwadike v. Ibekwe (1987) 4 N.W.L.R. (Pt. 67) 718, Igwego v. Ezeugo (1992) 6 NWLR (Pt. 249) 561 at 576, National Insurance Corporation of Nigeria v. Power and Industrial Engineering Co. Ltd. (1986) 1 NWLR

(Pt 14) 1 at 36 etc. Both the trial court and the court below are in agreement that the appellant woefully failed to prove the custom which he alleged existed to the effect that an Otun-Bale of Lanlate automatically ascends to the stool of Bale of Lanlate when the latter position falls vacant. There is abundant evidence on record in support of this finding and I can find no reason to interfere with the same. Accordingly the lone issue for consideration in this appeal must be resolved against the appellant.

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

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