

SUPREME COURT OF NIGERIA

4TH JUNE, 1996, SC. 284/1991

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

JEJE OLADELE & 2 OTHERS
(For themselves and on behalf of
ODOLE Chieftaincy family)

..... PLAINTIFFS/
APPELLANTS

AND

OBA ADEKUNLE AROMOLARAN II
(Owa-Obokun Ademula of Ijesa Land)
& 3 OTHERS

..... DEFENDANTS/
RESPONDENTS

CHIEFTAINCY MATTERS - Appointment of a chief - Whether defendant not being a member of the ruling house - Whose turn it is to present candidate - Is qualified for appointment.

CHIEFTAINCY MATTERS - Registered declaration - A registered declaration where it exist - Is admissible in evidence of the customary law - Relating to the appointment and selection of the chief it pertains to.

CUSTOMARY LAW - Custom - Whether the custom varies with the status - Accorded the chief by the Governor.

EVIDENCE - Document - Admissibility - Exhibit 1A is admissible in proof - Of Customary Law relating to selection and appointment of chief.

EVIDENCE - Finding of fact - Where evidence is led to support that succession is by rotation - Finding of fact to that effect - Cannot be faulted

JUDGMENTS - Review - Whether Supreme Court will overrule its previous decision - Where complaint is only against dicta therein - Not the correctness of the final decision.

PLEADINGS - Customary Law - On rotational chieftaincy succession - Whether pleaded in the Statement of Claim.

FACTS

The appellants, as plaintiffs, sued the respondents (who were defendants) at the High Court of Oyo State, Ilesha (now Oshun State) seeking

in their statement of Claim, three declarations to wit - That the Odole chieftaincy is hereditary, that the 4th defendant is not related to the first chief of Odole, that the selection and installation of the 4th defendant by the 1st and 3rd defendants is null and void and an order of perpetual injunction restraining the defendants. The case proceeded to trial at the end of which the trial judge gave judgment for the plaintiffs in respect of the 1st & 4th items and partly in the 3rd item but refused their 2nd item.

The 1st and 4th defendants dissatisfied with the decision, appealed to the Court of Appeal, Ibadan Division. It allowed the appeal, set aside the judgment of the trial court and dismissed the 3rd and 4th claims of the plaintiffs. Against that decision of the Court of Appeal the plaintiffs have now appealed, formulating one question for determination by the Supreme Court. They also invited the Court to depart from its decision in LIPEDE'S CASE.

ISSUE FOR DETERMINATION

Whether a registered declaration made under the provisions of the Chiefs Law Cap. 21 Laws of Oyo State 1978 (still applicable in Osun State) when a particular chieftaincy came under part 2 of the said Law still has force of law notwithstanding that the said chieftaincy has been reduced in status and now comes under Part 3 of the said law.

HELD (Unanimously allowing the appeal per lead judgment of **OGUNDARE JSC**)

Judgments - Review

1. Although the invitation is to overrule Oba Oyeade Lipede v. Adio Sonekan (supra), nothing has been urged to suggest that the case was wrongly decided. The criticism of the judgments in the case is directed at the correctness or otherwise of the dicta of Uwais and Onu JJ. SC. set out above, rather than the correctness of the final decision reached. Subject to what I will say later on the said dicta, I am of the respectful view that the decision reached in that case is sound. The dicta complained of did not form the basis of the judgment in the case. (p. 1049 A)

Admissibility of a registered declaration

2.. Where a registered declaration exists, it is, in my respectful view, admissible evidence of the customary law relating to the selection and appointment of the chief it pertains to. It does not matter that the chieftaincy is a recognized or minor chieftaincy. Just as the court may take judicial notice of a custom relating to the selection and appointment of a chief "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", so also, in my respectful view, may it take judicial notice of such custom that is reduced into writing in accordance with section 4 of the Law. There is nothing in section 22 of the Law which restricts the mode of proving the customary law relating to the selection and appointment of a minor chief to any particular method. Any method that satisfies the requirements of section 14 of the Evidence Act will, in my humble view, suffice. (p. 1049 G)

Custom does not vary with status of chief

3. There is nothing in the Law to suggest that that custom varies with the rank accorded the chief by the Governor. It may be that a recognized chief enjoys some privileges which are denied the minor chief but it is not the same thing as saying that the custom relating to his selection and appointment changes with whatever rank it pleases the Governor to clothe him with at any particular time. If the registered declaration states that custom when he is a recognized chief, It cannot be logically said that it no longer states the custom because he has been reduced to a minor chief. (p. 1050 F)

Exhibit 1A (the Chieftaincy Declaration) is admissible

4. The conclusion I finally reach is that Exhibit 1A in these proceedings is admissible in proof of the customary law relating to the selection and appointment of the Odole of Ilesa. It is not valueless. And since Exhibit 1A provides for a rotational system, that system ought to prevail. (p. 1050 H)

Finding of fact

5. I have already found that Exhibit 1A (the Declaration) is not valueless. The Plaintiffs have not relied on it alone. They pleaded in paragraph 13(b), and led evidence to the effect, that succession to the Odole was by rotation. The learned trial Judge acted on this evidence to find in favour of rotation. I cannot see how his finding can be faulted. (p. 1053 C)

Rotational succession pleaded

6. Although it is not directly contended by the 1st and 4th Defendants that the evidence in favour was inadmissible, that, in reality, is the effect of their submission that there was no pleading on customary law other than Exhibit 1A. I do not agree with the Defendants on this point. Paragraph 13(b) of the amended statement of claim clearly pleaded rotation independent of Exhibit 1A pleaded in paragraph 13. The phrase "vide ruling house

declaration of 21st day of May, 1975" in brackets at the end of the paragraph relates only to the next ruling house to provide a candidate. (p. 1053 D)

4th Defendant is not qualified for appointment

7. From the evidence of this witness, it is crystal clear that the ruling house whose turn it was to present a candidate to fill the vacancy occasioned by the death of Chief Babatope, is Ogboro. 4th Defendant not being a member of that ruling house would not be qualified for appointment as the Odole to succeed Chief Babatope. The conclusion I finally reach is that this appeal succeeds and it is hereby allowed by me. (p. 1053 G)

NOTABLE POINTS OF INTEREST

OGUNDARE JSC

1. Registered Declaration and status of chieftaincy

It is in the light of the above reasoning that I have come to share the view expressed by Karibi-Whyte JSC in Agbetoba v. Lagos State Executive Council (supra). A registered declaration, where it exists, obviates the necessity of proof by oral evidence, of the custom on each occasion that the issue arises for determination in court. With profound respect to my learned brothers Onu J.S.C. and Uwais JSC (as he then was), I find myself unable to agree with them that a registered declaration becomes inapplicable when the chieftaincy to which it relates is reduced in status from being a recognized chief to becoming a minor chief nor that it becomes "spent" or "obsolete". A registered declaration is declaratory of the custom relating to the selection and appointment of the chief to which it relates. (p. 1050 C)

KUTIGI JSC

2. Codification of customary law - Need thereof

I need only add that the tendency worldwide today is to try as far as possible to codify customary laws by reducing them into writing and making them available for people to read and know about them. This tendency is to be encouraged by everyone. It is interesting to note that the Chiefs Law itself in sections 10 -12 provide for amendments to a declaration if and when necessary. This I believe, is to ensure that any declaration is current, and takes cognizance of changes in and around the people. This is as it should be. I think suits like the present one have clearly demonstrated the necessity for all chieftancies major or minor, recognized or not recognized, to declare and register their customary laws relating to the selection and appointment of any chief thereof. It will be, I think, a right step in the right direction.

We cannot afford to put the hands of the clock backwards! The rest of the world will not wait for us. (p. 1069 F)

ONU JSC

3. Supreme Court does not show antipathy towards application to overrule itself

- B Be it noted that the Supreme Court ordinarily adheres to the rule of stare decisis and does not readily depart from its decisions. However, the court does not show antipathy towards any submission as herein made, that its previous decision e.g. that the Lipede case (supra) was wrong and should be overruled. An example that the court welcomes any opportunity to review its previous decision is exemplified in the case of Federal Civil Service Commission v. J. O. Laoye. In deciding whether or not to overrule or depart from its previous decision the Court had established certain criteria which will ground a cause for departure. These criteria do not, however, impose hard and fast rules which circumscribe the areas within which an application (sic to apply) for a departure from a previous decision. Each case must be decided on its special facts and circumstances with a view to avoiding the perpetuation of injustice which is the paramount determinant in this respect. (p. 1075 G)

E *4. What a court of appeal has to decide*

- F Thus, although all said and done, the 4th Respondent had claimed nothing; hence he had no onus to discharge at the trial court, once the Appellants evinced in evidence that the rotation and heredity pleaded by them had been established, the court below had no business upsetting the apple cart in allowing the Respondents appeal on the preponderance of evidence adduced which, in my respectful view, tilted the scale against them. It is settled law that what the Court of Appeal has to decide in an appeal is whether the decision of the judge was right and not whether his reasons were. It is only if the misdirection had caused him to come to a wrong decision that it will be material. (p. 1076 E)

ADIO JSC

5. Registered declaration and change in status of a chieftaincy

- H So, in the case of a minor chieftaincy which used to be recognized chieftaincy, if the custom or any part thereof, stated in its then registered declaration, had changed or ceased to apply, evidence may be led to prove it. After all, a custom is a flexible thing and is adaptable to changing circumstances. The conclusion to which I have come is that where a recognized

chieftaincy is reclassified as a minor chieftaincy, the registered declaration

relating to it when it was a recognized chieftaincy no longer enjoys the conclusive nature ascribed to it by section 9 of the Chiefs Law. Its contents will, unless the court can take judicial notice of it in the circumstances stated in section 14(2) of the Evidence Act, will have to be proved like any other custom. Even where judicial notice can be taken of the contents of the registered declaration which used to apply to the chieftaincy when it was a recognized chieftaincy, evidence may, in an appropriate case, be given and accepted of the fact that there has been a change in the custom or any part thereof has ceased to exist in relation to the minor chieftaincy. (p. 1079 G) B

IGUH JSC

6. Not every error will result in an appeal being allowed

I think I ought to observe that the learned trial Judge in some areas of his judgment slipped into one or two errors as a result of which the court below allowed the appeal against his decision. But it is not every mistake or error in a judgment that will result in an appeal being allowed. It is only when the error is substantial in that it has occasioned a miscarriage of justice that the appellate court is bound to interfere. In my view, the errors apparent on the face of the judgment of the learned trial Judge cannot be said to be substantial as they occasioned no miscarriage of justice. The 4th defendant not having been selected from the proper rotational section of the Odole chieftaincy family, the judgment of the trial court nullifying the appointment of the 4th defendant as Odole should not have been disturbed by the Court of Appeal. (p. 1083 B) D

REPRESENTATION

Patrick Okoh Esq. for the appellant
Chief Oye Esan for the 1st respondent
C. H. Ephraim Esq. for the 3rd respondent
L.O. Fagbemi Esq., for the 4th respondent E

CASES REFERRED TO

Lipede v. Sonekan (1995) 1 NWLR (Pt. 374) 688
Ayoade v. Military Governor of Ogun State (1993) 8 NWLR 111, 127-128
Agbetoba v. L.S.E.C. (1991) 4 NWLR (Pt. 188) 664
Akpatá v. Awoyemi (1960) 5 F.S.C. 275
Umoffia v. Ndem (1974) 4 ECSLR 674
Isiedu v. A.G. of Lagos State (1986) 2 N.W.L.R. (Part 21) 165
Odi v. Osafire (1985) 1 N.S.C.C. 14 at 40 G

H

Federal Civil Service Commission v. J. O. Laoye (1989)2 N.W.L.R. (Part 106) 652

Akinsanya v. U.B.A. LTD (1986)2 N.S.C.C. 968 at 1008

Oranye v. Jibowu (1950) 13 W.A.C.A. 41 at 46

B Kindey v. Military Governor Gongola State (1988) 2 N.W.L.R. (Pt. 77) 445

Ike v. Ugboaja (1993) 9 KLR 62

STATUTES REFERRED TO

Chiefs Law Cap. 21 Laws of Oyo state 1978 (applicable in Oshun State), ss. 4, 7, 9, 10, 11, 12, 15, 16, 20, 25.

C Oyo State Legal Notice (OYSLN) 18 of 1978 (applicable in Oshun State)

Evidence Act Cap 112 L.F.N. 1990, s. 14

LEAD JUDGMENT BY OGUNDARE JSC

D The main question calling for determination in this appeal is as to whether a registered declaration made under the provisions of the Chiefs Law Cap. 21 Laws of Oyo State 1978 (still applicable in Oshun State) when a particular chieftaincy came under part 2 of the said Law still has force of law notwithstanding that the said chieftaincy has been reduced in
E status and now comes under Part 3 of the said law.

The Odole Chieftaincy is a traditional and hereditary title in Ilesa in Osun State. The chieftaincy, at one time, was under part 2 of the Chiefs Law and was then a recognized chieftaincy. In 1975 a declaration was made and registered pursuant to section 4 of the Law stating the custom-
F ary law pertaining to the selection and appointment of holders of the chieftaincy. By legal notice OY.SLN 18 of 1978 entitled The Recognized Chieftaincies (Miscellaneous Provisions) Order issued in 1978 by the Governor of Oyo State - Ilesa was then in Oyo State - the Odole Chieftaincy was removed from the list of recognized chieftaincies to which part 2 of the
G Law applies and was thereby reduced in status to a minor chieftaincy to which the provisions of part 3 of the Law apply.

Consequent upon the death of Chief Ayo Babatope (the previous holder of the title) on or about the 13th day of April 1985 there was a vacancy in the chieftaincy. There were a number of contestants all claiming to descend from Logun-Edu. The 1st defendant, the Owa Obokun
H Adimula of Ijesha is the prescribed authority in respect of the chieftaincy. Sometime in June 1986 he appointed Chief Ayotunde Esan (the 4th defendant) to succeed to the vacancy. Members of Logun-Edu family protested and when the 1st defendant would not rescind his decision the plaintiffs,

for themselves and on behalf of Odole Chieftaincy Family, sued the 4 defendants claiming, as per paragraph 35 of their amended statement of claim, as follows:

"i. Declaration that Odole chieftaincy title is hereditary.

ii. Declaration that 4th defendant is not in any way related to Logun-edu the first Chief of Odole of Ilesa.

iii. Declaration that selection installation of the 4th defendant as chief Odole by the 1st defendant or/and 1st-3rd defendants on 14th day of June, 1986 is null and void and of no consequence. In that the 4th defendant claims to belong to Arobiomo ruling house which the plaintiffs are not conceding and when it has not come to the turn of that Arobiomo ruling House.

iv. Perpetual injunction restraining the 4th defendant from parading himself as chief Odole of Ilesa and also restraining 1st and/or 1st-3rd defendants from performing other traditional ceremonies and/or rites pertaining to the installation of Odole chieftaincy title."

Pleadings having been filed and exchanged and amended the action proceeded to trial, at the end of which and after addresses by learned counsel for the parties, the learned trial Judge, in a reserved judgment adjudged as follows:

"(i) The declaration sought that Odole chieftaincy title is hereditary is hereby granted in favour of the plaintiffs.

(ii) The declaration sought that the 4th defendant is not in any way related to Logun-edu, the first Odole of Ilesa, is hereby refused.

(iii) The declaration sought that the selection and installation of the 4th defendant by the 1st defendant is null and void and of no consequence is hereby granted in favour of the plaintiffs. The declaration sought against the 2nd and 3rd defendants however fail and are hereby refused and dismissed.

(iv) The 4th defendant is hereby restrained by a perpetual injunction from parading himself as Chief Odole of Ilesa and the 1st defendant is also hereby restrained from performing other traditional ceremonies and/or rites pertaining to the installation of any Odole until a new selection is made in the appropriate customary manner to accord with section 22 of the chiefs Law, Cap. 21, Laws of Oyo State of Nigeria."

The 1st and 4th defendants were displeased with the said judgment and both appealed separately to the Court of Appeal (Ibadan Division) which Court allowed the appeals, set aside the judgment of the trial High Court and dismissed plaintiffs' claims (3) and (4). It is against that judgment that the plaintiffs have now appealed to this Court.

In accordance with the Rules of this Court the parties filed and exchanged their respective Briefs of Argument. The Plaintiffs also filed a reply Brief. In the Plaintiffs/Appellants' Brief, the following question is formulated as calling for determination in this appeal:

- B *"The only issue for determination in the appeal is whether the judgment of the trial Court nullifying the appointment of the 4th Defendant/Respondent as Odole should have been set aside by the Court of Appeal for the reasons given in the passage set out on pages 3 to 4 of this Brief having regard to the reasons given by the learned trial Judge for refusing to act or accept Exhibit '1A' and yet in another breath using the contents of Exhibit '1A' to nullify the appointment of the 4th Defendant."*

C The 1st defendant/Respondent in his Brief, however, states the issue as hereunder:

- D *"Whether the Court below ought to have confirmed the use of Exhibit 1A in favour of the Appellants when the learned trial Judge had earlier ruled he was not going to make use of it in favour of either party to the litigation?"*

The 3rd and 4th defendants/Respondents appear to endorse the issue as set out in the Appellants' Brief. The 2nd defendant had since died.

- E The plaintiffs in their Reply Brief invited this Court to "depart and over-rule its previous decision in Oba Oyebadé Lipede v. Chief Adio Sonekan given on 20th January 1995 and reported in (1995) 1 NWLR (Pt. 374), 688" on the following grounds:

- F *"(a) The said decision was erroneous in law,
(b) The said decision was given per incuriam in that the Court took no cognizance of section 6 (1) (a) of the Interpretation Act 1964; the said decision was therefore inadvertently given.*

- G *(c) The attention of the Court was not called to its decision as per Karibi-Whyte JSC in ALHAJI SULE AGBETOBA and ANOR. V. THE LAGOS STATE EXECUTIVE & ORS. (1991)4 NWLR. (Pt. 188); Page 664 and it is undesirable that there should be two conflicting decisions on the same point of law by the Supreme Court.*

- (d) The decision in Lipede's case (supra) is repugnant to public policy,"*

The 4th Respondent filed a further Brief in answer to the submissions made by the plaintiffs on this issue.

- H At the trial in the High Court, it was not in dispute that the Odole Chieftaincy is hereditary in that it is the preserve of the descendants of Logun-edu. It is equally not in dispute that there are now 3 branches (known as ruling houses) of the Logun-edu family to wit, Nikunogbo, Ogboro

and Arobiomo. What was in dispute at the trial court were:

(1) was the 4th defendant a member of Logun-edu family through the Arobiomo ruling house? and

(2) Was the system of appointment rotational among the 3 ruling houses of the Logun-edu family?

The learned trial judge found, and the Court below affirmed it, and this is no longer contested in this appeal, that the 4th defendant is a member of the Arobiomo ruling house of the Logun-Edu family and was therefore, entitled to the Odole chieftaincy. The learned judge, however, found that appointment to the office was by rotation among the three ruling houses constituting the Logun-edu family and that it was not the turn of the Arobiomo ruling house to present a candidate to fill the vacancy occasioned by the death of Chief Babatope.

The Court of Appeal, in setting aside the judgment of the trial High Court, opined that the trial Judge was in error to use the registered declaration to reach his decision that appointment was rotational among the three ruling house, after he had held that the document could not be used to the advantage of either party to the proceedings. It further found that the 1st Respondent was the prescribed authority. It finally concluded that the trial Judge, having found that the 4th defendant is a member of the Arobiomo ruling house of the Logun-Edu family, should have upheld his appointment by the 1st defendant.

In their amended statement of claim the Plaintiffs pleaded, inter alia, as follows:-

"13. That prior to June 3rd, 1975, there had been 4 ruling houses namely:- Nikunogbo, Oduyodo, Lijetu Oyinbo, Arobiomo but by 3/6/76 a new declaration under section 4(2) of the chiefs law was made thereby creating 3 ruling houses as follows:-

(a) *NIKUNOGB0*

(b) OGBORO

(C) AROBIOMO

13. (A) Granted but not conceding that even if the 4th defendant belongs to Odole chieftaincy family, his selection and installation are null and void in that he claims to belong to Arobiomo ruling house. G

13(B). That the selection and installation of Odole is by rotation among the three ruling houses and that the next ruling house to nominate or provide a candidate is the Ogboro ruling house (vide ruling house declaration of 21st day of May, 1975).

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23. That on 14th day of June, 1986, the 1st defendant or/and 1st-

3rd defendants nominated and selected the 4th defendant and installed him the Odole of Ilesha contrary to the custom of Ijesaland as the 4th defendant is not in any way related to Odole chieftaincy family i.e. he is not a descendant of Logun-edu the first Odole of Ilesha."

Paragraphs 13-13(B) are crucial in the determination of this appeal. It was
 B contended in the court below, as well as in this Court, by the 1st and 4th
 Defendants that as the trial Judge held that the Chieftaincy Declaration
 (Exhibit 1A) could not be used in favour of either side, it was wrong of him
 to turn round later to use the same document to find that appointment to
 the Odole chieftaincy was rotational. It was further contended that with-
 C out Exhibit 1A, that finding would have no evidence to support it in that
 customary law as to rotation was not separately pleaded and any oral
 evidence tending towards such proof would be inadmissible as going to no
 issue. It is further contended in this Court by the 2 Defendants that Exhibit
 1A was no longer of any relevance to the Odole chieftaincy following the
 D reduction, in status, of that chieftaincy from being a recognized chieftaincy
 to which Part 2 of the Law applied, to minor chieftaincy to which Part 2 of
 the Law applied, to minor chieftaincy coming under part 3 of the Law.

Needless to say that the Plaintiffs, both in the court below and in
 this Court, contended to the contrary. They maintain in this Court that
 Exhibit 1A is very relevant being a codification of the Customary law relat-
 E ing to the selection and appointment of the Odole. They further contend
 that paragraph 13(A) and 13(B) plead facts independent of Exhibit 1A
 pleaded in paragraph 13. They invite us to depart and over-rule our previ-
 ous decision in Oba Oyebade Lipede v. Chief Adio Sonekan (1995) 1 NWLR
 (Pt. 374) 688. They urge us to follow and apply the dictum of Karibi-
 F Whyte JSC in Agbetoba v. Lagos State Executive Council (1991) 4 NWLR
 (Pt. 188), 664 at pp. 688B and 689. The grounds for the invitation have
 earlier been stated in this judgment; I need not repeat them here.

The first question to ask is this: Has Exhibit 1A, the Odole Chief-
 taincy Declaration made pursuant to section 4 of the Chiefs Law, Cap. 21
 G Laws of Oyo State, become valueless following the relegation of the Odole
 chieftaincy to the rank of minor chiefs? Section 4 which comes under Part
 2 of the Law provides for the making of a chieftaincy declaration. It reads:

*"4. (1) Subject to the provisions of this Law, a committee of a
 competent council -*

(a) may; and
 H *(b) shall, if so required by the Commissioner, make a declaration
 in writing stating the customary law which regulates the selection of a per-
 son to be the holder of a recognized chieftaincy.*

(2) in the case of a ruling house chieftaincy the declaration shall include -
 (a) a statement of the customary law relating to the following matters -

(i) the number of ruling houses and the identity of each such ruling house;

(ii) where there is more than one ruling house, the order of rotation in which the respective ruling houses are entitled to provide candidates to fill successive vacancies in the chieftaincy;

(iii) the persons who may be proposed as candidates by a ruling house entitled to fill a vacancy in the chieftaincy;

(iv) the number and identity of the Kingmakers;

(v) the method of nomination by each ruling house; and

(iv) the identity of any other person whose consent is required to an appointment made by the Kingmakers, and the Usage regulating the granting or withholding of such consent; and

(b) where, before the making of the declaration, the right of providing candidates has not been exercised under customary law in accordance with an ascertainable order of rotation, the recommendation of the committee as to the order in which the ruling houses should exercise that right after the coming into effect of the declaration.

(3) In the case of a recognized chieftaincy other than a ruling house chieftaincy, the declaration shall contain a sufficient description of the method of selection of the holder of the chieftaincy.

(4) In exercise of their powers under this section a committee shall ensure that no family is declared as a ruling house which is not generally recognized as such at the time of making the declaration by the community with which the chief concerned is associated, and in particular shall not declare as a ruling house a family which has been in the remote past so recognized but is not recognized at the time of making the declaration."

A declaration made by the competent committee is transmitted to the Council for onward transmission to the Governor (now Administrator) of the State - see section 5. The Governor may, in turn, approve or refuse to approve the declaration. Section 7 of the Law provides:

"7. (1) The Executive Council may approve or refuse to approve a declaration made by a committee of a competent council.

(2) Before exercising its powers under subsection (1) of this section the Executive Council may -

(a) cause an inquiry to be held in accordance with section 25, or

(b) whether or not an inquiry has been held, require the committee

which made the declaration to amend the declaration in any respect that the Executive Council may specify.

(3) Where in respect of a chieftaincy -

(a) a committee of a competent council fails to make a declaration within six months of being required to do so in accordance with section 4; or

(b) a committee of a competent council fails to amend the declaration in the respects specified by the Executive Council within six months of being required to do so in accordance with subsection (2) of this section, the Executive Council may make a declaration in respect of that chieftaincy in accordance with the powers conferred on the committee.

(4) Before exercising any of the powers conferred by subsection (3) of this section, the Executive Council may cause such inquiries to be held in accordance with section 25 as appear to it to be necessary or desirable.

(5) Upon a declaration in respect of a chieftaincy being made by the Executive Council every declaration made under this Law or the repealed Law relating to that Chieftaincy that is not approved shall be void and of no effect."

On the declaration being approved by the Governor, it is registered and comes into effect. Its legal effect is stated in section 9 which reads:

"9. Where a declaration in respect of a recognized chieftaincy is registered under this part, the matters therein stated (including any recommendation under paragraph (b) of subsection (2) of section 4) shall be deemed to be the customary law regulating the selection of a person to be the holder of that chieftaincy to the exclusion of any other customary usage of rule. (Underlining are mine)

Sections 10-12 make provisions for amendments to the declaration.

The power to approve or set aside an appointment made in accordance with a registered declaration lies with the Governor: see section 20 subsection (1) and (3) of which provide:

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

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

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

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

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

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

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

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

Thus the Governor is empowered by law to approve an appointment made in accordance with the relevant customary law as declared in the registered Declaration relating to the particular office: See sections 15 and 16 of the Law.

This power he has in relation to recognized chieftaincies coming under Part 2 of the Law.

Section 22 of the Law deals with the appointment and approval of appointment of minor chiefs. Subsections (1) and (3) of this section provide -

"22(1). *The Executive Council may appoint in respect of the area (which expression shall in this Part and Part 4 be deemed to include a reference to part of an area) of any Local Government or group of Local Governments, an authority (in this Part referred to as the prescribed authority) consisting of one person, or of more persons than one, who may be the chairman and other members of a committee established by section 5, to exercise the powers conferred by this section in respect of the office of any minor chief whose chieftaincy title is associated with a native community in that area.*

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

For the "Executive Council" where the expression appears Law read "Governor."

Reading the Law as a whole, it would appear that in its scheme the power to approve the appointment to the chieftaincies coming under Part 2 of the Law and known as recognized chieftaincies is vested in the Governor (Administrator) while a similar power in respect of chieftaincies coming under Part 3 is vested in the prescribed authority over such chieftaincies. In either case, however the appointment must be made in accordance with the customary law pertaining to the particular chieftaincy before it can be approved by the Governor or prescribed authority as the case may be.

The declaration made pursuant to section 4 provides the proof of such customary law in relation to recognized chieftaincies. The Law is silent as to the mode of proof of the customary law relating to the selection and appointment of minor chiefs. One, therefore, has to fall back on section 14 of the Evidence Act which provides:

B *"14.(1) A custom may be adopted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence; the burden of proving a custom shall lie upon the person alleging its existence.*

C *"14.(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 justified 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.*

D *(3) Where a custom cannot be established as one judicially noticed it may be established and adopted as part of the law governing particular circumstances by calling evidence to show that persons or the class of persons concerned in the particular area regard the alleged custom as binding upon them:*

E *Provided that in case of any custom relied upon in any judicial proceeding it shall not be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience."*

F As by operation of law judicial notice has to be taken of a registered declaration, the declaration comes within the purview of section 14 of the Evidence Act; it is not an exception to it. In my respectful view, section 9 of the Law is not inconsistent with section 14 of the Act.

G With this background I now turn to the case of Oba Oyeade Lipede vs. Adio Sonekan (supra) we are invited to over-rule. Our attention is called to some dicta in that case which are said to be inconsistent with the dictum of Karibi-Whyte JSC in Agbetoba v. Lagos State Executive Council (supra). In the former case, Onu JSC in his lead judgment observed at pages 686-687 of the Report thus:

H *"This issue which is relevant to grounds 2 and 4 of the grounds of appeal asks of what the Custom or Customary law regulating succession to Ashipa Egba Chieftaincy is.*

Two questions, in my opinion, naturally emanate as off-shoots of this issue. They are:-

(i) Is Exhibit '18' (the 1958 Registered declaration) still operative after 1976 as the Customary Law regulating the Ashipa Egba Chieftaincy?

(ii) If the answer is in the positive, is Exhibit '18' exhaustive of the Customary Law regulating the Ashipa Egba chieftaincy?

While at the trial the appellants answered the above two questions in the positive, the respondents for their part, gave a negative answer.

Now, Exhibit '18' is the 1958 Registered Declaration relating to the Ashipa Chieftaincy Title and made at the time pursuant to Sections 4 and 5 of the Chiefs Law, Cap. 19 Western Region of Nigeria, 1959, the corresponding provisions of which are now to be found in the Chiefs Law, Cap. 20 Laws of Ogun State, 1978. B

It is common ground between the parties that prior to 1976, the Ashipa Egba Chieftaincy was a recognized Chieftaincy to which the Chiefs Law (ibid) applied. In 1976, however, with the promulgation of Western State Legal Notice No. 6 (W.S.L.N. No.6) - The Recognized Chieftaincies Revocation and Miscellaneous Provisions) Order - the application of the Chiefs Law to the Ashipa Egba Chieftaincy was revoked. In effect, that Chieftaincy by operation of law, became a minor Chieftaincy to which the Law became applicable. That being the case, Exhibit '18' became inapplicable and no longer affected the appointment to be made into such Chieftaincy after the coming into operation of W.S.L.N. No. 6 of 1976. In other words, Exhibit '18' which hitherto applied to a recognized Chieftaincy became inoperable by reason of the fact that the Ashipa Egba Chieftaincy became a minor chieftaincy once it was de-recognized. C D E

The inapplicability of the provisions of sections 4 and 5 of the Chiefs Law (ibid) having to do with recognized Chieftaincy (ibid) aside, the application of Exhibit '18' to the minor chieftaincy of Ashipa Egba would run counter to the tenor and the general intendment of the Chiefs Law Cap. 20 as well as the W.S.L.N. No. 6 of 1976. This is because when the selection of the Ashipa Egba was governed by the Chiefs Law as a recognized Chieftaincy, the Alake of Egba land was not the prescribed authority but rather part of the selection or recommending process. With the de-recognition of the chieftaincy and its demotion to a minor chieftaincy, the Alake of Egba land became the prescribed authority. It will be absurd therefore to maintain a situation where the Alake shall be the prescribed authority as well as a Kingmaker, both rolled into one. Thus, the provision in Exhibit '18' making the Alake a Kingmaker will be perfectly in order before the amending law came into force more so, that at the time, the confirming or prescribed authority was the Governor-in-Council and in a setting that the chieftaincy was recognized and governed by the Chiefs Law. After the amendment of the latter Law in 1976, to have retained the Alake as one of the kingmakers, as reflected in Exhibit 18, in a set up where F G H

he is made the confirming or prescribed authority, would be absurd and unlawful.

For the above reasons, it is clear that Exhibit 18 is clearly inapplicable to the Ashipa Egba Chieftaincy, now a minor chieftaincy."

B Late in the judgment, the learned Justice of the Supreme Court observed at page 690: *"I fully endorse the respondents' argument on this point that to so hold would amount to a clear refusal to recognize 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 recognized chieftaincies."*
 C Uwais, JSC (as he then was), in his own judgment, stated thus at pages 698 -699:

"Now section 4 of the Chiefs Law, Cap. 20 by virtue of which 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 recognized 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 18 (which is a statutory instrument) ceases to have effect. Furthermore, by the repeal of the Recognized Chieftaincies Order, 1959 (W.R.L.N. No. 22 of 1959) by the 1976 Order W.R.L.R. 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 'spent' and 'obsolete'. Both the words 'spent' and 'obsolete' have been defined on pp. 357 and 358 of Craies on Statute Law, 17th Edition, as follows -

F *'Spent - that is, enactments spent or exhausted in operation by the accomplishment of the purposes for which they were passed, either at the moment of their first taking effect or on the happening of some event or on the doing of some act authorized or required.'*

G *'Obsolete' - where the state of things contemplated by the enactment has ceased to exist, or the enactment is of such a nature as to be no longer capable of being put in force, regard being had to the alteration of political or social circumstances.*

In the latter case, however, Karibi-Whyte, JSC opined at page 689 of the Report thus:

H *"The enabling provisions are for a declaration of the governing customary law by the Chieftaincy Committee. It is accepted that customary law is a question of fact to be proved in each case. A registered declaration of the fact will obviate the necessity of proof on each occasion. It is not an exercise of legislative powers."*

Although the invitation is to overrule Oba Oyebadé Lipede v. Adio Sonekan (supra), nothing has been urged to suggest that the case was wrongly decided. The criticism of the judgments in the case is directed at the correctness or otherwise of the dicta of Uwais and Onu JJ. SC. set out above, rather than the correctness of the final decision reached. Subject to what I will say later on the said dicta, I am of the respectful view that the decision reached in that case is sound. The dicta complained of did not form the basis of the judgment in the case. B

I stated above that a registered declaration made pursuant to the provisions of the Law provides the proof of which judicial notice is taken of the customary law relating to the selection and appointment of a chief. The restriction of the making of a declaration to recognized chieftaincies is not far fetched as the approval of such appointment is by the Governor of the State; it is necessary that he must be sure that an appointment for which his approval is sought is made in accordance with customary law. The best and least controversial way of ascertaining this is to have the customary law ascertained by people knowledgeable in the law and reduce same into writing. This obviates the necessity of having inquiries conducted to ascertain what the customary law is each time an appointment exercise is to be conducted. The Governor may not be from the area of the chieftaincy and may not be knowledgeable in the custom of the area. The registered declaration helps him in no small measure to determine what the customary law is. C D E

The approval of the appointment of a minor chief lies with the prescribed authority appointed by the Governor under section 22(1) of the Law. The appointment of the chief is made in accordance with customary law. It is not difficult for the prescribed authority, invariably the traditional ruler in the area, to ascertain the customary law pertaining to the selection and appointment of a chief in his area. Thus the need for a statement in writing, declaratory of the customary law on the issue, though desirable, is not as demanding as where the approval is to be made by the Governor. F

Where a registered declaration exists, it is, in my respectful view, admissible evidence of the customary law relating to the selection and appointment of the chief it pertains to. It does not matter that the chieftaincy is a recognized or minor chieftaincy. Just as the court may take judicial notice of a custom relating to the selection and appointment of a chief "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", so also, in my respectful view, may it take G H

judicial notice of such custom that it reduced into writing in accordance with section 4 of the Law. There is nothing in section 22 of the Law which restricts the mode of proving the customary law relating to the selection and appointment of a minor chief to any particular method. Any method that satisfies the requirements of section 14 of the Evidence Act will, in my
 B humble view, suffice. And if a declaration exists in respect of that chieftaincy when it was a recognized chieftaincy, the reduction in rank of the chieftaincy to a minor chieftaincy will not change the customary law relating to selection and appointment to it. The customary law remains the same irrespective of the status accorded the chieftaincy by the Governor.

C It is in the light of the above reasoning that I have come to share the view expressed by Karibi-Whyte JSC in Agbetoba v. Lagos State Executive Council (supra). A registered declaration, where it exists, obviates the necessity of proof by oral evidence, of the custom on each occasion that the issue arises for determination in court. With profound respect to my
 D learned brothers Onu J.S.C. and Uwais JSC (as he then was), I find myself unable to agree with them that a registered declaration becomes inapplicable when the chieftaincy to which it relates is reduced in status from being a recognized chief to becoming a minor chief nor that it becomes "spent" or "obsolete". A registered declaration is declaratory of the custom relating to the selection and appointment of the chief to which it relates.
 E As Muhammad, J.C.A. put it, in Ayoade v. Military Governor of Ogun State (1993) 8 NWLR 111, 127-128, and quite rightly in my respectful view:

*"The purpose of a registered declaration is to embody in a legally binding written statement, the customary law of a particular area, setting
 F 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."*

There is nothing in the Law to suggest that that custom varies with the rank accorded the chief by the Governor. It may be that a recognized chief
 G enjoys some privileges which are denied the minor chief but it is not the same thing as saying that the custom relating to his selection and appointment changes with whatever rank it pleases the Governor to clothe him with at any particular time. If the registered declaration states that custom when he is a recognized chief, It cannot be logically said that it no longer
 H states the custom because he has been reduced to a minor chief.

The conclusion I finally reach is that Exhibit 1A in these proceedings is admissible in proof of the customary law relating to the selection and appointment of the Odole of Ilesa. It is not valueless. And since Exhibit 1A provides for a rotational system, that system ought to prevail.

The next question I now have to consider is whether there was any admissible oral evidence outside Exhibit 1A that proved that appointment to the Odole chieftaincy was rotational among the 3 branches of the Logun-Edu family. To answer this question one has to look at the Plaintiff's pleadings and evidence in support; the onus was on them to prove the custom. I have earlier in this judgment set out the penultimate paragraphs of their pleadings. Kolawole JCA delivering the lead judgment of the court below (with which the other Justices that heard the appeal in that court agreed), observed:

"Paragraphs 6, 8, 9 and 10 of the respondents' amended statement of claim clearly show their case namely -

(1) That the Odole Chieftaincy title is hereditary and restricted only to the descendants of Logun-Edu the first Odole of Ilesha

(2) That the plaintiffs are the descendants of Logun-Edu.

(3) That the 4th defendant is not in any way related to the Odole Chieftaincy family."

It would appear that the learned Justice, with respect to him overlooked paragraphs 13(b) and 35(iii) of the amended statement of claim which alleged that appointment was by rotation among the 3 ruling houses and that it was not the turn of the Arobiomo ruling house to which the 4th Defendant claimed to belong. The 4th defendant understood Plaintiffs' case in this light. The learned Justice of Appeal observed:

"According to the learned Senior Advocate, the summary of the plaintiffs' claim against the 4th appellant is -

(a) That the 4th appellant is not a member of Logun-Edu family.

(b) That even if he is a member of the family, it is not the turn of the Arobiomo branch of Logun-Edu family to which the 4th appellant claims he belongs.

This is spelt out in paragraph 3 of the Respondents' claim in the court below, already reproduced above. Paragraphs 10, 13, 23, 27 and 32 of the amended statement of claim clearly amplified the complaint of the respondents."

On the issue of rotation, this is how the learned Justice resolved it. He said:

"Counsel then submitted that the only issue which remains is whether it was the turn of Arobiomo Ruling House in accordance with the custom of Ijesa.

Paragraph 13(b) of the statement of claim states that the selection and installation of Odole is by rotation among the three Ruling House: (i.e. Nikunogbo, Ogboro and Arobiomo) and that the next Ruling House to

nominate or provide a candidate is the Ogboro Ruling House (vide Ruling House Declaration of 21st day of May, 1975).

According to Chief Babalola the learned Judge held at page 212 that Exhibit '1A' cannot apply to Odole Chieftaincy title. The learned Judge further held at page 212 at lines 33 to 35 that -

B *'Further, I find myself unable to apply Exhibit 1(A) formally to the advantage of either party to this litigation.'*

Exhibit 1(A) is the document upon which the respondents relied to make a case for rotation among the three Ruling Houses. The Judge having agreed that it would not be used to the advantage of either party to the litigation proceeded to apply and to give effect to the Ruling House Declaration from pages 213 lines 37-39 to page 217.

C *The learned Judge held at page 216 lines 28-33 and page 217 line 1-4 that -*

D *'Even though I hold that Exhibit 1(A) does not have the effect that the plaintiffs ascribed to it, it is nevertheless, my view (and I so find and hold that it is a true expression of tested and practised tradition and custom relating to the Odole Chieftaincy title which was merely reduced into written form, as then required, for administrative workability and ease.'*

E *The learned trial Judge has given judgment on matters not pleaded. He has further given consideration to a point he had earlier in his judgment held he would not use to the advantage of either party. On a proper direction, it is contended, the learned trial Judge ought to have dismissed the respondents' case."*

Later in his judgment, he said:

F *"Learned counsel submitted that there is abundant evidence to support the third leg of the respondents' claim as to rotation among the three Ruling House.*

G *The answer to that submission however is that paragraph 13(b) of the Respondents' statement of claim based the issue of rotation on Exhibit 1(A), which the learned Judge specifically stated he was not going to rely upon. It follows that oral evidence cannot be substituted for what has been reduced into a written form. Furthermore, the respondents can only obtain the declaration which they seek in their third claim only if there is the absence of the two factors namely -*

H *(1) That the 4th appellant is not a member of the Arobiomo Ruling House a branch of Logun Edu family, and*

(2) That it was not the turn of Arobiomo Ruling House to present a candidate for the Odole Chieftaincy Title.

The learned trial Judge found that the 4th appellant is a member

of the Arobiomo Ruling House. Exhibit 1(A) is not available to be used to the advantage of either party. There was therefore no basis for the learned trial Judge to grant the declaration sought in the third claim."

It is this last passage particularly, that has come under attack in this appeal. It is submitted by the Plaintiffs that the court below was wrong in the conclusion it reached. For the 1st and 4th Defendants it is contended that the only issue joined on rotation was Exhibit 1A and the trial Judge having found that he could not use that document to the advantage of any of the parties, it was not open to him any longer to find that rotation applied to the chieftaincy. It is further contended that the Plaintiff did not plead any other customary law on which any evidence could be based to justify the trial Judge in finding that the Odole chieftaincy was rotational.

I have already found that Exhibit 1A (the Declaration) is not valueless. The Plaintiffs have not relied on it alone. They pleaded in paragraph 13(b), and led evidence to the effect, that succession to the odole was by rotation. The learned trial Judge acted on this evidence to find in favour of rotation. I cannot see how his finding can be faulted.

Although it is not directly contended by the 1st and 4th Defendants that the evidence in favour was inadmissible, that, in reality, is the effect of their submission that there was no pleading on customary law other than Exhibit 1A. I do not agree with the Defendants on this point. Paragraph 13(b) of the amended statement of claim clearly pleaded rotation independent of Exhibit 1A pleaded in paragraph 13. The phrase "vide ruling house declaration of 21st day of May, 1975" in brackets at the end of the paragraph relates only to the next ruling house to provide a candidate. And on this there was copious evidence from the 1st witness for the 4th Defendant who testified thus:

"We have Nikunogbo, Ogboro and Arobiomo ruling houses. Late Babatope was from Nikunogbo. He died about 2 years ago. Awodiya preceded Babatope. He was from Arobiomo branch. The 4th defendant belongs to Arobiomo ruling house."

From the evidence of this witness, it is crystal clear that the ruling house whose turn it was to present a candidate to fill the vacancy occasioned by the death of Chief Babatope, is Ogboro. 4th Defendant not being a member of that ruling house would not be qualified for appointment as the Odole to succeed Chief Babatope.

The conclusion I finally reach is that this appeal succeeds and it is hereby allowed by me. I set aside the judgment of the court below together with the order for costs and restore the judgment of the trial High Court. I award to the Plaintiffs the sum of N1,000.00 costs of this appeal to be paid

by the 4th Defendant only.

BELGORE JSC

- The position here must be made clear. In the case of recognized
- B Chieftaincy as contained in Chiefs Law of Oyo State the declaration as to custom registered is presumed to be the custom of the people of the area concerned with that Chieftaincy. In the case of a minor Chieftaincy no declaration is needed, all that is necessary is the proof of the custom of the people it does not matter whether it is a Ruling House Chieftaincy or not.
- C There are however situations, as in this case at hand, where a recognized Chieftaincy covered by a Declaration is now de-recognized. The Declaration is supposed to go with the de-recognition but the evidence of the appointment of that Chieftaincy can be deduced from the declaration. The aforementioned position does not derogate from de-recognition but it surely shows that prior to the Declaration now gone with de-recognition, the contents of the Declaration was the custom of the people. The de-recognition does not mean the Chieftaincy in question does no longer exist, far from it. All that happens is that the burden of governmental interference of a recognized Chieftaincy is now a local affair.
- D

- E There are cases of minor chiefs who had never been recognized chiefs covered by Declaration as in part 2 of the Chiefs Law, de-recognition will not apply to them and the custom must be proved by evidence.

- The Odole of Ilesha was recognized and covered by a Declaration spelling out the presumed custom of appointment to that Chieftaincy. Now it is de-recognized. It is a Ruling House Chieftaincy as defined in the Law.
- F The Declaration on it when recognized stated clearly the custom; that custom has not died or been extinguished by de-recognition. The trial Judge overstated his findings by saying that the Declaration, Exhibit 1A was of no help to either side. The Court of Appeal wondered why he relied on it again. The crux of the matter is that whereas Odole Chieftaincy was de-recognized that custom of appointing one is what was in the declaration,
- G Exhibit 1A. There is no need to beat about for new evidence as all the parties agree that the Declaration when in existence was the custom of the people of Ilesha. I am satisfied the learned trial judge, even though in an inelegant use of language, arrived at the true conclusion and the Court of Appeal erred in setting him aside.
- H

For the fuller reasons in the judgment of Ogundare J.S.C. which I entirely endorse and for the above reasons, I allow this appeal and set aside the judgment of the Court of Appeal. I restore the judgment of the trial Court.

I make the same order as to costs as made by my learned brother, Ogundare

WALI JSC

In the plaintiffs' Amended Statement of Claim the plaintiffs in paragraph 35 thereof, seek for the following Declarations and Order:- B

"i. Declaration that Odole chieftaincy title is hereditary,

ii. Declaration that 4th defendant is not in any way related to Logun-edu the first chief of Odole of Ilesa.

iii. Declaration that selection installation of the 4th defendant as chief Odole by the 1st defendant or/and 1st - 3rd defendants on 14th day of June, 1986 is null and void and of no consequence. In that the 4th defendant claims to belong to Arobiomo ruling house which the plaintiffs are not conceding and when it has not come to the turn of that Arobiomo ruling House. C

iv. Perpetual injunction restraining the 4th defendant from parading himself as chief Odole of Ilesa and also restraining 1st and/or 1st - 3rd defendants from performing other traditional ceremonies and/or rites pertaining to the installation of Odole chieftaincy title." D

The 1st and 4th defendants in their respective statements of defence denied the plaintiffs' claims. The 2nd and 3rd defendants filed a joint Amended Statement of Defence in which they virtually admitted the plaintiffs Amended State of Claim. E

After pleadings were settled, the case proceeded to trial at the end of which Adeyemi J, after making findings of fact and law on the issues raised, concluded his judgment as follows:-

"(i) The declaration sought that Odole chieftaincy title is hereditary is hereby granted in favour of the plaintiffs. F

(ii) The declaration sought that the 4th defendant is not in any way related to Logun-edu, the first Odole of Ilesa, is hereby refused.

(iii) The declaration sought that the selection and installation of the 4th defendant by the 1st defendant is null and void and of no consequence is hereby granted in favour of the plaintiffs. The declaration sought against the 2nd and 3rd defendants however fail and are hereby refused and dismissed. G

(iv) The 4th defendant is hereby restrained by a perpetual injunction from parading himself as chief Odole of Ilesa and the 1st defendant is also hereby restrained from performing other traditional ceremonies and/or rites pertaining to the installation of any Odole until a new selection is made in the appropriate customary manner to accord with section 22 of the chiefs Law, Cap. 21, laws of Oyo State of Nigeria." H

Aggrieved by the judgment of the trial court, the 1st and 4th defendants filed separate notices of appeal against it in the Court of Appeal. The 2nd and 3rd defendants did not appeal. Both parties to the appeal filed and exchanged briefs of argument.

In a considered judgment of the Court of Appeal delivered by B Kolawole JCA and with which Ogwuegbu JCA (as he then was) and Akpabio JCA agreed, the learned Justice concluded as follows:-

"I have considered the arguments addressed to us by all the counsel in this case. The appeal of the appellants is meritorious and ought to succeed. Accordingly, I allow the appeal of the 1st and 4th appellants. I set aside the decision of the learned Judge in respect of the 3rd and 4th claims. The plaintiffs/respondents' claims are dismissed as regards these who claims. The first and fourth appellants are entitled to their costs in this court which I fix at N500.00 each in favour of the first and fourth appellants respectively and in the court below which I fix in the sum of N750.00 each in favour of the first and fourth appellants respectively against the plaintiff/respondents jointly and severally."

The plaintiff filed in the Court of Appeal an application on 6th December, 1990 seeking the leave of that court to appeal to the Supreme Court against its judgment dated 31st October, 1990 delivered by Kolawole JCA. The Court of Appeal delivered a considered Ruling on 30th January, 1991 in E which the application for leave to appeal was refused and accordingly dismissed.

The plaintiffs then sought for and was granted leave by this court to appeal.

The plaintiffs and the 1st and 4th defendants filed and exchanged F briefs of arguments. In the brief filed by the plaintiffs the following issue was formulated for this Court's consideration and determination -

"The only issue for determination in the appeal is whether the judgment of the trial Court nullifying the appointment of the 4th Defendant/Respondent as Odole should have been set aside by the Court of Appeal for the reasons given in the passage set out on pages 3 to 4 of this Brief having regard to the reasons given by the learned trial Judge for refusing to act or accept Exhibit '1A' and yet in another breath using the contents of Exhibit 'A' to nullify the appointment of the 4th Defendant."

The 1st defendant raised one issue in his brief to wit.-

"Whether the Court below ought to have confirmed the use of H Exhibit 1A in favour of the appellants when the learned trial Judge had earlier ruled he was not going to make use of it in favour of either party to the litigation."

for the determination of the appeal.

The 4th defendant did not formulate a specific issue for determination in his brief, but the purport of his arguments seems to be an answer to the plaintiffs' issue.

As stated by my learned brother Ogundare JSC in his lead judgment the main issue calling for this Court's determination in this appeal is -
Whether a registered declaration made and registered pursuant to the provisions of sections 3 and 9 of the Chiefs Law Cap. 21 Laws of Oyo State 1978, respectively, in respect of a recognized chieftaincy under Part 2 of the said Law, will still apply when the same chieftaincy has been reduced to a minor chieftaincy and put under Part 3 of the same Law.

The facts in this case have been adequately stated in the judgment of my learned brother Ogundare JSC and therefore need no further reproduction by me in this judgment.

The plaintiffs, in paragraphs 12 and 13 of the Amended Statement of Claim averred thus:-

"12. The plaintiffs aver that the 1st-3rd defendants being the recognized chiefs under the Chiefs Law Cap. 21 vol. 1. (The recognized chieftaincies) (Miscellaneous provisions Order) the Laws of Oyo state of Nigeria form themselves into chiefs committee to select and nominate other minor chiefs in Ilesa.

13. That prior to June 3rd, 1975, there had been 4 ruling houses namely:- Nikunogbo, Oduyode, Lijetu oyinbo, Arobiomo but by 3/6/75 a new declaration under section 4(2) of the Chiefs Law was made thereby creating 3 ruling houses as follows:-

(a) NIKUNOGBO

(b) OGBORO

(C) AROBIOMO

(A) Granted but not conceding that even if the 4th defendant belongs to Odole chieftaincy family, his selection and installation are null and void in that he claims to being to Arobiomo ruling house.

(B) That the selection and installation of Odole is by rotation among the three ruling houses: and that the next ruling house to nominate or provide a candidate is the Ogboro ruling house (vide ruling II) on or about the 14th day of April, 1985."

In paragraph 6 of the his Amended Statement of Defence the 4th defendant denied the averments in paragraphs 12 and 13 of the plaintiffs Amended Statement of Claim when he averred:-

"6. That as regards paragraph 13 of the amended statement of claim the 4th defendant shall contend at the trial of this case as follows:

(a) That selection and installation of a suitable candidate to the vacant stool of any minor chieftaincy including Odole is the sole prerogative of the 1st defendant in consultation with his chiefs; and Oyo State Chieftaincy declaration is just a mere guideline for the prescribed authority and not law and therefore not binding on the first defendant.

B *(b) That the purported chieftaincy declaration has become obsolete since the division in the chieftaincy title to recognized chiefs and minor chiefs. Hence the three branches of Odole family presents several candidates to the 1st defendant to choose one and 4th defendant was chosen.*

C *(c) That assuming, the chieftaincy declaration as to rotation is subsisting (which is denied) the chieftaincy regulation confers on the 1st defendant a discretion to select a person whom he deems suitable from the next ruling house even though it is not the turn of such ruling house if he finds no suitable person from the ruling family whose turn it was to present a candidate. The 4th defendant was found suitable and fit hence the selection."*

D It was the contention of learned counsel for the plaintiffs that the learned trial Judge did not solely rely on Exhibit 1A in concluding that the 4th defendant was not validly selected and installed by the 1st defendant as Odole, but also relied on the oral testimonies given before him by witnesses for the plaintiffs, of the customary law applicable to the Odole Chieftaincy. He submitted that the Court of Appeal was wrong in its view that with the rejection of the contents of Exhibit 1A by the trial Judge it was not open for him to use the same in proof of the customary law relating to the chieftaincy even when the same is in consonance with the said customary law orally adduced.

F In the brief filed on behalf of the 4th defendant his learned counsel, contended that the only issue remaining to be determined in this appeal is whether the issue of rotation can be resolved in favour of the plaintiffs. He submitted that the plaintiffs did not prove the rotation which they relied on and pleaded in paragraph 13 of the Amended Statement of Claim. He contended that Exhibit 1A could not have been used to resolve the issue of rotation as done by the learned trial Judge after having earlier held that "I find myself unable to apply exhibit 1A formally to the advantage of either party to the litigation." He also submitted that since Exhibit 1A was the only customary law pleaded by the plaintiffs in proof of rotation, the learned trial Judge would be wrong to use any other customary law which was pleaded since the case that the 4th defendant was called upon to defend in the trial court was based on Exhibit 1A. He cited in support the cases of Oba Oyeade Lipede & Ors. v. Chief Adio Sonekan & Anor. (1995) 1

for easy recommendation of the successful candidate for the post of Odole chieftaincy to Owa Obokun Adimula of Ijesaland for final approval.

3. *That all the contestants were eligible to contest for the post of Odole chieftaincy but some of them were deceiving themselves*

4. *They should all love each other and go back home for necessary settlement.*

5. *Finally that God will select the rightful candidate to fill the vacant stool of Odole chieftaincy".*

There is no evidence on record available before me to show what criteria were applied in determining the successful candidate and by whom this was determined.

There is also no evidence to show what native law and custom was followed in selecting or appointing the 4th defendant, or to show the committee or body of persons who selected the 4th defendant or appointed him as Odole the 1st defendant who could have clarified this point chose not to give evidence in court by himself."

After making the finding on the evidence then the learned trial Judge fell back on Exhibit 1A which he had earlier on and rightly in my view, excluded, since it was a declaration that had been repealed. See Lipede v. Sonekan (1995) 1 NWLR (Pt. 374) 668. It is my view that the trial court was right on the remaining evidence, in its finding that the evidence did not show how the 4th defendant was nominated.

The case of Agbetoba v. L.S.E.C. (1991) 4 NWLR (Pt. 188) 664 is not apposite, as the facts in it are not on all fours with the present one. In Agbetoba v. L.S.E.C. this court decided that:

"3. The appointment of a traditional chief of lagos is now governed by the Oba and Chiefs of Lagos State Law No. 6 of 1981 which came into force on 18th November, 1981 and which replaced the chiefs Law, Cap. 25 Laws of Lagos State 1973; the Oba and Chiefs of Lagos Edict, No. 2 of 1975, the Oba and Chiefs (Amendment) Edict No. 5 of 1976; Chiefs' (Amendment) (No. 2) Edict, No. 22 of 1978."

"4. By virtue of sections 43 and 44 of the Oba and Chiefs of Lagos State Law, No. 6 of 1981 any valid declaration made under the repealed laws, and any approval to nominations made under such repealed laws remain valid and effective as if they were made under the 1981 law." (Underlining supplied by me)

There is not such saving provisions as regards Exhibit 1A in this case as in paragraph (4) *supra*. If the learned Justices of the Court of Appeal had considered the evidence properly, they would have no cause to disagree with the conclusion of the learned trial Judge that the 4th defendant was

not validly selected in accordance with the customary law presented viva voce by the plaintiffs and their witnesses.

The appeal succeeds and it is allowed. The judgment of the Court of Appeal is set aside and that of the trial Court is hereby restored.

I subscribe to the consequential orders made in the lead judgment of my learned brother, Ogundare JSC.

B

KUTIGI JSC

At the Ilesha High Court the Plaintiffs' claims read as follows -

"(i) Declaration that Odole Chieftaincy title is hereditary.

(ii) Declaration that the 4th defendant is not in any way related to Logun-edu the first Chief of Odole of Ilesha.

(iii) Declaration that selection installation of the 4th defendant as Chief Odole by the 1st defendant or/and 1st - 3rd defendants on 14th day of June, 1986 is null and void and of no consequence. In that the 4th defendant claims to belong to Arobiomo ruling house which the plaintiffs are not conceding and when it has not come to the turn of that Arobiomo ruling house.

(iv) Perpetual injunction restraining the 4th defendant from parading himself as Chief Odole of Ilesha and also restraining 1st and/or 1st - 3rd defendants from performing other traditional ceremonies and/or rites pertaining to the installation of Odole Chieftaincy title."

The High Court after a detailed review of the evidence gave judgment in favour of the Plaintiffs in the following terms -

"(i) The declaration sought that Odole Chieftaincy title is hereditary is hereby granted in favour of the plaintiffs.

(ii) The declaration sought that the 4th defendant is not in any way related to Logun-edu, the first Odole of Ilesha, is hereby refused.

(iii) The declaration sought that the selection and installation of the 4th defendant by the 1st defendant is null and void and of no consequence is hereby granted in favour of the plaintiffs. The declaration sought against the 2nd and 3rd defendants however fail and are hereby refused and dismissed.

(iv) The 4th defendant is hereby restrained by a perpetual injunction from parading himself as Chief Odole of Ilesha and the 1st defendant is also hereby restrained from performing other traditional ceremonies and/or rites pertaining to the installation of any Odole until a new selection is made in the appropriate customary manner to accord with section 22 of the Chiefs Law. Cap. 21, Laws of Oyo State of Nigeria."

H

Dissatisfied with the judgment of the High Court, the 1st and 4th Defendants appealed to the Court of Appeal, Ibadan. Allowing the appeal the Court of Appeal said on page 462 of the record thus -

B *"The appeal of the appellants is meritorious and ought to succeed. Accordingly I allow the appeal of the 1st and 4th appellants. I set aside the decision of the learned judge in respect of the 3rd and 4th claims. The Plaintiffs/respondents' claims are dismissed as regards these two claims."*

C It is against this decision that the Plaintiffs have now appealed to this Court. The real issue here now is whether the only customary law relevant for the selection and appointment to the Odole Chieftaincy is the 1975 Registered Declaration (Exhibit 1A) in the proceedings, which state the customary law pertaining to the selection and appointment of holders of the chieftaincy, notwithstanding the removal of the Odole Chieftaincy itself from the list of recognized chiefs by Oyo State Government Notice No. 18 of 1978.

D The record shows that the learned trial judge clearly found and the Court of Appeal agreed with him, that the Odole Chieftaincy is hereditary, and that the 4th defendant is a member of Logun-edu family and belongs to the Arobiomo ruling house of Odole Chieftaincy. The learned trial Judge also found that succession to Odole Chieftaincy is rotational, among three ruling houses and that the next competent ruling house to present a candidate is the OGBORO ruling house and not AROBIOMO ruling house where the 4th defendant comes from.

The Court of Appeal in setting aside the judgment of the High Court in respect of the 3rd and 4th claims, said on page 462 of the record thus -

F *"Having found the process by which the 4th appellant was appointed the Odole was not clear, the way open to the learned Judge was to dismiss the respondents' case as the respondents have failed to prove the case which they presented to nullify the nomination, selection and the appointment of the 4th appellant as the Odole of Ilesa."*

G *Finally, I have found that it was established that the first appellant is the prescribed authority for all minor chieftaincies including the Odole chieftaincy title in Ilesa Local Government and that the complaint of the respondents why they refused to recognize the 4th appellant as the Odole is not the reason upon which the learned trial judge based his decision. The decision of the learned trial judge therefore must be set aside."*

H I hasten to say that the Court of Appeal was clearly wrong here. The Plaintiffs did not only claim in Claim (iii) above and para. 13 of the Statement of Claim (supra) that the 4th defendant was not a member of

Odole Chieftaincy family, but that even if he was such a member, it was not yet the turn of AROBIOMO ruling house which he (4th defendant) claimed to belong ,to present a candidate for appointment as the Odole. The High Court on the evidence led before it rightly found in my view that the 4th defendant is a member of the Odole Chieftaincy family and belonged to the AROBIOMO ruling house but whose turn it was not to present a candidate. In their Amended Statement of Claim the Plaintiffs pleaded, inter alia, as follows -

"6. The plaintiffs aver that Odole Chieftaincy title is an hereditary title restricted only to the descendants of Logun-edu (the first Odole of Ijesa) who accompanied Owa Obokun Ajibogun from Ile-Ife with the family chieftaincy house at Aragan Ilesa.

13. That prior to June 3rd, 1975, there had been 4 ruling houses namely: Nikunogbo, Oduyodo, Lijetu oyinbo, Arobiomo but by 3/6/76 a new declaration under section 4(2) of the chiefs law was made thereby creating 3 ruling houses as follow -

(a) NIKUNOGBO

(b) OGBORO

(c) AROBIOMO

(a) Granted but not conceding that even if the 4th defendant belongs to Odole chieftaincy family, his selection and installation are null and void in that he claims to belong to Arobiomo ruling house.

(b) That the selection and installation of Odoles by rotation among the three ruling houses; and that the next ruling house to nominate or provide a candidate is the Ogboro ruling house (vide ruling house declaration of 21st day of May, 1975).

14. The Plaintiffs aver that the Odole Chieftaincy stool became vacant by the death of Chief Ayo Babatope (who adopted the title of Gidigbi II) on or about the 14th day of April, 1985."

It is clear from the above, that the Plaintiffs did plead the Registered Declaration, (Exhibit 1A). They also pleaded the number of ruling houses even prior to Exhibit 1A as well as the fact of rotation among the ruling houses and even the next house to provide a candidate. They led evidence at the trial in accordance with their pleadings.

For example, PW.1. (Mudasiru Adejare Adegbola) testified on page 113 thus -

"According to rotation, the ruling family entitled to nominate an Odole now is OGBORE ruling house."

2nd Plaintiff (Oladipo Akanbi Ojoluyi) also testifying on page 121 of the record said:

"Prior to 1975 we had 4 ruling houses namely:-

(I) NIKUNOGBO

(II) ODUYODE

(III) AROBIOMO

(IV) LIJETU OYINBO

B *After 1975, there are new 3 ruling houses, namely*

(a) NIKUNOGBO

(b) NIYANSAN or OGBORO: and

(c) AROBIOMO"

The learned trial judge agreed with the Plaintiffs and their witnesses and said -

C *"I am inclined to believe and I so find and hold not only that the Odole Chieftaincy is rotational, but I am also satisfied that on the basis of the evidence on customary family as also established by evidence, the next ruling house competent to present a candidate would really be OGBORO and would not be AROBIOMO where the 4th Defendant comes from."*

D The learned trial judge in my view cannot be said to have relied exclusively on Exhibit 1A when he made the findings above. He manifestly acted on the pleadings and evidence led thereon by the Plaintiffs. The Court of Appeal was therefore wrong to have set aside the judgment on the ground that the learned trial judge based its decision on other grounds not relied upon by the plaintiffs. My view therefore is that there was ample evidence apart from Exhibit 1A which support the findings of the learned trial judge above.

E The question then is - Could Exhibit 1A which was pleaded by the Plaintiffs and which, for all practical purposes, is the same thing as the pleaded customary law pertaining to the selection and appointment of the Odole, have been relied upon by the learned trial judge to reach the same conclusion in the instant case? In other words, does Exhibit 1A, the Odole Chieftaincy Declaration, remain valid and binding in the face of the de-recognition of the Odole Chieftaincy from Recognized Chieftaincy to minor chieftaincy? My answer, without any hesitation whatsoever, is in the affirmative. It is common ground that Exhibit 1A, the Odole Chieftaincy Declaration, was made pursuant to the provisions of the Chiefs Law Cap. 21, Laws of Oyo State of Nigeria, when the Odole chieftaincy was a recognized chieftaincy. It is also agreed that the chieftaincy has been reduced to a minor chieftaincy. It is doubtless that the selection and appointment of an Odole whether recognized or not, will continue to be made if and when necessary. It is my view therefore that Exhibit 1A, the declaration of the

customary law pertaining thereto would continue to be relevant and applicable when such a selection and appointment falls to be made. Consequently, the learned trial judge was wrong when he said -

"I hold therefore that Exhibit 1(A) cannot apply stricto sensu, to Odole Chieftaincy which is a minor chieftaincy, as section 5(i) of the Chiefs Law makes it abundantly clear that chieftaincy declaration relate only to recognized chieftaincies."

On the other hand I believe he was right when he continued thus -

"..... It is nevertheless my view and I so find and hold that it (meaning Exhibit 1A) is a true expression of tested and practised tradition and custom relating to Odole chieftaincy title which was merely reduced into writing. (Words in bracket supplied by me)."

I would therefore in the circumstances easily agree with the dictum of Karibi-Whyte J.S.C. In the case of AGBETOBA v. LAGOS STATE EXECUTIVE COUNCIL (1991)4 NWLR (Pt. 188) 664 at 689 where he said as follows -

"The enabling provisions are for a declaration of the governing customary law by the Chieftaincy Committee. It is accepted that customary law is a question of fact to be proved in each case. A registered declaration of the fact will obviate the necessity of proof on each occasion. It is not an exercise of legislative powers."

So that in the present case, the Plaintiffs having pleaded the Odole Chieftaincy Declaration (Exhibit 1A), needed not to have called witnesses to prove the customary law pertaining thereto. But here now, the Plaintiffs as shown above, did not only plead Exhibit 1A, but in addition also pleaded the custom involved and led evidence to prove same. A clear case of surplus or over pleading in my view.

I have also read the judgment of this Court in LIPEDA v. SONEKAN (1995)1 NWLR (Pt.374) 688. I agree that the Court said in the case, which is not entirely dissimilar with the present case, that the Registered Declaration (Exhibit 18), was not applicable because the chieftaincy had been de-recognized and had become a minor chieftaincy. But the court also found in addition, that the Chieftaincy Declaration (Exhibit 18) was defective. It had a lacuna, a gap or a missing link, if you like. It had not provided for the ruling house or houses from where the Chief (the Ashipa Egba) would come from. The respondents in that case pleaded the lacuna and led evidence thereon. Consequently, there were two parallel sets of customs before the court - the custom pleaded and relied upon by the Re-

spondents, and Exhibit 18, pleaded and relied upon by the Appellants. The Court therefore had a choice. It decided and rejected Exhibit 18 and agreed with the respondents' version of the custom. See what the learned Justices had to say in these judgments.

Onu J.S.C. in his lead judgment on page 689 of the Report said -

"..... assuming (without conceding) that Exhibit 18 is the customary law applicable to the Ashipa Egba Chieftaincy, it is clearly inexhaustive of the Customary Law governing that Chieftaincy since it became de-recognized and Section 4(2)(a) Part 2 of the Chiefs Law Cap. 20 of Ogun State became inapplicable. A close look at Exhibit 18 depicts that it does not contain anything on the ruling house or family where the Ashipa Egba should come from; rather it only contains the Kingmakers whose duty is to appoint. It is in this wise that Exhibit 18, if applicable at all, can be said to be inexhaustive of the Customary Law governing the appointment of the Ashipa Egba in other words, in the absence of Exhibit 18, recourse will be had to evidence, both oral and documentary (such as Exhibits 1 and 2) and the uncontroverted oral evidence of the respondents in the instant case, to prove the particular Customary Law of that Chieftaincy. See EDEWOR v. UWEGBA (1987)1 NWLR (Pt.50) 313 at 343 - 345. The factual position in law (the decision whether or not Exhibit 18 had become legally moribund is indeed a question of law) is that with the coming into force of W.S.L.N. No. 6 of 1976, Exhibit 18 became spent."

Uwais J.S.C. (as he then was) in his own contribution had this to say on page 699 of the Report -

"Suppose I am wrong in holding that Exhibit 18 is spent and obsolete and, therefore, it is not applicable to the selection of Ashipa Egba as a minor chieftaincy (which I do not concede), the Exhibit does not spell out what manner of people from Itoko township should be considered for the chieftaincy. The declaration (Exhibit 18) is therefore inexhaustive. It contains lacuna, which had been pleaded by the respondents in paragraph 7 of the Amended Statement of claim quoted above. The lacuna can be filled by calling both oral and documentary evidence - See CHIEF EDEWOR v. CHIEF UWEGBA & ORS (1987) 2 S.C. 49 at p. 177; (1987) 1 NWLR (Pt. 50) 313 at p. 345."

Iguh J.S.C. who participated in the appeal also in his contribution on page 701 said thus -

"The Declaration therefore ceased to apply to the Ashipa Egba Chieftaincy when the said chieftaincy was de-recognized and reduced to minor chieftaincy."

A little further down he continued as follows -

"The respondents established by evidence what the customary law of the parties at all material times was in the matter of the appointment of an Ashipa Egba. This is to the effect that the appointment of a person to the Ashipa Egba Chieftaincy has to be made in rotation between the Balogun and the Jagunna lines of chiefs. No other customary law was pleaded or proved by the appellants who only relied on Exhibit 18 as containing the applicable customary law. The respondents' evidence on the issue of the applicable customary law therefore remained uncontroverted and was rightly accepted by the court below. See WEST AFRICAN SHIPPING AGENCY (NIG.) LTD. v. ALHAJI MUSA KALLA (1978) 3 S.C. 21 at 31, OMOREGBE v. LAWANI (1980) 3 - 4 SC. 108 at 112, IMANA v. ROBINSON (1979) 3 - 4 SC. 1 at 22 etc. etc."

I think it ought to be observed too that it is common ground between the parties that the 3rd appellant is neither from the Balogun nor from the Jaguna lines of chiefs. He could not therefore be eligible for appointment as Ashipa Egba. In my view, his purported appointment, without doubt, was illegal and null and void."

Both Wali and Mohammed JJ.S.C. who participated agreed with Onu J.S.C. in their contributions.

The dicta of Uwais, Onu and Iguh JJ.S.C. to the effect that the Registered Declaration (Exhibit 18) ceased to have effect on the mere de-recognition of the Chieftaincy simpliciter, was certainly not the basis of the decision in the case. And the adoption of that simplistic interpretation of the judgment would not be proper. The judgment would have to be read as a whole and understood on its own peculiar facts and circumstances. There is nothing to be overruled therein. Enough of that.

I need only add that the tendency worldwide today is to try as far as possible to codify customary laws by reducing them into writing and making them available for people to read and know about them. This tendency is to be encouraged by everyone. It is interesting to note that the Chiefs Law itself in sections 10 -12 provide for amendments to a declaration if and when necessary. This I believe, is to ensure that any declaration is current, and takes cognizance of changes in and around the people. This is as it should be. I think suits like the present one have clearly demonstrated the necessity for all chieftancies major or minor, recognized or not recognized, to declare and register their customary laws relating to the selection and appointment of any chief thereof. It will be, I think, a right step in the right direction. We cannot afford to put the hands of the clock backwards! The rest of the world will not wait for us.

It is for the above reasons and others stated in the lead judgment

of my learned brother Ogundare J.S.C. which I read before now, that I too allow the appeal. The Judgment of the Court of Appeal is set aside while the one delivered by the trial High Court is restored. I endorse the order for costs.

B

ONU JSC

I have had a preview of the judgment of my learned brother Ogundare, J.S.C. just read and I agree with his conclusion that this appeal ought to succeed and it is allowed by me.

C

In adding a few comments of mine to the lead judgment, I wish to expatiate thereon as follows:-

If, as rightly held by this court (per Karibi-Whyte, JSC) in Agbetoba v. Lagos State Executive Council (1991)1 N.W.L.R. (Part 188)664 at 688, the usefulness of "a registered declaration" lies in the fact that it "will obviate the necessity of proof on each occasion" and as the Court of Appeal in Ayoade v. Military Governor of Ogun State (1993)8 N.W.L.R. 111 at 127 and 128 (per Muhammad, J.C.A.) more expandedly put it

D

"The purpose of a registered declaration is to embody in a legally binding written Statement, the Customary Law of a 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"

E

then, the answer to the lone issue submitted at the instance of the Appellants which postulates that:

F

"Whether the judgment of the trial Court nullifying the appointment of the 4th Defendant/Respondent as Odole should have been set aside by the Court of Appeal for the reasons given in the passage set out on pages 3 to 4 of this Brief having regard to the reasons given by the learned trial Judge for refusing to act or accept Exhibit '1A' to nullify the appointment of the 4th Defendant"

G

may be given as follows:-

In the first place, the passage in the judgment of the Court of Appeal (hereinafter referred to as the court below), that fulcrum upon which revolves the Appellants' grouse, is that -

H

"Having found that the process by which the 4th Appellant was appointed the Odole was clear, the way open to the learned Judge was to dismiss the Respondents' case as the Respondents have failed to prove the case which they presented to nullify the nomination, selection and the appointment of the 4th Appellant as the Odole of Ilesa. Obviously it was not

the duty of the 1st or 4th Appellant to prove the process of the appointment of the 4th Appellant as the Odole. Finally, I have found that it was established that the first Appellant as the prescribed authority for all minor chieftaincies including the Odole Chieftaincy Title in Ilesa Local Government and that the complaint of the Respondents why they refused to recognize the 4th Appellant as the Odole is not the reason upon which the learned trial Judge based his decision. The decision of the learned trial Judge therefore must be set aside. The reason why the Respondents are in Court is very clear. I shall repeat for the purpose of emphasis the testimony of the 3rd Respondent Samuel Omojola Awodiya. He said,

"We are in Court because someone who is not a member of our family has been made the Odole. The person is the 4th Defendant."

The learned Judge having found that the 4th Defendant/Appellant is a member of Arobiomo Ruling House, a branch of Logun - Edu family, he should have dismissed the Respondents' claim."

Be it noted that the Agbetoba case (supra) which the Court of Appeal in Ayoade's case (supra) would seem to have clearly followed and expanded - based as it were upon adherence to state decisis - was a pronouncement on the provisions of the Oba and Chiefs of Lagos State Law No. 6 of 1981 which came into force on 18th November, 1981 and which replaced the Chiefs Law, Cap. 25 Laws of Lagos State 1973; the Oba and Chiefs of Lagos Edict, No. 2 of 1975; the Oba and Chiefs (Amendment) Edict No. 5 of 1976; Chiefs' (Amendment) (No.2) Edict, No. 22 of 1978. By virtue of sections 43 and 44 of the Oba and Chiefs of Lagos State Law, No. 6 of 1981 (ibid) any valid declaration made under the repealed laws, and any approval to nominations made under such repealed laws remain valid and effective as if they were made under the 1981 law. The effect of that law in Agbetoba's case which, in my respectful view, is distinguishable from the one in hand, is that a registered declaration which applied to the chieftaincy (the Oniru recognized chieftaincy) is still effective albeit that the law is amended or repealed. The chieftaincy under consideration (the Odole chieftaincy of Ilesa, Oyo (now Osun) State being a de-recognized chieftaincy, the dictum of Karibi-Whyte, JSC, in the Agbetoba's case (supra) in so far as it relates to a recognized chieftaincy is not directly on all fours. Thus, the efficacy arrogated to Exhibit 1A, which in the instant case the learned trial Judge had excluded any way by saying he would not apply it for the benefit or advantage of the parties to the case herein, is to that extent, in my view, correct. Having however, ruled that there was ample pleading and evidence of the customary law on rotation and hereby relating to the de-recognized Odole Chieftaincy which would otherwise not have had the benefit of Exhibit 1A, the end result of the case, in my opinion,

would be the same to wit: that Appellants' appeal for that reason deserves to succeed. What ought to be clearly understood is that in de-recognized chieftaincies there can be no talk of registered declarations *per se* since in relation to them, their mere reduction to that status i.e. of being de-recognized makes the situation fluid and deprives them of the efficacy of certainty and rigidity of registered customary law subject to the instrumentality of the prescribed authority who no longer is the Governor, but rather a chieftaincy committee or chief-in-council of a local government. As no judicial notice pursuant to Section 14(1), (2) and (3) of the Evidence Act can be taken of Exhibit 1A, the applicable custom, which after all is flexible or capable of being so, will have to be proved in the ordinary way by adducing evidence therefore as any other custom is proved. See Giwa Abiodun v. Bisiriyu Erinmilokun (1961) 1 All N.L.R. 294 at 296. Customs, it must be noted, change not only from age to age but, in the jet age in which we are, with rapidity and unpredictability. The later is to be foreseen where a chieftaincy as here, with hitherto the hallmarks of recognition, is made to suddenly metamorphose into a status of de-recognition as in the wisdom of the Executive authority who effected its down grading.

Secondly, in relation to exhibit '1A' (the Declaration of the Odole Chieftaincy of Ilesa) respecting which the learned trial Judge gave reasons refusing to act thereon and later accepting same but yet in another breath used the contents thereof to nullify the 4th Appellant's appointment as Odole, I am of the view that the use to which the document was finally put was wrong. In Stroud's Judicial Dictionary, 3rd Edition, Volume 2 at page 1024, an exhibit is defined as follows:-

"An exhibit is a document or thing shown to witness and referred to by him in his evidence"

See also Akpata v. Awoyemi (1960) 5 FS.C. 275. Indeed, an exhibit ought to speak for itself vide Umoffia v. Ndem (1974) 4 ECSLR 674. Thus, while a judge must not rely on a document not tendered as an exhibit before him, for which, see Olagbemiro v. Ajagungbade 111 (1990) 3 N.W.L.R. (Part 136) 37 at 63 and Gajor v. Ogunburegui (1961) 1 ALL NLR 853, a Judge must equally not rely on the contents of a document he had himself rejected or excluded as an exhibit. The adoption of such evidence (documentary or otherwise though it may be) through the back door, so to say, into the mainstream of the evidence proffered at the trial, goes to no issue. Exhibit '1A' therefore, in my view, constituted evidence wrongly admitted and which ought to be expunged. See Isiedu v. A.G. of Lagos State (1986) 2 N.W.L.R. (Part 21) 165. It is in my view, immaterial that Exhibit '1A' was earlier pleaded and that evidence was adduced in the trial court relative

thereto or that it is howsoever in line with the customary law pertaining to the Odole Chieftaincy. The fact that the totality of the evidence adduced by the Appellants and their 4 witnesses on the customary law applicable appeared to fall in line with Exhibit '1A' does not ipso facto confer on that exhibit admissible evidence after its exclusion.

Thirdly, the question then arises: was the learned trial Judge, after he had excluded Exhibit 1A, right to have dismissed the Appellants' claim having found that the 4th Defendant/Respondent is a member of Arobiomo Ruling House, a branch of Logun-Edu family? An answer to this question can best be found from the pleadings and evidence adduced at the trial. In paragraph 13 of the Amended Statement of Claim, the Appellants pleaded the rotation and hereditary nature of the Odole chieftaincy thus:

"13. That prior to June 3rd, 1975, there had been 4 ruling houses, namely:- Nikunogbo, Oduyodo, Lijetu Oyinbo, Arobiomo but by 3/6/76, a new declaration under section 4(2) of the Chiefs Law was made thereby creating 3 ruling houses as follows:-

(a) NIKUNOGBO

(b) OGBORO

(c) AROBIOWO

(a) Granted but not conceding that even if the 4th defendant belongs to Odole Chieftaincy family, his selection

(b) That the selection and installation of Odole is by rotation among the three ruling houses; and that the next ruling house to nominate or provide a candidate is the Ogboro ruling house (vide ruling house declaration of 21st day of May, 1975)."

In support of the pleading is the evidence of 1st Plaintiff/Appellant wherein that witness said as follows:-

"Before 1975 and after, there have been 3 ruling houses in Odole family. They are:-

(a) Ogboro

(b) Nikunogbo

(c) Arobiomo

Lijetu-Oyinbo is only cognomen (nickname). It was the Oriki of Nikunogbo. Ayo Babatope died about one and half years ago. After his death, members of our family struggled for the recent chieftaincy, namely:-"

See also the evidence of 3rd Plaintiff/Appellant wherein that witness said inter alia that -

"..... the fourth defendant had claimed that he was from Arobiomo branch of Odole Family but we do not know him there as one of us."

Later down in his evidence the witness deposed as follows:-

"The contesting branches were Nikunogbo, oduyodo and Ogboro."

2nd Plaintiff in his testimony had this to say -

"Prior to 1975 we had 4 ruling houses, namely:-

(i) Nikunogbo

B *(ii) Oduyodo*

(iii) Arobiomo

(iv) Lijetu Oyinbo

After 1975, there are now 3 ruling houses, namely.

(a) (i) above

C *(b) Niyansan or Ogboro; and*

(c) Arobiomo

I contested the chieftaincy on the platform of Nikunogbo ruling house and lost temporarily, but I know the truth will prevail."

The totality of the evidence of the above-mentioned witnesses clearly indicates that there was enough evidence of customary law adduced following the pleadings, upon which to come to the view that the de-recognized minor chieftaincy of Odole now regulated by Part 3 of the Chiefs Law Cap. 21 Laws of Oyo State 1978 (applicable in Osun State) and subject to a chieftaincy Committee, as opposed to the former recognized chieftaincy in Part 2 thereof which is subject to a Registered Declaration such as Exhibit 1A and appointed by the Governor, had the same applied to the grade and status of chieftaincy under consideration. In this regard, see the provisions of sections 5 and 9 of the Chiefs Law which make it abundantly clear that chieftaincy declarations relate only to recognized chieftaincies. The finding of the learned trial Judge that the contents of exhibit 1A, from the oral testimonies of the above witnesses, overlap the customary law applicable to the Odole chieftaincy is only correct in so far as their wordings may be the same but the purpose which each serves depends on the recognition or non-recognition of the chieftaincy. It is with the foregoing that I will be slow to hold, with utmost due respect, that Exhibit 1A is and remains the customary law declaratory of the Odole chieftaincy. In effect, tendering Exhibit 1A without more cannot, in my view, be sufficient evidence of that minor chieftaincy since what used to apply to that chieftaincy when it was a recognized chieftaincy will definitely vary and cannot remain valid for all times after de-recognition to the rank and status of the minor chieftaincy. In saying all this, while I agree that where the customary law adduced in evidence following the pleadings and evidence of the parties, tallies with a chieftaincy Declaration such as Exhibit 1A, it would be acceptable to regulate that chieftaincy if and only if the law provides, and not as in the instant

case where the trial court had earlier rejected the Declaration as to the customary law regulating the selection and appointment of an Odole. As a matter of fact, that court cannot be allowed to do a round-about turn to invoke the Declaration (Exh.1A) when it pleases it to do so.

Indeed, fully conscious of the inapplicability of the Registered Declaration (Exhibit '1A') to the de-recognized Odole Chieftaincy now under Part 3 of the Chiefs Law (ibid), the learned trial judge equivocated by ruling it out and then attempted staging a come back by later relying on its contents. He cannot be allowed to blow hot and cold (see Ezomo v. A.G. of Bendel State (1986) 4 N.W.L.R. (Part 36)448 at 462) at the same time. It is little wonder then that the court below overruled his approach to the reception of this piece of evidence and rightly too, in my view. Furthermore, in as much as there is palpably no lacuna depicted in the evidence adduced on the customary law regulating the selection and appointment of the Odole following the pleadings and evidence adduced in the trial court, the submission made by learned counsel for the Appellants importuning this court to overrule its earlier decision in Shonekan & Ors. v. Oba Lipede & Ors. (1995) 1 N.W.L.R. (Part 374) 688, a case wherein an unfilled lacuna was clearly found to exist in a recognized Chieftaincy Declaration and the evidence of a pleaded customary law was needed but not provided to complement the codified law, cannot be said to be on all fours with the instant case. See Edewor v. Uwogba & Ors. (1987) 1 N.W.L.R. (Part 50) 313. It is in this wise that this court will be reluctant as urged by learned counsel for the Appellants to re-visit Lipede's Case (supra) and to whimsically overrule it when such a course of action is indeed inopportune and uncalled for. Moreover, the facts of the two cases are different and so distinguishable from each other. I must hasten to point out though, that the conclusion arrived at by the learned trial Judge, based on the evidence adduced before him following the pleading to the effect that appointment to the office of Odole was by rotation among the three ruling houses constituting the Logun-Edu family and that it was not the turn of the Arobiomo family to produce a candidate to fill the vacancy left by the death of Chief Babatope, is unimpeachable and impregnable.

Be it noted that the Supreme Court ordinarily adheres to the rule of stare decisis and does not readily depart from its decisions. See Odi v. Osafire (1985) 1 N.S.C.C. 14 at 40. However, the court does not show antipathy towards any submission as herein made, that its previous decision e.g. that the Lipede case (supra) was wrong and should be overruled. An example that the court welcomes any opportunity to review its previous decision is exemplified in the case of Federal Civil Service Commission v.

J. O. Laoye (1989)2 N.W.L.R. (Part 106)652 at 701. In Odi v. Osafile (supra) Obaseki, J.S.C. at page 29 expressed the following words of Wisdom:-

"The administration of justice involves the administration of the purest principles of law among men for the good of men in its fairest conception. Man is fallible so are the thoughts of man. This fallible nature of man demands that whenever the errors of thoughts and thought process surface and are exposed and brought to the attention of its authors there should be power and jurisdiction to depart from the effects and tread the correct path." See also Rossek v. A.C.B. Ltd. (1993)8 N.W.L.R. (Part 312) 382 at 443 where the above dictum was followed by this court."

In deciding whether or not to overrule or depart from its previous decision the Court had established certain criteria which will ground a cause for departure. See Akinsanya v. U.B.A. Ltd (1987)4. N.W.L.R. (Part 35)273, (1986)2 N.S.C.C. 968 at 1008. These criteria do not, however, impose hard and fast rules which circumscribe the areas within which an application (*sic to apply*) for a departure from a previous decision. Each case must be decided on its special facts and circumstances with a view to avoiding the perpetuation of injustice which is the paramount determinant in this respect. See Odi v. Osafile (supra) at page 41 and Rossek v. A.C.B. (supra) at page 447.

Thus, although all said and done, the 4th Respondent had claimed nothing; hence he had no onus to discharge at the trial court, once the Appellants evinced in evidence that the rotation and heredity pleaded by them had been established, the court below had no business upsetting the apple cart in allowing the Respondents appeal on the preponderance of evidence adduced which, in my respectful view, tilted the scale against them. It is settled law that what the Court of Appeal has to decide in an appeal is whether the decision of the judge was right and not whether his reasons were. It is only if the misdirection had caused him to come to a wrong decision that it will be material. See F.I. Oranye v. O. T. Jibowu (1950)13 W.A.C.A. 41 at 46; N.E.P.A. V. Alli (1992)8 N.W.L.R. (Part 259)279 at 302; Chief Kafaru Oje v. Chief Ganiyu Babalola (1991) 4 N.W.L.R. (Part 301)539 at 556; Felix Okoro v. The State (1993)3 N.W.L.R. (Part 282) 425 at 438; Rapheal v. Paul Chidebere (1990)1 N.W.L.R. (Part 125) 141 at 162 and Ajuwon v. Akanni (1993)9 N.W.L.R. (Part 316)205. See the provisions of sections 4; 22(1) and (3) of the Chiefs Law, the cumulative effect of which make it overwhelmingly inescapable, that the lone issue formulated at the instance of the Appellants must perforce be answered in affirmative.

It is in the light of all I have said above and the conclusion but not the reasons given by my learned brother Ogundare, J.S.C. that I too, allow this appeal. I make the same consequential orders inclusive of those as to costs set out in that judgment.

ADIO JSC

I have had the opportunity of reading, in draft, the judgment just delivered by my learned brother, Ogundare, J.S.C. I agree that the appeal should be allowed and I allow it, subject to what I have stated hereunder about the legal position of the continued legal effect, if any, of the registered declaration of a recognized chieftaincy which has been re-classified as a minor chieftaincy.

One fundamental question which has arisen in this case is the legal position or continued legal effect, if any, of a registered declaration relating to a chieftaincy which used to be a recognized chieftaincy under Part 2 of the Chiefs Law but which has now been classified as a minor chieftaincy under Part 3 of the Law. Where there is a registered declaration in relation to a recognized chieftaincy, section 9 of the Chiefs Law which applies is as follows:-

"9. Where a declaration in respect of a recognized chieftaincy is registered under this Part, the matters therein stated (including any recommendation under paragraph (b) of sub section (2) of section 4) shall be deemed to be the customary law regulating the selection of a person to be holder of that chieftaincy to the exclusion of any other customary usage or rule."

The provision of section 9 of the Law quoted above does not apply in the case of a minor chieftaincy because there is no provision for a registered declaration in the case of the chieftaincy. An appointment to a minor chieftaincy is made according to customary law. The customary law applicable is unwritten and it depends on what the appropriate authority believes or is persuaded by evidence to believe is the customary law. In the circumstance, parties concerned may make representations, oral or documentary, to the appropriate authority and the appropriate authority may give due consideration to such representations for the purpose of making up his/its mind about what is the customary law which pertains to a particular minor chieftaincy. This is because customary law is a question of fact to be proved by evidence. See *Olugbemiro v. Ajagungbade III* (1990) 3 N.W.L.R. (Pt. 136) 7. The situation is otherwise in the case of a recognized chieftaincy which has a registered declaration. The provision of section 9

of the Chiefs nb Law will be applicable and the legal effect is that the customary law regulating an appointment to the chieftaincy stated in the registered declaration is deemed to be the customary law to the exclusion of any other customary usage or rule. There is no room for leading evidence tending to alter or modify the provisions in the registered declaration.

B In other words, the contents of the registered declaration in relation to the custom the regulating the appointment to the chieftaincy are conclusive.

The foregoing clear legal distinction between a recognized chieftaincy and a minor chieftaincy is very important if the validity of the appointment of a chief is challenged in a court of law. If the chieftaincy in question is a recognized chieftaincy, all that the person, whose appointment is alleged to be invalid, has to do is to, inter alia, prove that the chieftaincy in question is a recognized chieftaincy under part 2 of the Chiefs Law and that his appointment was made in accordance with the provisions of the registered declaration in relation to the chieftaincy which he should produce and tender as an exhibit. If the chieftaincy is a minor chieftaincy, the onus will be on him to prove the customary law regulating the appointment to the chieftaincy and also prove that his appointment was made according to the customary law which he has alleged to be the applicable customary law. In the case of a recognized chieftaincy, a court will not have any alternative but to accept the customary law set out in the registered declaration as the applicable customary law whereas in the case of a minor chieftaincy, the court will take evidence and decide first of all whether the alleged customary law stated by one or the other of the parties is the applicable customary law and, if so, whether the appointment being challenged was made in accordance with the applicable customary law.

F It may well be that the chieftaincy which is the subject of a dispute before a court is a minor chieftaincy which used to be a recognized chieftaincy (in respect of which there used to be a registered declaration). In the circumstances, the registered declaration which was relating to it when it was a recognized chieftaincy will no longer be in force and the provision of section 9 of the Chiefs Law, which made the contents of the registered "declaration" conclusive on the question of customary law applicable, will no longer apply. The legal effect of the non-applicability of section 9 of the Chiefs Law is that it will be for the party whose appointment is being challenged to adduce evidence, oral and/or documentary, for the purpose of proving the applicable customary law. If the documentary evidence upon which he wishes to rely solely or partially for the purpose of discharging the burden on him is the previous registered declaration, the legal effect depends on the circumstances of each particular case. If the previous regis

tered declaration is a document that the court can judicially notice, the court will do so and no further proof of its contents will be necessary but if the court cannot lawfully take judicial notice of it then the applicable custom will have to be proved in the ordinary way any other custom is proved. See sections 14 (1), (2) and (3) of the Evidence Act.

The foregoing is not all. A custom may be judicially noticed by the court if it has, according to the provision of section 14 (2) of the Evidence Act, 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. See Romaine v. Romaine (1992)4 N.W.L.R. (Pt. 238) 650. As I pointed out earlier, the custom stated in a registered declaration pertaining to a recognized chieftaincy is conclusive evidence of the custom to the exclusion of any other usage or customary rule. The conclusive nature of the contents of a registered declaration pertaining to a recognized chieftaincy is no longer so once the chieftaincy has been re-classified as a minor chieftaincy. Even where the registered declaration is a document that the court can, under section 14 (2) of the Evidence Act, take judicial notice of, there may be cases in which the parties may be permitted to lead and the court may accept evidence that the custom in question has changed or ceased to apply. In paragraph 3-40 at p. 43 of Aguda, Law & Practice Relating to Evidence in Nigeria, the learned author stated, *inter alia*, as follow:-

"It is common knowledge that customs do change, and therefore, that rules of customary law also change, and indeed that in recent times such changes have become rapid. Consequently, the continued existence of a custom cannot always be taken for granted especially where there has been an allegation on the pleadings of such a change having taken place. See John Apoesho & Anor., v. Awodiya & Anor. (1964) N.M.L.R. 8, S.C. The court will therefore permit a party to lead evidence to show that a custom which has been judicially noted has ceased to be a custom in the particular area. Salami v. Salami 1957 W.R.N.L.R. 10".

So, in the case of a minor chieftaincy which used to be recognized chieftaincy, if the custom or any part thereof, stated in its then registered declaration, had changed or ceased to apply, evidence may be led to prove it. After all, a custom is a flexible thing and is adaptable to changing circumstances. See Olugbemiro's case, *supra*; and Kindey v. Military Governor Gongola State (1988) 2 N.W.L.R. (Pt. 77) 445. The conclusion to which I have come is that where a recognized chieftaincy is re-classified as

a minor chieftaincy, the registered declaration relating to it when it was a recognized chieftaincy no longer enjoys the conclusive nature ascribed to it by section 9 of the Chiefs Law. Its contents will, unless the court can take judicial notice of it in the circumstances stated in section 14(2) of the Evidence Act, will have to be proved like any other custom. Even where judicial notice can be taken of the contents of the registered declaration which used to apply to the chieftaincy when it was a recognized chieftaincy, evidence may, in an appropriate case, be given and accepted of the fact that there has been a change in the custom or any part thereof has ceased to exist in relation to the minor chieftaincy.

Subject to what I have stated above in relation to the legal or continued legal effect of the registered declaration pertaining to a recognized chieftaincy which has been re-classified as a minor chieftaincy. I agree with the lead judgment of my learned brother, Ogundare, J.S.C., that the appeal succeeds. I too allow it and abide by the consequential orders, including the order for costs.

IGUH JSC

I have had the privilege of reading the lead judgment just delivered by my learned brother, Ogundare, J.S.C. and I agree entirely that this appeal should be allowed.

The one single issue for the determination of this court as formulated by the plaintiffs/appellants is whether the judgment of the trial court nullifying the appointment of the 4th defendant/respondent as Odole should have been set aside by the Court of Appeal having regard to the reasons given by the learned trial Judge for refusing to act on Exhibit '1(A)', and yet using the contents of the same Exhibit '1(A)' to nullify the appointment of the said 4th defendant to the Odole chieftaincy title was challenged by the plaintiffs before the trial court on two main grounds. The first ground is that the said 4th defendant was not related to the Odole Chieftaincy title family. The second ground is that even if he was, it was not the turn of his section of the Odole family to present a candidate for the stool.

The learned trial Judge after some consideration of the evidence found that the 4th defendant was a member of the Odole chieftaincy family. He however upheld the objection of the plaintiffs to the selection of the 4th defendant to occupy the stool since it was not the turn of his section of the family to present a candidate.

Under the Chiefs Law, Cap. 21, Laws of Oyo State of Nigeria, the first category of chiefs, namely, the recognized chiefs, come under Part 2

thereof and they are appointed by the Governor. This is as against the Part 3 chiefs, the minor chieftaincies. These are appointed by the prescribed authority.

The appointment of both categories of chiefs is based strictly on customary law. The appointment of recognized chiefs is however governed entirely by Registered Declaration of customary law pertaining to the relevant chieftaincy title. The matters stated in such registered declaration shall by virtue of the provisions of section 9 of the Chiefs Law, Cap. 21 of Oyo State be deemed to be the customary law regulating the selection of a person to be the holder of that chieftaincy to the exclusion of any other customary usage or rule. This is in contrast with or as against the appointment of minor chiefs where there is no registered declaration in respect of the chieftaincy although such appointment is also governed by the prevailing customary law and/or usage.

It is not in dispute that the Odole chieftaincy was originally a recognized chieftaincy title which was governed by a Registered Declaration until, pursuant to the Oyo State Legal Notice No. 6 of 1976, it was down graded to a minor chieftaincy. Exhibit 1 (A) was tendered by the plaintiffs as the Registered declaration on the Odole chieftaincy title. The learned trial Judge, after affirming that the Odole chieftaincy title was a minor chieftaincy proceeded to state as follows:-

"I hold therefore that exhibit 1(A) cannot apply, stricto sensu to Odole chieftaincy which is a minor chieftaincy, as section 5(1) of the Chiefs Laws makes it abundantly clear the chieftaincy declarations relate only to recognized chieftaincies."

In effect, I hold that all submissions made to me as to whether or not exhibit 1(A) ought to have been gazetted and the like cannot hold; further, I find myself unable to apply exhibit 1(A) formally to the advantage of either party to this litigation."

But he inconsistently added -

"Even though I hold that Exhibit 1(A) does not have the effect that the plaintiffs ascribed to it, it is nevertheless my view (and I so find and hold) that it is a true expression of tested and practiced tradition and custom relating to Odole Chieftaincy title which was merely reduced into written form as then required for administrative workability and ease.

It could, therefore, be used for what it is worth as a mere guideline to ensure justice and fairplay in exercise of this nature."

The Court of Appeal for its own part, commenting on the above observations of the trial court with regard to the Registered Declaration, Exhibit 1 (A) stated as follows:-

"Exhibit 1(A) is the document upon which the respondents relied to make a case for rotation among the three Ruling Houses. The Judge having agreed that it would not be used to the advantage of either party to the litigation proceeded to apply and to give effect to the Ruling House Declaration from pages 213 lines 37-39 to page 217."

B A little later in its judgment, the Court of Appeal further commented:-

"The learned trial Judge found that the 4th appellant is a member of the Arobiomo Ruling House. Exhibit 1(A) is not available to be used to the advantage of either party. There was therefore no basis for the learned trial Judge to grant the declaration sought in the third claim. If the main declaratory claim fails, then it follows that the ancillary claim of perpetual injunction cannot stand. The declaration that the Odole Chieftaincy is hereditary inures for the benefit of the 4th appellant, consequently an injunction against him cannot be tied to that relief."

D In the first place, and with the greatest respect to the court below, a close study of the record of proceedings clearly shows that it cannot be correct that Exhibit 1(A) is the sole evidence upon which the respondents relied to make a case for rotation among the three Ruling Houses in the Odole chieftaincy family. Paragraph 13(b) of the plaintiffs' amended Statement of Claim pleaded that the selection and installation of Odole is by
E rotation among the three ruling houses and that the next ruling house to nominate or provide a candidate is the Ogboro ruling house.

Turning now to the evidence, the 1st plaintiff testified as follows:-

"Before 1975 and after, there have been three ruling houses in Odole family. They are -

- F *(a) Ogboro*
 (b) Nikunogbo
 (c) Arobiomo

..... According to rotation, the ruling family entitled to nominate an Odole now is Ogboro ruling house"

G There is also the evidence of the 3rd defendant, Chief E. O. Philips, Ogoni of Ilesha which went thus -

"Odole chieftaincy title is rotational. That it is rotational is a matter of declaration and tradition"

And the 4th defendant, Gabriel Ayotunde Esan testified as follows:-

H *"There are at present 3 ruling houses of the Odole chieftaincy family; Nikunogbo, Ogboro and Arobiomo I am from Arobiomo branch"*

It is thus clear that both from the pleadings and the oral evidence before the trial court, the findings of the learned trial Judge on the custom

any law governing the Odole chieftaincy title to the effect that it is rotational and that it was not the turn of the 4th defendant's section of the family to present a candidate are fully supported by oral evidence outside Exhibit 1(A). On these findings alone which have not been challenged before us in this appeal, the appointment of the 4th defendant is clearly irregular and in defiance of customary law.

I think I ought to observe that the learned trial Judge in some areas of his judgment slipped into one or two errors as a result of which the court below allowed the appeal against his decision. But it is not every mistake or error in a judgment that will result in an appeal being allowed. It is only when the error is substantial in that it has occasioned a miscarriage of justice that the appellate court is bound to interfere. See Onajobi v. Olanipekun (1985) 4 S.C. (Part 2) 156 at 162, Oje v. Babalola (1991) 4 N.W.L.R. (Part 185) 267 at 282, Ukejanya v. Uchendue 13 W.A.C.A. 45 at 46, Azuetonma Ike v. Ugboaja (1993) 6 N.W.L.R. (Part 301) 539 at 556 etc. In my view, the errors apparent on the face of the judgment of the learned trial Judge cannot be said to be substantial as they occasioned no miscarriage of justice. The 4th defendant not having been selected from the proper rotational section of the Odole chieftaincy family, the judgment of the trial court nullifying the appointment of the 4th defendant as Odole should not have been disturbed by the Court of Appeal.

On the issue of whether or not this court may revisit its decision in Oba Lipede v. Chief Sonekan (1995) 1 N.W.L.R. (Part 374) 688, it does not appear to me necessary to indulge in this exercise in the present appeal in view of the decision which I have now reached without any necessity to consider Exhibit 1(A). In the circumstance, I will decline to consider the question in the present appeal. It suffices, however, to state that I have no cause to entertain any doubt as to the correctness of the decision in the Oba Lipede case which, in my view, remains sound, having regard to the particular facts and circumstances of that case.

It is for the above reasons that I, too, allow this appeal and set aside the judgment of the court below delivered on the 31st October, 1990. I endorse the consequential orders made in the lead judgment and abide by the order as to costs therein contained.

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