

SUPREME COURT OF NIGERIA

9TH JULY, 1996. SC. 129/1990

**CORAM:- M. L. UWAI S CJN S. M. A. BELGORE,
A. B. WALI, S. U. ONU, A. I. IGUH, JJSC**

NATHANIEL OYEKAN PLAINTIFFS/APPELLANTS
 AND 4 OTHERS (For themselves
 and on behalf of all five female
 Ruling Houses)

AND
 AMOS AKINRINWA DEFENDANTS/RESPONDENTS
 AND 3 OTHERS

CHIEFTAINCY MATTERS - Succession to stool - Right of succession to the stool in issue - Lies in both male and female lines.

CHIEFTAINCY MATTERS - Presentation and installation of a Chief Method thereof under the Registered Declaration - Whether violated

MATTERS - Appointment of Warrant Kingmakers Whether Government is justified - In appointing warrant Kingmakers

COURTS - Error of trial court - Whether attempting to relate the requirements of traditional Kingmakers on literacy - Was erroneous

EVIDENCE - Sufficiency - Presumption in favour of Exhibit M - Whether there is sufficient evidence to rebut the same.

JUDGMENTS - Nullity of judgment - Whether the principle that denying a party's counsel opportunity to address court - Nullifies judgment - Applies to render judgment of trial court a nullity.

PRACTICE & PROCEDURE - Defences - Failure to consider defences of the respondent - Whether the trial judge was rightly revised

PRACTICE & PROCEDURE - Further address - By a party's Counsel citing two cases to trial judge - After final address - Whether the further address affected appellants' case.

FACTS

The appellants (as plaintiffs) in the High Court of Oyo State, Oyo claimed against the respondents (then defendants), 5 reliefs consisting of 3 declarations and 2 orders of court. Pleadings were ordered, filed and exchanged and the case proceeded to trial. The appellants case being among others that the 1st respondent was not qualified for selection; approval and installation as the Bale of Akinmorin as being not from the male line of a Ruling House and also that there are 5 Rulings Houses as against the 7 contained in the Registered declaration on Bale of Akinmorin chieftaincy. Further that method of selection, appointment and installation of the 1st Respondent was contrary to the said declaration.

Both parties led evidence at the trial, with the respondents case being on the other hand that there are 7 Ruling Houses and that both male and female lines of the Ruling Houses are entitled to succeed to the stool. At the conclusion of hearing, the trial judge entered judgment against the respondents. The respondents' appeal to the Court of Appeal against the judgment of the trial court was allowed. The appellants dissatisfied with the decision of the Court of Appeal have now appealed to the Supreme Court raising from 4 grounds of Appeal 10 questions for determination.

ISSUES FOR DETERMINATION

1. Whether the 1st Respondent being from a female line is entitled unconditionally, to be considered, nominated and appointed in the first instance, as Baale of Akinmorin in compliance with Akinmorin Chieftaincy Declaration (Exhibit 'M') being the Native Law and custom governing and regulating such consideration, nomination and appointment.

2. If not so, whether the conditions precedent for the consideration, nomination and subsequent appointment of a candidate from the female line, have arisen under the provisions of Exhibit 'M', the Baale Akinmorin Chieftaincy Declaration being the Native Law and Custom governing and regulating such consideration, nomination and appointment. Etc. see p. 1466

HELD (Unanimously dismissing the appeal per lead judgment of **ONU JSC**)

Right to succession to the stool in issue

1. It being accepted in line with Exhibit 'M' that both male and female lines had equal rights to succession to the Akinmorin stool, the contention that as there was no appeal against the conclusion and finding of fact by the trial court that "on the preponderance of evidence, the 1st defendant hails from the female line of Ola Ruling House and his father was never installed Baale of Akinmorin" is non sequitur. That the laid down procedure in ac

cordance with Exhibit 'M' was followed and that it did no. constitute an infraction of paragraph 4, 5 and 6(a) thereof can be gleaned from the defence evidence. (p. 1475 C)

Presentation and installation of a chief

2. From the totality of the evidence adduced and the relevant portions which I have quoted above, presentation and installation were not in my view done in breach of paragraphs 3, 4, 5 and 6(a) of Exhibit 'M'. The court below was therefore justified in allowing the respondents' appeal before it. (p. 1477 A)

Appointment of warrant kingmakers

3. The Commissioner of Chieftaincy Affairs having been to have explained to the original Kingmakers that the candidate (i.e. 1st respondent) need not be literate as postulated in their letter to their secretary Oyo South Local Government of 17th November, 1981 vide Exhibit 'B', yet they (the Kingmakers) did not reach any compromise with Government but rather insisted that the masses of Akinmorin wanted an educated Baale, the State Government was justified in invoking its powers pursuant to section 17 of the Chiefs Law, 1978 (Cap. 21) to empanel or appoint Warrant Kingmakers who then met and ratified the appointment of 1st respondent as the Baale of Akinmorin. (p. 1479 A)

Error of trial court

4. The Court below, however took a contrary view holding that the learned trial Judge was in error by attempting to relate the requirement of the traditional kingmakers on literacy" (which indeed formed neither a part of the pleadings of the parties nor contained in Exhibit 'M') to the expression "relative ability, character and popular support" as used in section 15 of the Chiefs Law. It is no-surprise to me therefore that the court below, quite rightly in my judgment, arrived at the correct conclusions. (p. 1479 D)

Sufficient evidence not adduced

5. My earlier extensive consideration of issues 1, 2, 5 and 8 having in my opinion, taken care of this issue, it is enough for me to point out that no sufficient evidence has been adduced at the instance of the appellants to rebut the presumptions in favour of Exhibit 'M' - a document which at the time the appellants were testifying in 1986 in the trial court, was about 30 years old. Further, there has been a default on the part of the Kingmakers in the performance of their duties under the Chiefs Law pursuant to which

Exhibit 'M' was made as a subsidiary regulation embodying in a legally

binding written statement the Customary Law of Akinmorin, setting out clearly the method regulating the nomination and selection of a candidate to fill the Baale of Akinmorin Chieftaincy and this, to avoid, no doubt, the uncertainty in the Customary Law of the Area. (p. 1480 E)

Defences of the respondents

6. In the instant case, the learned trial Judge has been demonstrably shown as having failed for the most part, to consider the defences of the respondents, most especially that of 1st respondent. Nor did he adequately evaluate the evidence adduced as well as to resolve the appellants' contradictions; he even failed to give reasons for his preference of the appellants' case. The court below was therefore justified, in my opinion, to have set aside the judgment entered in the appellants' favour. (p. 1481 H)

Further address

7. In the case in hand, the act of further address emanated from the learned counsel for the appellants. That the case cited in the further address did not diminish or add to the strength or weakness in the appellants' case may be deciphered from what the observation of the learned trial Judge is in his judgment then being impugned. (p. 1483 G)

Judgment not a nullity

8. In essence, what I am saying is that the proposition of law that the denial, of a party's counsel (where established and proven) of the opportunity of addressing the court is not a mere irregularity but a defect in proceedings which strikes at the right of the party to fair hearing thereby rendering the proceedings a nullity vide *Obodo v. Olomu* (1987) 3 NWLR (Part 57). Such a situation, in my respectful view, has no sway here. In the instant appeal, I am satisfied that neither of the two cases render this judgment a nullity. (p. 1484 C)

NOTABLE POINT OF INTEREST

ONU JSC

1. Issues not to out number grounds of appeal

Before my consideration of these issues as formulated, I wish to re-iterate this court's admonition to counsel times without number that it is wrong for counsel to formulate issues for determination in excess of the grounds of appeal filed. Indeed, it has been stated to need further emphasis and stressing by this court that except in special cases where the grounds of appeal so

dictate, it is undesirable to formulate an issue in respect of each ground appeal. In the instant case where there were only four grounds of filed the precipitate action of learned counsel for the appellants to have submitted in his brief ten issues in all for our determination is, to say the least superfluous and unsolicited. (p. 1468 C)

- B **REPRESENTATION**
Appellants absent and unrepresented
O. A. Boade, Ag. Deputy Director, Litigation & Services for the 2nd, 3rd and 4th Respondents

- C **CASES REFERRED TO**
Attorney-General of Bendel State v. Aideyan (1989)4 NWLR (Part 118) 646
Ayode v. Military Governor of Ogun State (1993)8 NWLR 111 at 127 and 128
D Afolabi v. Governor of Oyo State (1985)2 NWLR 734-786
Onajobi v. Olanipeku (1985)1 S.C. 156 at 163
Techno plastic v. Jatau (1986)4 NWLR (Part 38)771 at 778
Strabag Construction Co. (Nig) Ltd. v. Ogarekpe (1991)1 NWLR (part 170) 733
E Nigerian Bottling co. Ltd. v. Ngonadi (1985)1 NWLR (Part 4) 739
Ahumadu v. Salau (1974)11 S.C. 43 at 49

STATUTES REFERRED TO

- Chiefs Law (Cap. 21) Laws of Oyo State, 1978 ss. 14, 15, 17.
F Constitution of the Federal Republic of Nigeria 1979, ss. 33(1), 258(1).

LEAD JUDGMENT BY ONU JSC

- In the High Court of Justice, Oyo State of Nigeria holden at Oyo, in SUIT NO. HOY/5/83 the appellants herein as plaintiffs, claimed against the respondents, then as defendants, the following reliefs as endorsed on their Writ of Summons:-
G

“1. Declaration that under the traditional customs of Akinmorin only male lines are recognised for the purposes of considering, selecting, appointing and installing Baales of Akinmorin.

- 2. Declaration that there are FIVE, based on MALE LINES, and NOT SEVEN, Ruling Houses for Baale of Akinmorin Chieftaincy in the Oyo South Local Government Area of Oyo State.*
H

3. Declaration that the 1st defendant who is from a female line, is

not entitled to be considered, selected, appointed, approved, and or installed as Baala of Akinmorin on the ground that such consideration., selection, appointment, approval, and or installation are contrary to the traditional customs and practice of Akinmorin which recognise MALE LINES only for the purpose of appointing Baales of Akinmorin.

4. *An order removing the names of the following purported Ruling Houses, that is, (1) OLA, (2) WINSESAN (OYEDUNTAN) for the Baaleship of Akinmorin the Oyo South Local Govt Area of Oyo State from the registered Declaration in respect of succession to the Baaleship of Akinmorin.*

5. *An order setting aside any selection already done and or likely to be done, any appointment already made and/or likely to be made, any approval already given and/or likely to be given, and/or any installation already performed and/or likely to be performed of any Baale of Akinmorin from the FEMALE LINE, particularly that of the 1st defendant by the 2nd, 3rd and 4th defendants before the final determination of this suit."*

Pleadings were ordered, filed and exchanged by the parties. The case went to trial in which the learned trial Judge (Ibidapo Obe. J.) on 25th April 1986 after sifting the evidence adduced by all sides in line with their pleadings (the 1st respondent having filed his statement of defence separately in answer to the appellants statement of claim and the 2nd, 3rd and 4th respondents filed a joint statement of defence), gave judgment against the respondents. Being aggrieved by this decision the respondents appealed to the Court of Appeal sitting in Ibadan (hereinafter referred to as the court below) which on 20th July 1988 allowed their appeal. The appellants on being dissatisfied with the said decision have now appealed to this court on four grounds contained in their Notice of Appeal.

I wish firstly to state briefly the facts giving rise to the appeal herein. Which arose from a dispute involving the chieftaincy office of the Baale of Akinmorin in Oyo Local Government of Oyo State and which is a recognised chieftaincy under Part 2 of the Chiefs Law Cap 21 Laws of Oyo State, 1978. It was registered and approved by a Declaration in 1956. The Declaration which provided for seven Ruling Houses is Exhibit 'M' in this case. Following the death of David Amole Oladoja, the former Baale of Akinmorin in 1979, the Government of Oyo State, caused to be set in motion in 1980 machinery for appointing a new Baale whereby the OLA RULING HOUSE as contained in Exhibit 'M' was called upon to nominate a candidate or candidates for the vacant stool. The five appellants took out a writ against the four respondents before the trial court aforesaid, claiming that the last two Ruling Houses contained in Exhibit 'M' (Ola and Winsesan-Oyeduntan) came from female lines and contending in addition, that in Exhibit 'M'

they are not recognised Ruling Houses on their own.

The Ola Ruling House subsequently unanimously selected and presented the 1st respondent (now said to be dead) but the traditional Akinmorin Kingmakers rejected his candidature on the ground that he was an illiterate as well as emerging from a female line out of the five, as against the seven Ruling Houses set out in Exhibit 'M'. Despite requests by the Government for a reconsideration of their stand on the basis that their decision was not on a valid ground, the kingmakers maintained that the 1st respondent was disqualified. In consequence thereof, the Government of Oyo State empanelled warrant kingmakers to perform the functions of the traditional kingmakers who subsequently selected the 1st respondent as the rightful and proper person to fill the vacancy. After the selection procedure had been completed, the 1st respondent's appointment was approved and he was installed as the Baale of Akinmorin. The contentions of the appellants in their writ and statement of claim were that the incumbent Baale was an illiterate; that he was from a female line and that there are, in fact, five Ruling Houses as against the seven set out in Exhibit 'M'. They further contended that the selection, appointment and/or installation of the 1st respondent were contrary to the customs, tradition and practice of Akinmorin.

Sequel to the appeal filed in this court the appellants filed their changed briefs of argument in accordance with the rules of court. Four issues were distilled from the four grounds of appeal filed by the appellants who, in the alternative, submitted six additional issues for our determination, to wit:

1. Whether the 1st respondent being from a female line is entitled unconditionally, to be considered, nominated and appointed in the first instance, as Baale of Akinmorin in compliance with Akinmorin Chieftaincy Declaration (Exhibit 'M') being the Native law and custom governing and regulating such consideration, nomination and appointment.

2. If not so, whether the condition, precedent for the consideration, nomination and subsequent appointment of a candidate from the female line, have arisen under the provisions of Exhibit 'M', the Baale Akinmorin Chieftaincy Declaration being the Native Law and Custom governing and regulating such consideration, nomination and appointment.

3. If the answers to the above "TWO ISSUES" are in the negative, whether the qualification or otherwise of the 1st respondent under sections 14 and 15 of the Chiefs Law (Cap 21) Laws of Oyo State, has arisen at all.

4. Whether in view of the preponderance of evidence adduced by the plaintiffs before the trial Court upon which the court found that a female line and that the purported Ola Ruling House represents a female

line which is not a ruling house as such, the consideration, nomination and subsequent appointment of the 1st respondent as Baale of Akinmorin was valid as being in compliance with the provisions of Exhibit 'M' Baale of Akinmorin Chieftaincy Declaration.

ALTERNATIVELY:-

5. What if any, is the cumulative effect of non-compliance with the provisions of Baale Akinmorin Chieftaincy Declaration, Exhibit 'M' - in the consideration, nomination and appointment of the 1st respondent as Baale of Akinmorin. B

6. Whether the Kingmakers duly performed their functions as required of them under sections 14 and 15 of the Chiefs Law of Oyo State (Cap. 21) C

7. If so, whether the appointment of warrant Kingmakers by the Government in the circumstances was right and not contrary to section 17 of the said Chiefs Law of Oyo State (Cap. 21)

8. Whether, even if the 1st respondent is qualified under sections 14 and 15 of the said Chiefs Law of Oyo State, his appointment as Baale of Akinmorin could stand as valid in view of non-compliance with the provisions of Exhibit 'M' (Baale of Akinmorin Chieftaincy Declaration) being the Native Law and Custom governing and regulating the said appointment in the consideration, nomination, appointment and presentation for approval of the 1st respondent to the 3rd respondent. D
E

9. Whether after the close of addresses by counsel in a case, it is an infraction of a litigant's right of fair hearing guaranteed under section 33 of the 1979 Constitution and audi alteram partem rule to send a list of further and/or fresh authorities and comments made thereon to the Judge with copies sent to the other counsels (sic) in the case for their information and comments if they so wished. F

10. Whether in the particular case in hand, the learned trial Judge based his judgment on the said further address.

The respondents filed no brief or briefs of argument either separately or jointly. G

At the hearing of the appeal on 22nd April, 1996 the appellants were neither present nor were they represented by counsel. The 1st respondent who was also shown to be absent and unrepresented, was said to have had his name struck out by an order of this court made on 22nd March, 1993 upon the announcement of his demise. Mr. O.A. Boade, Acting D.O. L.A.S., Oyo State, who announced his appearance for the 2nd, 3rd and 4th respondents and also confirmed the death of the 1st respondent, stated that H

he had sent an application by courier mail service before leaving Ibadan to Abuja for the hearing of the appeal. As the case was fixed for hearing on that day, this court ruled that the appeal be taken as argued on the brief filed since the appellants and their counsel were absent in court and judgment was accordingly reserved until today.

B The argument proffered on the appellants brief has been made in the following order:

1. Issues 1, 2, 5 and 8 relate to Ground 1
2. Issues 3, 6 and 7 are predicated on Ground 2.
3. Issue 4 is concomitant with Ground 4, while
4. Issues 9 and 10 emanate from Ground 3 respectively.

C Before my consideration of these issues as formulated, I wish to reiterate this court's admonition to counsel times without number that it is wrong for counsel to formulate issues for determination in excess of the grounds of appeal filed. Indeed, it has been stated to need further emphasis and stressing by this court that except in special cases where the grounds of appeal so

D dictate it is undesirable to formulate an issue in respect of each ground of appeal. See *Attorney-General of Bendel State v. Aideyan* (1989) 4 NWLR (Pt. 118) 646; *Buraimoh v. Bamgbose* (1989) 3 NWLR (Pt. 109) 352 and *Utih v. Onoyivwe* (1991) 1 NWLR (Pt. 166) 116 at 214, to mention but a few.

E In the instant case where there were only four grounds of appeal filed, the precipitate action of learned counsel for the appellants to have submitted in his brief ten issues in all for our determination is, to say the least, superfluous and unsolicited. The learned counsel for the appellants having however neatly put the ten issues under four heads as above, and in the
F absence of any issues proffered on behalf of the respondents, I will treat the above issues in their order of sequence and arrangement as follows:-

ISSUES 1, 2, 5 AND 8:

Under these issues the submission is to the effect that the parties in this case base their cases in the first instance mainly on the provisions of Exhibit
G 'M' which is the "CHIEFTAINCY DECLARATION" in respect of Baale of Akinmorin Chieftaincy title, being the Native Law and Custom governing and regulating the selection, consideration and subsequent appointment as Baale of Akinmorin with the approval of the 3rd defendant (Alaafin of Oyo) who is the Consenting Authority to such appointment. Therefore, the validity or otherwise of any appointment made under Exhibit 'M', it is
H argued, must be in strict compliance with the provisions of the said Exhibit 'M' as non-compliance with, and/or infraction of any of the provisions will render any such appointment irregular, null and void and of no effect what

soever. After asking what provisions to be complied with in order to make a valid appointment under Exhibit 'M', we were referred to several of such provisions, wit: paragraphs 3, 4, 5 and 6(a) &(b) thereof. It is then submitted that the selection, presentation, appointment and installation of the 1st respondent are clearly an infraction of the provisions of paragraphs 3(i), (ii), 4; 5, 6(a), and (b) of Exhibit 'M' being the Native Law and Custom governing and regulating the selection, presentation and appointment of a Baale of Akinmorin. It is the further contention of the appellants that although 1st respondent is a member of Baale Akinmorin chieftaincy family of FIVE MALE LINES, he (1st respondent) is from the FEMALE LINE OF LANASE RULING HOUSE and that unless there are no suitable males in the Lanase Male Line or that members of that House willfully and by a majority decision present the 1st respondent, a member of the female line as a candidate, he cannot be selected, presented, appointed and installed as Baale Akinmorin. The appellants, it is further maintained, clearly averred these facts in paragraphs 24, 25, 26, 27, 28 and 29 of the Statement of Claim and led copious, straight forward, convincing and overwhelming evidence in proof of them through the testimonies of 1st P.W. - Lamidi Moninuola; 2nd P.W. - Samuel Adigun; 3rd P.W. - James Popoola Akinlo and 4th P.W. Oyegbola Kehinde. Plaintiffs other witnesses, it is further contended, gave their pieces of evidence in the same vein as that rendered by the above - named witnesses, adding that after reviewing, considering and weighing the evidence on both sides vide *Mogaji v. Odofin* (1978) 4 SC 91; *Adeyemo v. Arokopo* (1988) 2 NWLR (Pt. 79) 703 the learned trial Judge held, inter alia, that any candidate nominated in accordance with paragraphs 4 and 5, shall be presented to the Alaafin of Oyo, through Babakekere of Ilora by the Onsa for the conferment of the title and the performance of the necessary ceremonial rites and that on the preponderance of evidence led, the 1st respondent was depicted as hailing from the female line of Ola Ruling House and that his father was never installed as Baale of Akinmorin.

Incidentally, it is further argued, there was no appeal against this conclusion and finding of fact on which the appellants case succeeded in the trial court and so the respondents ought not to be heard to complain. After setting out what the defence case (both in examination-in-chief and cross-examination) was through the testimonies of D.W.1. Amos Olawuyi Oyesiji, 2nd D.W., Thomas Oyebanji, 3rd D.W., Oyelabi Ashamu and 4th D.W., Ayantade Oyeleke Ipadeola. It is the further submission on behalf of the appellants that from the relevant portions of the evidence of these witnesses, it is clear enough that 1st respondent's nomination, presentation

and installation were done in breach of paragraphs 3, 4, 5 and 6(a) of Exhibit 'M'. It is the contention of the appellants therefore that in the first place, the 1st respondent being from a female line as found by the trial Judge, could be nominated, presented and installed as the Baale of Akinmorin unless under and by virtue of paragraph 3(i) (ii) of Exhibit 'M'.

B Further, it is maintained, paragraph 5 of Exhibit 'M' provides that the ruling house whose turn it is to present a candidate *"SHALL DO SO THROUGH THE ELDEST MEMBER OF ALL THE FAMILIES PUT TOGETHER, WHO SHALL PRESENT SUCH A CANDIDATE TO THE KINGMAKERS THROUGH THE BASHI"*

C Thus, it is argued, the nomination and presentation of 1st respondent as the exclusive affair of the ruling house whose turn it is to present the new Baale is a great violation of paragraph 5 of Exhibit 'M'. Similarly, it is contended, the ONSA is to present the new Baale to the Alaafin of Oyo for the conferment of the title through the Babakekere of Ilora under and by virtue of paragraph 6 (a) of Exhibit 'M'. In other words, it is submitted, the

D roles of the eldest member of all the families put together, the ONSA and the Babakekere of Ilora, were jumped by the alleged "Ola Ruling House" (representing a female line) in their nomination, presentation and conferment of the title on 1st respondent all in their desperate bid to turn a female line into a male line. It is then contended that this violent and brazen

E infraction of the provisions of Exhibit 'M' which is the Native Law and Custom governing, regulating and guiding the nomination, presentation and conferment of the title on a new Baale of Akinmorin, renders completely null and void and of no effect whatsoever the nomination, appointment and the conferment of the title on the 1st respondent. The case of

F *Adefulu v. Oyesile* (1989) 5 NWLR (Pt. 122) 377 at pages 420-421 was called in aid. As a valid nomination and/or presentation to the kingmakers is a sine qua non for a valid selection by the kingmakers and/or its approval by the Governor, it is further maintained, it follows that any purported selection/appointment and/or its approval by the Governor of a person not

G properly nominated and/or presented to the kingmakers by the ruling house and/or families, is an exercise in futility. Reliance was placed on *Adefulu v. Oyesile* (supra) at page 421. As the original kingmakers were performing an exercise in futility on the ground that the 1st respondent was not validly nominated and presented to them for any such consideration, it is argued, similarly did the warrant kingmakers who were later empanelled; to rubber-stamp 1st respondent's appointment as Baale of Akinmorin.

H In resolving the question posed by the issues under consideration here, it is well to set out Exhibit 'M' which is the centre-piece and the pivot of the

argument canvassed above and which, contrary to the topsy-turvy stance the appellants have portrayed it to wit: that it contained only five ruling houses, it has indeed seven such ruling houses, It states:-

“DECLARATION

In exercise of the powers conferred upon Local Government Council is by section 3(1) of the Western Region Appointment and Recognition of Chiefs Law, 1954, the following declarations in respect of succession to the Baaleship or Akinmorin are hereby made:- B

(1) That 7 ruling houses shall have the right to provide candidates for Baaleship or Akinmorin namely:

1. Akingbehin

2. Orisagbure

3. Lanase

4. Oyeniya

5. Oyeniran

6. Ola

7. Winsesan (Oyeduntan) C

(2) That the order of rotation in which every family specified in paragraph 1 above is entitled to provide a candidate shall be in the order specified in paragraph 1 above.

(3) That the male line of a ruling house shall devolve on a female line when: D

(i) Members of the ruling house wilfully by a majority decision present a member of the female line as a candidate. E

(ii) the ruling house in the male line has no suitable candidate .

(4) That the following four chiefs are entitled to select the holder of the chieftaincy. F

1. The Bashi

2. The Odofin

3. The Jagun

4. The Onsa

(5) That the method of nomination of a candidate from the family whose turn it is to present a candidate shall do so through the eldest member of all the families put together who shall present such a candidate to the kingmakers through the Bashi. Provided that in the case of disagreement among the chiefs, a majority decision shall be taken. G

(a) That any candidate nominated in accordance with paragraphs 4 and 5 shall be presented to the Alafin of Oyo through the Babakekere of Ilora by the Onsa for the conferment of the title and the performance of the necessary ceremonial rites, and H

(b) That the candidate installed in accordance with paragraphs 4, 5 and 6(a) above, shall on the third day after his installation, be taken to the Alaafin of Oyo who will authorise the performance of the 'Iwuye' ceremony.

(Sgd) A. Taiwo

B *Chairman, Oyo Southern District Council*

(Sigd) S.A. OGUNMOLA

Secretary, Oyo Southern District Council

APPROVED this 18th day of September, 1956

(Sgd) F.R.A. WILLIAMS

C *Minister of Justice and Local Government*

DULY registered by me at page 3 of the Chieftaincy Declaration Register this 23rd day of October, 1956.

(Sgd) HADY

Acting Provincial Adviser, Oyo."

D Now, it is common ground that the Baale of Akinrnorin is a recognised chief under Part 2 of the Chiefs Law, Laws of Oyo State, 1978, and that the chieftaincy was registered and approved by a Declaration in 1956 which provided in essence for Seven Ruling Houses vide Exhibit 'M'. It was the plaintiffs/appellants contention that there are five Ruling Houses only in that the last two Ruling Houses (Ola and Winsesan both of which are
E called Oyeduntan) came from the female line and not recognised as Ruling Houses in their own right. This cannot be strictly true having regard to the pleading and evidence adduced in support thereof by the appellants. In order to exemplify this, in paragraphs 1 to 6 and 9 of the Statement of Claim, the appellants averred thus:

F *"1. That the plaintiffs are principal members of Baale of Akinmorin Chieftaincy family which consists of FIVE BRANCHES, and bring this action for themselves and on behalf of all the branches.*

2. That the FIVE BRANCHES are the male lines which according to Native Law and Custom, and the accepted age-long traditional practice of Akinmorin Oyo South Local Government, Jobele, Oyo State, form the FIVE RULING Houses from which successive Baales of Akinmorin are appointed.
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3. That the identity of each of the Ruling Houses is:-

(a) AKINGBEHIN RULING HOUSE - represented in this action by 1st plaintiff.
H

(b) ORISAGBURE RULING HOUSE - represented in this action by 2nd plaintiff.

(c) OYENIYA RULING HOUSE - represented in this action by 3rd plaintiff.

(d) *LANASE RULING HOUSE* - represented in this action by 4th plaintiff.

(e) *OYENIRAN RULING HOUSE* - represented in this action by 5th plaintiff.

4. That the Baale of Akinmorin Chieftaincy family is a recognized chieftaincy family and the Ruling House based on male lines only, as stated in paragraph 3 above, haven exclusive right to provide candidate or candidates for the stool any time it is vacant. B

5. That under Native Law and Custom, Usage and traditional practice of Akinmorin, the order of rotation in which the respective Ruling Houses are entitled to present candidates to fill the successive vacancies in the Chieftaincy is as follows:- C

(1) *AKINGBEHIN*

(2) *ORISAGBURE*

(3) *LANASE*

(4) *OYENIYA*

(5) *OYENIRAN* D

6. Under Native Law and Custom, usage and traditional practice relating to the Baale Akinmorin Chieftaincy the persons who may be proposed and or presented as candidates by the entitled Ruling Houses to fill a vacancy in the Chieftaincy must be male members of the respective Ruling Houses. E

X X X X X X X X

9. That Kutan from whom all the *FIVE RULING HOUSES*, originated, was the *FIRST BAALE OF AKINMORIN* and begat the following children:-

(1) *AKINGBILE (MALE)* F

(2) *AKINGHEHIN (MALE)*

(3) *ORISAGBURE (MALE)*

(4) *OYENIYA (MALE)*

(5) *LANASE (MALE).*"

The respondents joined issues with the appellants by denying especially the averments on the number of Ruling Houses which they claimed were seven. And on the female line to ascend the stool of Akinmorin chieftaincy, examined in chief, 1st P.W. Lamidi Moninuola, deposed inter alia that - G

".....I know Nathaniel Oyekan, Stephen Olayemi, Oyesola E Oladoja. All these person and myself brings (sic) this action on behalf of the Ruling Houses. There are five Ruling Houses in Akinmorin and all of us who are plaintiffs hail from Akinmorin Chieftaincy family. Akingbehin, H

Orisagbure, Oyeniya, Lanase and Oyeniran are the five branches of the Akinmorin Chieftaincy family. The five of us are the plaintiffs.

x x x x x x x

The male lines will be made the Baale and the female lines the head of the family.

B x x x x x x x

I know the 1st defendant Amos Akinrinwa. He is not from Akingbehin family. The mother of his father is a member of our family on the ruling line. We have eligible men in the Akingbehin Ruling House to be made the Baale. We do not want Amos Akinrinwa because he hails from the female line.

C x x x x x x x

The first defendant was then installed the Baale of Akinmorin at one Grammar School in Akinmorin.

The only kingmaker who signed was one Basi. This was on 29/2/83 against our native Law and Custom which forbids a female line from the Baaleship of Akinmorin. From the time immemorial

D

Since the founding of Akinmorin, there had never been a Baale from the female line. I know Winsesan. He is a senior brother of Abinde. He is entitled to the Baaleship of Akinmorin ... (underlining is for emphasis)

2nd P.W., Samuel Adigun for his part, had the following to say:-

E *"I know all the plaintiffs. I belong to the plaintiffs from Oyekan side. I know Akinmorin Chieftaincy Ruling House. I succeeded my father as the Head of the family. But I hail from the female line who normally is entitled to the Headship of the family but not the Baaleship. We are also entitled to be regents." but not as Baale. I know Ola. He was from female*
 F *line. The name of Ola's mother is Olawumi. I know Oyeniran. He was Baale but got the wrath of the people who drove him out of Akinmorin*
..... I know Amos Akinrinwa. the 1st defendant. He cannot be Baale of Akinmorin since there are good and eligible men from the Male line."

G Subjected to cross-examination by learned counsel for the 1st respondent, Alhaji Ishola, 2nd P.W. admitted as follows:-

"It may be possible to turn to a female line if there is no one from the male line I was the regent when Amole died. The 1st defendant has not the right to be Baale." (Italics is also mine for emphasis).

The 4th P.W. - Oyegbola Kehinde in his own testimony, deposed inter alia as follows:-

H *"I know the 1st defendant - Amos Akinrinwa. He is from Lanase as I am from Lanase. I am from male (sic) line and 1st defendant cannot and should not be Baale because it is against our custom and tradition. It*

is only the head of family that the female line can aspire “

The italicized portions of the evidence of the witnesses called by the appellants in support of or which was in line with their pleading contained in their Statement of Claim, sought to contradict Exhibit ‘M’ in two glaring areas, to wit: as to the Ruling Houses which appellants put at 5 but which the respondents say are 7 vide paragraph 1 of Exhibit ‘M’ as well as to the right of female succession to the Akinmorin Chieftaincy. For, while these witnesses are unanimous in saying that the female line has no right of succession to the Akinmorin chieftaincy in respect of the latter whatsoever, the express provisions of paragraph 3 of Exhibit ‘M’ are to the effect that the male line of a ruling house shall devolve on a female line when:

“(i) *Members of the ruling house wilfully and by a majority decision present a member of the female line as a candidate.*

(ii) *the ruling house in the male line has no suitable candidate.”*

It being accepted in line with Exhibit ‘M’ that both male and female lines had equal rights to succession to the Akinmorin stool, the contention that as there was no appeal against the conclusion and finding of fact by the trial court that “on the preponderance of evidence, the 1st defendant hails from the female line of Ola Ruling House and his father was never installed Baale of Akinmorin” is non sequitur.

That the laid down procedure in accordance with Exhibit ‘M’ was followed and that it did not constitute an infraction of paragraphs 4, 5 and 6(a) thereof can be gleaned from the defence evidence adduced through 1st D.W. - Amos Olawuyi Oyesiji, 2nd D.W. - Thomas Oyebanji, 3rd D.W. - Oyelabi Ashamu and 4th D.W. - Ayantade Oyeleke Ipadeola, Testifying in line with his pleading contained in his Statement of Defence, 1st D.W., who incidentally is 1st respondent, said inter alia -

“Okikiola begat Olawumi who was Ola I. Olawumi begat Morakinyo. Morakinyo beg at me to the 1st defendant. Olawumi is a male and not a female. Kutan is the younger brother of Okikiola, Akinmorin was his father. I hail from Ola ruling house of Akinmorin out of the 7 ruling houses. We are all from the male line including Winsesan. It was the turn of Ola to fill the Akinmorin Baaleship and I have been so selected. I succeeded Oladoja Amole from Oyeniran ruling house. Since I was presented by Ola ruling house, there was no opposition. I agree that only male line becomes the Baale of Akinmorin. If the next ruling house had no suitable male candidate from male line, then the female line may be presented So I was presented by Oyelabi Asamu from Ola ruling house. Oyelabi Asamu is from the male line All the ruling houses need not meet except the next ruling house which must meet.”

Continuing 1st D.W. asserted: .

"I was presented to the 4 Kingmakers who were Basi, Odofin, Onsa, and Jagun. The four agreed on that day. Later I hear the Kingmakers say, I am not literate. We went to Jobele three times and the Kingmakers disagreed with my candidature. Despite all efforts by my ruling house, the Kingmakers would not budge and my family stood by me. When the Kingmakers refused me another (sic) warrant chiefs were selected - they were Balogun, Iyalode, Egbemode, Olode and Asalu. They approved my candidature and I was installed the Baale by the Alaafin of Oyo Oba Lamidi Adeyemi III. Chief Bola Ige the then Governor of Oyo State approved my candidature. Some 30 years ago, the 7 ruling houses were registered. The ruling houses met 30 years ago to make declaration about Akinmorin Baaleship. (underlining above is mine for emphasis).

After 2nd D.W. had given evidence similar to what 1st D.W. said, he laid emphasis in support thereof by saying as follows:-

".....The present Baale is the son of Morakinyo who hails from Olawumi. I am from Olawumi Ruling house. Oyeniran did not behave like Baale he was stubborn and excessive. So he was sent out to Awe. In his place Olawumi was selected as Baale. When the quarrel was settled, Oyeniran came back to his throne as the Baale. Olawumi left Akinmorin to live in Ilora. He was not a regent but the Baale installed by the Alaafin. The 1st defendant is not from Lanase. He is the rightful Baale. It is the next ruling house who will present a candidate for the Baale. The head of the 7 ruling houses declined to approve the candidature of the 1st defendant." (underlining is mine)

Giving identical evidence as the two earlier defence witnesses before him, 3rd D.W. as head of Ola Ruling House said among other things that-

"It is not the duty of the general house to present him to the kingmakers. The Kingmakers did not reject him."

And under Re-examination the witness said -

"I now say that the 1st defendant was not presented to the 7 ruling houses but I took the document from the Local Government Council to the larger meeting of the family. I repeat that we took the 1st defendant to the Kingmakers and they accepted him. Later, they said he was illiterate."

4th D.W. re-echoed all what earlier witnesses before him said. In addition, he reiterated what they said thus:

"The head of the family presented the chosen candidate to the Kingmakers The argument of female line came up after the nomination of the 1st defendant has been completed."

Under cross-examination the witness had this to say:-

".....It is not correct that the 1st defendant was presented to the meeting of all the ruling houses. The other ruling houses have nothing to do with the selection of a new Baale except the one whose turn it is."

From the totality of the evidence adduced and the relevant portions which I have quoted above, presentation and installation were not in my view, clone in breach of paragraphs 3, 4, 5 and 6(a) of Exhibit 'M'. The court below was therefore justified in allowing the respondents appeal before it when it held inter alia as follows:-

"Fourthly, what the Declaration prescribed are 7 Ruling Houses and not 5; and that is the law on the custom governing the Chieftaincy, and not 5 Ruling Houses. Furthermore, paragraph 3 did not exclude female line. It expressly provided for female line in certain circumstances; and that is when members of the Ruling House (not Ruling Houses) wilfully by a majority decision makes such presentation. In this case, the decision to present a member from a female line was unanimous. The second provision is when the Ruling House (not Ruling Houses) has no suitable candidate in the male line. There was no such question here."

Fifthly, the Declaration did not provide any presentation by ALL THE MEMBERS OF THE RULING HOUSES as found by the learned trial Judge and as the respondents tried to make out.

There was no question therefore of there being any nomination, selection, appointment, approval with the consent or the making thereof by any of the 5 Ruling Houses or any selection by all the members of the 5 Ruling Houses as postulated. The Declaration which the learned trial Judge accepted as valid deals with the member of a Ruling House out of the Ruling Houses which are 7 in number and not 5. The Declaration properly provided for male and female lines, selection of a candidate, the method of nomination, presentation and installation of such candidate, and nothing else is even left for speculation or conjecture, this is my reading of the provisions....."

So also is my own reading of these provisions. My answer to these issues is accordingly rendered in the positive.

ISSUES 3, 6 and 7 (Ground 2): These issues pose the question or questions whether, if issues 1 and 2 are answered in the negative what are the qualifications or otherwise of a candidate under sections 14, 15 and 17 of the Chiefs Law (Cap 21) Laws of Oyo State, 1978. Having herein before given full consideration to Issues 1, 2, 5 and 8, all of which I have cumulatively answered in the positive, these issues must perforce be resolved against the appellants for the following reasons.

Sections 14(1) and 15 of the Chiefs Law (ibid) stipulate -

"14(1) A person shall unless he is disqualified be qualified to be a candidate to fill a vacancy in a recognised Chieftaincy if-

(a) he is proposed by the ruling house or the persons having the right to nominate the candidate according to customary law and

(b)(i) he is a person whom the ruling house or the persons having the right to nominate candidates are entitled to propose according to customary law, as a candidate or

(ii) he is unanimously proposed as a candidate by the members of the ruling house or the persons entitled to nominate candidates."

"15(f)(i) If the name of only one candidate is submitted who appears to the Kingmakers to be qualified in accordance with section 14 they shall declare him to be appointed.

(ii) if the names of more than one candidate are submitted who appear to the Kingmakers to be qualified and not disqualified in accordance with section 14 the names of these candidates shall be submitted to the vote of the Kingmakers and the candidate who obtains the majority of votes of the Kingmakers present and voting shall be declared appointed:

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

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

As transpired in the instant case, not only did the learned trial Judge hold that the 1st respondent was qualified under section 14(1) of the Chiefs Law (Cap. 21) (ibid), he also accepted Exhibit "M" as the customary law of Akinmorin and held that the 1st respondent hailed from the female line and wrongly applied the two contingencies in paragraph 3 of Exhibit "M" to him, the Original Kingmakers could not be said to have duly performed their functions under section 15 of the Chiefs Law of Oyo State (Cap 21) (ibid). This is irrespective of the evidence of 3rd P.W. James Popoola Akinlo, the Onsa of Ilora and one of the original Kingmakers: Alhaji Bashiru Aderinola Salami and Moses Abiodun Opekilede, the latter who testified on behalf of the 2nd, 3rd and 4th respondents to the effect, inter alia, that

"By 5/2/81, the candidate was presented to the Kingmakers. One

of the Kingmakers supported the candidate, 3 others were against on the ground that the nominee is an illiterate ”

The Commissioner for Chieftaincy Affairs having been shown to have explained to the original Kingmakers that the candidate (i.e. 1st respondent) needs not be literate as postulated in their letter to the Secretary Oyo South Local Government of 17th November, 1981 vide Exhibit “B” yet they (the Kingmakers) did not reach any compromise with Government but rather insisted that the masses of Akinmorin wanted an educated Baale, the State Government was justified in invoking its powers pursuant to, section 17 of the Chiefs Law, 1978 (Cap 21) (ibid) to empanel or appoint Warrant Kingmakers who then met and ratified the appointment of 1st respondent as the Baale of Akinmorin.

Dealing with the question of illiteracy, the learned trial Judge, after a review of the matter held -

Thus, I hold the view that literacy, in the opinion of the majority of the Kingmakers together with the popular support of all the families put together and the generality of Akinmorin citizens would appear to have disqualified the candidate. ”

The court below, however took a contrary view holding that the learned trial Judge was in error by attempting to relate the requirement of the traditional kingmakers on “literacy” (which indeed formed neither a part of the pleadings of the parties nor contained in Exhibit “M”) to the expression “relative ability, character and popular support” as used in section 15 of the Chiefs Law (ibid). It is no surprise to me therefore that the court below, quite rightly in my judgment, arrived at the correct conclusions when it held, among other things that -

“Firstly, the learned trial Judge disqualified the 1st appellant mainly on his interpretation of sections 14 and 15 of the Chiefs Law in their combined effect not as counsel had postulated, but as considered by the majority of the Kingmakers.

Secondly, the kingmakers, from Exhibit “B” referred to above, merely provided by themselves the minimum qualification as their own requirement for qualification.

There was no reference in that exhibit to the “relative ability, character, and popular support of the 1st appellant; nor indeed did they say there that he was not literate contrary to what counsel said.

Thirdly, the reasons for the learned trial Judge’s disqualification of the 1st appellant from his interpretation of the sections was as stated above; and I have to repeat it here for emphasis, and it reads –

“..... Although the name of the 1st defendant only was submitted

"to the traditional kingmakers since the majority of three against one rejected his candidature, Ipso jure he is disqualified."

Although the learned trial Judge did attempt to relate the requirement of the traditional king-makers on "literacy" to the expression relative "ability, character and popular support" as used in Section 15 of Chief Act (sic) the respondent's counsel only succeeded in defining "able" as meaning (from Concise Oxford Dictionary, 5th Edition) "legally qualified", he failed to relate the expression "ability", character and "popular support" or their cognate expressions individually or collectively as referable to the kingmakers requirement for minimum qualification or the literacy of the 1st appellant. The only cause open to him was to shift the duty of such reference to what the kingmakers said in Exhibit "B" and they said nothing but to prescribe their own standard qualification."

I cannot agree more. These issues are accordingly collectively answered in the affirmative.

ISSUE 4 (GROUND 4)

The query posed in this issue is whether in view of the preponderance of evidence adduced by the appellants before the trial court upon which that court found that a female line which the purported Ola Ruling Houses represents and a female line which is not a Ruling House as such, the consideration, nomination and subsequent appointment of the 1st respondent as Baale of Akinmorin was valid and as being in compliance with the provisions of Exhibit 'M' Baale of Akinmorin Chieftaincy Declaration. My earlier extensive consideration of issues 1, 2, 5 and 8 having, in my opinion, taken care of this issue, it is enough for me to point out that no sufficient evidence has been adduced at the instance of the appellants to rebut the presumptions in favour of Exhibit 'M' - a document which at the time the appellants were testifying in 1986 in the trial court, was about 30 years old. Further, there has been a default on the part of the Kingmakers in the performance of their duties under the Chiefs Law pursuant to which Exhibit 'M' was made as a subsidiary regulation embodying in a legally binding written statement the Customary Law of Akinmorin, setting out clearly the method regulating the nomination and selection of a candidate to fill the Baale of Akinmorin Chieftaincy and this, to avoid, no doubt, the uncertainty in the Customary Law of the Area. See *Agbetoba v. Lagos State Executive Council* (1991) 1 NWLR (Pt 188) 664 at 688 and 689; *Ayoade v. Military Governor of Ogun State* (1993) 8 NWLR (Pt. 3-9) 111 at 127 and 128 and the recent decision of this court in *Jele Oladele & ors v. Oba Adekunle Aromolaran II & ors* Suit No. SC284/1991 (yet to be reported) delivered on 4th June, 1996; (1996) 6 NWLR (Pt. 453) 180. Other in

stances of default by kingmakers as exemplified in the instant case on appeal are to be seen in Samuel O. Tuwagun v. J.O. Oladipo and the Governor of Oyo State (1980) OYSCH pages 606 - 626 in which the Kingmakers were two with each nominating a candidate of his own choice with the third candidate being rejected. That was a clear case of default by the original kingmakers as a result of the statemate precipitated. Ibidapo-Obe, J held, rightly in my view, on that occasion at page 624 of the Report thus:

"Where two kingmakers were enjoined to appoint a candidate to fill a vacant stool but appointed two candidates instead of one, they have failed to perform their duties under the Chiefs Law. The Commissioner responsible for Chieftaincy matters is obliged by law in the circumstance to resolve the situation."

In Lamidi Oyewale Akinmoyede v. Ola Lanloye & others (unreported) Suit No. FCA/1/124/82 judgment delivered on 15/7/85, the traditional kingmakers in respect of the Baale of Lalupon who received the notice of the nomination of the candidates to fill that stool did not convene the meeting within time. The Baale elect was in the meantime not until more than 3 months after the notice of nomination, selected from the ruling house. Three persons were in fact presented to the kingmakers - the appellant scored 4 votes and the 1st respondent 2. The Governor of Oyo State then set aside the selection and appointed Warrant Kingmakers who selected him as the Baale of Lalupon.

It was held by the Court of Appeal that the decision of the Commissioner to set aside the first selection because the traditional Kingmakers had failed to comply within the time set for their deliberation which was 7 days and had thus defaulted was correct. In Salami Afolabi & Ors v. Governor of Oyo State & ors. (1985) 2 NWLR (Pt. 9) 734-786 the judgment of the High Court, Osogbo in respect of the Olobagun of Obagun Chieftaincy Declaration, which was overtuned by the Court of Appeal was restored by this Court when it held inter alia-

"in my view, looking at the date of the death of Oba Bakare i.e. 26th July, 1981. it is Exhibit A that the Court has to look at to ascertain succession. At that time, the declaration of customary law set out in Exhibit L was not in existence."

See also Chief Michael Uwegba & 4 ors. v. The Attorney-General of Bendel State & Ors. (1986) 1 NWLR (Pt. 16) pages 303-322.

In the instant case, the learned trial Judge has been demonstrably shown as having failed for the most part to consider the defences of the respondents most especially that of 1st respondent. Nor did he adequately evaluate the evidence adduced as well as to resolve the appellants contradic

tions; he even failed to give reasons for his preference of the appellants case. The court below was therefore justified in my opinion to have set aside the judgment entered in the appellants favour.

This issue is accordingly resolved against the appellants.

ISSUES 9 and 10 (Ground 3):

B The appellants attack on the judgment of the court below in relation to these two issues is focused on the portion of that judgment wherein that court held:

"Lastly, the learned trial Judge wrongly in my view entertained a written further address on the issues before him, and upon which he acted after the close of oral addresses had been concluded, and the case is adjourned for judgment."

C *This is an infraction of the appellants right to a fair hearing guaranteed under section 33 of the 1979 Constitution and the audi alteram partem rule. As no opportunity was given to the appellants to make written submissions in reply thereto there has indeed been occasioned a serious miscarriage of justice (vide Onwuemena Okeluwa v. Frederick Nwobi Otogbolu (1978) 10 F.C.A. 1 at page 7 and Adigun v. Attorney-General of Oyo State (1987) 1 NWLR (Pt. 53) 678.)"*

D Argument of these issues together took the following form. That true it is that after the close of address on 3/4/86, Counsel for the appellants (respondents thereat) discovered two decided cases, to wit:

1. *Uwegba & ors. v. Attorney-General of Bendel State (supra)*
 2. *Josiah Abudu Oyediran & 3 ors v. Governor of Oyo State & ors. (Unreported, but delivered on 19/7/85 by Sijuade, J. at the Oshogbo High Court) which counsel thought would be of some assistance to the learned trial Judge in arriving at a decision in the case. Counsel then forwarded these two decided cases to the lower court with a covering letter in which the two cases were cited and the relevant portions were quoted with copies of the covering letter addressed and sent to counsel for both the 1st respondent and the 2nd, 3rd and 4th respondents respectively for their information and action."*

G The purpose of addressing and sending copies of the said letter to counsel on the other side who received them, it is contended, was to enable them read the cases and address their opinion on them to the learned trial Judge if they wished. In the circumstance, it is argued, the learned counsel for the 1st respondent, and the 2nd, 3rd and 4th respondents cannot be heard to complain:

(a) That the respondents did not have a fair hearing under section 33(1) of the 1979 Constitution.

(b) And or that the rule of audi alteram partem had been breached

(c) And or that the learned trial Judge did not afford them the

opportunity of a further written address on the two cases cited when all they had to do was to address their opinions on the two cases to the learned trial Judge which they failed to do.

It is further submitted that it is not correct as held by the learned Justices of Appeal, that the trial Judge acted upon or was influenced in any way at all by the further address in rendering his judgment. After our attention was adverted to the learned trial Judge's comments on the two cases contained in the further address. It is argued in conclusion, that as there is neither any infraction of section 33(1) (*ibid*) nor a breach of the rule of *audi alteram partem* committed by the learned trial Judge by merely referring to the two cases and his expressing a preference for the case of Salami Afolabi v. Governor of Oyo State (*supra*), the cases of Famuroti v. Agbeke (1991) 5 NWLR (Pt. 189) 1 and Onojobi v. Olanipeku (1985) 2 S.C. 156 at 163 were cited in support of the propositions.

I am of the firm view that the argument on these issues is well grounded. Even though I have not had the advantage of a respondents brief or briefs in this appeal to enable me see the two sides of the argument, I am not unmindful of the fact that it is trite law that counsel's address is no substitute for evidence. See *Technoplastic v. Jatau* (1986) 4 NWLR (Pt. 38) 771 at 778; *Strabag Construction Co. (Nigeria) Ltd. v. Ogarekpe* (1991) 1 NWLR (Pt. 170) 733; *Nigerian Bottling Co. Ltd. v. Ngonadi* (1985) 1 NWLR (Pt.4) 739 *Ahmadu v. Salawu* (1974) 11 S.C. 43 at 49.

It should be remembered that what we have in the instant appeal is a further address. The final address normally made pursuant to section 258(1) of the 1979 Constitution had come and gone and that this streak of address consisting of two cases may have been meant in the words of Oputa. J.S.C. in *Niger Construction Limited v. Okugbemi* (1987) 4 NWLR (Pt. 67) 787 at 792. to further "provide a Judge a clear mental opinion to perceive either the tenuousness in what had appeared impregnable or to see through the veneer and discover the hard core of a party's case or where, as in the instant case, it is not the trial court which in the process of writing its judgment discovered there is still outstanding a point of law in respect of which clarification was required from further addresses by counsel, in which case, it is entitled to invite counsel to address it on such point. See *Mustapha v. Governor of Lagos State* (1987) 2 NWLR (Pt. 58) 539. In the case in hand, the act of further address emanated from the learned counsel for the appellants. That the cases cited in the further address did not diminish or add to the strength or weakness in the appellants case may be deciphered from what the observation of the learned trial Judge is in his judgment then being impugned. Said he:

"I have read thoroughly the two judgments and indeed, considered the case law. For example, see the judgment of Aparo. J., Amusa Oladele v. D.O. Olaniyan, Secretary Irewole Local Government Council and 4 ors. (1983) O.Y.S.H.C. page 8-16.

B *Be that as it may, the Salami Afolabi case (supra) which deal with the provisions of section 15 of the Chiefs Law would appear to me to be more apposite. It is for these reasons that I have examined the provisions of section 15 in toto and hold the view that these provisions are mandatory and procedure laid down for the filling of vacant stool must be fulfilled in*

C *pursuance of section 15(1) (a), 15(1) (b) and 15(1)(c)."*
In essence, what I am saying is that the proposition of law that the denial of a party's counsel (where established and proven) of the opportunity of addressing the court is not a mere irregularity but a defect in proceedings which strikes at the right of the party to fair hearing thereby rendering the proceedings a nullity vide *Obodo v. Olomu* (1987) 3 NWLR (Pt. 59) 111

D such situation, in my respectful view, has no sway here. In the instant appeal, I am satisfied that neither of the two cases render his judgment a nullity. See *Famuroti v. Agbeke* (supra) and *Onajobi v. Olanipekun* (supra).

My answer to the two issues is accordingly rendered in the negative.

E The net result of all I have been saying is that this appeal fails and it is accordingly dismissed with no order as to costs to 2nd, 3rd and 4th respondents.

UWAIS CJN

F I have had the opportunity of reading in draft the judgment read by my learned brother Onu, J.S.C. I agree that the appeal has no merit and that it should be dismissed. Accordingly I too dismiss it. I make no order as to costs.

G BELGORE JSC

I have had the opportunity of reading in advance the judgment of my learned brother Onu, J.S.C. and I am in full agreement with his reasoning and conclusion which I adopt as mine. I also dismiss this appeal with N1,000.00 costs to respondents.

H

WALI JSC

I have had a preview of the lead judgment of my learned brother Onu, J.S.C. I entirely agree with him that the appeal must fail.

For the reasons given by my learned brother, I also hereby dismiss the appeal with N1,000.00 costs to 2nd, 3rd and 4th respondents.

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IGUH JSC

I have had the privilege of reading in draft the lead judgment just delivered by my learned brother, Onu J.S.C. and I entirely agree with his reasoning and conclusion.

C

The main contentions of the appellants are inter alia that the 1st respondent is uneducated and illiterate and that he is from a female line of a ruling house. The 1st respondent on the other hand claimed that he was nominated, selected, appointed. Approved and installed as the Baale of Akinmorin in accordance with Exhibit M, that is to say, the Baaleship of Akinmorin Chieftaincy Declaration, 1956.

D

Dealing with the question of illiteracy, the learned trial Judge Ibidapo-Obe, J. after a review of the matter held -

“Thus I hold the view that literacy, in the opinion of the majority of the kingmakers together with the popular support of all the families put together and the generality of Akinmorin citizens would appear to have disqualified the candidate.”

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The Court of Appeal, however, was of a different view holding that the learned trial Judge was in error by attempting to relate the requirement of the traditional Kingmakers on “literacy” to the expression relative “ability, character and popular support” as used in section 15 of the Chiefs Law.

F

No where in the Chieftaincy Declaration Exhibit M, is there any stipulation that illiteracy is a disqualifying factor in the appointment and installation of a candidate to the Baaleship chieftaincy stool and I entirely agree with the court below that the trial High Court erred in law by disqualifying the 1st respondent on the ground that he was uneducated and illiterate.

G

On the issue of whether the 1st respondent must come from the male line of a ruling house before he can qualify to be selected, appointed or installed as a Baale of Akinmorin, the trial Judge resolved this in the affirmative. The court below on the other hand, was of the view that the Chieftaincy Declaration properly provided for the selection or appointment of a candidate, the method of nomination, presentation and installation of such

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a candidate from both the male and female lines of a ruling house and that nothing therein is left for speculation or conjecture.

It is clear from the Chieftaincy Declaration, Exhibit M, that nothing therein excludes candidates from the female line of a ruling house. On the contrary, paragraph 3 thereof expressly provides for candidates from the female lines in certain circumstances such as where members of the Ruling House (not Ruling Houses) wilfully and by a majority decision present a member of the female line as a candidate.

In the present case the decision to present a member from a female line was both willful and unanimous on the part of members of the 1st respondent's Ruling House. I think the court below was right in setting aside the disqualification of the 1st respondent by the trial court.

On the whole, this appeal lacks merit and it is for the above and the more detailed reasons contained in the judgment of my learned brother Onu, J.S.C. that I, too, dismiss this appeal. The judgment of the court below is hereby affirmed and I abide by the order for costs contained in the said judgment.

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