

SUPREME COURT OF NIGERIA

20TH SEPTEMBER, 1996. SC. 201/1991

**CORAM:-I. L. KUTIGI, M. E. OGUNDARE, U. MOHAMMED, S.
U. ONU, A. I. IGUH, JJSC.**

MUSTAFA OLADOKUN

..... PLAINTIFF/RESPONDENT
CROSS-APPELLANT

AND

1. THE MILITARY GOVERNOR OF
OYO STATE & 12 OTHERS
14. Y. O. SUNMONU

..... DEFENDANTS/
APPELLANT

CHIEFTAINCY MATTERS - *Family meeting - To nominate a chieftaincy candidate - Where not summoned by the appropriate authority - Whether valid.*

CHIEFTAINCY MATTERS - *Kingmakers meeting - Where some of those entitled to attend were not invited - The meeting was invalid.*

CHIEFTAINCY MATTERS - *Eligibility for nomination - Whether the grandson of a previous holder of the title - Is eligible for nomination.*

CHIEFTAINCY MATTERS - *Lacuna in a Chieftaincy Declaration - As to number of candidates to be nominated - Can be filled by evidence.*

CHIEFTAINCY MATTERS - *Qualifications stipulated under the Declaration - Whether disjunctive or conjunctive interpretation - Should be adopted.*

CHIEFTAINCY MATTERS - *Validity of appointment of the chief - Where the procedures adopted are invalid - The appointment of the 14th defendant is null and void.*

WORDS & PHRASES - *Chieftaincy matters - "Sons of a previous holder of the title"- Whether to include grand son.*

FACTS

The plaintiff and the 14th defendant are members of the Etielu Ruling House, whose turn it is to present a candidate to fill the vacancy in the office of the Onjo of Okeho chieftaincy. The family meeting for the purpose of nominating a candidate was summoned by the secretary to

the Kajola Local Government instead of the Mogaji Ijo who is authorized to do that under the Chieftaincy Declaration (Exh.1). Plaintiff had the highest vote out of four nominated candidates. The four names were forwarded to the kingmakers who by a majority chose the 14th defendant for the chieftaincy in issue. Three persons who should have been invited to the kingmakers meeting were not invited.

Plaintiff filed an action before the Oyo State high court seeking a declaration that the appointment of the 14th defendant is null and void. He also contended that the defendant being a grand son of a previous holder of the chieftaincy title is not eligible for nomination. The trial court dismissed the plaintiff's action in its entirety. His appeal to the Court of Appeal was allowed Akpabio JCA dissenting on the reasons. Being dissatisfied, both parties have appealed to the Supreme Court raising 5 issues.

ISSUES FOR DETERMINATION

(i) *What is the construction to be placed on Exhibit 'A' (sic) (the Chieftaincy Declaration) as to who is to be appointed, the conditions to be satisfied and whether the sons of previous holders include grand sons?*

(ii) *Whether the exclusion of the Mogaji Ijo from the family meeting called for the selection of candidates was academic, considering the effect of the exclusion on the Cross-Appellant, and whether the said Mogaji Ijo had waived his right to be summoned and to be present at the family meeting where the nomination took place. Etc. see p. 1581*

HELD (Unanimously allowing each party's appeal in part per lead judgment of **OGUNDARE JSC**)

Family meeting - To nominate a chief

1. It is not in dispute that Exhibit 'I' requires that Mogaji Ijo is to summon a family meeting whenever nomination is to be made to the office of Onjo of Okeho. The meeting of August 1985 was not summoned by him, nor even by another principal member of the Etielu family but the Secretary to the Kajola Local Government. That meeting, in my humble view, could not be the meeting envisaged in Exhibit 'I'. The meeting of the ruling house envisaged by the declaration is a special meeting of the ruling house summoned by the Mogaji Ijo for the sole purpose of nominating candidate(s) to fill the vacancy occurring in the Onjo of Okeho chieftaincy title. It is for this reason that I share the view of Akpabio J.C.A. who, in his judgment, said:

"From the foregoing provision it becomes clear that the presence of the Mogaji Ijo at the family meeting was not just a cosmetic necessity, but a legal requirement for the validity of such a meeting,

which could not be compromised or waived by anybody. He was in fact to be the person to summon it. If it was not summoned by him, then the meeting was not properly constituted. So for that reason, I am of the firm view that it was not right for the 3rd Respondent to have summoned the family meeting of which he was not a member.”

I hold the meeting of the Etielu ruling house held on 22nd August 1985 to nominate candidate(s) for the filling of the vacancy in the Onjo of Okeho title, invalid. (p. 1585 B)

Kingmakers meeting - Failure to invite some persons

2. The Secretary to the Kajola Local Government, as Secretary to the kingmakers summoned the meeting of the kingmakers to which he invited 10 of them. He did not invite Labode Akano, the Mogaji Ijo and the Bale of Olele to the meeting because of the problems the two chiefs were then having in their families. I think he acted wrongly. And the consequence of his wrongful act is that the meeting of the kingmakers held on 30th August 1985 was invalid. The argument that a majority of the kingmakers was present is beside the point. The issue is that not all those entitled to attend were invited to the meeting. The Secretary had not the right to determine on his own who, or who not, to invite to the meeting. He ought and, indeed, must invite all those eligible to attend and alive at the time. The two chiefs excluded in this case were the incumbents of their respective offices at the time. That meeting is invalid and I so declare. (p. 1585 G)

Eligibility of a grandson to be nominated for the chieftaincy

3. We have not been invited in this appeal to depart from our decision in Olanrewaju. It, therefore, has to be followed. In the result, I must hold that the court below was in error in its construction of the phrase “sons of a previous holder of the title” appearing in Exhibit ‘1’. In consequence, I hold that the 14th Defendant is eligible to the title of Onjo of Okeho. (p. 1588 E)

Lacuna in a chieftaincy declaration

4. There is a lacuna in the declaration as to the number of candidates a Ruling House is enjoined to nominate. This lacuna can be filled by evidence there is evidence on record that on previous occasions more than one candidate had been nominated for consideration by the kingmakers. In so far, therefore, as a chieftaincy declaration is a restatement, in writing, of the customary law relating to the selection and appointment of a particular chief, effect has to be given to it subject, of course, to the

filing, by evidence, of any gap, as in this case, that may be apparent on its surface. In the light of the evidence, therefore, I must conclude that the Courts below are right in holding that the Etielu Ruling House has a right to nominate more than one candidate. And I so hold. (p. 1589 A)

Qualifications stipulated under the Declaration

5. The Declaration (Exhibit '1') provides for the consent of the Alafin to the appointment of the candidate forwarded by the kingmakers as the Onjo of Okeho. The Declaration further stipulates that such consent is not to be withheld if the candidate put forward by the kingmakers possesses any of the qualifications under Paragraph (iii) of the Declaration. Paragraph (iii) (this he following three qualifications:

- (a) member of the Ruling House,
- (b) of the male line only and
- (c) son of a previous holder of the title.

I agree entirely with the views expressed by the court below in the above passage. To construe paragraph (iii) of the Declaration in the manner suggested by the defendants is to defeat completely the intendment of the customary law as stated in Exhibit '1'. I think this issue has been thoroughly thrashed out by this Court in Olanrewaju (*supra*). It is sufficient to say once that the candidate to qualify for an appointment must possess all the three qualifications enumerated in Paragraph (iii) of Exhibit '1'. (p. 1589 D)

Validity of appointment of a chief

6 Having held that the meetings of the Etielu Ruling House held on 22nd August 1985 and of the kingmakers of Okeho held on 30th August 1985 invalid, the whole exercise conducted in August 1985 to fill the vacancy is void and the appointment of the 14th defendant resulting therefrom is equally null and void: the exercise is to commence all over again. (p. 1590 D)

NOTABLE POINTS OF INTEREST

OGUNDARE JSC

1. Misconceived objection

I think the objection is misconceived. The 1st and 2nd Defendants have not resiled from their pleadings. Instead, the facts are not in dispute. What they have done is to accept the construction placed on Exhibit '1' by the court below. Hence they have not appealed against the judgment of that court. And this they are entitled to do. (p. 1581 G)

2. Failure to appeal against a finding - Effect

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I think the argument of learned counsel, Chief Adejumo is misplaced. The court below found that by his exclusion from summoning the meeting of the family, the Mogaji Ijo's right was infringed. The Defendants did not appeal against this finding. It is not now open to them to argue that what Exhibit '1' confers on the Mogaji Ijo is a privilege and not a B right. They can only seek to justify the finding of the court below by arguing in favour of waiver found by the court below to disentitle the Plaintiff to complain. (p. 1584 E)

REPRESENTATION

C Chief S. A. Adejumo with A. O. Adewoye for 4th - 9th & 14th Defendants/Appellants

O. A. Boade Ag. D.D.L.A.S. Oyo State for 1st & 2nd Defendants/Respondents

L. O. Fagbemi and O. Olowolafe for Plaintiff/ Respondent

D

CASES REFERRED TO

Young v. Ladies Imperial Club (1920) All E.R. Rep. 223, 227-228

Olanrewaju v. Governor of Oyo State (1992) 9 NWLR (Part 265) 335, 362, 363,

E Edewor v. Uwegba (1987) 4 NWLR 313, 343 - 345

Lipede v. Sonekan (1995) 1 NWLR 668 699-700

Udoye v. The State (1967) NMLR 197

Yerokun v. Adeleke (1960) SCNLR 267

Ahmed v. Kassim (1958) SCNLR 28

F

STATUTES REFERRED TO

Chief Law of Western Region of Nigeria 1957 ss. 15(1)(c), 4(2)

Interpretation Law of Oyo State s. 53

G Chiefs (Appointment & Deposition) Law Cap. 20 Laws of Northern Nigeria s. 11

Constitution of the Federal Republic of Nigeria 1979 s. 39(2)

BOOK REFERRED TO

Maxwell on Interpretation of Statute 8th. Ed. para. 111 pp. 320 - 322

H

LEAD JUDGMENT BY OGUNDARE JSC

The main issue calling for determination in this appeal relates to the interpretation of the chieftaincy declaration of the Onjo of Okeho Chieftaincy, registered on 12th February 1958. Following a vacancy in

the office of the Onjo, steps were taken to fill the vacancy. The Secretary to the Kajola Local Government called on the Etielu Ruling House whose turn it was to present a candidate to do so. By the terms of the Chieftaincy Declaration, the meeting of the Ruling House had to be summoned by the Mogaji Ijo. There was at the time a dispute as to the validity of the appointment of Labode Akano as the Mogaji Ijo in consequence of which B the Secretary of the Kajola Local Government summoned a meeting of the Etielu Ruling House to consider the nomination of candidates for presentation to the kingmakers. The Ruling House held a meeting on the 22nd of August 1985 at which four candidates were proposed. A vote was taken. The Plaintiff who was one of the candidates scored 20 votes; C Y.O. Sunmonu another candidate scored 18 votes. Alhaji Shittu Ishola a third candidate scored 7 votes and Chief Oyebanji Oladokun the fourth candidate scored 1 vote. The names of the four candidates were presented to the kingmakers by the Secretary to the Local Government. Under the declaration, there are thirteen kingmakers including Mogaji Ijo D and Bale Olele. At the meeting of the kingmakers held on 3/8/85, ten of them were present. Mogaji Ijo and Bale Olele were not invited to the meeting. The ten kingmakers voted on the four candidates presented before them. Mustafa Oladokun scored 3 votes and Y.O. Sunmonu scored 7 votes. The other two candidates had no vote. The name of Sunmonu E was forwarded to the Alafin of Oyo for his consent to the appointment of Sunmonu as the Onjo of Okeho. The Alafin refused to give his consent. The 1st defendant directed him to do so. But before the Alafin could comply, Mustafa Oladokun who was unhappy about the outcome of the exercise instituted proceedings leading to this appeal. Y.O. Sunmonu the F successful candidate was joined as the 14th defendant in the action.

In his writ of summons Mustafa Oladokun claimed as hereunder:

- "1. Declaration that the plaintiff who scored twenty (20) votes at the joint meeting of Etielu Ruling House held on 22nd August, 1985 is the candidate nominated by Etielu Ruling House pursuant to Clause (v) of G Onjo of Okeho Chieftaincy Declaration registered on 12th February, 1958.*
- 2. Declaration that the forwarding of 4 names by the Secretary to the kingmakers in spite of the selection of the plaintiff by the family was contrary to custom and the existing declaration, irregular, without foundation and ineffective.*
- 3. Declaration that the plaintiff's name is the only one that should have been forwarded to the kingmakers in accordance with provisions of the existing declaration and the custom of Okeho relating to Onjo of Okeho.*
- 4. Declaration that the reversal of the plaintiff's nomination by the kingmakers*

and the substitution therefore of the name of the 14th Defendant by the kingmakers is contrary to custom and the existing declaration.

Alternative to reliefs 1 - 4 above

- 5. Declaration that the joint meeting of Etiele Ruling House held on 22nd of August 1985 was irregular null and void and of no effect in that,*
B *the meeting was not summoned by the Mogaji Ijo as stipulated in the existing declaration.*
- 6. Declaration that the meeting of the kingmakers at which the 14th defendant was voted for was irregular, null and void and of no effect in that the kingmakers were not invited.*
- C *7. Declaration that the 14th defendant not being the son of previous Onjo is not qualified to be an Onjo of Okeho.*
- 8. Declaration that the 1st defendant's directive to the 13th defendant that the 13th defendant should exercise his discretionary power as a consenting authority in a particular manner i.e. to consent to the appoint-*
D *ment of the 14th defendant within 7 days is unconstitutional, contrary to law, improper, null and void and of no effect.*
- 9. Injunction restraining the 13th defendant by himself his agents, servants or privies from or otherwise howsoever from consenting to the nomination of the 14th defendant.*
- E *10. An order of injunction restraining the defendants, their agents, servants or privies from or otherwise howsoever from consenting to the nomination of the 14th defendant.*
- 11. An order of injunction restraining the 14th defendant from presenting or parading himself for installation as the Onjo of Okeho"*
- F *Pleadings having been filed and exchanged, the action proceeded to trial at the conclusion of which the learned trial Judge found -*
 - 1. that "there is nothing in Section 15(1) (c) of the Chiefs Law that empowers the Secretary of a Local Government to summon a meeting of members of a Ruling House. All the Section requires is for the Secretary*
G *to announce the name of the Ruling House entitled according to the customary law to provide a candidate or candidates, as the case may be, to fill the vacancy."*
 - 2. that "it is the Mogaji Ijo who should under normal circumstances summon a meeting of the family whenever there is a vacancy."*
- H *3. that there is no evidence that Mogaji Ijo "is a recognized chieftaincy" under the Chiefs Law.*
 - 4. that the decision of the Grade C Customary Court as contained in Exhibit A in respect of Labode Akano's appointment as Mogaji Ijo is still subsisting and valid as it has not been set aside;*

5. *that at the time the Secretary of the Kajola Local Government invited the Etielu Ruling House to hold a family meeting to nominate a candidate or candidates to fill the vacant stool of the Onjo of Okeho in 1985, there was no incumbent Mogaji Ijo;*
 6. *that if there was any irregularity at all in the summoning of the meeting of the Etielu family, it was waived by the parties and as there was no Mogaji Ijo, the family meeting was properly held;*
 7. *that the Chieftaincy Declaration “envisages that more than one candidate may be proposed by the family for the consideration of the kingmakers. Reading the whole of the Declaration together the only conclusion one can reach is that the name of more than one candidate may be sent to the kingmakers for their consideration;*
 8. *that there were no incumbents of the chieftaincies of Mogaji Ijo and Baale of Olele. No one could have been validly invited to represent the holder at the kingmakers meeting of August 1985, consequently the meeting of August 1985 at which the kingmakers selected the 14th defendant was properly constituted;*
 9. *that the qualifications enumerated in paragraph (iii) of the Chieftaincy Declaration are disjunctive and not conjunctive and that, therefore, anyone that has one of the qualifications enumerated in that paragraph will be entitled for selection to the vacant stool.*
- In the net result the learned trial Judge found that the plaintiff failed in all his claims and dismissed the action.

Being dissatisfied with this judgment the plaintiff appealed to the Court of Appeal which latter Court in the lead judgment of Ogwuegbu, J .C.A (as he then was) (with which Kolawole, J.C.A. agreed) found:

1. *that the trial in the Grade ‘C’ Customary Court is a nullity and, therefore, the appointment of Labode Akano as Mogaji Ijo remained valid;*
2. *that the Mogaji Ijo was wrongfully excluded from summoning the family meeting and participating at the meeting of the kingmakers to select the Onjo of Okeho;*
3. *but that as Mogaji Ijo is not a party to the present proceedings nor the other kingmaker (Baale of Olele) who was not invited to the meeting of the kingmakers did not complain about their exclusion in the present proceedings either as a party or as a witness the issue of their exclusion in the circumstances appears to me academic and the plaintiff having agreed with all the steps taken by the family at the meeting, he has waived his right to complain;*
4. *that the Ruling House is perfectly entitled to provide one candidate or more than one candidate;*

5. that Clause (iii) of the Chieftaincy Declaration must be read conjunctively to avoid absurdity and capricious result;

6. that the phrase “son of a previous holder” appearing in Clause (iii) (c) of the Chieftaincy Declaration means direct sons of a previous holder of the title; it does not include grandson, great -grandson and great-great-grandson; that consequently Y.O. Sunmonu (the 14th defendant) not being a direct son of a previous holder of the title is not qualified under the declaration to be nominated or selected for the vacant stool of Onjo of Okeho and the Alaafin of Oyo was right in not confirming his appointment.

Upon these findings the Court below allowed the appeal of Oladokun (who shall hereinafter be referred to as the Plaintiff) and set aside the judgment of the trial Judge and granted the 7th, 8th, 9th, 10th and 11th alternative reliefs of the plaintiff.

Akpabio, J. C.A. in minority judgment agreed with the conclusion reached by his learned brethren but for a different reason. In his judgment he held the view that the family meeting at which candidates were nominated for consideration by the kingmakers was invalid as it was not summoned by the Mogaji Ijo. He set aside the whole nomination exercise and ordered that the exercise be commenced de novo and that a fresh meeting be summoned by the Mogaji Ijo.

Being dissatisfied with the judgment of the Court of Appeal the 4th to the 6th, the 8th, the 9th and the 14th defendants appealed to this Court complaining against the whole decision and seeking from this Court an order setting aside the judgment of the Court of Appeal and dismissing the plaintiff’s claims in their entirety. The plaintiff too was unhappy about some aspects of the majority decision of the Court of Appeal and cross-appealed to this Court. Briefs of argument were filed and exchanged. The defendants/appellants who shall hereinafter be referred to as “defendants” simpliciter, filed reply briefs in answer to the plaintiff’s brief and the brief of the 1st and 2nd defendants/respondents.

The defendants in their brief of argument set out for determination as many issues as there are grounds of appeal in their notice of appeal. The plaintiff, however, posed two questions for the determination of the main appeal. These are:

1. What is the construction to be placed on Exhibit “A” (sic) (the Chieftaincy Declaration) as to who is to be appointed, the conditions to be satisfied and whether the sons of previous holders include grandsons?

2. Whether the judgment of the Court of Appeal was against the weight of evidence.

Having regard to the judgment appealed against and the grounds of appeal, question (1) as formulated by the plaintiff is adequate enough for the determination of the defendants appeal before us.

The plaintiff, in his brief of argument, has also posed questions for the determination of his cross-appeal: These are:

(i) *Whether the Court of Appeal was right in restricting the interpretation of clause (iii) (c) of Exhibit "1"* B

(ii) *Whether the exclusion of the Mogaji Ijo from the family meeting called for the selection of candidates was academic, considering the effect of the exclusion of the Cross-Appellant, and whether the said Mogaji Ijo had waived his right to be summoned and to be present at the family meeting where the nomination took place.* C

(iii) *Whether under the declaration, Exhibit "1" Clause (v) the nomination of candidates should not be restricted to only one candidate."*

These questions are adopted by the defendants in their Reply Brief to plaintiff's brief. I have considered the preliminary objections taken in the D briefs of the plaintiff and defendants. I can find no substance in any of the said objections; it is clear from the grounds of appeal filed by the defendants (as inelegantly as some of them might have been drafted) that the complaints of the defendants, as well as those of the plaintiff in his cross-appeal, are against the construction given by the court below to some paragraphs of the E chieftaincy declaration (Exhibit 1) in issue in these proceedings.

At the oral hearing of the appeal and cross-appeal, learned counsel for the respective parties proffered oral arguments in further elucidation of the arguments contained in their respective briefs. Learned counsel for the defendants, Chief Adejumo objected to the stand of the 1st and F 2nd defendants in this Court He observed that both in their pleadings in the court of trial and their brief in the court below the 1st and 2nd defendants/respondents supported the case of the other defendants, except the 13th defendant. He further observed that in this Court the 1st and 2nd defendants now pitched their tent in the plaintiff's camp, as shown by G the arguments in their brief. This, learned counsel opined, was improper as parties are bound by their pleadings.

I think the objection is misconceived. The 1st and 2nd defendants have not resiled from their pleadings. Instead, the facts are not in dispute. What they have done is to accept the construction placed on H Exhibit 1 by the Court below. Hence they have not appealed against the judgment of that court. And this they are entitled to do.

I now turn to the appeals on hand. As the determination centres on the construction of Exhibit 1, I need to set out the declaration in

extenso at this stage. Exhibit 1 reads:

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

(i) *There are two ruling houses and the identity of each such B ruling house is:*

1. *Etielu* (2) *Adeniyi*

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

C 1. *Adeniyi* 2. *Etielu (present ruling house)*

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

(a) *members of the ruling house*

(b) *of the male line only*

D (c) *sons of a previous holder of the title.*

(iv) *There are thirteen kingmakers as under:*

1. *Mogaji Ijo* 2. *The Baale Pamo* 3. *The Jagun Yaba* 4. *The Baogan* 5. *The Baale Bode* 6. *The Alashia* 7. *The Baale Olele* 8. *The Baale Gbonje* 9. *The Alubo* 10. *The Baale Ishemi* 11. *The Baale Oke*
E *Ogun* 12. *The Onimoba* 13. *The Baale Ogan*

(v) *The method of nomination by each ruling house is as follows:-*

The ruling house whose turn it is to provide a candidate shall nominate at a family meeting to be summoned by the Mogaji Ijo. Whoever is nominated by the family shall be presented to the thirteen kingmakers.

F (vi) *The consent of the Alafin of Oyo is required to confirm the appointment of the candidate put forward by the kingmakers as the Onjo of Okeho. Such consent could not be withheld by him if the candidate possessess any of the qualifications under paragraph (iii) of this declaration.”*

G Meetings of the Ruling House and kingmakers

Paragraph (v) of Exhibit 1 provides that the meeting of the ruling house called to nominate a candidate is to be summoned by the Mogaji Ijo. It is not in dispute that the meeting of the Etielu ruling house held on 22/8/85 at which the plaintiff and the 14th defendant, among others,
H were nominated, was not summoned by the Mogaji Ijo, Labode Akano but by the Secretary to the Kajola Local Government. Labode Akano was not invited to nor present at the meeting. Both the plaintiff and the 14th defendant were present and took part in the deliberations at the meeting. The court below held that the Mogaji Ijo was wrongfully excluded from summoning the

family meeting but that as he did not complain and as the plaintiff attended the meeting and took part in the deliberations, he had waived his right to complain. The same finding was made by that Court in respect of the exclusion of the Mogaji Ijo and Baale of Olele from the meeting of the kingmakers summoned to appoint a new Onjo of Okeho, Ogwuegbu, J.C.A. said:

"I am satisfied that the Mogaji Ijo was wrongfully excluded B from summoning the family meeting and participating at the meeting of the kingmakers to select the Onjo of Okeho.

What therefore is the effect of the exclusion of the Mogaji Ijo from the exercises leading to the selection of the 14th respondent? The declaration regulating the selection to the Onjo of Okeho Exhibit "1" C was made under S.4(2) of the Chiefs Law of Western Region of Nigeria, 1957. It is a subsidiary legislation. Paragraph (v) of the Declaration provides that the ruling house whose turn it is to provide a candidate shall nominate at a family meeting to be summoned by the Mogaji Ijo. Paragraph (iv) of the said declaration makes provision for the kingmakers. D Mogaji Ijo is one of them.

Even though the function of the Mogaji Ijo is to summon a meeting of the family whose turn it is to provide a candidate and also to participate and vote along with the other kingmakers in the selection of the Onjo of Okeho, it is my firm view that the Mogaji Ijo had a constitutional right to summon the family meeting whether he took part in the voting at the family meeting or not. He equally had the same right to take part in the selection or appointment of the Onjo of Okeho in case of vacancy in the chieftaincy as in this case. Therefore, the exclusion of the Mogaji Ijo from the exercise based on Exhibit "8" was wrongful and F unconstitutional. The rights conferred by the Onjo of Okeho Chieftaincy Declaration Exhibit "1" are vested rights which the 3rd respondent cannot set aside by his misinterpretation of the proceedings in Exhibit "8" See Ojo v. Governor of Oyo State (1989) 1 NWLR (PL 95) 1 at 14.

The Mogaji Ijo is not a party to the present proceedings nor the G other kingmaker who was not invited to the meeting of the kingmakers. None of them has complained about his exclusion in the proceedings either as a party or as a witness. The issue of their exclusion in the circumstances appears to me academic more so when the issue of waiver is considered" H

After considering the elements of waiver, the learned Justice concluded: *"I am of the view that both elements of waiver are present in this case. The appellant agreed with all the steps taken by the family at the meeting. In his evidence he testified that if his name was the only*

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name submitted to the kingmakers, he would not have complained about the procedure adopted in summoning and holding the meeting. He cannot therefore, approbate and reprobate. The failure of the Mogaji Ijo to summon the meeting of the ruling house and the failure of the 3rd respondent to invite him and the other living kingmaker to the meeting of the kingmakers cannot in my view vitiate the selection. Both men never complained of the violation of their rights."

Learned counsel for the plaintiff submitted that the court below was right in holding that the exclusion of the Mogaji Ijo from summoning and attending the family meeting and his exclusion and that of the Baale of Olele from the meeting of the kingmakers was wrongful. He, however, submitted that the conclusion that that right was waived was irrelevant Chief Adejumo, for the defendants, submitted that the conclusion of the court below was correct. He argued that as more than a majority of kingmakers met to appoint, their meeting could not be vitiated and relied on section 53 of the Interpretation Law of Oyo State, for this submission. Learned counsel further submitted that the provision that the family meeting be summoned by the Mogaji Ijo was directory only and non-compliance would not render the meeting invalid. He observed that both the Chiefs Law and the chieftaincy declaration were silent on the consequences of non-compliance with the provision as to the summoning of the family meeting. Learned counsel also relied on paragraph 111 on pages 320 to 322 of Maxwell on Interpretation of Statutes (8th ed) - and admitted that the power given to the Mogaji Ijo was a privilege and not a right.

I think the argument of learned counsel, Chief Adejumo is misplaced. The court below found that by his exclusion from summoning the meeting of the family, the Mogaji Ijo's right was infringed. The defendants did not appeal against this finding. It is not now open to them to argue that what Exhibit "I" confers on the Mogaji Ijo is a privilege and not a right. They can only seek to justify the finding of the court below by arguing in favour of waiver found by the court below to disentitle the plaintiff to complain.

The question that arises now is: Has the plaintiff waived his right to complain on the facts of this case? The right to summon the family meeting is that of the Mogaji Ijo. Similarly, the right to attend the meeting of the kingmakers to select a candidate is that of the Mogaji Ijo and Baale of Olele. Neither belongs to the plaintiff who could therefore not be said to have waived the right. One cannot waive a right one does not possess. Be that as it may, plaintiff in paragraph 28(g) of his statement of claim averred:

"The plaintiff will contend as follows:-

(g) That the family meeting at which the four candidates were

selected was null and void in that it was not summoned by the Mogaji of Ijo” He also challenged the validity of this meeting in alternative relief 5 of his claims. True enough plaintiff said in his evidence:

“I agreed with all the steps taken by the family at the meeting. If only my name had been sent to the kingmakers, I would not have worried about the procedure adopted in calling and holding the meeting.” B
That cannot stop him from questioning the validity of the meeting if it was otherwise invalid.

It is not in dispute that Exhibit T requires that Mogaji Ijo is to summon a family meeting whenever nomination is to be made to the office of Onjo of Okeho. The meeting of August 1985 was not summoned by him, nor even by another principal member of the Etielu family but the Secretary to the Kajola Local Government. That meeting, in my humble view, could not be the meeting envisaged in Exhibit T. The meeting of the ruling house envisaged by the declaration is a special meeting of the ruling house summoned by the Mogaji Ijo for the sole purpose of nominating D candidate(s) to fill the vacancy occurring in the Onjo of Okeho Chieftaincy title. It is for this reason that I share the view of Akpabio, J .C.A. who, in his judgment, said:

“From the foregoing provision it becomes clear that the presence of the Mogaji Ijo at the family meeting was not just a cosmetic E necessity, but a legal requirement for the validity of such a meeting, which could not be compromised or waived by anybody. He was in fact to be the person to summon it. If it was not summoned by him, then the meeting was not properly constituted. So for that reason, I am of the firm view that it was not right for the 3rd respondent to have sum- F moned the family meeting of which he was not a member.”

I hold the meeting of the Etielu ruling house held on 22nd August 1985 to nominate candidate(s) for the filling of the vacancy in the Onjo of Okeho title, invalid.

The kingmakers met on 30th August 1985 to select a candidate G to fill the vacancy. Exhibit T provides for 13 kingmakers. It is not in dispute that one of the 13 was dead as at 30th August 1985. Mogaji Ijo and Baale of Olele had then problems in their respective families. The Secretary to the Kajola Local Government, as Secretary to the kingmakers summoned the meeting of the kingmakers to which he invited 10 of them. He H did not invite Labode Akano, the Mogaji Ijo and the Baale of Olele to the meeting because of the problems the two chiefs were then having in their families. I think he acted wrongly. And the consequence of his wrongful act is that the meeting of the kingmakers held on 30th August 1985 was invalid -

see: *Young v. Ladies Imperial Club Ltd.* (1920) All E.R. Rep. 223, 227-228 per Lord Sterndale, M.R.:

“To my mind it is not shown that she would never have attended, but whether she would, or whether she would not, in my opinion there was no ground whatsoever for not giving her the opportunity and, therefore, no excuse for not summoning her. If that be so, this meeting is bad. It is an invalid meeting quite incapable of acting under r.42. It was argued that to hold this would be a very dangerous thing, because it might interfere with the internal management of clubs. In my opinion, it would be a very much more dangerous thing to hold otherwise, because that would be leaving it to the discretion of the secretary or somebody to omit to summon people because it was thought they would not attend. That, to my mind, would be a very objectionable thing indeed. But I do not think it matters one way or the other. It is a pure point of law, and, in my opinion, it ought to be decided in the plaintiffs favour.”

D The argument that a majority of the kingmakers was present is beside the point. The issue is that not all those entitled to attend were invited to the meeting. The Secretary had not the right to determine on his own who, or not, to invite to the meeting. He ought and, indeed, must invite all those eligible to attend and alive at the time. The two chiefs excluded in this case
E were the incumbents of their respective offices at the time. The meeting is invalid and I so declare.

Eligibility of 14th Defendant:

It is not in dispute that the 14th defendant is a grandson of a previous holder of the title of Onjo of Okeho. The Court below, per
F *Ogwuegbu, J.C.A.* held:

“Clause (iii) (c) which states that the persons who may be proposed as candidates by a ruling house entitled to fill a vacancy shall be sons of a previous holder of the title kept off from the race any person whose father was not a previous holder of the title and who is not a son
G *of such a previous holder of the title. This being the case, sons of a previous holder of the title must mean direct sons of a previous holder of the title. I also hold the view that ‘Son’ does not include grandson, great grandson and great great grandson.”*

Chief Adejumo has argued in the Brief -

H *“Having regard to the above dictionary definition of the word ‘Son’, it is submitted that it will be a very narrow construction for the word in the context of succession to chieftaincy title to limit the meaning to that in (1) only that is ‘a boy or man in relation to either or both of his parents’ It is submitted that the wider meaning in (2) (a) above should*

be preferred here that is male descendant or male members of a family."

So it is submitted that the word "sons" in Clause (iii) (c) should be construed as meaning 'male descendants of a previous holder of the title; and male members of the family of a previous holder of the title.'

I think he has support for his submission in the decision of this Court in *Olanrewaju v. Governor of Oyo State & Ors.* (1992) 9 NWLR B (Pt. 265) 335,362,363, where this Court, per Karibi-Whyte J.S.C. after first observing as follows;

"It should be observed that not every male member of the entitled Ruling House falls within the category of persons entitled to contest. Such a broad definition will introduce members of the Ruling House not entitled at customary law to contest. On the other hand, the qualification "sons of previous holders of the title, will limit qualification to contest to children of previous holders of the title only, thereby depriving their cousins whose fathers died without holding the title. As unjust as this provision is to the last mentioned, the words are clear and unambiguous to be given a different construction - See Ahmed v. Kassim (supra). Lawal v. G.B. Ollivant (Nig.) Ltd. (1972) 2 SC. 124. The meaning so given to the words is sensible and appropriate. I do not see that the construction given to the declaration leads to absurdity or some repugnancy or inconsistent with the rest of the declaration."

held subsequently:

"It is important to observe that the words of clause 2 of paragraph (iii) are sons of previous holders of the title. These are wide enough to include any person from the particular Ruling House whose father, grandfather or ancestor had been the holder of the title. The other construction contended for which will limit eligibility to the children of the immediate past title holders, thus barring the Opo Ruling House for ever, unless there are sons of an immediate demised holder cannot be read into that clause which is plain, simple and unambiguous. It should be read to convey the ordinary meaning of the words used."

In the Court of Appeal in that case I had expressed the view that -

"The Chieftaincy Declaration (Exhibit K) requires that a person to be proposed as candidate must not only be a male member of the ruling house but must also be a son of a previous holder of the title of Baale of Otu. The question that arises is: who is a son of previous holder of the title? Mr. Joshua submits that "son" includes a grandson. Mr. Awomolo for his part, submits that the word means any legitimate descendant of a previous holder. The New Elizabethan Reference Dictionary published by George Newnes Ltd. defines "son" as meaning a male

child in relation to a parent or parents; a descendant. The same definitions appear in the New Concise Oxford Dictionary and in the shorter Oxford English Dictionary. In effect the son may mean a male child of a parent or parents or a male descendant. Obviously, in its narrower sense it means a male child while in its broader sense it means a descendant. Which meaning B to apply depends on the context in which the word is used.”

and concluded:

“Reading Clause (iii) of Exhibit K as a whole it is my view that to be qualified as a candidate, a person must be a male member of the ruling house whose turn it is to present a candidate or candidates and C must be a descendant, on the male line of a previous holder of the title of Baale of Otu.”

The plaintiff has sought to distinguish the present case from Olanrewaju. He argued that the phrase construed was “sons of previous holders of the title” whereas in the Onjo of Okeho declaration the phrase is “sons of D a previous holder of the title.” It was then submitted in the Brief thus:

“It is submitted that the fact that different words were employed by the draftsmen of the two declarations underscores the point that the phrase “previous holders” in Olanrewaju’s case is different from “previous holder” in this case.”

E With respect, I can see no difference in the two phrases; they mean one and the same thing and convey the same sense and meaning.

We have not been invited in his appeal to depart from our decision in Olanrewaju. It, therefore, has to be followed. In the result, I must hold that the court below was in error in its construction of the phrase “sons of a previous holder of the title” appearing in F Exhibit ‘1’. In consequence, I hold that the 14th defendant is eligible to the title of Onjo of Okeho.

Number of Candidates to be Nominated:

Again, it is not disputed that the plaintiff scored the highest votes G among four candidates proposed and considered at the Etielu family meeting of 22nd August 1985. It is his contention that it was only his name that should have been transmitted to the kingmakers as Exhibit ‘1’ allowed the family to nominate only one candidate. The defendants contend to the contrary.

H Paragraph (v) of Exhibit ‘1’ appears incomplete as regards the number of candidates that the Ruling House can nominate. The paragraph reads:

“The method of nomination by each ruling house is as follows:
The ruling house whose turn it is to provide a candidate shall nomi-

nate at a family meeting to be summoned by the Mogaji Ijo. Whoever is nominated by the family shall be presented to the thirteen kingmakers."

There is a lacuna in the declaration as to the number of candidates a Ruling House is enjoined to nominate. This lacuna can be filled by evidence - see: Edewor v. Uwegba (1987) 1NWLR (Pt.50) 313, 343-345; Oba Lipede & Ors. v. Sonekan & Anor. (1995) 1 NWLR B (pt.374) 668,699-700. **There is evidence on record that on previous occasions more than one candidate had been nominated for consideration by the kingmakers. In so far therefore, as a chieftaincy declaration is a restatement, in writing, of the customary law relating to the selection and appointment of a particular Chief, effect has to be given to it subject, of course, to the filling, by evidence, of any gap, as in this case, that may be apparent on its surface. In the light of the evidence, therefore, I must conclude that the Courts below are right in holding that the Etielu Ruling House has a right to nominate more than one candidate. And I so hold.**

Consent of the Alafin:

D

The declaration (Exhibit "1") provides for the consent of the Alafin to the appointment of the candidate forwarded by the kingmakers as the Onjo of Okeho. The declaration further stipulates that such consent is not to be withheld if the candidate put forward by the kingmakers possesses any of the qualifications under Paragraph (iii) of the declaration. Paragraph (iii) E lists the following three qualifications:

- (a) member of the Ruling House,**
- (b) of the male line only and**
- (c) son of a previous holder of the title.**

It is contended by the defendants that by the use of the word F "ANY" in paragraph (vi) the three qualifications are disjunctive, that is, a candidate need not possess all the qualifications; it is sufficient if he possessess any of them and that once a candidate selected by the kingmakers possessess any of these three qualifications the Alafin of Oyo is duty bound to give his consent to the appointment of such a G candidate. This argument found favour with the trial Judge.

The plaintiff however, contended, and still contends, that the three qualifications are conjunctive, that is, a candidate to be eligible for appointment must possess all the three qualifications. This argument found favour with the court below. Ogwuegbu, J.C.A. observed as follows: H

"The words of the Registered Declaration is clear but it is not free from ambiguity which leads to absurdity. I should therefore treat the word 'Any' appearing in clause (vi) of Exhibit 1 as surplusage and tautologuous. It is therefore the duty of this court to modify the uncer-

tainty created by clause (vi). The inconvenience and the absurdity is manifest and I am not in any way rewriting the Registered Declaration regulating the selection to the Onjo of Okeho chieftaincy."

I agree entirely with the views expressed by the Court below in the above passage. To construe paragraph (iii) of the declaration in the manner suggested by the defendants is to defeat completely the intendment of the customary law as stated in Exhibit T. I think this issue has been thoroughly thrashed out by this Court in Olanrewaju (supra). It is sufficient to say once again that the candidate to qualify for any appointment must possess all the three qualifications enumerated in paragraph (iii) of Exhibit T.

The final conclusion I have reached having regard to all I have said above is that the appeal of the defendants succeeds in part, and that is, to the extent that the 14th defendant being a grandson of a previous holder of the title of Onjo of Okeho is eligible to vie for the title. **Having held that the meetings of the Etielu Ruling House held on 22nd August 1985 and of the kingmakers of Okeho held on 30th August 1985 were invalid, the whole exercise conducted in August 1985 to fill the vacancy is void and the appointment of the 14th defendant resulting therefrom is equally null and void; the exercise is to commence all over again.** Subject to the above, I affirm the judgment of the court below, including the order for costs, and enter judgment for the plaintiff in terms of his alternative reliefs 5, 6, 8, 9, 10 and 11. His reliefs 1 - 4 and alternative relief 7 stand dismissed.

The cross-appeal of the plaintiff also succeeds in part, to the extent that I declare null and void the meetings of the Etielu Ruling House and of the kingmakers.

I make no order as to the costs of this appeal.

G

KUTIGIJSC

There is no doubt at all that the main issue for determination in these appeals by (1) the plaintiff and (2) the 4th to 6th, 8th, 9th and 14th defendants, respectively revolves around the interpretation and construction of The Onjo of Okeho Chieftaincy Declaration approved and registered on the 12th day of February, (1958) (Exhibit in the proceedings).

The declaration, Exhibit 1, which is only a one-page document reads as follows -

*"OKEHO/IGANNA DISTRICT COUNCIL DECLARATION
MADE UNDER SECTION 4 (2) OF THE CHIEFS LAW, 1957, OF THE*

CUSTOMARY LAW REGULATING THE SELECTION TO THE ONJO OF OKEHO CHIEFTAINCY.

(i) *There are two ruling houses and the identity of each such ruling house is-* 1. Etielu 2. Adeniyi

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

1. Adeniyi 2. Etielu (present ruling house)

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

(a) *member of the ruling house*

(b) *of the male line only*

(c) *sons of a previous holder of the title.*

There are thirteen kingmakers as under:

1. Mogaji Ijo 2. The Baale Pamo 3. The Jagun Yaba 4. The Baogan 5. The Baale Bode 6. The Alashia 7. The Baale Olele 8. The Baale Gbonje 9. The Alubo 10. The Baale Ishemi 11. The Baale Oke Ogun 12. The Onimoba 13. The Baale Ogan

(v) *The method of nomination by each ruling house is as follows:-*

The ruling house whose turn it is to provide a candidate shall nominate at a family meeting to be summoned by the Mogaji Ijo. Whoever is nominated by the family shall be presented to the thirteen kingmakers.

(vi) *The consent of Alafin of Oyo is required to confirm the appointment of the candidate put forward by the kingmakers as the Onjo of Okeho. Such consent could not be withheld by him if the candidate possesses any of the qualifications under paragraph (iii) of this declaration"*

At the conclusion of trial in the High Court, the learned trial Judge dismissed plaintiff's claims in their entirety when he concluded his judgment on page 102 of the record thus -

"From all the above, I hold that the plaintiff has failed in all his claims. Since all his substantive claims failed, his claim for injunction also fails. In the event, the plaintiff's claims are hereby dismissed. "

But before arriving finally at the above conclusion he had in his judgment made the following findings amongst others -

1. Under normal circumstances it is the Mogaji Ijo who should summon a meeting of the ruling family whenever there is a vacancy - H paragraph (v) of the declaration.

2. At the time the Secretary of the Kajola Local Government invited the Elielu Ruling House to hold a family meeting to nominate a "candidate or candidates" to fill the vacant stool of the Onjo of Okeho

there was no incumbent Mogaji Ijo vide Grade C Customary Court judgment (Exhibit 8).

3. That under paragraphs (ii) & (iii) of the declaration the name of more than one candidate may be sent to the kingmakers for their consideration. -

B 4. That the meeting of 30th August 1985 at which the kingmakers selected the 14th defendant was properly constituted.

5. That the word “any” in paragraph (vi) of the declaration shows that the three qualifications a, b & c listed under paragraph (iii) must be read disjunctively.

C 6. That as the common grandfather of both the plaintiff and the 14th defendant was never an Onjo of Okeho but yet the plaintiff’s father became an Onjo of Okeho, the 14th defendant therefore qualified to be an Onjo of Okeho.

D 7. That the 13th defendant, the Alafin of Oyo has no right under the declaration to withhold his consent to the selection of the 14th defendant as the Onjo of Okeho.

Aggrieved by the decision of the High Court, the plaintiff appealed to the Court of Appeal. The appeal was allowed. The judgment of the High Court was set aside and alternative claims or reliefs No.7, 8, 9, E 10 and 11 were granted to the plaintiff. Summarily slated the Court of Appeal (per Ogwuegbu, J.C.A. as he then was, and Kolawole, J.C.A.) held that-

1. The trial in the Grade C Customary Court was a nullity and the appointment of Labode Akano as Mogaji Ijo remains valid.

F 2. Mogaji Ijo was wrongfully excluded from summoning the family meeting of the kingmakers to select the Onjo of Okeho.

3. Clauses (iii) & (v) of the Declaration permit a Ruling House to propose one or more candidates.

G 4. Clause (iii) (a) (b) and (c) must be read together and conjunctively.

5. “*Sons of a previous holder of the title*” in Clause (iii) (c) must mean direct sons of a previous holder of the title. The word “son” does not include grandson, great grandson and great great grandson.

H 6. The 14th defendant not being a son of a previous holder of the title did not qualify to be nominated for the vacant stool of Onjo of Okeho and the Alafin of Oyo was right in not confirming the appointment. .

7. Akpabio, J.C.A. declared both the family meeting of 22/8/85 which was not summoned by the Mogaji Ijo as required by Clause (iii), and the meeting of the kingmakers of 30/8/85 to which only 10 kingmakers’

were present instead of 13 as provided under Clause (iv), as null and void. He therefore ordered fresh family meeting as well as fresh kingmakers meeting to hold.

Dissatisfied with the decision of the Court of Appeal, the plaintiff on one hand, and the 4th, 8th, 9th and 14th defendants on the other hand, have respectively appealed to this Court.

B

Plaintiff's Appeal.

Three issues were framed for determination as follows -

(i) Whether the Court of Appeal was right in restricting the interpretation of Clause (iii) (c) of Exhibit 1.

(ii) Whether the exclusion of Mogaji Ijo from the family meeting called for the selection of candidates was academic, considering the effect of the exclusion on the plaintiff and whether the said Mogaji Ijo had waived his right to be summoned and to be present at the family meeting where the nomination took place

(iii) Whether under the declaration Exhibit I, Clause (v) the nomination of candidates should not be restricted to only one candidate.

D

Issue (i)

The Court of Appeal (per Ogwuegbu, J.C.A.) no doubt interpreted the phrase "*sons of a previous holder of the title*" in Clause (iii) (c) of Exhibit 1 above, to mean "*direct sons of a previous holder of the title and that the word "Sons" does not include grandson, great grandson and great great grandson.*" Consequently it concluded that the 14th defendant who was not a son of previous holder of the title did not qualify to be nominated or selected for the vacant stool of Onjo of Okeho.

E

The trial High Court as I said above held that the qualifications stated in Clause (iii) must be read disjunctively. The learned trial Judge said the uncontradicted evidence of both parties show that they had a common grandfather who was never an Onjo of Okeho yet the father of the plaintiff became an Onjo of Okeho and therefore if the qualifications contained in Clause (iii) were to be read together, then the plaintiff's father would never have been entitled to the Chieftaincy. The High Court therefore held that the 14th defendant was qualified to be nominated or selected for the vacant stool of Onjo of Okeho.

F

The Supreme Court had occasion in the case of Olanrewaju v. Governor of Oyo State & Ors. (1992) 9 NWLR (Pt. 265) 335 to interpret a similar phrase- "*Sons of previous holder of the title*" - where Karibi-Whyte, J.S.C. reading the lead judgment held thus:-

"It is important to observe that the words of Clause 2 of paragraph (iii) are "*Sons of previous holders of the title.*" These are wide

G

enough to include any person from the particular Ruling House whose father, grandfather. or ancestor had been the holder of the title."

The above interpretation is in consonance with the finding of the trial High Court to the effect that the common grandfather of the plaintiff and the 14th defendant was never an Onjo of Okeho although the plaintiff's father became an Onjo of Okeho. We are also bound to follow the decision in Olanrewaju's case. The Court of Appeal was therefore wrong in its interpretation of the phrase "*Sons of a previous holder of the title*," and the High Court was right in holding the 14th defendant eligible to contest for the title of Onjo of Okeho,

C Issue (ii)

I say straight away that the exclusion of Mogaji Ijo from the family meeting called for selection of candidates was not and never academic. It was very fundamental. There is no doubt that Clause (iii) of Exhibit 1 vests the power of summoning the meeting of the Ruling House in Mogaji Ijo alone. Clause (iv) also provides for 13 kingmakers to be invited to the kingmakers meeting who will consider the nomination or nominations from the Ruling House. I agree entirely with the minority judgment of Akpabio, J.C.A. that the family or Ruling House meeting of 22/8/85 which was not summoned by Mogaji Ijo, and the meeting of kingmakers of 30/8/85 to which only 10 instead of 13 kingmakers were invited contrary to Clauses (iii) and (iv) of Exhibit 1 respectively, were all null and void.

Issue (iii)

I agree with the views held by the lower courts that under Clauses (iii) & (v) of Exhibit 1, a Ruling House is entitled to propose one or more candidates for consideration by the kingmakers.

Plaintiff's appeal therefore succeeds in part only. It is allowed by me in respect of issue (ii) alone and dismissed in respect of other issues (i) and (iii).

Appeals of 4th-6th. 8th. 9th and 14th defendants.

G Ten issues were submitted for determination by Chief Adejumo in the brief. But Chief Babalola S.A.N. learned Counsel for the plaintiff beautifully summarised them into just two issues (and which I adopt) as follows -

H 1. What is the construction to be placed on Exhibit 1 as to who is to be appointed, conditions to be satisfied and whether the sons of previous holders include grandsons.

2. Whether the judgment of the Court of Appeal was against the weight of evidence.

Issue (1)

I have already covered this issue when I considered plaintiff's issues (1) & (iii) above. I do not need to repeat them here. Suffice it to say, however, that the qualifications contained in Clause (iii) of the Declaration, Exhibit 1, must all be satisfied while the phrase "*Sons of previous holder of the title*" therein will include any person from the particular Ruling House whose father, grandfather or ancestor had been the holder of the title vide *Olanrewaju v. Governor of Oyo State & Ors* (supra)

Issue (2)

In view of all I have said above, the judgment of the Court of Appeal cannot be said to be totally against the weight of evidence subject only to my concurrence with the minority judgment of Akpabio, J.C.A. that both the meetings of the Ruling House and that of the kingmakers in the instant case were null and void as explained above.

The defendant's appeal therefore succeeds in part only.

Summary

Plaintiff's appeal succeeds in respect of alternative claims or D reliefs No.s (5) & (6) which relate to the meetings of the Ruling House and of the kingmakers respectively and which have been declared null and void (see above). The entire exercise of nominations or selections must therefore be started afresh.

Defendants' appeal also succeeds against plaintiff's alternative E relief or claim No. (7) to the extent that the 14th defendant is qualified to be an Onjo of Okeho (see above).

Conclusion

It is for the above reasons and those contained in the lead judgment of my learned brother Ogundare, J.S.C. which I read before now, F that I allow the plaintiff's and the defendants' appeals in parts only. I endorse the consequential orders made by him.

MOHAMMED JSC

I have had the advantage of reading in draft, the judgment of my learned brother, Ogundare, JSC., and I agree with him that this appeal succeeds, in part. I agree that a grandson of a previous holder of the title of Onjo of Okeho is qualified and eligible to be nominated to fill a vacant chieftaincy stool of Onjo.

It is crystal clear that under paragraph (v) of the Chieftaincy Declaration of Onjo of Okeho the meeting of the Ruling House for the nomination of the candidate for the consideration of the kingmakers shall be summoned by the Mogaji Ijo. The Secretary of the Local Government

has no power to summon a meeting of the Ruling House. Having done so in this case and without Mogaji Ijo present, the meeting was null and void. I also agree that the whole nomination exercise be set aside and that a fresh meeting be summoned by Mogaji Ijo.

In consequence, I affirm the judgment of the Court below and B allow, in part, the cross-appeal. I abide by all the consequential orders made by my learned brother, Ogundare, J.S.C., in the lead judgment. I also make no order as to costs.

C **ONU JSC**

I have had the privilege to read before now the judgment of my learned brother, Ogundare, J.S.C. just delivered and I am in entire agreement that the main appeal succeeds only in part but is otherwise dismissed by me while the cross-appeal succeeds only in part and it is to D that extent allowed by me.

The dominant issue that calls for our resolution in this appeal pertaining to the chieftaincy wherein the 4th to the 6th, the 8th, 9th and 14th defendants/appellants (hereinafter referred to simply as defendants) are dissatisfied with the judgment of the Court of Appeal, Ibadan Division E holden in Ibadan, was it's allowing the plaintiff/respondent's appeal. They are complaining against the whole decision and so seeking from this Court, an order to set aside the whole judgment of the Court below and to dismiss the plaintiff/respondent/cross-appellant's (hereinafter referred to shortly as plaintiff) claims in their entirety. The plaintiff for his own part F being aggrieved with some aspects of the decision of the court below has cross-appealed. The appeal has to do with the interpretation or construction to be put on the Onjo of Okeho Chieftaincy Declaration of the 12th February, 1958 (Exhibit 1 herein) made pursuant to section 4(2) of the Chiefs Law Cap. 21, Laws of Oyo State, in so far as it relates to the G nomination, appointment, election and/or selection of the Onjo of Okeho - a recognised Chieftaincy - the confirmation of which the consenting authority, the Alafin of Oyo whose confirmation of same is a sine qua non, was on this occasion withheld for alleged irregularities. The attempt at filling the vacancy of the Onjo was sequel to the demise of former H incumbent, Oba Rowland Ereola Adedeji on the 13th day of August, 1983.

The defendants in pursuit of their main appeal have consequently formulated as many issues as there were grounds of appeal (ten in all) filed on their behalf by their counsel, assailing the decision of the court below. The three issues submitted as arising for determination on behalf of the 1st and

2nd defendants/respondents which clearly overlap the two formulated on plaintiff's behalf, are as given consideration hereafter. On behalf of the plaintiff in his respondent's brief incorporating his brief in respect of his Cross-Appeal wherein he submitted two issues as arising for our determination -the first which is premised on the interpretation to be put on Exhibit 1 (ibid) irrespective of the objection taken to it by learned counsel for the defendants) B being, in my opinion, enough to dispose of the matter in contest as opposed to the proliferated number of issues proffered by the defendants, shall be adopted and considered hereinafter by me. It asks:-

"1. What is the construction to be placed on Exhibit "A" (sic) as to who is to be appointed, the conditions to be satisfied and whether C the sons of previous holders include grandsons."

Now, Exhibit 1 governing the nomination, selection, election and/or confirmation of a candidate for the stool of Onjo of Okeho Chieftaincy relevantly provides as follows:-

"(i) There are two ruling houses and the identity of each such D ruling house is:

1. Etielu

2. Adeniyi

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

1. Adeniyi

2. Etielu (present ruling house)

E

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

(a) members of the ruling house

(b) of the male line only.

(c) sons of a previous holder of the title.

F

(iv) There are thirteen kingmakers as under:

1. Mogaji Ijo 2. The Baale Pamo 3. The Jagun Yaba 4. The Baogan 5. The Baale Bode 6. The Alashia 7. The Baale Olele 8. The Baale Gbonje 9. The Alubo 10. The Baale Ishemi 11. The Baale Oke Ogun 12. The Onimoba 13. The Baale Ogan

G

(v) The method of nomination by each ruling house is as follows:-

The ruling house whose turn it is to provide a candidate shall nominate at a family meeting to be summoned by the Mogaji Ijo. Whoever is nominated by the family shall be presented to the thirteen kingmakers.

(vi) The consent of the Alafin of Oyo is required to confirm the appointment of the candidate put forward by the kingmakers as the Onjo of Okeho. Such consent could not be withheld by him if the candidate possesses any of the qualifications under paragraph (iii) of this declaration.

Made by the Chieftaincy Committee of the Okeho/Iganna District

Council which has been designated to be a competent Council by W.R.L.N. 61 of 1955 and duly signed by the Chairman and the Secretary of the Committee this 27th day of January, 1958.”

Before delving into the points in the issue identified above, I consider it pertinent firstly to set out the main as well as the alternative B reliefs the plaintiff had claimed per his Writ of Summons in the trial court as follows:-

“(1) Declaration that the plaintiff who scored twenty (20) votes at the joint meeting of Etielu ruling house held on 22nd August, 1985 is the candidate nominated by Etielu ruling house pursuant to Clause 5 of C Onjo of Okeho Chieftaincy declaration registered on 12th February, 1958.

(2) Declaration that the forwarding of 4 names by the Secretary to the kingmakers in spite of the selection of the plaintiff by the family was contrary to custom and the existing declaration irregular, without foundation and ineffective.

D (3) Declaration that the plaintiffs name is the only one that should have been forwarded to the kingmakers in accordance with provisions of the existing declaration and the custom of the Oke-Iho relating to Onjo of Oke-Iho.

(4) Declaration that the reversal of the plaintiffs nomination by the E kingmakers and the substitution therefore of the name of the 14th defendant by the kingmakers is contrary to custom and the existing declaration.

Alternative to reliefs 1-4

(5) Declaration that the joint meeting of Etielu ruling house held on 22nd August, 1985 was irregular, null and void and of no effect F in that, the meeting was not summoned by the Mogaji Ijo as stipulated in the existing declaration.

(6) Declaration that the meeting of the kingmakers at which the 14th defendant was voted for was irregular, null and void and of no effect in that the kingmakers were not invited.

G (7) Declaration that the 14th defendant not being the son of previous Onjo is not qualified to be an Onjo of Okeho.

(8) Declaration that the 1st defendant’s directive to the 13th defendant that the 13th defendant should exercise his discretionary power as a consenting authority in a particular manner i.e. “to consent to the H appointment of the 14th defendant” within 7 days is unconstitutional, contrary to law, improper, null and void and of no effect.

(9) Injunction restraining the 13th defendant by himself, his agents, servants or privies from or otherwise however from consenting to the nomination of the 14th defendant.

(10) *An order of injunction restraining the Defendants, their agents, servants or privies from or otherwise howsoever from consenting to the nomination of the 14th defendant.*

(11) *An order of injunction restraining the 14th defendant from presenting or parading himself for installation as the Onjo of Oke-Iho."*

The trial court (coram: Aderoju Aderemi, J.) after appraising the pleadings and evidence adduced by both sides, dismissed the plaintiff's claim in its entirety. The lower court (per Ogwuegbu, J.C.A. as he then was (whose judgment was concurred in by Kolawole, J.C.A.), in allowing the plaintiff's appeal (with Akpabio, J.C.A. dissenting therefrom) held, inter alia:

(a) that the 14th Defendant did not qualify under Exhibit 1 to be C nominated or selected to the vacant Stool of Onjo of Okeho Chieftaincy.

(b) It ordered that a fresh family meeting of the Etielu Ruling House as well as that of the Kingmakers be summoned by the Mogaji Ijo to nominate candidates for the Onjo of Okeho Chieftaincy.

(c) The court below, in addition in its majority decision, arrived D at the conclusion erroneously though, that the exclusion of the Mogaji Ijo from the nomination exercise based on a judgment of Grade 'C' Customary Court nullifying his appointment was not wrongful and unconstitutional and the rights conferred by Exhibit "1" are vested rights which the 3rd defendant cannot set aside by his misinterpretation of the proceedings in Exhibit "8" vide *Ojo v. Governor of Oyo State (1989) 1 NWLR (Part 95)1* at Page 14. The court below was wrong, in my view, when it went on to hold as follows:-

"The Mogaji Ijo is not a party to the present proceedings nor the other Kingmaker who was not invited to the meeting of the Kingmakers. None F of them has complained about his exclusion in the proceedings either as a party or as a witness. The issue of their exclusion in the circumstances appears to me academic more so when the issue of waiver is considered.

Those respondents who are attacking the judgment have raised G the doctrine of waiver which is an abandonment of a right. In a waiver the courts have held that there must be an element of volition, express or implied coming from the party against whom the doctrine is raised. It is the knowledge and acquiescence that make it inequitable that the appellant should turn to resile from the situation."

He finally added, also erroneously in my view, that the elements H of waiver were present in this case in that the plaintiff having agreed with all the steps taken by the family at the meeting, cannot be heard to approbate and reprobate.

In view of all, I have said above and what I shall shortly say in the

Cross-Appeal the principle of waiver and the purported tag of academic coloration attendant thereto in the exclusion of Mogaji Ijo and Bale of Olele from the family meeting and the meeting of Kingmakers, become irrelevant and I so hold. I equally hold that in the light of the foregoing the 13th defendant did not, in my respectful view, wrongly withhold his consent to the appointment to the selection of the 14th defendant as the Onjo of Okeho vide clause (vi) of Exhibit 1 notwithstanding that the plaintiff at the trial admitted that he and the 14th defendant hailed from the same common ancestor (grandfather) in that only his own father and not 14th Defendant's father, was the immediate past Onjo of Okeho. What in the final analysis it entails is that 14th defendant like the plaintiff, qualifies as a candidate as I shall hereinafter seek to demonstrate.

On the stance taken by the 1st and 2nd defendants in the matter herein from the inception of the case to oppose the Plaintiff's case and their present stance on appeal not to oppose the plaintiff's case and cross-appeal which the defendants' have virulently attacked, I find no merit in the defendants' objection as contained in their brief and reply brief. What it means, in effect, is that they (1st and 2nd defendants) no longer oppose the candidature of the plaintiff in the Onjo of Okeho Chieftaincy tussle, pure and simple.

Main Appeal:

In respect of who is to be appointed as the Onjo of Okeho, Clause (v) of Exhibit 1 which I have set out above does not appear to me to defy construction. Hence, both the trial court and the court below, in my view, are at one in the construction they have put on it. Thus, when the court below in its judgment held that:-

"Clause (v) of Exhibit "1" did not restrict the nomination to one candidate only. "The ruling house whose turn it is to provide a candidate" can only mean the ruling house whose turn it is to provide the Onjo of Okeho. "Whoever is nominated by the family shall be presented to the thirteen Kingmakers." {Underlining is mine}. The word "*whoever*" does not envisage that only one candidate will be nominated by the family.

In my view, it means everyone who is nominated or whomsoever is nominated. I do not therefore see how Exhibit "1" should be construed to mean that only one candidate should be nominated by the ruling house. I think the learned trial Judge was right here in preferring the plural as against the singular".

This constitutes, in my view, an unimpeachable construction by the two courts below. In the absence of the same being perverse or erroneous in law, I see no reason not to accept the construction put on "*whoever is*

nominated” by the Etielu family as a valid and flawless interpretation and I so hold.

With regard to the conditions to be satisfied, Clause (iii) of Exhibit 1 provides that:-

“The persons who may be proposed as candidates by a ruling house entitled to fill a vacancy in the chieftaincy shall be: B

(a) members of the ruling house

(b) of the male line only

(c) sons of a previous holder of the title.”

Construing the above clause which must be read along with Exhibit “1” other provisions, the court below (per Ogwuegbu, J.C.A. as C he then was), held as follows:-

“I now come to the following issues:-

(a) Whether under the Declaration of 1958 - Exhibit ‘1’ the family was entitled to choose more than one candidate for presentation to the kingmakers. D

(b) Whether or not under clause (iii) of 1958 Declaration, a candidate must satisfy just one of the three conditions or all the three conditions, and

(c) Whether in determining the correct interpretation of “Sons of previous holder” appearing in Clause (iii) (c) there was need to invoke E Clause (vi) and the word “Any” in the said Clause.

I do not think there is much difficulty in answering issue (a) above. The above sentence speaks of persons who may be proposed as candidates by the ruling house. The ruling house is perfectly entitled to propose one candidate or more than one candidate. I see nothing in clause (iii) of Exhibit “1” which limits the family to nominate only one candidate as contended by the appellant. F

Clause (v) of Exhibit “1” did not restrict the nomination to one candidate only..... The word “whoever” does not envisage that only one candidate will be nominated by the family. G

In my view, it means everyone who is nominated or whomsoever is nominated. I do not therefore see how Exhibit “1” should be construed to mean that only one candidate should be nominated by the ruling house. I think the learned trial judge was right here in preferring the plural as H against the singular.”

The construction put on clause (iii) of Exhibit 1 also poses no difficulty as the two courts below would appear clearly to be at one in their interpretations of same. Thus, as this court observed in the case of

Bello v. A-G of Oyo State (1986) 5 NWLR (part 45)828:-

“A court must not in the interpretation of a statute whose word-ings are clear and unambiguous import into it something which is not contained in it”

Further, where words in a statute, as in the instant case, are B clear and unambiguous, they should be given their ordinary meanings and enforced accordingly. See Ekeogu v. Aliri (1991) 3 NWLR (Part 179) 258 and Okumagba v. Egbe (1965)1 NMLR 62.

As to whether in determining the correct interpretation of the words *“Sons of previous holder”* appearing in clause (iii) (c) in Exhibit C *“I”* there was a need to invoke (vi) and the word *“Any”* in the said clause, the court below held as follows:

“Clause (iii) (c) which states that the persons who may be pro-posed as candidates by a ruling house entitled to fill a vacancy shall be “sons of a previous holder of the title” kept off from the race any person D whose father was not a previous holder of the title. This being the case, sons of a previous holder of the title must mean direct sons of a previous holder of the title. I also hold the view that “son” does not include grandson, great grandson and great great grandson.”

The ordinary meaning of the word *“Son”*, in my respectful view, E does not include grandson, great grandson, great great grandson, etc. This proposition is founded on the principle of interpretation of *‘expressio unius est exclusio alterius’* -the mentioning of the word *‘Son’* in law excludes the word *‘grandson.’* In *Aku v. Anekwo* (1991)8 NWLR (Pt.209) 280, a case in which prior to the setting up of a Committee by the Igala F Traditional Council under the chairmanship of the Attah of Igala to regulate the age-long customary law of succession to the Achaduship of Igala land, the appellant, a grandson and who under normal circumstances would have been disqualified to the stool of his grandfather in a setting where his own father never was an Achadu, the respondent and another G sued him (appellant) and got judgment against him from the High Court which set aside his selection and/or nomination as Achadu after earlier ruling that it (High Court) had jurisdiction to hear the suit and that its jurisdiction was not ousted by section 11 of the Chiefs (Appointment & Deposition) Law Cap.20 Laws of Northern Nigeria, applicable in Benue H State. The appellant’s appeal to the Court of Appeal where he contended that his exclusion as grandson from succeeding his grandfather amounted to a breach of his right to freedom from discrimination as enshrined in section 39 (2) of the Constitution of the Federal Republic of Nigeria, 1979, as amended was peremptorily dismissed. The Court of Appeal there

also held inter alia that a rule which disentitles a person to a right to which he would otherwise be entitled is not by that fact alone repugnant to natural justice, equity and good conscience; and further that the custom which excludes the appellant from succeeding to a Chieftaincy stool which was never occupied by his father was not repugnant to natural justice, equity and good conscience - the objection of the Attah of Igala land, the B custodian of the native law and custom of Igala land, notwithstanding. In construing clause (iii)(c) of Exhibit "1" generally, the court below in the instant case isolated the word son and relied on it as a decisive factor in the clause. This is more so as the court below held that under clause (iii) of Exhibit '1', a candidate must not only be a member of the ruling C house; hails from a male line, but he must additionally be a son of an immediate previous holder of the title. The learned justice, who wrote the leading judgment (Ogwuegbu, J.C.A as he then was) put it this way:

"It is my considered view that clause (vi) cannot be brought into harmony with clause (iii) of Exhibit "1". It does violence to clause (iii)(a), D (b) and (c) considered together are geared towards ensuring that only males succeed to the chieftaincy stool and they must be sons of a previous holder of the title.

Clause (vi) of Exhibit '1' provides that the Alafin of Oyo is required to confirm the appointment of the candidate put forward by the E Kingmakers as the Onjo of Okeho and that such consent could not be withheld by him if the candidate possesses "ANY" of the qualifications under clause (iii) of Exhibit "1".

If the intention of the legislature is that the Alafin of Oyo should confirm the appointment of the candidate who possesses "ANY" of the F three qualifications in clause (iii), then a female who is a member of the ruling house - clause (iii)(a) or who can trace her genealogy from the male line - clause (iii) (b) can be nominated by the ruling house put forward by the kingmakers and approved by the Alafin of Oyo. This will lead to absurdity because clause (iii) read as a whole does not envisage G such situation. I am sure this is not the intention of the law makers.

If the intention of the legislature is that any candidate who possesses any of the three qualifications in clause (iii) should be confirmed by the Alafin, there should have been no need for clause (iii)(b) and (c). The only qualification therefore should be membership of a ruling house H irrespective of sex.

In the circumstances, Clause (iii) of the Declaration must be read conjunctively to avoid absurdity and capricious result. I therefore feel that the word "ANY" in the Declaration must be ignored to enable

this court give effect to the true intention of the legislature. I agree with the submission of the learned Senior Counsel for the Appellant that the Registered Declaration -Exhibit "I" will be thrown into a state of chaos and its scope widened to include "all comers" if the candidate is to satisfy any of the conditions laid down in clause (iii) of the Declaration." (Underlining is mine for comments).

Later down in the judgment, the learned Justice said as follows:
"The words of the Registered Declaration is clear but it is not free from ambiguity which leads to absurdity. I should therefore treat the word ANY appearing in clause (vi) of Exhibit "I" as surplusage and C tautologous. It is therefore the duty of this court to modify the uncertainty created by clause (VI)....."

Clause (iii(c) which states that the persons who may be proposed as candidates by a ruling house entitled to fill a vacancy shall be "sons of a previous holder of the title" kept off from the race any person whose D father was not a previous holder of the title. This being the case, sons of a previous holder of the title must mean direct sons of a previous holder of the title. I also hold the view that "son" does not include grandson, great grandson and great great grandson.

I therefore hold that the 14th Defendant/Respondent did not E qualify under the declaration of 1958 - Exhibit "I" to be nominated or selected for the vacant stool of Onjo of Okeho as he was not a son of a previous holder of the title and the Alafin of Oyo was right in not confirming his appointment." (Underlining mine for emphasis and comment).

In the first extract of underlined words contained in the judgment of the F court below set above, while the court itself held that Exhibit 'I' must be read conjunctively to avoid absurdity, etc, the learned counsel for the Defendants submitted that it must be disjunctive, so that for the use of the word "ANY" the word "either" be substituted.

In the light of evidence adduced at the hearing before the trial G court from both parties that the common grandfather of both the Plaintiff and the 14th Defendant was a previous Onjo of Okeho and in view of what I shall say shortly regarding the relevance of the decision of this court in Wahab Ajigbotoso Sijuola Olanrewaju v. The Governor of Oyo State & Ors (1992) 9 NWLR (Pt. 265) 335, I agree with the learned H counsel for the Defendants that the provisions of Clause (iii)(a), (b) and (c), be read disjunctively to give effect to that provision to read "either" in place of "ANY". Having regard to my proposition above, the second extract of underlined words in the judgment of the court below expressing that court's agreement with the learned Senior Counsel that Exhibit

"1" would be thrown into a state of chaos should its scope "*be widened*" to include "*all comers*" if the candidate is to satisfy any of the conditions laid down in clause (iii), thereof would no longer arise.

In the third extract from the judgment of the court below in relation to clause (iii) (c) of Exhibit "1" and the construction to be put on who "*sons of a previous holder of the title*" and as to whether or not the "son" includes grandson, great grandson and great great grandson, it is pertinent to point out that the Concise Oxford Dictionary defines 'son' thus:

"(1) A boy or man in relation to either or both of his parents.

(2) (a) a male descendant; (b) a male member of a family, nation."

In view of this court's decision in *Olanrewaju v. The Governor of Oyo State & ors* (supra), I would prefer the wider meaning of "sons" in the context of the case in hand, that is, "male descendants" or "male members of a family". A fortiori. That the word "Sons" in Clause (iii)(c) should be construed as meaning "male descendants" of a previous holder of the title notwithstanding the fact that "Sons of a previous holder of the title" in Exhibit 1 Clause (iii) (C) has been held by the court below to mean "direct sons of a previous holder" of the title. In the Baale of Otu Declaration which was construed in the *Olanrewaju's* case (supra) "sons of previous holders of the title" have been interpreted to mean persons whose father, grandfather or ancestor had been holder of the title. The distinction sought to be made of these two provisions in the two Declarations by learned Counsel for the plaintiff - the one in the case in hand and that of the *Olanrewaju's* Case, is therefore, in my respectful view, a distinction without a difference. Compare *Aku v. Aneku* (supra), where there was no pre-existing Declaration providing for a son to succeed his grandfather and where his father never ascended the stool of the Achadu Chieftaincy before the threshold or inception of the case and a cleavage to the customary rule of succession not shown to be against equity and good conscience, was adopted by the trial court and duly and rightly affirmed by the Court of Appeal. Said Karibi-Whyte, J.S.C. in the *Olanrewaju's* Case (Supra) at Page 363 where the Supreme Court in wholly dismissing the plaintiff/appellant's appeal, construed the Baale of Otu Chieftaincy Declaration of 1960 inter alia thus:

"It is important to observe that the words of clause 2 of paragraph (iii) are "sons of previous holders of the title." These are wide enough to include any person from the particular Ruling House whose father, grandfather or ancestor had been the holder of the title. The other construction contended for which will limit eligibility to the children of the immediate past title holders, thus barring the Opo Ruling House forever, unless there are sons of an immediate demised holder cannot be read into that

clause which is plain, simple and unambiguous. It should be read to convey the ordinary meaning." (Underlining is mine for comment).

The italicization by me above underscores the fact of a striking similarity between Clause (iii) (c) of Exhibit "1" herein and Clause 2 of paragraph (iii) of the Out Chieftaincy Declaration (ibid) considered in the B Olanrewaju Case (supra) and that identical construction put on the Declaration considered herein (the Onjo of Okeho Chieftaincy Declaration of 1958) whose words which, in my opinion, are clear, unambiguous and consistent, should be given their plain and ordinary meanings unless such would lead to a manifest absurdity or injustice. See Udoye v. The State C (1967) NMLR. 197; Yerokun v. Adeleke (1960) SCNLR 267; Ahmed v. Kassim (1958) SCNLR. 28 and Olanrewaju' s Case (supra) at Page 362. In the instant case, I can conceive of neither a manifest absurdity nor injustice flowing from the clear and unambiguous provisions of Exhibit 1. The single issue herein considered by me is therefore accordingly D answered in both the affirmative and negative respectively.

Cross - Appeal:

The two issues formulated for our determination by the respondent/cross-appellant which overlap his two grounds of appeal are:-

1. Whether the exclusion of the Mogaji Ijo from the family meeting E ing called for the selection of the candidates was academic, considering the effect of the exclusion on the cross-appellant, and whether the said Mogaji Ijo had waived his right to be summoned and to be present at the family meeting where the nomination took place.

2. Whether or not under the Chieftaincy Declaration, Exhibit" F 1", the nomination of candidates by the ruling house whose turn it is to fill the vacant stool is restricted to only one candidate.

In answering the first issue in the negative, I can see myself doing no more than adopting in its entirety and wholesomeness, most respectfully, what Akpabio, J .C.A. said in his judgment to wit:

G "I have looked at the 1958 chieftaincy Declaration in this case and find that under Clause (v) thereof only the Mogaji Ijo should have summoned the family meeting for nominating a new Onjo of Okeho. The clause reads as follows:-

H "(1) The method of nomination by each ruling house is as follows:
The ruling house whose turn it is to provide a candidate shall nominate at a family meeting to be summoned by the Mogaji Ijo. Whoever is nominated by the family shall be presented to the thirteen kingmakers." (Italics are mine).

From the foregoing provision it becomes clear that the presence of

the Mogaji Ijo at the family meeting was not just a cosmetic necessity, but a legal requirement for the validity of such a meeting, which could not be compromised or waived by anybody. He was in fact to be the person to summon it. If it was not summoned by him then the meeting was not properly constituted. So for that reason, I am of the firm view that it was not right for the 3rd respondent to have summoned the family meeting of which he was not a member. In fact, the mere presence of the 3rd respondent and his Police guards completely changed the character of the meeting to a government gathering. In fact it will not be wrong to say that the 3rd respondent virtually presided at the meeting as a “respondent officer” even though he called himself an observer. I should also mention the fact that after a candidate or candidates has or have been nominated; he or they should be presented “to the thirteen kingmakers.” It should be noted that under clause (iv) of the declaration, there are 13 kingmakers of which Mogaji Ijo is No.1 while the Bale Olele is No.7. The short of this is that all the kingmakers should have been present for approving the nomination. If all were not present then the meeting was not properly constituted, and their deliberation will be invalid.

In view of the foregoing I hold the view that the so-called meeting of 22/8/85 was a nullity as it was not summoned by the Mogaji as required by clause (v) of the chieftaincy declaration. The whole nomination exercise must therefore be set aside, and the exercise ordered to be commenced de novo with a fresh meeting duly summoned by whoever is the reigning Mogaji Ijo of the family. The meeting of the Kingmakers of the 30/8/85 was also not validly constituted as only ten Kingmakers were present instead of the full 13. The meeting of Kingmakers must also be set-aside, and a fresh meeting held to choose the final candidate for the Onjo of Okeho chieftaincy.”

The resort by the defendants to the provisions of sections 14 and 15 of the Chiefs Law (ibid) particularly section 15(1) (f) (ii) thereof, to the effect that where 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, such names of the candidates shall be submitted to the vote of the kingmakers and the candidate who obtains the majority of votes of the kingmakers thereat present and voting, shall be declared appointed is not, in my opinion, an appropriate and complete answer to Paragraph 3.6 of the plaintiff’s amended brief wherein it is contended that:-

“The exclusion of Mogaji Ijo had robbed the plaintiff/cross-appellant of the vote of Mogaji Ijo who was his known supporter.”

Indeed, in the exclusion of the Mogaji Ijo from the selection process,

there was clearly an unconstitutional aberration rendering the whole process null and void ab initio. The question of the Mogaji Ijo having waived his right, in the circumstance, in my respectful view, would therefore not arise.

Issue No.2 having already been exhaustively dealt with in my consideration the main appeal, must also perforce be answered in the negative.

For the reasons assigned here-in before by me and more particularly those contained in the judgment of my learned brother Ogundare, J.S.C., the defendants' appeal succeeds against the plaintiff in alternative relief No.7 only, to the extent that the 14th defendant is qualified, as I had earlier concluded, to be a candidate for the Onjo of Okeho chieftaincy stool. The plaintiff's cross-appeal likewise succeeds, to wit: those in respect of alternative reliefs Nos.5 and 6 which relate to the meeting of the Ruling House and the Kingmakers respectively earlier declared null and void to the effect that the entire exercise of nominations or selections must be begun afresh. I abide by the consequential orders made inclusive of those as to costs.

IGUH JSC

I have had the advantage of a preview of the leading judgment just delivered by my learned brother, Ogundare, J.S.C. and I agree entirely with the reasoning and conclusions therein. I have nothing more to add.

Accordingly the defendants appeal succeeds in part to the extent that the 14th defendant being a grandson of a previous holder of the title of Onjo of Okeho is eligible to vie for the title. The decision of the court below entering judgment for the plaintiff in terms of his alternative reliefs 5, 6, 8, 9,10 and 11 is hereby affirmed but the plaintiff's claims in respect of reliefs 1,2,3 and 4 and alternative relief 7 fail and are hereby dismissed.

The cross-appeal of the plaintiff being meritorious is hereby allowed in part. It is clear that the meetings of the Etielu Ruling House and the kingmakers as constituted were grossly irregular and incompetent and the same are hereby declared null and void.

I, too, make no order as to the costs of this appeal. Appeal allowed in part. Cross appeal allowed in part.

H