

SUPREME COURT OF NIGERIA
10TH FEBRUARY, 1997. SC. 218/1994
CORAM:- A. B. WALL, M. E. OGUNDARE, U. MOHAMMED,
Y.O. ADIO, A. I. IGUH, JJSC.

1. MILITARY GOVERNOR OF IMO STATE DEFENDANTS/
2. ATTORNEY-GENERAL, IMO STATE APPELLANTS
AND
CHIEF B.A. E. NWAUWA PLAINTIFF/RESPONDENT

***APPEALS** - Objection - Where sought to be newly raised before the Supreme Court - Leave must be obtained.*

***CHIEFTAINCY MATTERS** - Recognition of a chief- Withdrawal of the recognition - Whether proper.*

***CHIEFTAINCY MATTERS** - Support of the community for the chief- Loss of the support - Can be measured not only by referendum.*

***CHIEFTAINCY MATTERS** - Fair hearing - Withdrawal of the chief's recognition - Whether implemented without fair hearing.*

FACTS

The plaintiff/respondent was the traditional ruler of Izombe Autonomous community in Imo State. He was so recognized by the Imo State Governor vide a certificate dated 8-7-79. Following various allegations against the respondent, which led to disturbances in the area, the Governor appointed a Panel of Inquiry to investigate the allegations. The Panel's term of reference included an aspect of criminal investigation which it also determined though without jurisdiction. Following the submission of the Panel's report, the Governor subsequently withdrew the respondent's chieftaincy recognition in 1989. Respondent filed an action challenging the Governor's actions.

The trial court dismissed the respondent's claim. His appeal to the Court of Appeal was allowed on the ground that the Panel pronounced on some criminal matters and that fair hearing was denied the respondent. Being aggrieved, the appellants have now appealed to the Supreme Court raising 4 issues.

ISSUES FOR DETERMINATION

"1. Whether the issues formulated and argued by the Respondent (as

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Appellant) in the Court of Appeal were distilled from the grounds of appeal lodged in that court or arose from the judgment appealed from;

2. Whether the Principle of Severance does not apply to the case. Etc, see p. 332

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

Objection - Sought to be newly raised

1. It was open to the defendants to object both in their brief in the court below and at the oral hearing of the appeal before that court that some of the questions raised for determination were not open to the plaintiff to canvass having regard to the grounds of appeal before that court. They did not do that. To raise that objection before this Court, they would need leave of this Court and as such leave was never sought nor obtained. I agree with the Respondent that Question (1) is incompetent. Consequently I strike out that question as well as ground (i) of the grounds of appeal on which it is predicated. (p. 334 D)

Withdrawal of a chief's recognition

2. The Court below was of the view that it was a matter of speculation whether, if the findings on the criminal allegations made against the Respondent were excluded, the Government would have acted solely on the non criminal misconducts to withdraw the recognition of the Respondent as the Eze of his community. That view, with respect, would appear not to be supported by the Government's views expressed in the white paper. Having expunged from the record of the Panel the findings relating to the allegations of criminal nature, its findings accepted by the Governor in relation to the noncriminal allegations constitute, in my respectful view, grave misconduct as rightly found by the learned trial judge. (p. 337 G & 339 C)

Chief's loss of the community's support

3. In my respectful view it would be erroneous to say that the only way to measure the loss of support of a community given to an Eze is by referendum. The Governor is entitled to base his judgment on other materials or contacts he may choose to resort to, particularly that he is enjoined by Law to impanel an inquiry. I therefore, answer Question (3) in the negative. (p. 342 B)

Fair hearing

4. In the instant case there were disturbances in the Respondent's com-

munity in December 1987. The Governor set up an Inquiry into the cause or causes of the disturbances. That Inquiry found some allegations amounting to misconduct against the Respondent.... The governor pursuant to the provisions of the Traditional Rulers and Autonomous Community Law No. 11 of 1981 set up another panel to investigate the allegations against the Respondent. The Respondent appeared before that panel, he testified and called witnesses in his favour. That 2nd panel later reported to the Governor who on the basis of the findings of the panel decided to remove the Respondent from office. I cannot see how anyone could say there was a breach of the right to fair hearing in a situation such as this. (p. 346 B)

NOTABLE POINTS OF INTEREST

IGUHJSC

1. The panel lack jurisdiction to determine crime

It is well settled that once a person is accused of the commission of a criminal offence, he must only be tried by a court of law established under the Constitution where the complaints of his prosecutors can be ventilated in public in accordance with the law and where his constitutional right of fair hearing would be assured. No other tribunal, investigating panel or committee will do. Accordingly, the panel was incompetent to “try”, as it were, the respondent and to find him “guilty” on any criminal charges. (p. 350 B)

2. Principle of severance is applicable

In the present case, the allegations or findings on criminal conduct against the respondent cannot be said to be facts in issue or directly in issue as the noncriminal findings of grave misconduct against him are sufficient to arrive at the same verdict reached by the panel or the State Government, that is to say, that acts of grave misconduct had been established against the respondent. In my view the principle of severance does clearly apply to the facts of this case. (p. 352 H)

3. What fair hearing connotes

The term “fair hearing” has been judicially interpreted to involve situations where, whether having regard to all the circumstances of a case, the hearing may be said to have been conducted in such a manner that an impartial observer will conclude that the tribunal was fair to all the parties to the proceedings. It is said to mean a trial conducted according to all the legal rules formulated to ensure that justice is done to all the parties to a cause or matter. (p. 353 H)

REPRESENTATION

Okoro C. O. (Mrs.), Ag. DCL (Imo State) for the Appellants
Haruna, A. for the Respondent

CASES REFERRED TO

- Nwobodo v. Onoh (1984) 1 SC. 1
B Omoboriowo v. Ajasin (1984) 1 SC. 206
Nwankwere v. Adewumi (1967) NMLR 45
Governor of Oyo State v. Folayan (1995) 9 KLR 1643
Adegbenro v. Akintola (1962) ANLE 462
C Baba v. Nigerian Civil Aviation (1991) 5 NWLR 388
Sofekun v. Akinyemi (1980) 5-7 S.C. 1 at 18
Onasanya v. Shopitan (1975) 1 N.M.L.R. 30
Consortium M. C. v. N.E.P.A (1992) 6 N.W.L.R. (Part 246) 132
Okafor v. A. G. Anambra State (1991) 6 N.W.L.R. (Part 200) 659 at 678

D **STATUTES REFERRED TO**

Commission of Inquiries Law Cap. 24 Laws of Eastern Nigeria
Traditional Rulers & Autonomous Communities Law of Imo State No. 11
1981 ss. 18, 10(e)&(f)
E Constitution of Nigeria 1979 s. 33(4)

LEAD JUDGMENT BY OGUNDARE JSC

- The plaintiff (who is respondent in this appeal) was, at one time, the Eze (traditional ruler) of Izombe Autonomous Community in the Ohaji/Egbema/Oguta Local Government area of Imo State. He was so recognised
F by the Military Governor of Imo State by a certificate of recognition dated 8th day of July, 1979. Following allegations made against him by some members of the community which led to disturbances in the area on 12/12/87, the Military Governor in exercise of the powers conferred on him by the Commission of Inquiries Law Cap 24 Laws of Eastern
G Nigeria Traditional Rulers and Autonomous Communities Law, No.11 of 1981 appointed a Panel of Inquiry to investigate the allegations, particularly whether:

- H “1. *The actions of Eze Nwauwa in the events that led to the disturbances in Izombe on 12th December, 1987 amounted to grave misconduct and in particular whether,*

(i) *Eze Nwauwa was irreconcilably in confrontation with Izombe Development Union;*

(ii) *Eze Nwauwa disregarded the community’s code of conduct by dissolving and reconstituting community’s institutions arbitrarily;*

(iii) *Eze Nwauwa had lost the broad or popular support of his people;*

(iv) *Eze Nwauwa misappropriated various specified communities' funds viz- (a) N1,000.00(b) N1,750.00 (c) N400.00, (d) N3,000.00 (e) N890.00:*

(v) *Eze Nwauwa had saddled the community with payment of B N8,000.00 contract variation;*

(vi) *Eze Nwauwa caused the suspension of scholarship awarded to members of Izombe community by Ashland Oil Company;*

(vii) *Eze Nwauwa forestalled a scheduled meeting of the community's delegation with the Ashland Oil Company."* C

The Panel carried out its assignment and submitted a report to the Governor. The Imo State Government issued a white paper dated 26th July, 1989 (Exhibit A in these proceedings) on the report. The white paper contained the decision of the Governor to withdraw recognition of the plaintiff as the Eze of Izombe Autonomous Community. The white D paper was followed by a legal notice No. 21 of 1989 dated 10th August 1989 giving effect to the decision.

The plaintiff thereupon instituted the action leading to this appeal wherein he claimed, as per paragraph 24 of his amended statement of claim -

"(a) A declaration that S. 18 of the Traditional Rulers and Autonomous Communities Law of Imo State No. 11 of 1981 to the extent that it empowers an Administrative Inquiry to try 'charges' of grave misconduct and/or criminal offences is in conflict with S. 33(4) of the 1979 Constitution of the Federal Republic of Nigeria and is therefore null and F void, and of no effect.

(b) A declaration that the findings of the Administrative Panel of Inquiry set up by the Imo State Government to the effect that the plaintiff is guilty of fraud, embezzlement, corruption and/or any other G criminal offence is null and void, contrary to the rules of natural justice, and offends against the provisions of S. 33(4) of the unsuspended 1979 Constitution of the Federal Republic of Nigeria.

(c) A declaration that the purported decision of Imo State Government, against the plaintiff, as contained in the Imo State Government H White Paper on Izombe purportedly based on the report of the Administrative Panel of Inquiry on Izombe is of no effect in law.

(d) A declaration that the purported withdrawal of the Certificate of Recognition of the plaintiff by the Imo State Government as per

Imo State of Nigeria Legal Notice No. 21 of 11/8/89 based on the Izombe Administrative Inquiry and the Government White Paper on it, is unconstitutional, null and void and of no effect.

(e) *An injunction restraining the defendants, their servants and/or agents, from giving effect to implementing or continuing to implement, the decisions or comments against the plaintiff, contained in the Imo State Government White Paper on 'The Report of the Administrative Panel of Inquiry into allegations of Grave Misconduct against Eze R.A.E. Nwauwa, Eze Udo I of Izombe.'*

Pleadings having been filed and exchanged and subsequently amended, the action proceeded to trial.

Evidence was led on both sides at the trial at the end of which and after addresses by learned counsel for the parties the learned trial Judge in a well considered judgment found that the allegations made against the plaintiff by members of the community and in respect of which the Governor set up a panel to investigate were partly criminal in nature and partly "immoral and unethical acts of behaviour which attract criticisms, condemnation or regarded as opprobrium to the society." The learned trial Judge also found that as regards the allegations that were criminal in nature only Section 33 of the Constitution should apply and therefore, the Panel would have no jurisdiction to investigate such acts. He also found that as regards the allegations of non-criminal acts the Panel had jurisdiction. On question of the method of determining whether the plaintiff had lost the support of his community, the learned trial Judge found that although one of the ways to determine such a question was by conducting a referendum, it was however, not the only method of assessing support. The learned trial Judge also found that the Panel conducted its affair in reference to the non-criminal allegations fairly and that the plaintiff was given a hearing. He finally found:

"I am satisfied that the Panel's recommendation in regard to non criminal acts was in order. Pursuant thereto, the Government acted in the most acceptable legal manner in withdrawing the recognition of the plaintiff not necessarily because he has committed any criminal offence (this is not proved) but because he has breached the Code of Conduct of his office by doing acts forbidden by custom and tradition and abdicating his proper role as the custodian of the custom of his people. He became a Pariah in a community he was recognised to serve. In the end he became a king without subjects. He was deserted. The Government obviously was left with no alternative. To allow the situation to remain as it was would be horrendous and unthinkable, and may lead to

total break down of law and order. The Government in the event took a decision that was the best in the circumstances. The deposition is legal."

He thereupon dismissed plaintiff's claims.

The plaintiff being dissatisfied with this judgment appealed to the Court of Appeal. That Court also found that the Panel of Inquiry appointed by the Military Governor of Imo State acted without jurisdiction in investigating the charges of criminal nature laid against the plaintiff. It also found that the allegations of criminal nature could not be severed from the other allegations which were of non criminal nature. Finally, it allowed the plaintiff's appeal, set aside the decision of the trial High Court and entered judgment in plaintiff's favour in terms of his claims.

The defendants have now appealed to this court against the judgment of the Court of Appeal upon 4 grounds of appeal. Pursuant to the Rules of this Court the parties filed and exchanged their respective Briefs of Argument. In the appellant's brief 4 questions have been formulated as arising for determination in this appeal. They are:

- "1. Whether the issues formulated and argued by the respondent (as appellant) in the Court of Appeal were distilled from the grounds of appeal lodged in that court or arose from the judgment appealed from;*
- 2. Whether the principle of severance does not apply to the case;*
- 3. Whether the conduct of a referendum is the only method of determining the level of support enjoyed by an Eze and Traditional Ruler of a Community;*
- 4. Whether the respondent's Right of Fair Hearing was breached."*

Having regard to the judgment appealed against and the grounds of appeal, I am of the respectful view that the above questions are to be preferred to those set out in the respondent's brief.

Question (1)

Appellants referred to the 4 grounds of appeal contained in the plaintiff's Notice of Appeal from the High Court to the Court of Appeal and also the issues formulated by him before that court and submitted that only one of the five issues could be said to have arisen from, or predicated on, the ground of appeal. It is the submission of the defendants before this court that issues (i), (iii) (iv) and (v) formulated and argued in the court below by the respondent arose not from the judgment of the High Court but from the proceedings of the Administrative Panel of Inquiry or actions of the Military Governor which were not canvassed in the court to trial. Issue No. (iii) formulated in the court below by the plaintiff was particularly singled out by the appellant's for comments in this Court. It is submitted as follows:

“that since the trial court did not base its judgment on the pronouncements of the Administrative Panel on the Criminal allegations and in fact declared the findings on criminal allegations as null and void, the same could not constitute a grievance for appeal nor an issue for determination by the Court of Appeal within the provisions of Sections 219 and 220 of the 1979 Constitution.

It is a fundamental rule of law that a right of appeal is a creation of statute and no such right exists where there is no provision for it in the statute. See Muazu Nunku v. I.G.P. (1955) 15 WACA 23 at 24.

It is therefore submitted that the Court of Appeal had no jurisdiction to deliberate on the proceedings from the Administrative Panel of Inquiry as there was no such provision in the 1979 Constitution and no appeal arose out of its deliberations.”

The respondent in his brief objected to Question (1) being entertained in this Court on the ground that it was a point not canvassed in the court below and in respect of which leave of this Court had not been sought nor obtained to raise it. The appellants have not filed any reply brief in answer to this objection. I think the objection is well taken. **It was open to the defendants to object both in their brief in the court below and at the oral hearing of the appeal before that court that some of the questions raised for determination were not open to the plaintiff to canvass having regard to the grounds of appeal before that court. They did not do that. To raise that objection before this court, they would need leave of this Court and as such leave was never sought nor obtained I agree with the respondent that Question (1) is incompetent. Consequently I strike out that question as well as ground (i) of the grounds of appeal on which it is predicated.**

Question (2):

This appears to me the main issue to be determined in this appeal. The learned trial Judge found that some of the allegations made against the plaintiff and which the Panel of Inquiry was directed to investigate and report on were criminal in nature and that consequently, that Panel would have no jurisdiction to determine such allegations. The learned trial judge also found that there were other allegations of misconduct which raised moral and ethical questions and as regards such allegations the Panel was competent. The learned trial Judge would appear to have disregarded the findings of the Panel of Inquiry on the criminal allegations made against the plaintiff and based its judgment on the findings of that panel in regard to the non criminal allegations. The Court of Appeal is of the view that the trial Judge acted wrongly in severing the criminal from the non criminal

allegations and basing its judgment on the findings on the non criminal allegations. The Court per Edozie, J.C.A. observed:

“It is clear beyond doubt that the Government relied on the findings of the Panel both in respect of the criminal and non criminal acts of the appellant in withdrawing the recognition of his ‘Ezeship’. The learned Director of Civil Litigation, counsel for the respondents had argued that the finding against the appellant on a single allegation which is devoid of any criminality is sufficient to warrant the withdrawal of the recognition of the appellant as the Eze of his community. That is correct having regard to section 10 of Law No.11 of 1981. But it is equally correct that under the said section 10 it is not obligatory for the Government to derecognise the appellant as the Eze on proof of any allegation of misconduct against him. It is a matter for speculation whether, if the finding on the criminal allegations of the appellant were excluded, the Government could have acted solely on non criminal misconducts to withdraw the recognition of the appellant as the Eze of his community. The issue is not on whether or not a single established act of non-criminal misconduct would justify the derecognition of the appellant. Rather it is on what facts or finding of misconduct did the respondents base their decision to destool the appellant. It is evident that it is the totality of the finding of the Panel that impelled the Government in taking the decision against the appellant. No question of severance arises. The cases cited by the learned Director of Civil Litigation seem to me irrelevant. The case of Chief Jim Nwobodo v. Chief C.C. Onoh supra and the other cases cited deal with the standard of proof in a case before a court that has jurisdiction to hear the case but in the case in hand, the question involved is not the standard of proof of an allegation of a crime but the jurisdiction of the Panel to entertain the allegation. The principle of severance is not applicable in the latter case. I am clearly of the view that the Panel’s recommendation and the Government acceptance of it and decision to withdraw the recognition of the appellant as the Eze was influenced by the findings of guilt of the appellant in respect of allegations of crimes against him which allegations neither the Panel nor the Government had the jurisdiction to determine. The Panel’s finding of guilt against the appellant in respect of the crimes alleged against him which is a nullity because the Panel lacked jurisdiction to determine his guilt, the Government’s decision to withdraw recognition of the appellant as Eze which is based on the Panel’s finding is equally a null it ‘(Italics are mine) It is this passage that is under attack in this appeal.

It is contended by the appellants that the court below was wrong in regarding the non-criminal allegations as in-severable from the crimi-

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nal allegations already adjudged null and void by the trial court. It is further
contended that under Section 10 of Law No.11 of 1981 the Governor
could withdraw recognition from a traditional ruler on any of the
grounds stated in (a) to (k) of the section and as this was the case in the
matter on hand that court was wrong to interfere with the decision of the
trial court. Appellants further contend that the court below misdirected
B itself in holding that the cases of Chief Jim Nwobodo v. Chief C.C. Onoh
& Ors. (1984) 1 SC 1; (1984) 1 SCNLR 1; Chief A n Omoboriowo & ors
v. Chief M.A. Ajasin (1984) 1 SC 206; (1984) 1 SCNLR 108 and Godwin
Nwankwere v. Joseph Adewumi (1967) NMLR 45 did decide the principle
of severance.

C The respondent contends that the principle of severance does not arise
because it was neither a case for either party. Therefore the court below
was right in holding that the allegations of criminal offences could not be
severed from non-criminal allegations. To hold otherwise, contends the
respondent, would amount to the court making for the party a case he
D did not make for himself. It is further contended by the respondent that
even if the principle applies, the non-criminal allegations were not proved.

To the extent that the three cases cited above did not discuss nor
pronounce on the principle of severance the court below, with profound
respect, was in error. For in Nwobodo v. Onoh (supra) Bello J.S.C. (as
E he then was) who delivered the lead judgment of this court had this to
say at pages 40-42 of the report:

*“However, where a plaintiff makes an allegation of a crime in
his pleadings but nevertheless can succeed in his claim without proving
the crime it cannot then be said that the alleged crime was a fact in issue
F or directly in issue: Nwankwere v. Adewunmi (1967) NMLR 45 at 48.
Denning L.J. stated the rule aptly in Arab Bank v. Ross (1952) 2 Q.B.D.
216 at 229 in these terms:*

*‘Under the rules of pleading, as I have always understood them,
a pleader who has pleaded more than he strictly need have done, can
G always disregard the unnecessary or surplus averments and rely simply on
the more limited one.’*

*The scope of section 137(1) of the Evidence Act may be
summarised: Where in an election petition the petitioner makes an alle-
gation of a crime against a respondent and he makes the commission of
H the crime as the basis of his petition, the sub-section imposes strict bur-
den on the petitioner to prove the crime beyond reasonable doubt. If the
petitioner fails to discharge the burden, his petition fails. However, the
provisions of Section 137(1) are subject to the principle of severance of
pleadings which may be stated thus: If in any civil proceeding the aver-*

ments alleging a crime are severable and if after such severance there still remain in the pleadings of the plaintiff or the petitioner sufficient averments devoid of the criminal imputation against any party to the proceeding and on which the plaintiff or the petitioner can succeed in his claim or petition, then the burden of proof upon the plaintiff or petitioner is to prove his case within the balance of probability.”

And in *Omoboriowo v. Ajasin* (supra) Bello J.S.C. once again reiterated at pages 216- 217 of the report thus:

“In the case on hand, at the close of his case during the hearing of the petition, the petitioner abandoned the allegations of crimes. It follows therefore that in so far as the petition was founded on those allegations it must be dismissed. However, if the averments alleging crimes against the 2nd respondent were excised from the petition, there still remained in the body of the petition sufficient averments without putting directly in issue the commission of a crime by a party to sustain the petitioner.”

And in *Nwankwere v. Adewunmi* Brett J.S.C. delivering the judgment of this court observed at page 48 of the report:

“The evidence that the defendant refused to return the certificate in order to bring pressure on the plaintiff to pay him the final 5pounds showed a motive for his act, but as the plaintiff could have succeeded in his claim without proving any motive it cannot be said that the alleged motive was a fact in issue or directly in issue.”

Applying the principle of severance to the case on hand, it is not disputed that paragraph 1(iv) of the terms of reference of the Panel of Inquiry was ultra vires the Panel in that it requested the Panel to investigate and pronounce on the guilt of the respondent in respect of five cases of embezzlement therein contained. In my respectful view the report of the Panel in respect of that item should be expunged from the record. There was still left items (i)(ii)(iii)(v)(vi)&(vii) which were within the jurisdiction of the Panel to investigate. All these items are covered by the provisions of section 10 of Law No 11 of 1981 of Imo S and could, therefore, form the basis of any decision of the Governor in respect to the respondent.

The court below was of the view that it was a matter of speculation whether, if the findings on the criminal allegations made against the respondent were excluded, the Government could have acted solely on the non-criminal misconducts to withdraw the recognition of the respondent as the Eze of his community. That view, with respect, would appear not to be supported by the Government’s views expressed in the White Paper. In paragraph 17 of the White Paper the following appears:

17. TERM OF REFERENCE 2

“*Having regard to the findings in 1(i) - 1(xi) above, make recommendations as to whether or not the recognition of Eze Nwauwa as the traditional ruler of Izombe should be suspended or withdrawn. (i.e. paras. 6-16 of this White Paper).*”

17.1 Recommendations - The Panel offers two alternative sets B of recommendations, namely ‘A’ and ‘B’ as follows:

‘A’

(a) ‘Government should withdraw the recognition of Eze B. A. E Nwauwa

Comment, considering the findings of the Panel that Eze Nwauwa C is guilty of fraud, embezzlement, and corruption, and in view of the fact that it has been established that he has lost support and respect of his subjects, and has become an object of public derision, ostracism and contempt, Government accepts this recommendation and directs the Secretary to the Military Government to take necessary action in accordance D with section 10(e) and (f) of the Traditional Rulers and Autonomous Communities Law No. 11 of 1981.”

(Italics is mine)

It would appear that Government was persuaded to withdraw recognition of the respondent by the fact that he had “lost the support and respect of his subjects, and has become an object public derision, ostracism and contempt” and directed the Secretary to the Military Government to take action in accordance with Section 10(e) and (f) of Law No 11 of 1981. It is appropriate at this stage to quote Section 10 of the Law. It reads:

“10. Notwithstanding the provisions of section 9 of this Law, the Governor may suspend or withdraw the recognition of a recognised Eze if the Governor is satisfied that such suspension or withdrawal is necessary:-

(a) because in a rotary system it is not his turn;

(b) because in a hereditary system he is outside the stripes;

(c) having regard to persistent acts of violation of the code of G conduct by the Eze as required by the customary law of the autonomous community he represents;

(d) because he has fallen foul of any of the conditions of recognition is Section 5 of this Law;

(e) as the only means of bringing about peace, order and good H government to the Autonomous Community concerned;

(f) because an allegation of grave misconduct has been proved against him as in section 18 of this Law;

(g) because he has persistently failed or knowingly and without just cause refused or deliberately neglected to perform his functions un-

der section 17 of this Law;

(h) because he is too old or incapable of carrying on as the Eze of an Autonomous Community but is nevertheless unwilling to give up the office;

(i) because he is too old or incapable of carrying on as the Eze of an Autonomous Community but is unwilling to appoint a regent; B

(j) because the tradition and custom of the Autonomous Community he purports to represent have not been correctly and properly observed in the processes leading to his recognition; and

(k) if he has resigned or abdicated his customary stool.

Having expunged from the record of the Panel the findings relating to the allegations of criminal nature, its findings accepted by the Governor in relation to the non-criminal allegations constitute, in my respectful view, grave misconduct as rightly found by the learned trial Judge. C

The plaintiff in his amended Statement of Claim criticised some findings of the Panel set up to investigate allegations against him. Some D of these criticisms found favour with the court below and this influenced that court into coming to its decision. The role of the court in the matter such as this is one of a review and not appellate. I once had the opportunity of restating the law in this respect. In the Governor of Oyo State and ors v. Folayan (1995) 8 NWLR (Pt.413) 292, 322-323 I said: E

“As stated earlier in this judgment, the plaintiff’s case is for a judicial review of the Aboderin Commission, in relation to matters within a public body’s field of judgment the court conducts its review from the body’s stand point and must not intervene solely on the basis that it would itself have acted differently. The following principles are to be borne in F mind by a reviewing court:-

(a) judicial review is not an appeal;

(b) the court must not substitute its judgment for that of the public body whose decision is being reviewed;

(c) the correct focus is not upon the decision but the manner in G which it was reached;

(d) what matters is legality and not correctness of the decision and

(e) the reviewing court is not concerned with the merits of a target activity.

In a judicial review the court must not stray into the realms of appellate H jurisdiction for that would involve the court in a wrongful usurpation of power - See R. v. Secretary of State for the Home Department, Ex parte Brind (1991) 1 AC 696, 7271. The power of the court as a reviewing tribunal is better clearly stated by Lord Green M. R. in Associated Pro-

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vincial Picture Houses Ltd. v. Wednesbury Corporation (1948) 1 KB 223,
234 *when the noble Master of the Rolls said:*

B “The power of the court to interfere in each case is not as an
appellate authority to override a decision of the local authority, but as a
judicial authority which is concerned, and concerned only, to see whether
the local authority have contravened the law by action in excess of the
powers which parliament has confided in them.”

C In exercise of his power of judicial review the court has no jurisdiction to
substitute its own opinion for that of the public body whose decision is being
reviewed for it is not part of the purpose of judicial review to substitute the
opinion of the judiciary or of individual judges for that of the authority
constituted by law to decide the matters in question—*Chief Constable of the*
North Wales Police v. Evans (1982) 1 WLR 115 5160 F per Lord
Hailsham. What the court is concerned with is the manner by which the deci-
sion being impugned was reached. It is its legality, not its wisdom, that the
D court has to look into. For the jurisdiction being exercised by the court is
not an appellate jurisdiction but rather a supervisory one.”

It appears the court below exceeded its jurisdiction in trying to
substitute its own views for the views of the Panel. My answer to Ques-
tion (2) is that the principle of severance applies this case.

Question (3):

E Section 10 empowers a Governor to suspend or withdraw the recogni-
tion of a recognised Eze if he (the Governor) is satisfied that such sus-
pension or withdrawal is necessary. An Inquiry was conducted into the
allegations made against the respondent. As a result of the findings of the
Panel of Inquiry, the Governor was satisfied that the withdrawal of the
F recognition of the respondent was necessary.

G “It was contended at the trial that before coming to the conclu-
sion that the respondent had lost the support of his people a referendum
ought to have been conducted as opined by Oputa CJ (as he then was) in
Chief S.B.O. Orisakwe v. The Governor of Imo State and ors (1982) 3
NCLR745. The learned trial Judge commenting on the view of Oputa CJ
had this to say:

H I do share the views of the learned Judge that one of the ways to
determine loss of support is by conducting a referendum. But that mode of
determining support or loss cannot with greatest respect represent the only
method of assessing support. A Panel has the documents or memoranda sub-
mitted before it to work with. Being in control of the proceedings, it will be able
to determine the relative force of the support the combatants enjoy and the
nature of the answer given by the person whose conduct is being investi-
gated. The duty of this court is not to substitute its own finding to (sic) that of

the Executive arm of the Government otherwise we would unwittingly be playing into the horrid and embracing arm of the Executive and delve into executive prerogative. The Panel is an instrument that was the eye of the Government and was to all intents and purposes part of the Executive.”

In his lead judgment in the Court of Appeal Edozie J.C.A. expressing his views on the subject said:

“I agree entirely with the learned Senior Advocate for the appellant that the level of support an Eze enjoys in his community is a question of fact capable of ascertainment by evidence. Referendum may not be the only way to establish it but it is certainly, in my considered view the most satisfactory method, group of members of the community of a cultural organisation in the community may meet to pass a vote of no confidence on the Eze but on a reflection, it may turn out that the group of members of the community or the cultural organisation forms an insignificant fraction of the entire population of the community. The genesis of the appellant’s problem with his community was his disagreement with the Town Union viz: the Izombe Town Development Union under the chairmanship of Marcus Nwokoma Naanna (DW5) who was a Principal Registrar of the High Court. Members of a Town Union are supposed to be representatives of the community but it does not necessarily imply that the strained relationship between the Eze and the Town Union meant that the Eze had lost the popular support of his community. A proper assessment would have been by a referendum or head count. The argument that the Panel had no power under its terms of reference to conduct a referendum is untenable. Since it is within its terms of reference to determine as a fact whether or not the appellant had lost broad support of his people, by necessary implication, the Panel had the power to adopt an acceptable method such as referendum to establish that fact. As the panel did not conduct any referendum on the popularity of the appellant, the conclusion is irresistible that the finding by the Panel that he, the appellant had lost the broad support of his people was based on the adverse findings against the appellant in respect of the other terms of reference including those relating to the criminal offences. In my view, that is hardly a reliable guide or index to the level of support the appellant enjoys in his community.”

With profound respect to the learned Justices of the court below, I think their approach to the matter is wrong. Having conceded that “referendum may not be only way to establish the support an Eze enjoys in his community,” it follows that the Governor is entitled to adopt whatever method he considers desirable in the circumstance. I agree entirely with the exposition of the Law as stated by the learned trial Judge in his judg-

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ment. See also Alhaji D.S. Adegbenro v. Chief S.L. Akintola & Anor (1962)
1 All NLR 442 where the Privy Council held that by the words “it appears
to him” employed in Section 33(10) of the Constitution of Western Nige-
ria, the judgment as to the support enjoyed by a Premier is left to the
Governor’s own assessment and there is no limitation as to the materials
on which he is to base his judgment or the contacts on which he may
resort for the purpose. The Privy Council further held that the Governor’s
power of removal is not limited in such precise terms as would confine
his judgment to the actual proceedings of the House of Assembly. **In my
respectful view it would be erroneous to say that the only way to
measure the loss of support of a community given to an Eze is by
referendum. The Governor is entitled to base his judgment on other
materials or contacts he may choose to resort to, particularly that
he is enjoined by law to empanel an inquiry.**

I therefore, answer Question (3) in the negative.

Question (4):

The respondent in his further amended Statement of Claim pleaded as
hereunder:

“6. On the 11th day of January 1988, the First defendant in
exercise of the powers conferred by Section 3 of the Commission of In-
quiry Law Cap 24, Laws of Eastern Nigeria 1963, appointed a Judicial
Commission of Inquiry into the disturbances at Izombe in the Ohaji/
Egbema/Oguta Local Government Area which occurred on 16th Decem-
ber 1987 with specific Terms of reference. The plaintiff may found on the
Government White Paper on the Report of the said Commission which
White Paper is dated Wednesday 17th August, 1988, at the hearing of
this suit. The defendants are hereby given Notice to produce:-

(a) The Report of the Judicial Commission of Inquiry into the
Disturbances at Izombe, Ohaji/Egbema/Oguta L.G.A., on 16th Decem-
ber 1987, and

(b) Government White Paper on (a) above dated Wednesday
17th August, 1988.

7. In breach of its terms of reference, and in breach of the rules
of natural justice, the said Commission of Inquiry purported to find the
plaintiff guilty of serious Criminal Offences. At the hearing, the plain-
tiff will contend that the aforesaid Commission of Inquiry was not a
‘Court or Tribunal’ within the meaning of Section 33 of the unsuspended
1979 Constitution of the Federal Republic of Nigeria.

8. The said Commission of Inquiry also recommended ‘the imme-
diate removal of His Highness Eze R.A.E. Nwauwa, Eze Udo I of Izombe.’
At the hearing the plaintiff will contend that its recommendation for his

'immediate removal' was not only ultra vires the powers of the Commission, it was also contrary to various statutory provisions governing the removal of recognized Traditional Rulers in Imo State.

9. *The defendants acting on the strength of the Report of and the Government' White Paper on the aforesaid Commission of Inquiry, on the 6th day of December 1988, appointed an Administrative Panel of Inquiry into allegations of grave misconduct against Eze B.A.E. Nwauwa, Eze Udo I of Izombe (The plaintiff).* B

The said Administrative Panel of inquiry had the following Terms of References:

'(i) To ascertain whether alleged actions of Eze Nwauwa, Eze Udo I of Izombe, during his tenure of office and, in particular, in the events that led directly or indirectly to the disturbances in Izombe on 16th December, 1987 amount to grave misconduct... C

2. Having regard to the findings in 1(i) - 1(vii) above, make recommendations as to whether or not the recognition of Eze Nwauwa as the Traditional Ruler of Izombe, should be suspended or withdrawn.' D

11. *The said Administrative Panel of Inquiry duly sat and took evidence, and submitted report. The defendants are hereby given Notice to produce the report of the said Administrative Panel of Inquiry at the hearing.* E

12. *The Government White Paper on the report of the Administrative Panel of Inquiry into Allegations of Grave Misconduct Against Eze B.A.E. Nwauwa, Eze Udo I of Izombe dated 26th of July, 1989 will be relied upon at the trial. The defendants are hereby given Notice to produce the said Government White Paper dated Wednesday, 26th July, 1989.* F

13. *At page 8 of the Government White Paper on the report of the Administrative Panel of Inquiry into allegations of grave misconduct against the plaintiff, the defendants commented as follows:*

Considering the findings of the Panel the Eze Nwauwa is guilty of fraud, embezzlement and corruption and in view of the fact that it has been established that he has lost support and respect of his subjects, and has become an object of public derision, ostracism and contempt, Government accepts this recommendation and directs the Secretary to the Military Government to take necessary action in accordance with Section 10(e) and (f) of the Traditional Rulers and Autonomous Communities Law No.11 of 1981.' G H

The Government of Imo State took the said decision without hearing or seeking to hear from the plaintiff nor asking for any representations oral or in writing from the plaintiff.

14. *As a result of the matters aforesaid in paragraph 13 above,*

the First defendant again, without asking for representation from the plaintiff published Imo State Legal Notice No. 21 of 1989 dated the 10th day of August, 1989 purporting to withdraw the recognition of the plaintiff as the recognized Traditional Ruler of the Izombe Autonomous Community in the Ohaji/Egbema/Oguta Local Government Council Area. Evidence was led to show that the respondent participated fully in the work of the Administrative Panel that was set up to investigate the allegations against him. He testified and called witnesses in his favour. That Panel later submitted its report to the Governor who acting on the report, took the decision to withdraw the recognition as Eze from the respondent. Respondent's complaint was that he was not served with a copy of the report with a view to his commenting thereon before Government took its decision to remove him from office. It is this complaint that he termed a breach of his right to fair hearing. The learned trial Judge disagreed with him. The Court of Appeal by majority (Onalaja J.C.A. dissenting), held that he was not accorded fair hearing. Edozie, J.C.A. in his lead judgment observed as follows:

"It remains to consider the 4th and last issue for determination relating to the breach of the appellant's right to fair hearing. The main thrust of the appellant's counsel on this issue is that on receiving the White Paper which would constitute the charge or the accusation against the appellant, it was incumbent on the respondents to give the appellant the opportunity to respond to the Report before taking a final decision on the matter. As the respondents did not do so before withdrawing the appellant's recognition, the appellant was denied a hearing. Consequently, the withdrawal of recognition is a nullity. The above criticism appears to be well founded."

He supported his decision with the decision of this court in Alhaji Abdullahi Baba v. Nigeria Civil Aviation & Anor (1991) 5 NWLR (Pt.192) 388. The learned Justices of the Court of Appeal went on to say:

"The words underlined underscore the need for a body appointing a panel to investigate a person accused of allegations to notify that person of the adverse findings of the panel and afford him an opportunity to defend himself before the body takes a final decision to punish him. In the case in hand, it is not disputed that the respondents on receiving the report of the Panel did not appraise the appellant of the findings on his misconduct on which they decided to withdraw his recognition. It was particularly necessary for the respondents to do so having regard to the fact that they rejected some of the findings of the Panel and substituted theirs. The appellant's complaint about denial of hearing is justified."

Onalaja, J.C.A. in his own judgment had this to say:

“On the issue that after the Governor issued the White Paper before the withdrawal of recognition the Governor should have served the appellant with the findings of the Panel with liberty to exculpate himself was raised in this appeal by the learned Senior Advocate for the appellant that the failure was a breach of the fundamental right to fair hearing.

The submission with the authorities relied in support especially Alhaji Abdullahi Baba v. Nigerian Civil Aviation Training Centre & Anor (1991) 5NWLR (Pt. 192) page 388 is very impressive but out of reality in the instant case. Both Baba’s and Laoye’s cases (supra) are based on the terms and conditions of employment which is contractual unlike the instant appeal, though there is the political theory of social contract in a democracy, I think one is stretching the matter beyond reason.

There is no provision in the Traditional Rulers and Autonomous Communities Law 1980 being Law 11 of 1981 of Imo State laying down the procedure of the Civil Service Rules as to Disciplinary Procedure for civil servants, so notwithstanding the attractiveness of the contention which was accepted in the lead judgment, the facts and rules are distinguishable and there is no breach of the fundamental right of the appellant by the Governor for not making available the findings of the panel of inquiry to the appellant to exculpate himself before the Governor took the decision to withdraw the recognition as an Eze of the appellant.”

With profound respect to their Lordships Edozie and Rowland J.J.C.A., there appears to be a misunderstanding of the facts in the case of Baba v. Nigerian Civil Aviation Training Centre & Anor. The procedure laid down by this court in that case in the judgment of Nnaemeka-Agu J.S.C. appear to have been followed in the instant case. Nnaemeka-Agu J.S.C. at pages 418-419 of the report said-

“I wish to pause here to note what an employer, such as the respondents were, is supposed to do in such a situation. Where some allegations have been made against an employee such as the appellant the employer is entitled to set up a panel to investigate the allegations. Such an investigating panel is not a court of trial; so it is enough if it gives to any of the persons whose names feature in the inquiry the opportunity of making some representations, oral or written, before it. In the process of investigation, it can receive its information from any source; see on this Miller v. Minister of Health (1946) K.B. AC 120; Local Government Board v. Arlidge (1915) AC 120; The panel of inquiry, not being a court of trial, none of the persons whose names feature in the inquiry can insist on any right to cross-examine other persons who make allegations or present memoranda at the inquiry. But once the panel has concluded its

inquiry and makes up its mind that any points had been prima facie made out which point to the fault of any person, the employer must first inform such an employee of the points in the case against him and give him the opportunity to refute, explain or contradict them or otherwise exculpate himself by making any representations or defence thereto before the employer can lawfully use those points as bases for dispensing with his services."

In the instant case there were disturbances in the respondent's community in December 1987. The Governor set up an Inquiry into the cause or causes of the disturbances. That Inquiry found some allegations amounting to misconduct against the respondent. The Governor pursuant to the provisions of the Traditional Rulers and Autonomous Community Law No.11 of 1981 set up another Panel to investigate the allegations against the respondent. The respondent appeared before that Panel, he testified and called witnesses in his favour. That 2nd Panel later reported to the Governor who on the basis of the findings of the Panel decided to remove the respondent from office. I cannot see how anyone could say there was a breach of the right to fair hearing in a situation such as this. I agree with Onalaja J.C.A. that there was no such breach in this case and I therefore, answer Question (4) in the negative.

The final conclusion I reach is that this appeal succeeds and it is hereby allowed. The judgment of the Court of Appeal is set aside and I hereby restore the judgment of the trial High Court. I award to the defendants/appellants N1,000.00 costs of this appeal and N1,500.00 as costs in the court below.

WALI JSC

I have had a preview of the lead judgment of my learned brother Ogundare J.S.C. and I agree with his reasons and conclusion for allowing the appeal.

For the same reasons contained in the lead judgment which I hereby adopt, I also allow the appeal, and restore the judgment of the trial court. I adopt the consequential order as to costs contained in the lead judgment.

MOHAMMED JSC

I have had the advantage to read, in draft, the judgment of my learned brother, Iguh, J.S.C., and I agree with him that this appeal has

merit and ought to be allowed. I have nothing more to add. The appeal is allowed. I abide by the consequential orders made in the lead judgment including the assessment of costs.

ADIO JSC

B

I have had the opportunity of reading in draft, the judgment just read by my learned brother, Ogundare, J.S.C., and I entirely agree that this appeal succeeds. I too allow it and abide by the consequential orders, including the order for costs.

C

IGUH JSC

I have had the privilege of reading in draft, the leading judgment just delivered by my learned brother, Ogundare, J.S.C. and I agree entirely with the reasoning and conclusion therein reached and adopt the same as mine. I propose, however, to say a few words of my own in connection with one or two issues that have arisen for consideration in this appeal.

The respondent was the Traditional Ruler and Eze Udo I of Izombe Autonomous Community in Imo State until 1988 when, by petitions to the Military Governor of this State, members of his community made various allegations of grave misconduct and maladministration against him. The petitions called for his removal from office as the Traditional Ruler of the community. This was immediately followed by violent disturbances in the community which resulted in the loss of property estimated at several millions of Naira.

F

The State Government reacted by appointing an Administrative Panel of Inquiry, hereinafter referred to as “the panel”, to investigate the allegations of grave misconduct against the respondent pursuant to the provisions of Section 18(1) and (3) of the Traditional Rulers and Autonomous Community Law No. 11 of 1981 as amended by Edict No.5 of 1989 of Imo State.

In particular, Section 18 of Law No. 11 of 1981 provides as follows -

“(1) Whenever there are allegations of grave misconduct against recognised Eze, the Military Governor may cause an administrative Inquiry to be held in respect of such allegations.

(2) The Military Governor shall give adequate notice to all parties concerned in the allegations before the administrative inquiry is held.

(3) During the hearing of the allegations the rules of natural

justice must be observed to embrace a fair trial and just decision.

(4) Where the Military Governor after such enquiry is satisfied that such Eze has ceased to enjoy the popular support of the community, the Military Governor may withdraw the recognition of such Eze."

The panel, broadly speaking, had seven terms of reference to B investigate. These terms are fully set out in the leading judgment and it is unnecessary to reproduce them all over again. It suffices to state that only item (iv) dealt with matters relating to alleged misappropriation of sundry public funds by the respondent. The rest concern other alleged non-criminal acts of grave misconduct unacceptable to society and not C expected of a Traditional Ruler. After necessary notices as required by law were issued to the general public, the panel commenced its assignment with the respondent in attendance and fully represented by counsel of his choice throughout the proceedings. Memoranda were filed by interested parties and witnesses duly testified before the panel and were D duly examined-in-chief, cross-examined and re-examined.

At the conclusion of the inquiry, the panel found nothing against the respondent in terms of reference numbers (i) and (ii). In respect of term number (iii), the panel found that the respondent had lost "gross support" of the people of Izombe. In respect of term (iv), it found that E the respondent received certain sums of money on behalf of the community which he did not make available to the said community. His conduct in respect of some other sums of money, the panel found nothing wrong. The panel also found against the respondent in respect of terms (vi) and (vii). Thereafter it made recommendation for the withdrawal of the F ognition of the respondent as the traditional ruler of Izombe.

Following the said recommendation which the State Government duly studied, it issued its White Paper thereon. By Legal Notice No. 21 of 1989 dated the 11th August, 1989 published in the Imo State Extraordinary Gazette No.9 of 1989, the Military Governor withdrew the G official recognition of the respondent as the Eze or Traditional Ruler of Izombe Autonomous Community.

The respondent, challenged his removal from office in the High Court Owerri claiming as already fully set out in the leading judgment of my learned brother. The learned trial Judge at the conclusion of hearing H on the 11th December, 1992 dismissed the claims. Said he -

"After going through the whole gamut of documents submitted and carefully considering the evidence canvassed and taking into consideration the fact that the allegations of reprehensive and condemnable behaviour levelled against the plaintiff, to which he merely paried the

issues in controversy in the enquiry, I am satisfied that the Panel's recommendation in regard to non criminal acts was in order. Pursuant thereto, the Government acted in the most acceptable legal manner in withdrawing the recognition of the plaintiff, not necessarily because he has committed any criminal offence (this is not proved) but because he has breached the Code of Conduct of his office by doing acts forbidden by custom and tradition and abdicating his proper role as the custodian of the custom of his people. He became a Pariah in a community he was recognised to serve. In the end he became a king without subjects. He was deserted. The Government obviously was left with no alternative. To allow the situation to remain as it was would be horrendous and unthinkable, and may lead to total break down of law and order. The Government in the event took a decision that was the best in the circumstances. The deposition is legal. In the circumstances the action fails and is hereby dismissed."

The respondent's appeal against this decision of the trial court was on the 27th April, 1994 allowed. The appellants have now appealed to this court.

The first issue that arises for consideration in this appeal is whether the principle of severance does not apply in this case. In this connection, it ought to be stressed that out of a total of seven terms of reference the panel was to investigate, only one, that is to say, the fourth, contained allegations of the commission of criminal offences. The rest, as found by the trial court, were in respect of -

"certain acts constituting matters forbidden by native law and custom or disregard of code of conduct in the community or doing something reprehensible and condemnable by the society i.e. acts not expected of a Traditional Ruler."

This finding was not faulted by the court below. The panel found the respondent liable as already indicated.

It cannot be disputed that the withdrawal of the respondent's recognition was based on matters concerning the alleged fraudulent acts which are clearly criminal in nature and various other acts of grave misconduct which, in the opinion of the panel, as affirmed by the State Government, any respectable traditional ruler should not be involved in. The trial court put it this way -

"It is evident, therefore, when considering the case of the Government that the term "grave misconduct" included criminal and non-criminal but reprehensible and condemnable acts frowned at by the society, particularly by the rural villagers."

The court below was substantially in agreement with the trial

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court in the above regard. Said the court -

"It is clear beyond doubt that the Government relied on the findings of the panel both in respect of the criminal and non-criminal acts of the appellant in withdrawing the recognition of his Ezeship."

B The real issue is whether the panel was competent to investigate the alleged criminal conduct of the respondent and, if not, whether those conduct can be severed from those that are clearly not criminal in nature as aforesaid to justify the derecognition of the respondent by the State Military Governor.

C It is well settled that once a person is accused of the commission of a criminal offence, he must only be tried by a court of law established under the Constitution where the complaints of his prosecutors can be ventilated in public in accordance with the law and where his constitutional right of fair hearing would be assured. No other tribunal, investigating panel or committee will do. See Dr. O. G. Sofekun v. Chief D N.O.A. Akinyemi and others (1981) 2 NWLR 135; (1980) 5-7 SC 1 at 18, Denloye v. Medical and Dental Practitioners Disciplinary Committee (1968) 1 All NLR 306, Federal Civil Service Commission v. J.O. Laoye (1989) 2 NWLR (Pt. 106) 652. Accordingly, the panel was incompetent to "try", as it were, the respondent and to find him "guilty" on any criminal charges. The determination of the guilt or innocence of any person E accused of the commission of a criminal offence is within the exclusive jurisdiction of a court of law constituted in the manner prescribed under the Constitution of the Federal Republic of Nigeria, 1979. It seems to me that what the State Government should have done was to refer the criminal allegations of misappropriation of sundry public funds to the Nigeria F Police for investigation and prosecution if necessary but not to vest the panel with any authority to deal with the same.

On the issue of severance, it was the view of the trial court that the criminal aspects of the panel's findings may be discountenanced as G invalid and null and void but that the derecognition of the respondent would be legally justifiable in the face of the non-criminal findings against him. The trial court stated -

"It is to be noted that the Panel found the plaintiff liable in the allegation of non criminal acts otherwise interpreted by the government to be also acts constituting grave misconduct."

H At page 35 of Exhibit 'F' the Panel stated as follows in a bid to show the unpopularity of the plaintiff, quite aside from any criminal allegation against him:

"The Boards and Committees appointed by him were dissolved and re-constituted and all his supporters in the Cabinet of Chiefs were

systematically removed. A new Cabinet of Chiefs met without him and to all intents and purposes, he was dethroned. By December 1987 not only had the communities been more or less fully mobilized against him, there was evidence that those persons who still supported the Eze were experiencing social harassment. The outcome of this mobilization exercise was an isolation of Eze, his families and supporters and an atmosphere amounting to ostracismAs a reaction to erosion of his popularity, power, influence and authority, he tended to rely heavily on the police. This was the situation when in reply to his report, the police dispersed a group of Izombe women on 16th December 1987, who were rehearsing a cultural dance.” B

Much below the Panel reported as follows - C

“The Panel finds Eze Nwauwa deficient in a number of factors his lack of tact in handling his subjects also called into question his ability to govern. His suborning of witnesses is further evidence of Eze Nwauwa’s scant regard for truth. His duplicity on the issue of citing of the Palace is unfortunate. The Panel therefore finds Eze Nwauwa as an unsatisfactory ruler.” D

A little later in its judgment, it concluded -

“In so far as the administrative panel conducted its affairs in reference to these non-criminal allegations fairly and, the plaintiff being heard, the court could not and should not interfere unduly..... E

In the course of this trial, volumes of documents containing terms of reference, memoranda and documentary evidence submitted to the Panel were tendered in this court as Exhibits. I looked at these mountains of documents and I am satisfied that the Panel was in order in that it was a duly statutorily constituted body that made recommendations in the spirit of Section 18 and even beyond it (the latter state being of course unacceptable). Shall the court throwaway the baby and the dirty water - No! That will amount to illogicality, concocted judicial reasoning and abdication of its responsibility in the development of jurisprudence through a well thought out judicial activism in its postulations and pronouncements.” F G

In holding that the doctrine of severance cannot apply to the facts of the present case, the Court of Appeal commented -

“It is a matter for speculation whether, if the finding on the criminal allegations of the appellant were excluded, the Government could have acted solely on non criminal misconducts to withdraw the recognition of the appellant as the Eze of his community.” H

With the greatest respect to the court below, there is a presumption that the judgment of a trial court is correct and, therefore, the burden of proof is always on the appellant to establish that the judgment appealed

against is wrong. See *Adikatu Onasanya v. Adegunle Sopitan* (1975) 1 NMLR 30, *Bakare Folorunso v. I.A. Adeyemi* (1975) 2 WSCA 196 at 202 etc. If, as found by the Court of Appeal, the issue of whether if the findings on the criminal allegation against the respondent were excluded or discountenanced, the State Military Governor could still have acted solely on the non-criminal misconduct to derecognise the respondent is merely speculative, then it would seem to me that the appellant before that court would not have discharged the burden on him to enable his appeal to succeed on that issue. In effect, the appellant before it would have failed to establish that Government would not conceivably have acted solely on the non-criminal grave misconducts to derecognise him if the criminal allegations against him were excluded.

In the second place, it would seem that our courts appear now to be shifting away from the narrow technical approach to justice which characterised some earlier decisions of courts on matters. Instead, they now pursue the course of substantial justice. See *Consortium M.C. v. N.E.P.A.* (1992) 6 NWLR (Pt. 246) 132 at 142, *Fari Khawam v. Found Michael Elias* (1960) 5 F.S.C 224; (1960) SCNLR 516; *Wallersteiner v. Moir* (1974) 3 All E.R 217; *Bello v. A.G. Oyo State* (1986) 5 NWLR (Pt. 45) 828, *Okonjo v. Dr. Odje* (1985) 10 SC 267.

In the third place, the law is settled that where a plaintiff makes an allegation of a crime in his pleading but nonetheless can succeed in his claim without proving the crime, it cannot be said that the alleged crime was a fact in issue or directly in issue. See *Jim Nwobodo v. CC. Onoh and others* (1984) 1 SC1 at pages 40-41; (1984) 1 SCNLR 1. A similar statement of the law was made by Bello, J.S.C., as he then was, when he said -

“However if the averments alleging crimes against the 2nd respondents were excised from the petition, there still remained in the body of the petition sufficient averments, without putting directly in issue the commission of a crime by a party to sustain the petition.”

See *Omoboriowo and others v. Ajasin* (1984) 1 SC 206 at 216 - 217; (1984) 1 SCNLR 108. Similarly in *Nwankwere v. Adewunmi* (1967) NMLR 45 at 48 where evidence of motive on the plaintiff's act was shown, it was observed by this court that as he could have succeeded in his claim without proving any motive, it cannot be said that the alleged motive was a fact in issue or a relevant fact in the case.

In the present case, the allegations or findings on criminal conduct against the respondent cannot be said to be facts in issue or directly in issue as the non-criminal findings of grave misconduct against him are sufficient to arrive at the same verdict reached by the panel or the State

Government, that is to say, that acts of grave misconduct had been established against the respondent. In my view the principle of severance does clearly apply to the facts of this case. The non-criminal allegations under paragraphs (iii), (vi) and (vii) of the terms of reference having been established, the Court of Appeal was in error by pronouncing that they could not be severed from the criminal allegation which, as I have stated, the panel had no jurisdiction to investigate. In the circumstance I hold that the report of the panel on the criminal aspects of its findings ought to be and should be expunged from the record. My answer to issue number I must therefore be in the affirmative.

The fourth issue touches on whether the respondent's right to fair hearing as guaranteed under the Constitution of the Federal Republic of Nigeria, 1979 was breached and if so, the effect of such infringement to the proceedings. The case of the respondent is that the appellants were in breach of his constitutional right to fair hearing. The gist of his complaint is that after the appellants received the report of the panel which found against him, they ought to have given him another opportunity to defend himself before publishing the White Paper that led to the withdrawal of his recognition as the traditional ruler of Izombe. This, they failed to do. Relying on the decision in *Alhaji Abdulahi Baba v. Nigerian Civil Aviation Training Centre and Another* (1991) 5 NWLR (Pt. 192) E 388, the majority decision of the Court of Appeal found favour with this contention of the respondent.

Without doubt, the right to fair hearing is a fundamental constitutional right guaranteed by the Constitution of Nigeria, 1979 and the breach of which, particularly in trials, naturally, vitiates such proceedings and renders the same null and void. See *Akoh v. Abuh* (1988) 3 NWLR (Pt. 85) 696, *Oyeyemi v. Commissioner for Local Government, Kwara State* (1992) 2 NWLR (Pt. 226) 661; *Ceekay Traders Ltd. v. General Motors Co. Ltd.* (1992) 2 NWLR (Pt. 222) 132. A hearing cannot be said to be fair if any of the parties is refused a hearing or denied the opportunity 'to be heard, present his case or call his witnesses. See *Gukas v. Jos Int. Breweries Ltd.* (1991) 6 NWLR (Pt. 199) 614 at 623, *Alhaji Mohammed and Another v. Lasisi Olawunmi* (1990) 2NWLR (Pt. 133) 458 at 485, *Aladetoyinbo v. Adewunmi* (1990) 6 NWLR (Pt. 154) 98, *Otapo v. Sunmonu* (1987) 2 NWLR (Pt. 58) 587 at 605 etc.

The term "fair hearing" has been judicially interpreted to involve situations where, whether having regard to all the circumstances of a case, the hearing may be said to have been conducted in such a manner that an impartial observer will conclude that the tribunal was fair to all the

parties to the proceedings. It is said to mean a trial conducted according to all the legal rules formulated to ensure that justice is done to all the parties to a cause or matter. See *Ariori v. Muraino Elemo* (1983) 1 SC 13; (1983) 1 SCNLR 1. See too *Kuusu v. Udom* (1990) 1 NWLR (Pt. 127) 421 & *Robert Okafor v. AG. Anambra State* (1991) 6 NWLR (Pt. 200) 659 at 678.

B In the present case, the respondent not only testified on his own behalf but called as many witnesses as he wished. He was also legally represented by counsel of his own choice throughout the entire proceedings. Indeed, the respondent in his evidence before the trial court testified, *inter alia*, as follows -

C *"I appeared before that panel. The panel first sat at Egbema Local Government Area Headquarters and later at Owerri in the court premises. I testified before the panel. I called many witnesses. After the hearing, the panel made its report to the Government of Imo State. The Government published a white Paper."*

D In my view, the respondent was fully heard and was afforded the opportunity of being heard or presenting his case even with the assistance of counsel before the panel. In these circumstances, no question of any breach or violation of the respondent's constitutional right to fair hearing can conceivably arise.

E The majority decision of the Court of Appeal on the issue of fair hearing relied on the decision of this court in the case of *Alhaji Abdulahi Baba v. Nigeria Civil Aviation Training Centre and Another*, *supra*, to buttress its finding. With profound respect, I find myself unable to accept that the ratio decidendi in that case has any bearing with the facts of the
F present case. The decision in that case is based, quite rightly, on the terms and conditions of the contract of employment between the parties thereto but, clearly, has no relevance to the facts of the present case. Indeed, in the words of Onalaja, J.C.A. in the court below, that decision, although "very impressive" is "out of reality in the instant case". I agree
G entirely with this view.

There is also the suggestion that it was obligatory on the State Government to invite the respondent for another round of defence after it received the panel's report but before publishing its decisions thereupon. Again, with respect, I cannot accept that the Imo State Executive Council
H was duty bound to invite the respondent a second time for the presentation of his case all over again or that failure by Government to invite him for the purpose aforesaid invalidated the decisions of the Military Governor on the Inquiry recommendations.

Section 18 of the Traditional Rulers and Autonomous Commu-

nity Law No. 11 of 1981 as amended by Edict No.5 of 1989 provides as follows-

“(1) Whenever there are allegations of grave misconduct against recognised Eze, the Military Governor may cause an administrative Inquiry to be held in respect of such allegations.

(2)

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(3)

“(4) Where the Military Governor after such enquiry is satisfied that such Eze has ceased to enjoy the popular support of the community, the Military Governor may withdraw the recognition of such Eze.”

It is clear from the above section of the law that where the Imo State Military Governor, after an inquiry, is satisfied that a recognised Eze has ceased to enjoy the popular support of his community, he may withdraw his recognition.

In the present case, the Imo State Government, following allegations of grave misconduct against the respondent, set up an Administrative Board of Inquiry which duly sat, investigated and submitted its recommendations to Government. The respondent fully put his case across to the panel at the investigation, at the conclusion of which exercise the panel submitted its report to Government. It cannot be disputed, on the law, that the Military Governor under section 18(4) of the said law No. 11 of 1981 is fully entitled to withdraw the recognition of the respondent, with or without White Paper, if, after an inquiry set up by him, he is satisfied that the natural ruler concerned has ceased to enjoy the popular support of his community. This is what happened in the present case and I am unable to fault this exercise of discretion by the Imo State Military Governor in the instant case.

I think I ought to observe that the report of the panel or the Administrative Board of Inquiry in the present case was nothing but mere recommendations to Government and not decisions. It was the duty of the Government, having studied and deliberated on the report, to take its final decisions thereupon. The proceedings of the panel fully show the entire evidence with the respective cases and arguments of the parties concerned. They also reflect all the memoranda and exhibits submitted at the inquiry and I cannot accept that it is mandatory on the Imo State Executive Council to invite the respondent for his comment on either the panel’s report or the White Paper on it before the Military Governor’s decision on the matter can be valid. On the evidence, the respondent fully knew the grave acts of misconduct levelled against him and made the

fullest use of the opportunity offered him to defend his actions before the panel. In my view, the respondent having fully presented his case before the panel with the assistance of counsel was not by law entitled to be invited a second time for another round of defence before the Military Governor would validly make public his decisions on the panel's findings B and recommendations. Accordingly issue number 4 must be resolved in favour of the appellants.

It is for the above and the more detailed reasons contained in the leading judgment of my learned brother, Ogundare, J.S.C. that I, too, allow this appeal and set aside the judgment and orders of the court C below. The decision of the trial court is hereby restored. I abide by the order for costs contained in the leading judgment.
Appeal allowed.

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