

SUPREME COURT OF NIGERIA
FRIDAY 30TH MAY, 1997. SC. 227/1988
CORAM:- M. L. UWAIS CJN, A. B. WALI, M. E.
OGUNDARE, U. MOHAMMED, Y. O. ADIO, JJSC

YUSUF AMUDA

..... PLAINTIFF/APPELLANT

AND

1. ALHAJI ABDULKADIRI ADELODUN.. DEFENDANTS/ RESPONDENTS

2. ATTORNEY-GENERAL KWARA STATE

CHIEFTAINCY MATTERS - Appointment of Chief- Where the law did not empower the traditional council to make an appointment - It has no jurisdiction to recommend 1st defendant to the governor.

CHIEFTAINCY MATTERS - Appointment of Chief - The appointment of 1st defendant as chief - By the military governor - Is null and void.

CHIEFTAINCY MATTERS - Ruling house - Concurrent findings that plaintiffs family does not belong to the ruling house - Will not be disturbed.

FACTS

Vacancy occurred in the Eleso of Oke-Ode Chieftaincy in Ifelodun/Irepodun Kwara State. Plaintiff/appellant and 1st defendant/respondent vied for succession with other persons. Both names and 7 other names were submitted to the Kingmakers of Oke-Ode known as Council of Iwereje. The Council by a majority of two to one appointed the plaintiff after considering the 9 persons nominated. A dispute arose as to the eligibility of the plaintiff. The dispute was referred to the Ifelodun/Irepodun traditional council which found that the plaintiff's family is not one of the ruling houses entitled to the Eleso chieftaincy.

The 1st defendant's name was submitted to the governor by the council and the appointment was approved. Plaintiff filed an action before the high court claiming that he is the rightful Oba Eleso of Oke-Ode. He claimed that the 1st defendant's appointment as chief is null and void and sought an injunction. The trial court found against the plaintiff. His appeal to the Court of Appeal was dismissed. Plaintiff has further appealed to the Supreme Court upon 4 grounds of Appeal.

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

Ruling house- Concurrent findings

1. There is a concurrent finding of the two courts below that Ote-Olowu family otherwise known as Maku is not a ruling house family in respect of the Eleso of Oke-Ode chieftaincy. I am not satisfied that the plaintiff has shown exceptional circumstance why I must disturb this finding. There is sufficient credible evidence to support the finding. On this finding, plaintiff cannot succeed in his claim (i) in that he does not belong to any ruling house family in Oke-Ode. I, therefore, conclude that his claim (i) was rightly dismissed by the trial High Court and the Court below was equally right in affirming that dismissal. (p. 1075 H)

Traditional council has no jurisdiction to appoint chief

2. The Local Government Law did not empower the traditional council to make an appointment; that was and is still the function of the kingmakers. There is support for this view also in the evidence of witnesses on both sides. The traditional council having disqualified the plaintiff, it ought to have remitted the matter to the body of kingmakers, that is, the council of Iwereje of Oke-Ode to make an appointment. It acted without jurisdiction when it recommended the 1st defendant to the Governor for approval and the Governor's approval based on that recommendation is consequently void. (p. 1076 F)

Governor's appointment of 1st defendant is null and void

3. I hereby grant plaintiffs claims (ii) & (iii) and declare: (a) that the appointment of the 1st defendant by the Military Governor of Kwara State as Eleso of Oke-Ode is null and void and (b) I hereby grant an injunction restraining the 1st defendant from acting and parading himself as the Eleso of Oke-Ode and the 2nd defendant and other agents and servants of the Governor of Kwara State from treating the 1st defendant as the Eleso of Oke-Ode. (p. 1076 H)

REPRESENTATION

G J. O. Ijaodola, for the appellant

S. A. Mohammed, Ag. DCL Kwara State for the respondents

CASES REFERRED TO

Mcfoy v. UAC Ltd. (1962) AC 152

Skenconsult Nigeria Ltd v. Ukey (1981) 1 SC 6 at page 9

LEAD JUDGMENT BY OGUNDARE, JSC

Following a vacancy that Occurred in the Eleso of Oke-Ode Chieftaincy in Ifelodun/Irepodun Kwara State, both the plaintiff and the 1st defendant,

among others, vied for succession. The plaintiff was nominated by his family, Ote-Olowu whilst the 1st defendant was nominated by his own family, Olayofe. Both names were submitted to the kingmakers of Oke-Ode known as Council of Iwereje. It is generally accepted by both sides that the council of kingmakers consists of seven chiefs of Oke-ode but at all times relevant to this occasion, there were only three of them alive. The three living Kingmakers met and considered the nominations of the plaintiff, 1st defendant and seven others and by a majority of two to one appointed the plaintiff. A dispute arose as to the eligibility of the plaintiff and this dispute was referred to the Ifelodun/Irepodun traditional council which looked into the issue and resolved that there were only four ruling houses in Oke-Ode entitled to the Elesa chieftaincy, that is, Maku, Agbere, Olayofe and Adeogun. The traditional council further found that the Ote-Olowu family was not a ruling house family. The 1st defendants name was forwarded by the traditional council to the Governor for approval and the Governor of Kwara State approved the appointment. Being unhappy with this development the plaintiff instituted the action leading to this appeal claiming as per paragraph 7 of his amended Statement of Claim thus:

“Wherefore the plaintiffs claim against the defendants both jointly and/or severally is for (i) a declaration that the plaintiff is the rightly (sic) Oba-Elesa of Oke-Ode having been so appointed by the Oke-Ode kingmakers under the native law and custom of Oke-Ode (ii) a declaration that the appointment of the 1st defendant by the Military Governor of Kwara State as from 1st May, 1985 as evidenced by letter Ref No. IFLG/S/89/s. 3/79 of 18/5/85 is null and void as it was not made by the Oke-Ode kingmakers and it is contrary to section 3 of the Chiefs (Appointment and Deposition) Law Chapter 20 of the Laws of Northern Nigeria 1963, now applicable in the Kwara State of Nigeria, and (iii) a perpetual injunction prohibiting the 1st defendant from acting, or parading himself as the Elesa of Oke-Ode and the 2nd defendant and other agents and/or servants of the Government of Kwara State from treating the 1st defendant as the Elesa of Oke-Ode.”

Pleadings were ordered, filed and exchanged and with leave of court, subsequently amended. The action went to trial at the end of which the learned trial Judge, in a reserved judgment, found plaintiffs claim not proved and dismissed his action in toto. He found:

“(1) The traditional council, with their traditional wisdom, after a careful appraisal of all their findings and facts available to them, categorically found that there are four ruling houses in Oke-Ode to wit Adeogun, Agbera, Olayofe and Maku. The purported fifth one was rejected by the first four in unism. In my considered view, the findings of the respected Traditional

Council is unassailable.”

xx

(2A) “I find as an act that Ote Olowu otherwise known as Makun house is not a ruling house in Oke-Ode. Makun title, as it has now become clear, has affiliation with Nupe land. Such title has no bearing with Igbomina -Yorubas according to D.W.10 whose evidence I accept unequivocally.
(underlining are mine)

xx

(3) “Having found as above, it occurs to me that the purported appointment of the Plaintiff by PW2 and his friend who connived with him had no foundation. They merely attempted to bastardize the cherished history of Oke-Ode. It is analogous to the positions in *Mcfoy v. UAC Ltd. (1962) A.C. 152* and *Skenconsult Nigeria Ltd. & Anor. V. G.S. Ukey (1981) 1 SC 6 at page 9.* They attempted to put something upon nothing and such must collapse.”

(4) “I find that the Plaintiff is not the rightful Oba Eleso of Oke-Ode. He could not have been as his appointment is questionable and had no requisite base. His so-called appointment was not forwarded to Ifelodun/Irepodun Traditional Council. The selection so called was not recommended by the Traditional Council to the Governor for approval. The so called appointment was not approved by the Governor. The conditions which were *Sine qua non* were not me.”

Being dissatisfied with the judgment of the trial High Court the plaintiff appealed to the Court of Appeal holden at Kaduna. That Court dismissed plaintiff’s appeal and affirmed the decision of the trial High Court. He has now further appealed to this Court upon 8 grounds of appeal, four of which were earlier held by this Court to be incompetent and were struck out. The Grounds of Appeal upon which this appeal is brought read as follows:

“(1) *The Justices of the Court of Appeal erred and misdirected themselves in law in holding:*

“The record of proceeding of this appeal showed clearly that the appointment of 1st defendant was done by Kingmakers of Iwereje. There was no doubt a split had occurred among them, but this was resolved by an ad hoc committee set up by the Traditional Council of Oke-Ode Chieftaincy. The report of this committee is Exhibit 6. Its conclusion at page 13 read inter alia as follows:-

“The council resolved to recommend for your approval the candidature of Alhaji Kadiri Adelodun Bale from Olayootu Ruling House because he enjoys the most popular support and his nomination had been proper being historically and spiritually.

The above report made it clear that the traditional council succeeded in bringing the split of kingmakers through the said ad hoc committee.

Particulars of error and misdirection in law

i. *An appellate court has no jurisdiction and no competence in drawing conclusions not drawn by the trial court and in respect of which there has been no appeal.*

ii. *Exhibits 1 and 2 showed that it was the appellant who was appointed by the council of Iwereje.*

iii. *There was nobody called Traditional Council of Oke-Ode Chieftaincy.*

iv. *There was no evidence that the traditional council succeeded to bridge the split of the Kingmakers through the ad hoc committee.”*

2. *“The learned Justices of the Court of Appeal erred and misdirected themselves in law in their view of the statutory duty of the Traditional Council.*

Particulars of error and misdirection in law

(i) *S. 78(1)(j) of the Local government Law, 1976, gives only adjudication powers to a Traditional Council.”*

3. *“The learned Justices of the Court of Appeal erred and misdirected themselves in law in holding that the appellant could not properly argue grounds 2,3, 8 and 9 because they were not raised at the High court.*

Particulars of error and misdirection in law

(i) *No Law says so.*

(ii) *They arose out of the High Court decision.*

4. *“The learned Justices of the Court of Appeal erred and misdirected themselves in law in their view that the appellant could not properly complain in respect of Exhibits 5 & 6 when his counsel did not objection to their admission. Grounds 4, 5 & 6 refer.*

Particulars of error and misdirection in law

(i) *Once a document was pleaded and was in law admissible, a party can not object to its admission.*

(ii) *There is a width of difference between admissibility and weight to be attached to the admitted evidence.”*

The parties filed and exchanged their respective briefs of argument and at the oral hearing of the appeal counsel relied on the briefs.

I have carefully considered the arguments proffered in the respective briefs. **There is a concurrent findings of the two courts below that the Ote Olowu family otherwise known as Maku is not a ruling house family in respect of the Eleso of Oke-Ode chieftaincy. I am not satisfied that the plaintiff has**

shown exceptional circumstance why I must disturb the finding. There is sufficient credible evidence to support the finding. On this finding, plaintiff cannot succeed in his claim (i) in that he does not belong to any ruling house family in Oke-Ode. I, therefore, conclude that his claim (i) was rightly dismissed by the trial High Court and the Court below was equally right in affirming that dismissal.

It would appear however that the two courts below failed to give proper consideration to claims (ii) and (iii). The evidence showed that the three kingmakers of Oke-Ode who met to consider appointment to the vacancy in the Elesa chieftaincy voted two to one in favour of the plaintiff. In effect the kingmakers did not appoint the 1st defendant. It was the traditional council to whom the dispute was referred that finally recommended the 1st defendant to the Governor for the approval of his appointment. I think this is wrong. True enough paragraphs (j) and (k) of section 78 of the Local Government Law No. 8 of Kwara State which reads:

“78 (i) The functions of a Council established under this part shall be

(j) to determine questions relating to chieftaincy matters and control of traditional titles and, where such matters are within the exclusive prerogative of the Emir, Oba or principal Chief, to give advice thereon where so requested;

(k) notwithstanding any other provision of this Edict, to determine customary law and practice on all matters governed by customary law including land tenure under customary law.”

empowered the traditional council to determine questions relevant to chieftaincy matters and control of traditional titles and to determine customary law and practice of all, matters governed by customary law. **The Local Government Law did not empower the traditional council to make an appointment; that was and is still the function of the kingmakers. There is support for this view also in the evidence of witnesses on both sides. The traditional council having disqualified the plaintiff, it ought to have remitted the matter to the body of kingmakers, that is, the council of Iwereje of Oke-Ode to make an appointment. It acted without jurisdiction when it recommended the 1st defendant to the Governor for approval and the Governor’s approval based on that recommendation is consequently void.**

With this conclusion I must hold that the plaintiff’s appeal succeeds to that extent and the judgment of the Court below, as well as that of the trial High Court, in so far as it relates to claims (ii) & (iii) are hereby set aside. **I hereby grant plaintiffs claims (ii) & (iii) and declare: (a) that the appointment of the 1st**

defendant by the Military Governor of Kwara State as Elesa of Oke-Ode is null and void and (b) I hereby grant an injunction restraining the 1st defendant from acting and parading himself as the Elesa of Oke-Ode and the 2nd defendant and other agents and servants of the Governor of Kwara State from treating the 1st defendant as the Elesa of Oke-Ode. The orders for costs made by the two courts below are hereby set aside and I make no order as to costs of this B appeal.

UWAISCJN

C

I have had the advantage of reading in draft the judgment read by my learned brother Ogundare, J. S. C. and I entirely agree with it. I adopt, as mine, the order made thereunder.

WALIJSC

D

I have been privileged to have a preview of the lead judgment of my learned brother Ogundare JSC and I agree with it. For the same reasons contained in the lead judgment; I dismiss the appellant's appeal against the concurrent findings of the two lower courts that Ote-Olowu family, otherwise E known as Maku and to which the appellant belongs, is not a ruling house family in respect of Elesa Oke-Ode Chieftaincy. But I allow the appeal in respect of the appellant's claims (ii) AND (iii) to wit:

"(ii) A declaration that the appointment of the 1st Defendant by the Military Governor of Kwara as from 1st May, 1995 is null and void; and F (iii) A perpetual injunction prohibiting the 1st Defendant from acting or parading himself as the Elesa of Oke-Ode and the 2nd Defendant and other agents and/or servants of the Government from Kwara State from treating the 1st defendant as the Elesa of Oke-Ode."

The declaration and the order sought in the preceding above quoted para- G graphs are granted for reasons contained in the lead judgment.

I make no order as to costs.

MOHAMMEDJSC

H

I agree with the opinion of my learned brother, Ogundare, J.S.C., in the judgment just read that the concurrent findings of the two lower courts on the fact that the Ote-Olowu family from which the appellant comes is not a recognized ruling house family for the appointment of a candidate for the Elesa

of Oke-Ode chieftaincy is unassailable. The appellant has no right to be recommended for appointment to the stool of Eleso of Oke-Ode since his family has not been recognized as a ruling house family. Thus the appeal against that issue is hereby dismissed.

From the facts, it is clear that the 1st respondent had been appointed as the Eleso of Oke-Ode by the governor of Kwara State following a recommendation forwarded to him by the traditional council. The council has no power under the Local Government Law of Kwara State, 1976, to nominate a candidate and forward his name to the Governor for approval. That power is only vested with the Kingmakers. Since the kingmakers did not nominate the 1st respondent the Governor's action in appointing him is void.

I therefore agree that the learned trial judge was wrong to dismiss plaintiff's claims (ii) and (iii) and the Court of Appeal was in error to affirm such a decision. The appeal against those two sets of claims is hereby allowed. The two claims are granted as prayed. The decisions of the lower courts in respect of those claims are accordingly set aside. I also make no order as to costs.

ADIO JSC

I have had a preview of the judgment just delivered by my learned brother, Ogundare J.S.C., and I agree that this appeal succeeds to the extent stated in the judgment. The powers conferred upon the traditional council by the Local Government Law did not include the power to appoint or select a candidate as a chief. That power was conferred upon the kingmakers. In the circumstance, there was no legal basis for the recommendation of the 1st respondent for appointment made by the traditional council. In the same way, the Governor could not legally approve the appointment.

It is for the reasons given above and for the fuller reasons given in the lead judgment of my learned brother, Ogundare, J.S.C., that I agree that this appeal succeeds to the extent stated in the lead judgment. I abide by the consequential orders.

H