

SUPREME COURT OF NIGERIA

27TH JUNE, 1997. SC. 143/1996

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

ABUBAKAR UMARU ABBA TUKUR APPELLANT
AND
1. THE GOVERNMENT OF TARABA STATE
2. ALHAJI ABBAS NJIDDA TAFIDA RESPONDENTS
3. THE GOVERNMENT OF ADAMAWA STATE

ACTIONS - *Commencement of actions - Where appellant's main complaint relate to his deposition as Emir - It was wrong to come by way of fundamental Rights (Enforcement Procedure) Rules.*

ACTIONS - *Commencement of actions - Employing the wrong procedure in commencing an action - Withdraws competence from the trial high court - Thereby rendering the proceedings null and void.*

APPEALS - *Issues - An issue that was not canvassed before the Court of Appeal - Cannot be raised without leave before the supreme Court.*

APPEALS - *Briefs - Defective brief - Where the ground of appeal in a defective brief cannot be said to have been abandoned - Reformulation of the issues by the Court below - Is proper.*

FACTS

Alhaji Umaru Abba Tukur was the Emir of Muri in the former Gongola State, now in Taraba State. Sometime in 1986, he was deposed by the then governor of Gongola State. In the cause of his deposition, he was detained for a total of 214 days. The said Alhaji Tukur, who was the plaintiff/appellant commenced proceedings before the Federal High Court Kano pursuant to S.42(1) of the 1979 Constitution and the Fundamental Rights (Enforcement Procedure) Rules 1979 praying inter alia, for an order quashing his said deposition, a declaration that his fundamental rights have been violated in his being unlawfully detained and aggravated exemplary damages. The proceedings went up to the Supreme Court which held that the Federal High Court has no jurisdiction to determine the matter.

On 1/11/89, appellant commenced a fresh action before the High Court Yola vide similar proceedings and claiming similar reliefs. After the trial

court in its judgment had held that some of the claims are chieftaincy matters and struck them out as they were not commenced vide writ of summons, it awarded the sum of N6,000,000.00 to the appellant for the violation of his fundamental Rights. Respondents appeal to the Court of Appeal was allowed as that Court struck out the remainder of the appellant's claim, for want of jurisdiction in the High Court as the action was not commenced by writ of summons. It reduced the damages awarded to N1,000,000.00. Appellant has now appealed to the Supreme Court raising 3 issues. Appellant died on 7/2/97 and his son Abubakar Umaru Abba Tukur was allowed to substitute him.

ISSUES FOR DETERMINATION

"1. Whether the Court of Appeal was right in entertaining and determining the first Respondent's third ground of appeal in Appeal No. CA/J/206/93?

2. Was the Court of Appeal correct when it held that the trial court lacked the jurisdiction to entertain the Appellant's claims?

3. Whether the Court of Appeal was right in reducing the N6,000,000.00 awarded in favour of the appellant by the trial court to N1,000,000.00?"

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

An issue that was not canvassed before Court of Appeal

1. I agree with the 1st Respondent. The contention that Ground 3 was outside the purview of the appeal before the Court below was not made an issue before that Court. The Appellant has not sought, nor obtained, the leave of this Court to raise an issue not canvassed in the Court below. This line of attack is not open to the Appellant in this Court. I, therefore, discountenance it. (p. 1253 E)

Briefs - Defective brief

2. Turning to the brief of the 1st Respondent in the Court below (Appellant's Brief) there can be no dispute that the brief was defective. The issue for determination formulated therein would on its face, not cover Ground 3 but the arguments raised thereon clearly took care of the complaint in Ground 3. It is therefore, not a case where that ground of appeal could be said to have been abandoned. Far from being abandoned, it was exhaustively argued. Faced with a situation where the issue formulated was inadequate for the proper determination of the appeal before it, the Court below, rightly in my view, reformulated the issues in the light of the grounds of appeal and the arguments proffered in the brief. The net result of all I have been saying is that I

find no substance in the Appellant's contentions that Ground 3 in the Court below was abandoned and that that Court was incompetent to reframe the issues for determination. I accordingly answer Question 1 in the affirmative. (p. 1254 F & 1255 D)

Where main complaint relate to deposition as emir

3. The primary complaint of the Appellant in the whole case was his deposition as the Emir of Muri; the alleged breaches of his fundamental rights to fair hearing, liberty and freedom of movement were merely accessory to his primary complaint. The proceedings by way of the Fundamental Rights (Enforcement Procedure) Rules, are inappropriate, in the circumstance. The Appellant herein ought to have come by way of a writ of summons, not only in respect of Reliefs 1 and 2 but also in respect of the other Reliefs as well. (p. 1262 F)

Employing the wrong procedure in commencing an action

4. I have considered the alternative request of the Appellant that this Court if it found that the wrong procedure was employed in commencing the proceedings leading to this appeal, it should, rather than strike out the proceedings, order the trial High Court to order pleadings and take oral evidence. Much as I sympathize with the Appellant in the plight he found himself, I regret I cannot grant his alternative request. This is so because the defect in the proceedings was fatal in that it affected the competence of the trial High Court to hear the case. The case was not initiated by due process of law as laid down in the Rules of that Court. The proceedings before it were a nullity. In my respectful view, therefore, the Court below was right in striking out Reliefs 3-5. I consequently answer Question 2 in the affirmative. (p. 1263 E)

NOTABLE POINTS OF INTEREST

OGUNDARE JSC

1. Effect of a respondent's failure to appeal on an issue

I need to mention, however, that as the 3rd Respondent has not appealed against that part of the judgment of the Court below affecting it, the position taken in its brief in a arguing against that judgment is not open to it. See: Ejowhomu v. Edok-Eter Mandillas Ltd. (1986) 5 NWLR 1; Brown v. Adebajo (1986) 1 NWLR 383; Awote v. Owodunni (1986) 5 NWLR 941. I would have discountenanced the arguments in the brief if it had been necessary for me to determine Question 3. (p. 1263 H)

IGUHJSC***2. Ancillary claims that are bound with the main claim - Issue of jurisdiction***

It cannot be over emphasized that where incidental or ancillary claims are so inextricably tied to or bound up with the main claims before the court in the same suit, a court of law cannot adjudicate over them where it has no jurisdiction to entertain the main claims if such incidental or ancillary claims cannot be determined without a determination at the same time of the main claims or where the determination of such incidental or ancillary claims must involve a consideration or determination of the main claims. See Alhaji Umaru Abba Tukur v. Government of Gongola State (1989) 4 N.W.L.R. (part 117) 517 at 548. (p. 1269 E)

REPRESENTATION

Charles Obishai for appellant

B. M. Isa (Solicitor-General, Taraba State) with him H. Audu (State Counsel) for 1st Respondent

O. B. James for 2nd Respondent

Dr. M. M. Gidado (Attorney-General, Adamawa State with him Yusuf Jalo (Senior State Counsel) for 3rd Respondent

CASES REFERRED TO

Niger Construction v. Okugbemi (1987) 4 NWLR 787 at 799; (1987) 12 SC

Ikeanyi v. A.C.B. et al (1997) 2 NWLR 509

Obiora v. Osele (1989) 1 NWLR 279 at 300

Akpan v. The State (1992) 6 NWLR 439 at 458

Tukur v. Government of Gongola State (1989) 4 NWLR 517 at 547-548

Madukolu v. Nkemdilim (1962) ANLR 581

Ejowhomu v. Edok-Eter Mandillas Ltd. (1986) 5 NWLR 1

Awote v. Owodunni (1986) 5 NWLR 941

STATUTES AND RULES REFERRED TO

Constitution of Nigeria 1979 ss. 42(1), 38(1), 31(1)(a), 32(1), 33(1)

Chiefs (Appointment and Deposition) Law Cap. 20 vol 1 Laws of Northern Nigeria 1963 s. 6

Decree No. 17 of 1984 s. 1 (1)(d)

Fundamental Rights (Enforcement Procedure) Rules 1979 0.1 r. 2, 0.2 r. 3(1)

Public Officers (Protection) Law Cap. 111 laws of Northern Nigeria 1963 s. 2(a)

Ex- Native Officers Holders Removal Law cap. 41 Laws of Northern Nigeria s.

LEAD JUDGMENT BY OGUNDARE, JSC

Alhaji Umaru Abba Tukur, OFR was at one time the Emir of Muri. Muri was, at all times material to this case, situate in the now defunct Gongola State; it is now in Taraba State following the creation, in August 1991, of Taraba and Adamawa States out of Gongola State. He was appointed Emir of Muri, on 6/11/65 in succession to his late father, Alhaji Muhammadu Tukur. By an order title the Deposition (of the Emir of Muri, Alhaji Umaru Abba Tukur) Order 1986 and dated the 12th day of August 1986, the then Military Governor of Gongola State Col. Y. A. Madaki (now retired) removed Alhaji Umaru Abba Tukur (hereinafter is referred to as the Appellant) from office as Emir of Muri. Before the making of the a letter signed by the secretary to the Military Government of Gongola State, was forwarded to him on 11/8/86 inviting him to have audience with the Military Governor concerning the reconstitution of the dissolved Muri Emirate Council. The Appellant left his palace at Jalingo on 12/8/86 for Yola, the State Capital where he met the Zonal Assistant Commissioner of Police one Alhaji Umaru Yola who took him to a residential quarters on the order of the Military Governor. It was while he was waiting in the heavily guarded quarters that the Secretary to the Government arrived and delivered to him the deposition order. Thereafter he was placed under house arrest at Yola for 32 days and on 8/9/86 he was banished and driven from Yola to Mubi in the middle of the night under tight security. Following an order of the Federal High Court sitting at Kano the plaintiff was released from detention on 16/2/87 after staying 161 days under detention in Mubi.

On 19th August 1986, he commenced proceedings in the Federal High Court Kano pursuant to section 42(1) of the Constitution of the Federal Republic of Nigeria 1979 and the Fundamental Rights (Enforcement Procedure) Rules 1979 praying for the following reliefs:

"1. An order or orders quashing THE DEPOSITION (OF THE EMIR OF MURI ALHAJI UMARU ABBA TUKUR) ORDER 1986 dated the 12th day of August, 1986, made by Col. Y. A. Madaki, Military Governor of Gongola State, removing the Applicant from office as Emir of Muri, on the following grounds:

(i) That the said order violates the fundamental rights of the Applicant guaranteed by Section 33(1) of the Constitution of the Federal Republic of Nigeria 1979 as amended, (hereafter referred to as the Constitution), in that the Applicant was never given the opportunity of being heard before the said order was made, nor given any notice of misconduct pertaining thereto, let alone particulars thereof,

(ii) That the conditions precedent to the exercise of the powers of deposition by the military Governor under Section 6 of the Chiefs (Appoint-

ment and Deposition) Law Cap. 20 Vol. 1 Laws of Northern Nigeria 1963 applicable to Gongola State, not having been satisfied, renders the said order null ad void and of no legal effect, and;

(iii) That the said order having been purportedly made pursuant to Section 1(1) (d) of Decree No. 17 of 1984, is void ab initio and not applicable to the Applicant, since it cannot be said that the Applicant is and B employee of the Jalingo Local Government Council as envisaged by the said Decree, nor could it be said that he is in the public service of Gongola State within the meaning of the said decree, being a traditional and/or natural ruler;

2. For a declaration that by virtue of paragraphs 1(i) to 1(iii) C supra, that the Applicant is still the Emir of Muri, Jalingo L.G.A., and is entitled to all rights and privileges pertaining thereto.

3. For a further declaration that the Applicant's detention from the 12th day of August, 1986 in a Government Lodge, Yola, by the Military Governor aforesaid is without any justifiable cause whatsoever and constitutes a further violation of his fundamental rights as enshrined in Section D 32(1) of the said Constitution;

4. For another declaration that being an Emir or a traditional ruler does not derogate from the Applicant's right to freedom of movement throughout Nigeria as guaranteed by Section 38(1) of the Constitution E aforesaid;

5. For a perpetual injunction restraining Col. Yohanna Madaki, Military Governor of Gongola State, his servants, agents and other such representatives from howsoever interfering with the liberty and rights of the Applicant, as guaranteed by chapter 4 of the said Constitution except in a F manner prescribed by law, and

6. For aggravated and exemplary damages against the Military Governor for wrongful infringing Applicant's fundamental rights as afore-said;

and for such other order or orders as the Court may deem just." G

The proceedings went through the three tiers of Courts, that is, Federal High Court. Court of Appeal and the Supreme Court on the issue of the jurisdiction of the Federal high to entertain the proceedings. On 5/9/89, this Court, per Obaseki JSC, finally held:

"In the instant appeal, all the breaches of the fundamental rights H alleged flow from the deposition of the appellant from the office of Emir of Muri by the Military Governor of the State. The office of Emir of Muri is a chieftaincy office and the deposition of the Emir a chieftaincy question which only a State High Court has jurisdiction to determine. The appellant in my

opinion, is directly complaining by his claim or reliefs claimed and affidavit evidence, that his civil right as a chief has been breached and that in the process, his fundamental rights of fair hearing, liberty and freedom of movement have also been breached. His claim for an order to quash the order of deposition and restoration to the office is a relief the Federal High Court has no jurisdiction to entertain. It is only the High Court of Gongola that has jurisdiction to grant the relief. Since the Federal High Court does not have jurisdiction to quash the order of deposition and of order / restoration of the appellant to his office of Emir of Muri, the jurisdiction to enforce the fundamental rights of fair hearing, liberty and movement of the appellant vests only in the High Court of Gongola State in the matter."
 See: (1989) 4 NWLR 517 at 547.

The learned Justice of the Supreme Court added at page 548 of the Report:

"The appellant is not without a forum to pursue his claims. He has only approached the wrong court - a court which has no jurisdiction to adjudicate on all the questions raised by the appellant."

Following this development the Appellant, on 1/11/89, commenced fresh proceedings against the Government of Gongola State under Order 1 Rule 2 of the Fundamental Rights (Enforcement procedure) Rules, 1979 in the High Court of Gongola State sitting in Yola for the following reliefs:

"1. Quashing the Deposition (of the Emir of Muri, Alhaji Umaru Abba Tukur) Order 1986 dated the 12th day of August 1986, made by Col. Y.A. Madaki, (Rtd.) Military Governor of Gongola State, removing the Applicant from office as Emir of Muri, on the following grounds:-

(A) That the said order violates the fundamental rights of the Applicant guaranteed by section 33(1) of the Constitution of the Federal Republic of Nigeria 1979 as amended, (hereinafter referred to as the Constitution), in that the Applicant was never given the opportunity of being heard before the said order was made, nor given any notice of misconduct pertaining thereto, let alone particulars thereof;

(B) That the condition precedent to the exercise of the powers of deposition by the military Governor under Section 6 of the Chiefs (Appointment and Deposition) Law Cap. 20 Vol. 1 Laws of Northern Nigeria 1963 applicable to Gongola State, not having been satisfied, renders the said order null and void and of no legal effect, and

(C) That the said order having been purportedly made pursuant to Section 1(1) (d) of Decree No. 17 of 1984, is void *ab initio* and not applicable to the Applicant, since it cannot be said that the applicant is an Employee of the Jalingo Local Government Council as envisaged by the

said Decree, nor could it be said that he is in the public service of Gongola State within the meaning of the said Decree, being a traditional and/or natural ruler;

2. A declaration that by virtue of paragraph 2(i) to 2(iii) *supra*, that the applicant is still the Emir of Muri, Jalingo L.G.C., and is entitled to all rights and privileges pertaining thereto. B

3. A further declaration that the Applicant's detention from the 12th day of August, 1986 in a Government Lodge, Yola, for 27 days by the Military Governor aforesaid, and subsequent banishment to Muri, Gongola State for 187 days are without any justifiable cause whatsoever and constitutes a further violation of his fundamental rights as enshrined in Sections C 31(1) (a) and 32(1) of the said Constitution.

4. Another order quashing the Ex Emir (Alhaji Umaru Abba Tukur Ex Emir of Muri) Removal Order 1986 B 31, contained GGS Legal Notice No. 58 of 1986 dated 30th October, 1986, on the ground that the same is incompetent and unconstitutional, since it violates the right guaranteed the D Applicant, by Sections 31(1) and 32(1) of the Constitution aforesaid, as well as Decree No. 2 of 1984 as amended.

5. Aggravated and exemplary damages against the Government for wrongfully infringing Applicant's fundamental rights as aforesaid, and for such other order or orders as the Court may seem just." E

Affidavits and counter-affidavits were filed on both sides. A preliminary objection was taken by the Respondents to the proceedings, that is, Gongola State Government and the Attorney-General of Gongola State. The objection was to the effect that the action was incompetent in that "by virtue of section F 2(a) of the public Officers (Protection) Law Cap. 111 Laws of Northern Nigeria 1963 (applicable in Gongola State) and order 2 Rule 3(1) of the Fundamental Rights (Enforcement procedure) Rules 1979" the action was statute barred. The preliminary objection was argued and dismissed by late Buba Ardo CJ. on 20/3/91 and the substantive application proceeded to trial before Bansi Chief Judge who had in the meantime succeeded Buba Ardo CJ. following the G later's demise.

In the course of the proceedings before Bansi CJ Alhaji Abbas Njidda Tafida was joined as a correspondent in the proceedings. He had been appointed to succeed the Appellant as the Emir of Muri, following the latter's deposition. H

After series of preliminary issues were raised and determined by the learned trial Chief Judge, arguments on the substantive application were heard from learned counsel to the parties and in a reserved judgment given on 30th day of November 1992, the learned trial Chief Judge adjudged as follows:

"1. (a) Prayers Nos. 1(a) to (c) and which have radically and principally raised chieftaincy matters, and, chieftaincy matters are not Fundamental Rights matters within the scope of Chapter 4 of the 1979 Constitution, are incompetent and therefore not properly before me, and they are hereby struck out to the extent of their incompetence.

B (b) The Fundamental Right issue raised in paragraph 1(a) above being incidental to the chieftaincy matters and since the principal matters - chieftaincy matters are struck out, the incidental matters, which is the Fundamental Right matter, must also be struck out and it is hereby struck out because the Fundamental Right matter can not be tried without determining C the chieftaincy matters.

2. Any Consequential order or orders made by this Court since the commencement of this proceedings in this Court in 1989, in Connection with the Chieftaincy matters, and all other matters incidental thereto and ancillary thereof, having been struck out in this judgment for being incompetent, the said order or orders are also hereby discharged (the order or D orders).

3. A declaration is hereby made that the detention of the Applicant after Exhibits 'F' and 'G' attached to the affidavit of the applicant were served on the Applicant and the Applicant became aware of their contents E as he was a deposed Emir, he became at that point in time an Ex Emir of Muri.

4. That the subsequent detention of the Applicant as an Ex Emir of Muri for 27 days as from 12/8/86 at the Government Lodge Yola is without any justifiable cause whatsoever and constitutes a violation of the Applicant's Fundamental Rights as enshrined in Sections 31(1)(a), 32(1) and 33(1) of F the Constitution.

5. That the further detention of the Applicant at Mubi Gongola for 187 days is without any justifiable cause whatsoever and constitutes a further violation of his Fundamental Rights as enshrined in Sections 31(1)(a), 32(1) and 33(1) of the Constitution.

G 6. An order quashing the Ex Emir (Alhaji Umaru Abba Tukur Ex Emir of Muri) Removal Order 1986 B. 31 contained in Legal Notice No. 58 of 1986 dated 30th October 1986 banishing him to Mubi is hereby entered on the ground that the same is incompetent and unconstitutional since it violates the rights guaranteed to the Applicant by Sections 31 (1)(a), 32(1) H and 33(1) of the constitution aforesaid as well as Decree No. 2 of 1984 as amended.

7. The Taraba State Government is hereby ordered and directed to pay the aggravated and exemplary damages of six million (N6,000,000.00) Naira awarded to the Ex Emir, the Applicant forthwith.

8. *It is hereby declared that the 3rd Respondent Alhaji Abbas Njidda Tafida - is and innocent Respondent in this suit, therefore, he shall not pay any part of the damages awarded to the Applicant. No execution of this judgment, shall therefore, be levied against the 3rd Respondent.*

9. *It is also hereby ordered and directed that this judgment shall not be executed against the Adamawa State Government. An it shall not also be executed against the Attorney-General of Adamawa State for the reasons that are stated in this judgment."*

and directed that -

"10. These orders shall be on:-

(a) The Honourable Attorney-General and Commissioner of Justice of Taraba State for Compliance; and

(b) The Secretary to the Government of Taraba State also for compliance.

11. *It is further hereby ordered that these orders shall be served for information only, on:*

(i) The Attorney-General and Commissioner of Justice of Adamawa State, and

(ii) The Secretary to the Government of Adamawa State."

Being dissatisfied with that part of the judgment of the trial High awarding N6 million damages against the Taraba State Government in favour of the appellant, the Taraba State Government appealed to the Court of Appeal upon 2 grounds which, without their particulars read as follows:

"1. The learned trial Judge erred in law when he awarded the 'Global' sum of six million Naira (N6,000,000.00) as exemplary and aggravated damages against the appellant (Taraba State Government) in favour of the 2nd Respondent.

2. The quantum of damages awarded by the learned trial Judge is unreasonable, unjustifiable and unwarranted having regard to the circumstances of the case"

and sought the following reliefs from the Court of Appeal -

"1. An order setting aside the order of the lower court ordering the appellant to pay the 'Global' sum of six million Naira (6,000,000.00) to the 2nd Respondent as exemplary and aggravated damages or,

ALTERNATIVELY (without conceding though)

2. An order reducing the quantum of damages to one hundred thousand Naira (N100,000.00) and that this amount be paid by both Adamawa and Taraba States in accordance with the formular used in the sharing of assets and liabilities of the defunct Gongola States between themselves."

The Adamawa State Government, the Appellant (Alhaji Umaru Tukur) and the Co-respondent Alhaji Umaru Abba Njidda Tafida were made parties to the appeal. By leave of the Court of Appeal, a third ground of appeal was added to the grounds of appeal. It reads:

"The trial Judge erred in law when he divided the claims before it into those of chieftaincy and those of fundamental Human right and adjudicated on the latter.

PARTICULARS

(a) The trial Judge held at page 133 line 35 - page 134 lines 1 - 25 of the records as follows:-

C *'I therefore agree with the submissions of Mr. Kehinde Sofola (SAN) counsel that I can only have jurisdiction to try this principal claim of the applicant if the Chieftaincy matter with its subsidiary matter, the right to fair hearing under section 33(1) of the 1979 Constitution brought by way of writ of summons. When the Chieftaincy matter under prayers 1(a) to (c) and 2*
D *are swept away by the violent wind of want of jurisdiction the subsidiary matter of fair hearing under section 33 (1) of the 1979 Constitution is also swept away.'*

(b) Having said that the fundamental Human Right had been swept away, he should not have turned round to determine the fundamental Human Right, issue."

Briefs of arguments having been filed and exchanged and oral arguments proffered, the Court of Appeal in a unanimous decision allowed the appeal of the Taraba State Government and set aside the decision of the trial High Court. It found, per Edozie JCA,;

F 1. "It is crystal clear that the 1st Respondent's principal claims,
that is, prayers 1 and 2 are inextricable (sic) bound up with his subsidiary
claims - 3, 4 and 5 and the learned Chief Judge having correctly found that
he lacked the jurisdiction to adjudicate on the principal claim because
proceedings thereto were not initiated by writ of summons, he ought not to
G have embarked upon trying the subsidiary prayers, 3, 4 and 5. He ought to
have struck out the subsidiary claims just as he did with respect to the
principal claim."

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2. However, since the learned trial Chief Judge took into consideration in the award of damages extraneous matters with respect to the history of his judicial carrier and being of the view that the award made is ridiculously high, there is justification for reducing same. As was stated by the Supreme Court in *His Highness Uyo I v. Felix Egwere* (1974) 1 All NLR (pt. 1) 293 at 296, one of the matters which the trial Judge was obliged to consider was

the status of the respondent and '.....What the method of assessment is employed a great part of the exercise of assessment must be arbitrary but the entire exercise must at all stages have reference to the evidence in the case and the subject-matter of the action such an award must be adequate to repair the injury to the plaintiff's reputation which was damaged; the award must be such as would atone for the assault on the plaintiff's character and pride which were unjustifiably invaded.'

In the case in hand, the 1st Respondent was a 1st class Emir and one time Minister of State and member of the Northern House of Assembly. It is not disputed that he was in detention for a total of 214 days. Taking all these into consideration and the fact that the value of the Naira has depreciated remarkably, since the incident, I think an award of N1,000,000.00 (One million Naira) is reasonable. Accordingly, I do vary the amount of six million Naira damages to N1,000,000.00 (One million Naira)."

I may at this stage mention that the Appellant was also dissatisfied with that part of the judgment of the trial High Court which struck out his reliefs (1) and (2). He too appealed to the Court of Appeal. In a separate judgment, the Court of Appeal dismissed this appeal.

The Appellant was unhappy with the two judgments and, in separate appeals, appealed to this Court. Briefs of arguments were filed and exchanged in the two appeals but before they came up for hearing, the Appellant died on 7/2/97. In respect of the present appeal an application was made, and granted, to substitute Abubakar Umaru Abba Tukur, the eldest son of the deceased as appellant. The second appeal was withdrawn at the hearing by learned counsel for the Appellant and was dismissed by us.

In relation to the present appeal, briefs of argument were filed and exchanged by the Appellant, the 1st Respondent, that is, the Government of Taraba State and the 3rd Respondent, that is, the Government of Adamawa State. Learned counsel for the parties proffered oral arguments in further expatiation of their briefs of argument. Three questions are set down for determination in the Appellant's brief. They are:

"1. Whether the Court of Appeal was right in entertaining and determining the first Respondent's third ground of appeal in Appeal No. CA/J/206/93?

2. Was the Court of Appeal correct when it held that the trial court lacked the jurisdiction to entertain the Appellant's claims?

3. Whether the Court of Appeal was right in reducing the N6,000,000.00 awarded in favour of the appellant by the trial court to N1,000,000.00?"

The 1st Respondent, in its Brief, also set out three questions as hereunder -

"1. Whether the Court of Appeal was right when it, after considering the issues for determination as set out by the parties to the appeal and the grounds of appeal filed, re-framed two issues for determination which, in the opinion of the court, would determine the issues in controversy between the parties in the appeal.

B 2. Whether the Court of Appeal was right when it held that the trial court was in error to have tried the subsidiary claims of fair hearing after it (trial court) had held that it lacked jurisdiction to try the principal claims of chieftaincy.

3. Whether the Court of appeal was right in reducing the C N6,000,000.00 awarded in favour of the Appellant by the trial court, to N1,000,000.00?"

There is scarcely any difference between the two sets of questions. The 3rd Respondent who apparently was not concerned with the 1st two questions as raised by the Appellant and the 1st Respondent framed the following question as calling for determination:

"Whether the Court of Appeal was right in holding that the One Million Naira (N1,000,000.00) it awarded in favour of the Appellant, should devolve on the 1st and 3rd Respondents?"

The 2nd Respondent did not file a Brief and although he was represented by E counsel at the hearing, learned counsel did not seek leave to address the Court and maintained the position that his client was not affected by the appeal.

I now proceed to consider and determine the questions as posed in the Appellant's Brief.

F QUESTION 1:

I have stated earlier in this judgment the three grounds of appeal filed in the Court of Appeal by the 1st Respondent (Taraba State Government) as Appellant before that Court. In its Brief of argument in that Court the 1st Respondent set out one issue as arising for determination, to wit:

G "Whether the trial chief Judge was right when he awarded the 'Global sum' of six million Naira (N6,000,000.00) as exemplary and aggravated damages against the 1st and 2nd respondent (sic) in the lower court and ordered that the said damages be paid by the appellant herein alone."

The Appellant, as 1st Respondent before that Court, raised in his Brief a H preliminary objection, that is to say:

"PRELIMINARY OBJECTION

The first Respondent herein shall at the hearing of this appeal urge this Honourable Court to strike out Ground 3 of the appeal and also the whole of the Appellant's Brief for being incompetent, defective and incur-

ably incomprehensible.

The grounds of objection are as follows:

(1) *Ground 3 of the appeal is deemed to have been abandoned when no issue as formulated is based or relevant to it.*

(2) *Argument based on grounds of appeal and not issue for determination is of no consequence* B

(3) *The argument in respect of issue No. 1 which urges the court to answer the said issue on the negative has no correlation or bearing howsoever with the issue for determination.*

(4) *That the only issue formed (sic) for determination is defective as it cannot be reconciled with any of the grounds of appeal.* C

(5) *That the only issue formed (sic) for determination is of no consequence in that no award for damages was made against the 1st and 2nd Respondents by the lower Court."*

It is submitted that:

(a) Ground 3 was incompetent in that no issue was formulated on it and as arguments have to be based on issues formulated, the ground must be deemed abandoned. A number of legal authorities are cited in support.

(b) Ground 3 could not be raised having regard to the part of the judgment of the trial court appealed against as stated in paragraph 2 of the notice of appeal. In reply, it is submitted in the brief of the 1st Respondent thus: E

"My lords we further submit that even if the brief of the appellant was defective (we are not conceding though) your Lordships should nevertheless consider and determine the appeal. This is in line with the fact that briefs are by their nature the submission of counsel to the court. In as much as the court cannot reject or stop a counsel from making a submission no matter how defective the style and form the argument takes, we urge your Lordship to adopt same measure with regard to this appeal and determine the real issue in controversy between the parties to this appeal. This position will also accord with the decision in Omojasola v. Plison Fisko (Nig.) Ltd. (1990) 4 NWLR (part 151) page 434 at paragraph F-H." F G

The Court below considered the preliminary objection. In his lead judgment with which the other justices agreed, Edozie JCA observed:

"It is trite law that issues formulated in a brief of argument for determination of an appeal must arise from and be related to the grounds of appeal filed: See okoye v. Nigeria Construction and Furniture Co. Ltd. H (1991) 6 NWLR (pt. 199) 501. Failure to formulate an issue from grounds of appeal will make the argument in respect of such ground incompetent: Otti v. Otti (1992) 7 NWLR (pt. 252) 187. The court has always frowned at and viewed with disfavour the proliferation of issues for determination formu-

lated from grounds of appeal. The guiding principle is that a number of grounds could where appropriate be formulated into a single issue running through them: The Registered Trustees of Apostolic Church v. Mrs. Emmanuel Olowolemi (1990) 6 NWLR (pt. 158) 514 at 159. The rule however is not an inflexible one. It is only where several grounds are related that distilling a single issue from them may be appropriate. In the case in hand, the additional 3rd issue for determination which complains about the division of the reliefs into those which raise chieftaincy matters and those concerned with fundamental human rights would appear to be unrelated to the two original grounds of appeal dealing with the quantum of damages and the order that they be born by the appellant. It seems to me that it would have been more appropriate that two issues were formulated from the three grounds of appeal. A disturbing feature in this appeal is the fact that as stated in paragraph 2 of the Notice of Appeal at page 173 of the record of appeal, the Appellant is complaining against. "The order of the learned trial Judge awarding Six million Naira against the Taraba State Government in favour of the (1st Respondent)." This to my mind is only consistent with the two original grounds of appeal. Be that as it may, it is important to bear in mind that the question of issues and their relationship with grounds of appeal are matters of practice and procedure. They go to irregularity and are no grounds for nullity: Labiya v. Anretiola (1992) 8 NWLR (pt. 258) 129 at 168. It is settled law that a bad, faulty or inelegant brief though may attract some adverse comments from the appellate court is still a brief, though faulty as such the appellate court would not close its eyes to the fact of its existence. The fact that the brief of argument is poorly written would not discharge the appellate court from its duty in doing substantial justice to the parties appearing before it: Obiora v. Osele (1988) 1 NWLR (pt. 97) 279 at 300, Solomon Thomas Akpan v. The State (1992) 5 NWLR (pt. 248) 439 at 466, 471-472; Omojasola v. Plison Fisko (Nig.) Ltd. (1990) 5 NWLR (pt. 151) 434. Where as in the instant case, the issues for determination as formulated by the parties are inadequate, this court in the interest of justice can formulate such issues as are consistent with the grounds of appeal and determine the appeal on the basis of such issues it formulated. See Labiya v. Anretiola (supra) at page 159. Guided by the above principles, I will overrule the preliminary objection and formulate the following two issues as arising for determination in this appeal:-

1. Whether the learned trial Chief Judge was right in dividing the claims before him into those of chieftaincy matter and those of fundamental human rights and adjudicating on the latter?
2. Whether the learned trial Judge was right when he awarded the

sum of six million Naira (N6, 000,000.00) against the Appellant in favour of the 1st Respondent?"

This decision is under attack in this appeal. The Appellant has launched a two-pronged attack. He submits that the third ground of appeal before the lower court was incompetent and that Court was, therefore, incompetent to entertain and decide the said ground in favour of the 1st Respondent. It is submitted that the ground was incompetent in that it fell outside the ambit of paragraph 2 of the Notice of Appeal which reads:

"2. Part of the decision of the lower court complained of: The order of the learned trial Judge awarding six million Naira (6,000,000.00) against Taraba State Government in favour of the 2nd respondent."

It is submitted that an appellant cannot go outside that part of the decision being complained against as disclosed in his notice of appeal. Praying Band of C & S v. Udokwu (1991) 3 NWLR 716 at 738 per Kutigi JCA (as he then was) and Niger Construction v. Okugbemi (1987) 4 NWLR 787 at 799; (1987) 12SC. 108 at 120-121 per Nnaemeka-Agu JSC are cited in support. It is finally submitted on this ground of attack, that the additional ground of appeal filed by the first Respondent marked Ground 3 was not covered by the part of the decision of the High Court which was being challenged at the Court of Appeal and accordingly it ought not to have been entertained.

The 1st Respondent objects to this line of argument on the ground E that it was not canvassed in the Court below.

I agree with the 1st Respondent. The contention that Ground 3 was outside the purview of the appeal before the Court below was not made an issue before that Court. The Appellant has not sought, nor obtained, the leave of this Court to raise an issue not canvassed in the Court below. This line of attack is not open to the Appellant in this Court. I, therefore, discountenance it. See: Ikeanyi v. A.C.B. et al (1997) 2 NWLR 509.

The second line of attack on Ground 3 in the Court below is that as no issue was formulated on it, the Court below must deem it abandoned and should not have, suo motu, formulated an issue based on it. True enough, it is settled by a long line of cases that where a ground of appeal is not covered by any issue formulated in a party's brief of argument, particularly the appellant's, that ground must be taken as abandoned. Similarly, an issue that is not predicated on any ground of appeal is incompetent. Thus issues for determination must relate to are argued and not the grounds of appeal. In brief H writing, it is the issues that are argued and not the grounds of appeal. Notwithstanding that these basic principles have been laid down in numerous cases decided since brief writing has become part of the procedural law of the appellate Courts in this country, it is not uncommon that many legal practitio-

ners in the preparation of briefs of argument still breach these basic principles. The appellate Courts have not relented in frowning against breaches of the rules of brief writing. But no appeal has been refused on the sole ground of a defective brief. In Omojasola v. Plison Fisko (Nig.) Ltd. (1990) 5 NWLR 434 at 441 - F-H, the Court of Appeal, per Achike JCA observed:

B *"It is pertinent to observe that despite the fact that the learned appellant's counsel had formulated his incompetent issue for determination, he discarded same and proceeded to argue the four grounds of appeal, one by one, without further reference to the issue formulated by him. This is clearly contrary to the spirit and letters of good brief writing. It is for the*
C *parties, particularly the appellant, to properly identify the issues arising from the grounds of appeal filed, and the arguments arising therefrom are then focussed on the issues rather than arguing the grounds of appeal. The advantage of such an approach cannot be over-emphasised; suffice it to say that it alleviates substantially the cumbersomeness, and often, the waste of*
D *time, by verbose counsel, in beating about the bush. Of course, it is clear that while the courts can disapprove of such badly written briefs with demeaning superlatives at their command, they are however, powerless to reject such badly written brief."*

I agree entirely with the above comment which is in line with the decision of
E this Court in Obiora v. Osele (1989) 1 NWLR 279 at 300 F-G per Oputa JSC who said:

"A bad, faulty and /or inelegant Brief will surely attract some adverse comments from the courts but it will be stretching the matter too far to regard such defective Brief as no Brief. A faulty Brief is a Brief which is
F *faulty. One cannot close ones eyes to the fact of its existence."*

See also Akpan v. The State (1992) 6 NWLR 439 at 438 A-E per Omo JSC and page 471 F-G per Nnaemeka-Agu JSC.

Turning to the brief of the 1st Respondent in the Court below (Appellant's Brief) there can be no dispute that the brief was defective. The
G **issue for determination formulated therein would on its face, not cover Ground 3 but the arguments raised thereon clearly took care of the complaint in Ground 3. It is therefore, not a case where that ground of appeal could be said to have been abandoned. Far from being abandoned, it was exhaustively argued. Faced with a situation where the issue formulated was inadequate for**
H **the proper determination of the appeal before it, the Court below, rightly in my view, reformulated the issues in the light of the grounds of appeal and the arguments proffered in the brief. This Court approved such a course in**
Labiya v. Anretiola (1992) 10 SCNJ 1 at 11; where Karibi-Whyte JSC observed:

"The court below was free either to adopt the issues so formulated

by learned counsel or to formulate such issues that are consistent with the grounds of appeal filed by the appellant. It is in the observance of this principle in pursuit of the proper administration of justice that the court below considered an appropriate formulation of the issue consistent with the grounds of appeal filed when it was observed that although the grounds of appeal inelegantly drafted, the complaints therein were clear and not misleading." B
And in Bankole v. Pelu (1991) 11 SCNJ 108 at 120, Omo JSC observed:

"The complaint here is entirely misconceived. As this court has stated so often, what the Court of Appeal has to consider are not grounds of appeal but issues for determination framed vide Ogbuinyinya v. Okudo No. 2 (1990) 4 NWLR (pt. 146) 551. These issues may be those framed by either C one or both parties or those re-framed, after a consideration of issues as set out and the grounds of appeal filed, by the Court of Appeal. The Court of Appeal is at liberty to reject all the issues framed by the parties and frame its own issues if, in its view, the issues as framed will not lead to a proper determination of the appeal." D

The net result of all I have been saying is that I find no substance in the Appellant's contentions that Ground 3 in the Court below was abandoned and that that Court was incompetent to reframe the issues for determination. I accordingly answer Question 1 in the affirmative.

QUESTION 2: E

It is not in dispute that the reliefs sought by the Appellant in the Federal High Court of Gongola State in 1989. It is equally not in dispute that on each occasion the Appellant came to court by way of the procedure laid down in fundamental Rights (Enforcement procedure) Rules 1979 and not by writ of summons. This Court in Alhaji Umaru Abba Tukur v. Government of Gongola State (1989) 4 NWLR 517 at 547-548 decided that Appellant's reliefs F sought in the 1st proceedings related to a chieftaincy question and that all the breaches of the fundamental rights alleged in those reliefs flowed from the deposition of the Appellant as Emir of Muri. Obaseki JSC examine each relief and observed at pages 547-548 of the Report: G

"Turning to the reliefs or orders claimed by the Appellant, I will take them one by one. The first relief is an order quashing the deposition of the Emir of Muri.

This relief can only be granted by the Gongola State High Court as the claim involves a determination of a chieftaincy question as defined in H the Chiefs (Appointment and Deposition) Law. Ground one of the three grounds of the application is that the order violates section 33 (1) of the Constitution, i.e. the right of fair hearing. It is more germane to say that the order was made in violation of the right of the appellant to fair hearing.

The second ground which is non-compliance with section 6 of the Chiefs (Appointment and Deposition) Law, Cap. 20, Vol. 1 of Northern Nigeria, 1963 applicable to Gongola State is not a ground which the Federal High Court has jurisdiction to determine. The 3rd ground is that section (1) (d) of Decree No. 17 of 1984 is inapplicable to the appellant. The B issue raised by this ground is not within the jurisdiction of the Federal High Court. The question raised is whether the appellant is or not an employee of Jalingo Local Government Council or whether the appellant is in the public service of Gongola State.

The Federal High Court therefore has no jurisdiction to grant the C first prayer, i.e. to quash the Deposition Order.

The second relief claimed is a declaration that the appellant is still the Emir of Muri in the Jalingo Local Government Area and is entitled to all the rights and privileges pertaining thereto.

The question raised in this claim is not a fundamental right ques- D tion. As in the first prayer, the right to be Emir is not guaranteed by the Fundamental Rights provisions of the Constitution and the Federal High Court has no jurisdiction whatever in the matter. The Court of Appeal was therefore not in error of law to hold that the Federal High has no jurisdiction to grant the two reliefs.

The third relief claimed is a declaration that the appellant's deten- E tion was without jurisdiction and constitutes a violation of section 32 (1) of the Constitution. The grounds on which this relief is sought are the same as those already stated for the first and second reliefs. This involves the ques- tion of the deposition of the appellant from the office of Emir which raises a F chieftaincy question. This question is not one of the matters in respect of which the Federal High Court is given jurisdiction.

The fourth relief is for a declaration that being an Emir or tradi- tional ruler does not derogate from the appellant's right to freedom of move- ment. The same three grounds as given for the first three reliefs are the G grounds on which this claim is founded. Apart from raising a chieftaincy question, the claim is hypothetical or academic.

The perpetual injunction claimed as relief No. 5 and the aggra- vated damages claimed as relief No. 6 being predicated or found on the three grounds are equally in respect of a chieftaincy question. Perpetual H injunction to restrain the Military Governor from interfering with his rights as Emir and aggravated damages for deposing him and depriving him of his rights as an Emir."

Oputa JSC, for his part observed at p.560:

".....all the claims of the appellant were intimately and

*firmly riveted on his deposition and that all arose from the Deposition Order
....."*

(underlining is mine for emphasis)

This Court held that as the fundamental issue in the reliefs sought by the Appellant was a chieftaincy question, the Federal High Court would have no jurisdiction to entertain his claims which, on the surface, appeared to be anchored on breaches of fundamental rights. B

After that decision, the Appellant applied to High Court of Gongola State for the enforcement of his fundamental rights and sought precisely the same reliefs as he sought in the Federal High Court. It was argued at the trial that as the fundamental issue was chieftaincy the Appellant could not approach the court by way of the procedure laid down in the Fundamental Rights (Enforcement Procedure) Rules 1979 but by way of a writ of summons. C
It was contended that the deposition of the Appellant as the Emir of Muri did not constitute a breach of his fundamental right in that the right to be an Emir was not one of the fundamental rights listed in chapter 4 of the 1979 Constitution, the breach of which was enforceable by way of application under the Fundamental Rights (Enforcement Procedure) Rules, 1979. It was further contended that the rights to fair hearing, liberty and freedom of movement were incidental to the principal complaint which was the deposition of the Appellant as the Emir of Muri. D E

The learned trial Chief Judge, in his judgment, observed:

"From all these submissions one legal thread has been running through them; beginning from the submissions of Mr. G. Brown Peterside SAN to Mr. Kehinde Sofola SAN and Mr. N.S. Adi the Senior State Counsel. The thread is the consensus ad idem of all the learned Counsel on both sides F that the right to be an Emir or the right to be a Chief is not one of the Fundamental Rights as contained in the Provisions of Chapter 4 of the 1979 Constitution."

The learned Chief Judge examined the reliefs sought by the Appellant and found- G

(a) "A close examination of prayers No. 1(a) to (c) and 2 radically and substantially introduced chieftaincy matter. I am therefore in total agreement with Mr. Kehinde Sofola SAN and Mr. N. S. Adi the Senior State Counsel, that the principal complaint of the applicant on these prayers is in connection with his deposition as the Emir of Muri. I hold that his right to H fair hearing as far as these prayers are concerned is an incidental accessory issue. It is parasitic upon the principal matter - the chieftaincy matter. Chieftaincy matter like this, are always brought to Court by writ of Summons and heard on the pleadings and not by affidavit evidence. See the

following authorities:-

1. Chief Micheal Uwegba & 4 Ors. v. A. G. of Bendel State & 3 Ors. (1986) 1 NWLR (pt. 16) page 303 at 304.

2. Adigun v. A. G. Oyo State (1987) 1 NWLR (pt. 53) page 678 at 689."

B (b) "I therefore agree with Mr. Kehinde Sofola SAN, and Mr. N.S. Adi the Senior State Counsel that the radical and the principal complaint of the Applicant is that he was wrongly deposed as the Emir of Muri and that he is still the Emir of Muri."

(c) "Again, I hold that chieftaincy is either an empty title of dignity C or an office or it may be both in some cases. If chieftaincy is not a matter of Fundamental Rights, then, it must go without saying that it can not be enforced under the provisions of Section 42 of the 1979 Constitution."

(d) "I therefore agree with the submission of Mr. Keninde Sofola SAN and Mr. Adi the Senior State Counsel that I can only have jurisdiction D to try this principal claim of the applicant if the chieftaincy matter with its subsidiary matter, the right to fair hearing under Section 33(1) of the 1979 Constitution are brought by way of Writ of Summons."

(e) "The Applicant's prayers Nos. 1(a) - (c) and 2 principally raised a chieftaincy matter and not a Foundamental Rights matter. These E items of prayers are therefore incompetent."

(f) "Mr. Kehinde sofola SAN for the 3rd Respondent submitted that the whole action must fail. Mr. N. S. Adi the Senior State Counsel, the learned counsel for the 1st and 2nd respondents associated himself with the submission of Mr. Kehinde Sofola SAN, that the entire application must fail F and it must be dismissed.

With the greatest respect and humility to the learned Senior Advocate of Nigeria Mr. Kehinde Sofola, the learned counsel for the 3rd respondent and with the same respect to Mr. Adi leading Mr. Yusuf Jallo learned counsel for the 1st and 2nd respondents, I hold a different view. On the G outset, I have jurisdiction under Sections 42 and 236 of the 1979 Constitution to hear and determine the Fundamental Human Right matter and the Chieftaincy matter. The facts of the case before me do not only involve Chieftaincy matter and fair hearing which is tied up with the chieftaincy matter. There is also an issue for the detention of the applicant as an Ex Emir H for determination under prayer No. 3; and prayer No. 4 invites this court to quash a Removal Order of the applicant as an Ex Emir - Order No. 58 of 1986 B. 31. These, I think constitute different items of claim from the reliefs claimed by the applicant. These are not chieftaincy matters. Is an ex Chief a Chief? I think not. I will come back to deal with these items of claim from

the reliefs sought. But suffice it to say that the applicant is claiming them as an Ex Emir and not as an Emir of Muri."

(g) *"Therefore I hold that an Ex Chief or an Ex Emir is not a Chief within the meaning of the Chiefs (Appointment and Deposition) Law."*

(h) *"A close look at the Order of Removal or banishment of the Ex Emir to Mubi was purported to be exercised by the powers conferred upon B the Military Governor by Section 2 of the Ex-Native Office Holders Removal Law."*

The learned Chief Judge considered the merit of Reliefs 3-6 and found in favour of the Appellant, he granted those reliefs and awarded him, by way of damages, the sum of N6,000,000.00 (six million Naira). C

On appeal to the Court below, that Court, per Edozie JCA, held that the trial Court was wrong to have entertained Reliefs 3-6 after it had struck out reliefs 1 and 2 on the ground that the Appellant approached the Court in a wrong way. The learned Justice of Appeal cited the dictum of Adio JCA (as he then was) in Borno Radio Television Corporation v. Basil Egbuonu (1991) 2 D NWLR 81 at 89 where a dismissed employee sought to challenge his dismissal by alleging, inter alia, breach of his fundamental right to fair hearing and initiated proceedings by an application under the Fundamental Rights (Enforcement Procedure) Rules. Adio JCA said, and I agree with him:

"When an application is brought under the Fundamental Rights E (Enforcement Procedure) Rules, 1979, a condition precedent to the exercise of the court's jurisdiction is that the enforcement of fundamental right or the securing of the enforcement thereof should be the main claim and not an accessory claim. Enforcement of fundamental right or securing the enforcement thereof should, from the applicant's claim as presented, be the principal or fundamental claim, and not an accessory claim. See The Federal Minister of Internal Affairs & Ors. v. Shugaba Abdurrahman Darman, (1982) 2 NCLR 915 in which the principal or main claim was a declaration that the order deporting the applicant, a Nigerian citizen, was ultra vires and that the ;same constituted a violation of his fundamental rights to personal liberty, privacy and freedom to move freely throughout Nigeria. G

In this case, the alleged breach of fundamental rights of fair hearing under section 33 of the Constitution of the Federal Republic of Nigeria, 1979, flows from the alleged suspension and termination of the appointment of the respondent. The termination of the appointment of the respondent H was, having regard to all the circumstances in this case, including the reliefs claimed, the grounds for claiming the reliefs, the facts deposed to in the affidavit and further affidavite of the respondent, and most of the findings made by the learned trial Judge, the main claim or the fundamental issue in

this case. It was the cause of action."

(Underlining is mine for emphasis)

At page 90 of the Report the learned Justice after an examination of the findings of the trial court therein observed:

"The ruling of the learned trial Judge on the question whether the respondent was properly dismissed was based substantially on the alleged breach of certain provisions of the Staff Regulations. The nature of a party's cause of action, main claim, or the fundamental issue determines, for example, which court to approach for a remedy or for reliefs. See Tukur v. Governor of Gongola State, (1989) 4 NWLR (pt. 117) 517.

C It is not in doubt that a High Court in a State has jurisdiction under section 42 of Constitution of the Federal Republic of Nigeria, 1979, to entertain an application for enforcement of fundamental rights. However, where the main or principal claim is not the enforcement or securing the enforcement of a fundamental right, the jurisdiction of the court cannot, as has been pointed out above, be properly exercised as it will be incompetent by reason of the foregoing feature of the case."

(Underlining is mine)

Edozie, JCA also examined the decision of this Court in Alhaji Umaru Abba Tukur v. The Government of Gongola State (supra) and came to the conclusion that -

"It is crystal clear that the 1st Respondent's principal claims, that is, prayers 1 and 2 are inextricable (sic) bound up with his subsidiary claims - 3, 4 and 5 and the learned Chief Judge having correctly found that he lacked the jurisdiction to adjudicate on the principal claim because proceedings thereto were not initiated by writ of summons, he ought not to have embarked upon trying the subsidiary prayers, 3, 4 and 5. He ought to have struck out the subsidiary claims just as he did with respect to the principal claim."

The Appellant contends in this appeal that this conclusion is erroneous. Referring to the affidavit evidence before the trial court, he submits that his case is one for the enforcement of his fundamental rights and the procedure adopted was sufficient and competent. He submits, in the alternative, that if the procedure adopted in initiating the present proceedings was found to be inappropriate, the interest of justice dictates that the parties be directed to file pleadings and adduce oral evidence, rather than striking out the case.

The 1st Respondent argues in favour of the decision of the Court below. It refers specifically to a dictum of Obaseki JSC in Tukur v. The Government of Gongola State (supra) at pages 548-549 to the effect:

"The submission of learned counsel for the respondent that claims

or prayers 3, 4, 5 and 6 are so intimately bound up with chieftaincy question that they cannot be determined without determination of the rights and obligations of a chief under the Chieftaincy (Appointment and Deposition) Law is well founded.

Before concluding this judgment, I would observe that the learned Justices of the Court of Appeal gave very sound reasons for allowing the defendant's appeal to it in respect of claims or prayers 1 and 2. The same reasons were sufficient to have persuaded the Court of Appeal to make the same pronouncement for prayers 3, 4, 5 and 6."

and argues that the same remark applies to the reliefs in the case on hand.

I have given deep consideration to the submissions of the parties C and the judgment of the Court below. Reliefs 3-5 sought by the Appellant in these proceedings read:

"3. A further declaration that the Application's detention from the 12th day of August, 1986 in a Government Lodge, Yola, for 27 days by the Military Governor aforesaid, and subsequent banishment to Mubi, Gongola D State for 187 days are without any justifiable cause whatsoever and constitutes a further violation of his fundamental rights as enshrined in Section 31(1)(a) and 32(1) of the said Constitution.

4. Another order quashing the Ex Emir (Alhaji Umaru Abba Tukur Ex Emir of Muri) Removal Order 1986 B 31, contained in GGS Legal Notice E No.58 of 1986 dated 30th October, 1986, on the ground that the same is incompetent and unconstitutional, since it violates the right guaranteed to the Applicant, by section 31(1) and 32(1) of the Constitution aforesaid as well as Decree No.2 of 1984 as amended.

5. Aggravated and exemplary damages against the Government for F wrongfully infringing Applicant's fundamental rights as aforesaid."

Reliefs 3 and 4 flowed from the exercise by the Military Government of powers vested in him by the Ex-Native Office Holders Removal Law, Cap 41 Laws of Northern Nigeria, 1963 (applicable in Gongola State). That the Law was, at the time, an existing law is not in dispute in these proceedings. Now, section 2 of G the Law provides:

"2. (1) Where a person who has been appointed a native authority or a member of a native authority under a repealed Native Authority ordinance or the Native Authority Law, or has otherwise exercised executive authority under the said Ordinance or the said Law, or who has been appointed a H district headman or village headman under section 9 of the Native Revenue Ordinance or has exercised judicial authority under a repealed Native Courts ordinance or the Native Courts Law, or who has been appointed a Chief or head chief under or whose appointment as a chief or head chief has

been approved under the Chiefs (Appointment and Deposition) Law, has ceased to hold office or exercise authority by reason of the termination of his appointment, resignation or otherwise, and the Governor is satisfied that it is necessary for the re-establishment or maintenance of peace, order and good government in the area for or in which he was so appointed or exercised authority that such person should leave such area, the Governor may by an order under his hand direct that such person shall leave such area and such other part of Northern Nigeria adjacent thereto as may be specified in the order within such time as the order may direct, and that he shall not thereafter return to such area or part without the consent of the Governor.

If such person should already have left such area or part he shall comply with the remaining terms of the order."

The Ex-Emir (Alhaji Umaru Abba Tukur, Ex-Emir of Muri) Removal order, 1986 GGS L.N. No. 12 of 1986 was made on 8th September, 1986 by Group Captain Jonah David Jang, Military Governor of Gongola State pursuant to the Law.

That being so, it must follow that the alleged breach of appellant's fundamental rights of liberty and freedom of movement was ancillary to his deposition as Emir of Muri - a chieftaincy question.

I think the learned trial Chief Judge was in error in drawing a line between being an Emir and an Ex-Emir. Had he given proper consideration to the effect of the Ex-Native Office Holders Removal Law on the whole scenario, he would have undoubtedly come to the conclusion that the underlying factor in all the reliefs was the deposition of Appellant as the Emir of Muri. Needless to say that Relief 5 is a follow-up to the other reliefs. The learned Chief Judge should have allowed himself to be guided by the dictum of Obaseki JSC earlier referred to in this part of the judgment and given in similar circumstances.

The primary complaint of the Appellant in the whole case was his deposition as the Emir of Muri; the alleged breaches of his fundamental rights to fair hearing, liberty and freedom of movement were merely accessory to his primary complaint. The proceedings by way of the Fundamental Rights (Enforcement Procedure) Rules, are inappropriate, in the circumstance. As Adio, J.C.A., put it in Borno Radio Television Corporation v. Basil Egbeonu (supra) at page 90, and quite rightly in my view;

"The competence of a court to exercise jurisdiction in relation to an action before it depends on certain conditions which Bairamian, F.J., (as he then was) set out in Madukolu & Ors. v. Nkemdilim (1962) 2 SCNLR 341; (1962) 1 All NLR 587, at p. 595. His Lordship stated, inter alia, as follows:

'Before dismissing those portions of the record, I shall make some observations on jurisdiction and the competence of a court. Put briefly, a

court is ;competent when:-

(1) *It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and*

(2) *the subject mater of the case is within jurisdiction, and there is within jurisdiction, and there is no feature in case which prevents the court B from exercising its jurisdiction; and*

(3) *the case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction."*

The combined effect of the second and the third conditions mentioned above is that when the main or principal claim in an application is not the enforcement or securing the enforcement of a fundamental right, the court has no jurisdiction to entertain it under the Fundamental Rights (Enforcement procedure) Rules, 1979. That is the position in the case of the present application of the respondent. The respondent's application is not D properly before the court."

(underlining is mine)

The Appellant herein ought to have come by way of a writ of summons, not only in respect of Reliefs 1 and 2 but also in respect of the other Reliefs as well.

I have considered the alternative request of the Appellant that this Court if it found that the wrong procedure was employed in commencing the proceedings leading to this appeal, it should, rather than strike out the proceedings, order the trial High Court to order pleadings and take oral evidence. Much as I sympathise with the Appellant in the plight he found himself, I regret I cannot grant his alternative request. This is so because the defect in the proceedings was fatal in that it affected the competence of the trial High Court to hear the case. The case was not initiated by due process of law as laid down in the Rules of that Court. The proceedings before it were a nullity: see Madukolu & Ors. v. Nkemdilim (1962) ANLR 518. In my respectful view, therefore, the Court below was right in striking out Reliefs 3-5.

I consequently answer Question 2 in the affirmative.

With the conclusion I have just reached it is unnecessary for me to consider Question 3 which would only have arisen for consideration if Question 2 had been answered in Appellant's favour. I need to mention, however, that as the 3rd Respondent has not appealed against that part of the judgment of the Court below affecting it, the position taken in its brief in a arguing against that judgment is not open to it. See: Ejowhomu v. Edok-Eter Mandillas Ltd. (1986) 5 NWLR 1; Brown v. Adebajo (1986) 1 NWLR 383; Awote v.

Owodunni (1986) 5 NWLR 941. I would have discountenanced the arguments in the brief if it had been necessary for me to determine Question 3.

The result so far is that due to procedural errors first, in initiating proceedings in the wrong court and later by the wrong procedure in the right court, Appellant's complaints remain undecided on the merit. With the death of the Appellant it would appear that this may remain the case. This is rather unfortunate, to say the least.

The net result of all I have been saying is that this appeal fails and it is hereby dismissed by me. I award N1,000.00 costs of this appeal to the 1st Respondent only.

C

BELGORE JSC

This matter was taken to the trial Court on a wrong vehicle, instead of a writ of summons designed for initiating an action, it was started with a motion on notice under Fundamental Rights procedure under the Constitution. The real crux of the complaint in the trial Court, however, is as to whether the plaintiff was lawfully deposed as the Emir of Muri, but this was cloaked under Fundamental Rights. Since the main procedural approach at the trial Court was incompetent, no relief could flow from it. It is impossible to separate the main issues, had the plaintiff initiated the action by writ of summons perhaps the story would have been different; better still if he had brought the two actions - one under fundamental rights and another under normal writ of summons. All the breaches of fundamental rights emanated from the plaintiff's deposition as an Emir and it would have been right for him to challenge the legality of the deposition via writ of summons. Ancillary to his depositions are the issues of his freedom of movement and liberty. The High Court of Taraba State has jurisdiction to try all the reliefs sought but the real defect is that he went under a wrong procedural process making the action incompetent. Certainly this action was wrongly separated by the trial Court. The Court of Appeal was therefore right that since the principal claim was incompetent, the ancillary ones must collapse with it. I therefore agree with Ogundare, JSC that this appeal has no merit. I also dismiss the appeal and make the same consequential orders as made by my learned brother.

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KUTIGI JSC

In the Gongola State High Court holden at Yola, the appellant by motion on notice after leave had been obtained pursuant to fundamental Rights (Enforcement Procedure) Rules, 1979, commenced these proceedings praying

for the reliefs or orders as follows:-

"1. *Quashing the deposition (of the Emir, Alhaji Umaru Abba Tukur) Order 1986, made by Col. Y.A. Madaki (RTD) Military Governor of Gongola State removing the Applicant from office as Emir of Muri on the following grounds:-*

(A) *That the said order violates the Fundamental Rights of the Applicant guaranteed by Section 33(1) of the Constitution of the Federal Republic of Niageria 1979 as amended. (Hereinafter referred to as the Constitution), in that the Applicant was never given the opportunity of being heard before the said order was made, nor given any notice of misconduct pertaining thereto, let alone particulars thereof.* C

(B) *That the condition precedent to the exercise of the powers of deposition by the Military Governor under Section 6 of the Chief (Appointment and Deposition) Law Cap. 20 Volume 1 Laws of northern Nigeria 1963 applicable to Gongola State not having been satisfied, renders the said order null and void and of no legal effect and* D

(C) *That the said order having been purportedly made pursuant to Section 1(1) (d) of Decree No. 17 of 1984, is void ab initio and not applicable to the Applicant since it can not be said that the Applicant is an employee of the Jalingo Local Government Council as envisaged by the said Decree. Nor could it be said that he is in the public service of Gongola E within the meaning of the said Decree, being a traditional and/or natural ruler:*

2. *A declaration that by virtue of paragraphs 1(A) to (C) supra, that the Applicant is still the Emir of Muri Jalingo Local Government Council, and is entitled to all rights and privileges pertaining thereto.* F

3. *A further declaration that the Applicant's detention from the 12th day of August, 1986 in a Government Lodge Yola, for 27 days by the Military Governor aforesaid, and subsequent banishment to Mubi, Gongola State for 187 days are without any justifiable cause whatsoever and constitutes a further violation of his fundamental rights as enshrined in Sections G 31(1) (a) and 32(1) of the said Constitution.*

4. *Another order quashing the Ex-Emir (Alhaji Umaru Abba Tukur Ex-Emir of Muri) Removal Order 1986 B.31, contained in GGS Legal Notice No. 58 of 1986 dated 30th October 1986, on the ground that the same is incompetent and unconstitutional, since it violates the right guaranteed to H the Applicant by Sections 31(1) (a) and 32 (1) of the Constitution aforesaid as well as Decree No. 2 of 1984 as amended.*

5. *Aggravated and Exemplary Damages against the Government for wrongfully infringing Applicant's Rights as aforesaid.*

And for such other order or orders as the Court may seem just."

The appellant filed an affidavit in support of his application while the respondents filed a counter-affidavit in opposition. Learned counsel on both sides addressed the court and in a reserved judgment, the learned trial Chief Judge held that prayers Nos. 1(a) to (c) and 2 are incompetent as they raised B not a fundamental right matter but a chieftaincy matter which ought to have been brought by a writ of summons and heard on the pleadings and not on affidavit evidence. He accordingly struck out the afore-mentioned prayers. As for reliefs or prayers 3,4 & 5, the learned Chief Judge said these are not chieftaincy matters but human rights matters which fall within his jurisdiction C to adjudicate upon. He held that prayers 3 & 4 were proved in toto by the appellant and they were granted. Exemplary damages of six million naira (6,000,000.00) were also awarded in favour of the appellant in respect of his prayer (5).

Dissatisfied with judgment of the High Court, the respondents appealed to the Court of Appeal, Jos Division. The Court of Appeal in the lead judgment delivered by Edozie, JCA., (which was concurred in by Oguntade and Orah JJ.C.A.) held:-

"It is crystal clear that the 1st respondent's (meaning appellant) principal claim, that is prayers 1 & 2 are inextricable (sic) bound up with E his subsidiary claims 3, 4 and & 5 and the learned Chief Judge having correctly found that he lacked jurisdiction to adjudicate on the principal claim because proceedings thereto were not initiated by writ of summons, he ought not to have embarked upon trying the subsidiary prayers 3, 4 & 5. He ought to have struck - out the subsidiary claims just as he did with respect to F the principal claim. The answer to the 1st issue for determination is in the negative. This conclusion is sufficient to dispose of this appeal but in case it is not sustained on a further appeal I will now consider the second issue for determination."

The second issue which relates to the quantum of damages awarded G to the appellant by the High Court was then considered. The award was then reduced from N6 million to just one (N1m) million naira only. The appeal was therefore allowed and the judgment of the trial High was accordingly set aside.

Aggrieved by the decision of the Court of Appeal, the appellant has H appealed to this Court.

The main issue before us is really whether the Court of Appeal was right when it held as it did, that the learned Chief Judge having rightly come to the conclusion that the appellant's principal prayers Nos. 1(a) - (c) & 2 having been found to be incompetent and struck out, ought to have struck out the

remaining subsidiary prayers Nos. 3, 4 & 5. The answer is readily available in the judgment of this Court between the same parties herein in TUKUR v. GOVERNMENT OF GONGOLA STATE (1989) 4 NWLR (part 117) 517 at 547 where it was held amongst others that:-

"In the instant appeal, all the breaches of the fundamental rights alleged flow from the deposition of the appellant from the office of Emir of Muri by the then Military Governor of the state. The office of the Emir of Muri is a chieftaincy office and the deposition of the Emir, a chieftaincy question which only a State High Court has jurisdiction to determine. The appellant in my opinion is directly complaining by his claim or reliefs claimed and affidavit evidence that his civil right as a chief has been breached and that in the process, his fundamental right of fair hearing, liberty and freedom of movement have also been breached. His claim for an order to quash the order of deposition and restoration to the office is a relief the Federal High court has no jurisdiction to entertain. It is only the High Court of Gongola State that has jurisdiction to grant the reliefs. Since the Federal High Court does not have jurisdiction to quash the order of deposition and order of restoration of the appellant to his office of Emir of Muri, the jurisdiction to enforce the fundamental rights of a fair hearing, liberty and movement of the appellant rests only in the High Court of Gongola State in the matter."

The Court on page 548 added thus:-

"The appellant is not without a forum to pursue his claims. He has only approached the wrong court - a court which has no jurisdiction to adjudicate on all the questions raised by the appellant."

The Court of Appeal relying on the above authority must therefore be right, I agree with its decision. Since proceedings in respect of the principal claims could only have been validly and properly initiated by writ of summons which was not, the subsidiary claims ought to have been struck out along with the principal claims, all being incompetent. Prayers 3, 4 & 5 are therefore hereby struck-out and this shall be the order of the High Court. Last time it was the wrong court, this time it is the wrong procedure!

This appeal must therefore fail. It is for the above reasons and others contained in the lead judgment of my learned brother, Ogundare, JSC, which I read before now and with which I agree, that I also dismiss the appeal with N1,000.00 costs in favour of the 1st respondent only.

ADIO JSC

I have had preview of the judgment just read by my learned brother, Ogundare, J.S.C., and I agree with him that this appeal fails and should be

dismissed. Accordingly, I too dismiss it and abide by the order for costs.

IGUHJSC

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 B reasoning and conclusions therein.

The claims before the trial court together with the relevant facts of the case have been adequately set out in the leading judgment and no useful purpose will be served by my recounting them all over again. It suffices to state that the principal question before this court is whether the Court of C Appeal was right when it held that the learned trial Chief Judge was in error to have proceeded to try the subsidiary claims under the Fundamental Rights Procedure after he had held that he lacked jurisdiction to try the main chief- taincy question before the court and in respect of which the suit was filed.

The court below after a thorough consideration of this question D observed as follows -

".....It is pertinent to reiterate that the 1st Respondent claimed 5 reliefs as set out in his application reproduced in the introductory part of this judgment. It has been noted that the learned Chief judge struck out the 1st and 2nd reliefs, that is reliefs 1(a) to (c) and 2 on the ground that they E are incompetent in that as the principal claim therein involves a chieftaincy matter; it ought to have been brought by way of a writ of summons and not by an application under the Fundamental Rights (Enforcement Procedure) Rules 1979. He however held that the remaining three reliefs involved fun- damental rights and that he had jurisdiction to adjudicate on them. The F gravamen of the Appellant's complaint is that all the reliefs claimed by the 1st Respondent are inextricably bound together and could not be tried sepa- rately and therefore if the lower court lacked jurisdiction to try any part of the claim, the same applies to the other claims."

It concluded thus -

G "It is crystal clear that the 1st respondent's principal claims, that is, prayers 1 and 2 are inextricably bound up with his subsidiary claims 3, 4 and 5 and the learned Chief Judge having correctly found that he lacked the jurisdiction to adjudicate on the principal claims because proceedings thereto were not initiated by writ of summons, he ought not to have em- H barked upon trying the subsidiary prayers, 3, 4 and 5. He ought to have struck out the subsidiary claims just as he did with respect to the principal claims."

It cannot be questioned that the right to be an Emir, a natural ruler or a chief is not an issue cognisable under the Fundamental Rights pursuant to

the provisions of Chapter 4 of the Constitution of the Federal Republic of Nigeria, 1979. It is also clear that the central complaint in respect of which the appellant's claims were filed revolved in his deposition as the Emir of Muri. The Learned trial Chief Judge appeared to have appreciated this point when he proceeded to classify the claims, found the main or principal claims before the court to be chieftaincy matter for which he rightly declined jurisdiction but proceeded to entertain and to uphold the Fundamental Right issues which were merely ancillary or incidental to the main chieftaincy issue before the court, namely, the appellant's deposition as the Emir of Muri. The learned trial Chief Judge rightly declined jurisdiction to entertain the main chieftaincy claims before the court. This was because the appellant wrongly commenced his action by an application on notice supported by affidavit after leave had been obtained pursuant to Order 2 Rule 1(1) and 2 of the Fundamental Rights Enforcement Procedure Rules, 1979 instead of by way of a writ of summons under which Chieftaincy claims are filed. He nonetheless proceeded to entertain the Fundamental Rights claims which were merely incidental to the main Chieftaincy question before the Court. I cannot see how the court below can be faulted by holding that having found that the principal claims before the court were Chieftaincy questions, the trial court ought to have struck out the subsidiary or incidental reliefs just as he did respect of the principal claims.

It cannot be over emphasised that where incidental or ancillary claims are so inextricably tied to or bound up with the main claims before the court in the same suit, a court of law cannot adjudicate over them where it has no jurisdiction to entertain the main claims if such incidental or ancillary claims cannot be determined without a determination at the same time of the main claims or where the determination of such incidental or ancillary claims must involve a consideration or determination of the main claims. See Alhaji Umaru Abba Tukur v. Government of Gongola State (1989) 4 N.W.L.R. (part 117) 517 at 548. In that case, the facts of which are *in pari materia* with the present case, this court, per Obaseki, J. S.C. Observed as follows -

"The submission of learned counsel for the respondent that claims or prayers 3, 4, 5 and 6 are so intimately bound up with chieftaincy question that they cannot be determined without a determination of the rights and obligations of a chief under the Chiefs (Appointed and Deposition) Law, is well founded. Before concluding this Judgment, I would observe that the learned Justices of the Court of Appeal gave very sound reasons for allowing the defendant's appeal to it in respect of claims or prayers 1 & 2. The same reasons were sufficient to have persuaded the court of Appeal to make the same pronouncement for prayers 3,4,5 and 6".

I entirely agree with the court below that the appellant's principal

claims, that is to say, claims 1 (a), (b), (c) and 2 are so inextricably bound up with his subsidiary or incidental claims 3, 4 and 5 that the learned trial Chief Judge, having correctly found that he lacked the jurisdiction to adjudicate on the principal claims because proceedings thereto were not initiated by a writ of summons, ought not to have embarked upon trying the said subsidiary prayers 3, 4 and 5. But he did. I entertain no doubt that the proceedings before him are a nullity. See Madukolu and others v. Nkemdilim (1962) All N.L.R. 581.

It is for the above and the more elaborate reasons contained in the leading judgment of my learned brother, Ogundare, J.S.C. that I, too, dismiss this appeal as lacking in substance. I abide by the order for costs therein made.

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