

SUPREME COURT OF NIGERIA
8TH JANUARY, 1998. SC. 211/1994
CORAM:- M. L. UWAIJS CJN, S. M. A. BELGORE, E. O.
OGWUEGBU, U. MOHAMMED, A. I. IGUH, JJSC

HIGH CHIEF ALBERT SANUMI & 4 OTHERS

(For and on behalf of the Eretolu Jegun
Ruling House Jegun Idepe Chieftaincy)

AND

6. CHIEF S. A. AKINTULEREWA

(For and on behalf of Ogunkalu Lugade, Ikugbamade and
Odunsomogbuwa Branches of Akinjokun ruling APPELLANTS
House of Jegun of Idepe Chieftaincy)

AND

1. THE MILITARY GOVERNOR OF ONDO STATE

2. THE ATTORNEY-GENERAL OF ONDO STATE

3. J. M. JEGEDE, CHAIRMAN, IKALE LOCAL .. RESPONDENTS
GOVERNMENT

4. R. A. ENIKUOMEHIN

***APPEALS** - Dismissal or striking out of appeal - Where either order can be justified on alternative grounds - Supreme Court will not interfere with the dismissal order made by the Court of Appeal.*

***APPEALS** - Issue - That was declared incompetent before the Court of Appeal - Where not appealed against before the Supreme Court - Appellant's complaint based on that issue cannot hold.*

***JUDICIAL PRECEDENTS** - Chieftaincy matters - Jurisdiction of high court to pronounce on Chieftaincy Edict - Supreme Court decision in Labiyi's case - Was followed by the Court of Appeal.*

FACTS

Vacancy arose in the chieftaincy stool of Jegun of Idepe, Ondo

State. A letter was written on behalf of the then Military Governor of Ondo State to the Chairman of the concerned Local Government directing him to set the necessary machinery in motion towards causing the vacancy to be filled. The plaintiffs/appellants filed an action against the defendants/respondents before the Ondo State High Court Okitipupa seeking various declarations and an injunction restraining the respondents from filling the vacant stool until certain issues have been determined. Vide a motion on notice moved by the appellants, an injunction was granted against the 3rd respondent restraining him from giving effect to the letter in question pending the determination of the suit.

Although the parties had filed their pleading, the 1st to 3rd respondents jointly filed a motion on notice challenging the jurisdiction of the Court to try the matter. The trial court ruled that it had no jurisdiction pursuant to the provisions of s. 1 (2) (b) (i) of (Supremacy of powers) Decree 13 of 1984. The action was struck out. Appellants' appeal to the Court of Appeal was dismissed after that court held that the sole issue raised before it was incompetent. The Court below also considered the appeal alternatively on the assumption that the issue was competent, before dismissing the appeal. Appellants have further appealed to the Supreme Court raising 2 issues.

ISSUES FOR DETERMINATION

"(a) Whether or not the Court of Appeal was bound to follow the Supreme Court's decision in LABIYI V ARANTIOLA reported in (1992) 8 N.W.L.R. (Part 258) 139 in the circumstances of this case.

(b) Whether or not the Court of Appeal was right in dismissing the appeal of the Appellants."

HELD (Unanimously dismissing the appeal per lead judgment of **UWAIS CJN**)

Issue - That was declared incompetent

1. It is significant that the Appellants have not appealed against the finding. The case of Labiya v Arantiola (supra) was cited in arguing the issue. It follows that the complaint by the Appellants that the Court of Appeal failed to follow the decision, which was binding on it, being a decision of

this Court, cannot in this circumstance hold. (p. 35 F)

Judicial precedents - Chieftaincy matters

2. The Court of Appeal after declaring that the issue was incompetent held as follows (per Ubaezonu, J.C.A.):-

"Assuming that the Appellants' issue was predicated on the grounds of appeal, it is my view that the High Court can pronounce on the validity of an Edict. If an Edict conflicts with a provision of a Decree or the unsuspended part of the 1979 Constitution, the High Court has the jurisdiction to pronounce invalid, null and void and of no effect, that part of the Edict which is in conflict with or repugnant to the Constitution." (Underlining mine).

In effect this finding accords with the decision of this Court in Labiya's case, (supra); the Appellants do not, therefore, have any reasonable ground to complain in their issue No. 1 in this Court against the alternative finding. Such complaint is non sequitur. It would have been different had it been they have appealed against the finding that the issue was incompetent. (p. 35 G)

Dismissal or striking out of appeal

3. Based on the first finding of the Court of Appeal that the issue formulated by the Appellants was incompetent, the consequential order to be made by the Court of Appeal was to strike out the appeal since there was no issue in support of it. However, going by the alternative finding of the Court of Appeal that the appeal against the decision of the High Court had failed in that the Appellants' claim on the Writ of summons challenged the issuance of the letter dated 16th November, 1990 by the Military Governor contrary to the provisions of Section 1 subsection (2) (b) (i) of Decree No. 13 of 1984, the consequential order to be made is that dismissing the appeal. Whether the appeal was struck out or dismissed, the consequences to the Appellants' case appears to me to be the same. If it is the former the decision of the High Court stands. On the other hand, if the latter still the decision of the High Court remains extant. I do not, therefore, see any point in interfering with the decision of the Court of

Appeal as it will be an exercise in futility. (p. 37 D)

REPRESENTATION

G. O. Kolawole for the Appellants

B 1st, 2nd and 3rd Respondents absent and unrepresented

Chief B. F. Adeyeye for the 4th Respondent

CASES REFERRED TO

C Idika v. Erisi (1988) 2 N.W.L.R. (Part 78) 563 at p. 578

Osakwe v. Governor of Imo State (1991) 5 N.W.L.R. (Part 191) 318

Labiyi v Arantiola (1992) 8 N.W.L.R. (Part 258) 139

STATUTES REFERRED TO

D Chiefs Edict 1984 ss. 26(1), 11(7)

Constitution of Nigeria 1979 s. 236

Decree No. 13 of 1984 (Supremacy of Power)

E **LEAD JUDGMENT BY UWAIS CJN**

This is an appeal from the decision of the Court of Appeal, Benin. The Appellants were the Plaintiffs in the High Court of Ondo State holden at Okitipupa, while the Respondents were the Defendants.

F The Plaintiffs' cause of action arose from a letter written on 16th November, 1990 on behalf of the then Military Governor of Ondo State (by a Director-General in his Office) to the Chairman of Ikale Local Government Caretaker Committee. The letter reads as follows:-

G *"Department of Local Government
and Chieftaincy Affairs,
Office of the Military Governor,
Akure.*

CD/C.6/9/Vol.III/809

16th November, 1990.

H *The Chairman,*

Ikale Local Government Caretaker Committee,

Okitipupa.

FILLING OF JEGUN OF IDEPE CHIEFTAINCY

I am directed to refer to the exchange of correspondence resting with your letter No. ILG.576/193 dated 1st November, 1990 concerning the above subject, and to now request you to set the necessary machinery in motion to fill the vacant stool of Jegun of Idepe, following strictly the prevailing customs and tradition applying to the chieftaincy, and in accordance with the provisions of Section 26 (i) of the Chiefs Edict, 1984. 2. This letter supersedes my earlier one Ref. No. CD/C.6/9/Vol. III/788 of 30th July, 1990.

(Sgd.) (S. O. Niyi)

for Director-General."

A copy of the letter was sent on the same day to High Chief L. O. Olagbegi, the Lisa and Regent of Idepe, at Idepe-Okitipupa requesting him to inform all persons connected with the chieftaincy to liaise with the Chairman of Ikale Local Government Caretaker Committee.

In their endorsement to the writ of summons and their Statement of Claim, the Plaintiffs' claim was stated to be for -

"1. A declaration that there is no existing Declaration for the Jegun of Idepe Okitipupa Chieftaincy and as such the vacant stool of Jegun Idepe Okitipupa cannot be filled by invoking the provisions of Section 26 (1) of the Chiefs Edict, 1984.

2. A DECLARATION that the determination of order of rotation among the three Ruling Houses and the composition of Kingmakers are conditions precedent to the filling of vacant stool for the Jegun of Idepe chieftaincy in the absence of any Chieftaincy Declaration for the Jegun of Idepe Chieftaincy.

3. A DECLARATION that the letter Ref. No. CD/C.6/9/Vol. III/ 809 of 16th November, 1990 constitutes an illegal act and as such null and void and of no effect when Section 26(1) is inapplicable to all the circumstances of filling the vacancy in Jegun of Idepe Chieftaincy.

4. AN ORDER of injunction restraining the Defendants, their agents, privies and servants from filling the vacant stool of Jegun of Idepe Chieftaincy until a Judicial Commission of Enquiry has determined the issues involved

5. A *DECLARATION* that in the absence of approved list of Kingmakers, the Kingmakers for Jegun of Idepe Chieftaincy are two from each of the three Ruling Houses plus the Lisa of Idepe as Chairman."

B Before the hearing of the suit commenced, the Plaintiffs brought a motion on notice in the High Court praying for an order of injunction restraining the Defendants from filling the vacant stool pending the determination of the case and restraining the 3rd Defendant from giving effect to the letter in question pending the determination of the suit. The motion was heard by Ajayi, J. and the interim injunction was granted on 3rd December, 1990 in accordance with the prayers.

Although all the parties filed their pleadings, the trial did not take place for the 1st, 2nd and 3rd Defendants jointly raised a preliminary objection by a motion on notice on the ground that the High Court had no jurisdiction to entertain the action. The preliminary objection was heard by Falokun, J. who ruled as follows:-

"In view of the facts and circumstances of this case and the above cited authorities I hold:

(i) That the letter Ref. CD/C.6/9 Vol. III/809 dated 6/11/90 was written pursuant to Section 26(i) of the Chiefs Edict, 1984.

(ii) That the provisions of the said Section 26(i) of the Chiefs Edict, 1984, is not inconsistent with any Decree or the unsuspended parts of the 1979 Constitution.

(iii) That as such the Court has no jurisdiction to entertain the action having regard to the provisions of Section 1 (2) (b) (i) of Decree 13 of 1984.

G The action i.e. Suit No. HOK/52/90 is accordingly struck out. All previous orders made by this Court in this Suit are hereby declared null and void."

Dissatisfied with the ruling the plaintiffs appealed to the Court of Appeal. Briefs of argument were filed thereat by all the parties. The Respondents raised objection as to the competence of the issue for determination formulated by the Appellants in their joint brief of argument. The Court of Appeal (Ogundere, Ubaezonu and Ige, JJ.C.A.) dismissed

the appeal firstly on the objection to the competence of the sole issue raised for determination by the Appellants and secondly, in the alternative, if the first reason could not hold, by upholding the decision of the learned trial judge that he had no jurisdiction.

On the first reason, Ubaezonu, J.C.A., who wrote the lead judgment with which the other Justices on the panel agreed, stated as follows:-

"But first, let me dispose of the objection of learned counsel for 1st - 3rd respondents and 4th respondent as to the competence of the appellants' issue. Both counsel for the respondents argue that the appellants' sole issue does not arise from the grounds of appeal. I have set out the appellants' grounds of appeal in this judgment. In the Ground 1 of the grounds of appeal the appellant complained that the learned trial judge failed to consider whether Decree 13 of 1984 conflicts with Section 236 of the 1979 Constitution; while in Ground 2 the complaint was that the trial judge failed to advert his mind to the fact that Item 34 in the Exclusive Legislative List (in the Schedule to the 1979 Constitution) under which Decree 13 of 1984 was made did not deal with a litigation between an individual and a State Government. In the issue formulated by the appellants they questioned whether a court can pronounce on the validity of an Edict. I agree with learned counsel for the respondents that the issue thus formulated does not arise from the grounds of appeal. The grounds of appeal did not question the competence of a court to pronounce on the validity of an Edict. The sole issue of the appellants is therefore incompetent - See Aja v. Okoro (supra); (1991) 7 NWLR (Part 203) 260; Oseni v Akinbinu, (supra); (1988) 2 N.W.L.R. (Part 78) 563 at p. 578; Osakwe v. Governor of Imo State, (1991) 5 N.W.L.R. (Part 191) 318 at p. 340.

Assuming that the appellant's issue was predicated on the grounds of appeal, it is my view that the High Court can pronounce on the validity of an Edict" (parenthesis mine).

On the second reason the learned Justice held:-

"Thus, the letter written at (sic on) the directive of the Military Governor was an act done pursuant to Section 26 (1) of Edict No. 11 of

1984 of Ondo State. This is conceded by the appellants - See the first arm of their claim. Being an act done pursuant to the Edict, "no civil action can lie or be instituted in any court" in respect of it. The learned trial judge of the High Court was therefore right in declining jurisdiction
B Section 26 (1) of the Edict under which the Military Governor acted is valid. The act of the Military Governor done under the Section of the Edict is valid."

The Appellants filed their brief of argument in which two issues have been formulated for our determination. The issues are -

C "(a) Whether or not the Court of Appeal was bound to follow the Supreme Court's decision in LABIYI V. ANDREN TIOLA reported in (1992) 8 N.W.L.R. (Part 258) 139 in the circumstances of this case.

D (b) Whether or not the Court of Appeal was right in dismissing the appeal of the Appellants."

The 1st, 2nd and 3rd Respondents who have not appeared nor are they represented by counsel, have not filed a brief of argument. However, the 4th Respondent has filed a brief adopting the issues raised by
E the Appellants.

Arguing the first issue Mr. Kolade, learned counsel for the Appellants, contends that the case of Labiya v Arantiola, (supra) was cited to the Court of Appeal to support the Appellants' submission that the High
F Court of Ondo State has unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right is in issue. He contended that since it is the claims before the High Court that determine the extent of the jurisdiction of the High Court, it is essential to determine and appreciate the nature of the Plaintiffs' claim. The claim, it
G is submitted, is not whether or not the Military Governor could, pursuant to Section 26 subsection (1) of the 1984 Edict, issue the letter dated 16th November, 1990, but that in the absence of an existing Declaration for the Jegun Idepe Okitipupa Chieftaincy, the Appellants claim the right to
H fill the vacancy for the chieftaincy. This, therefore, satisfied the existence of their right as claimed. Consequently their rights have not been limited or affected by the provisions of Section 26 (1) of the 1984 Edict and they remain justiciable notwithstanding the provisions of Decree No.

1 of 1984, as had been decided by this Court in Labiya's case (supra).

In his reply, Mr. Adeyeye, learned counsel for the 4th Respondent, canvassed that the issue as formulated by the Appellants does not arise because the facts of the present case differ from those of Labiya's case. Consequently the question of the application of the doctrine of stare decisis does not apply. He argued further that the decisions of the lower courts in the present case were not based on the provisions of Section 11 subsection (7) of the Chiefs Edict, 1984 of Ondo State which seeks to oust the jurisdiction of the Courts. Rather, the decisions were based on the Appellants' action in challenging the authority of the Military Governor to enact Section 26(1) of the 1984 Edict and act according to its provisions by issuing the letter in question.

Now, the sole issue formulated by the Plaintiffs for the determination of the Court of Appeal reads -

"Whether a Court, the High Court of Ondo State in particular can pronounce on the validity or otherwise of the provisions of an Edict, in this case - The Chiefs Edict, 1984 (No. 11 of 1984) of Ondo State - notwithstanding the provisions of the Constitution (Suspension and Modification) Decree No. 1 of 1984 and the Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 13 of 1984."

This issue was held incompetent by the Court of Appeal following the submissions by the Defendants that it did not conform with the grounds of appeal filed by the Plaintiffs.

It is significant that the Appellants have not appealed against the finding. The case of Labiya v Arantiola (supra) was cited in arguing the issue. It follows that the complaint by the Appellants that the Court of Appeal failed to follow the decision, which was binding on it, being a decision of this Court, cannot in this circumstance hold.

The Court of Appeal after declaring that the issue was incompetent held as follows (per Ubaezonu, J.C.A.):-

"Assuming that the Appellants' issue was predicated on the grounds of appeal, it is my view that the High Court can pronounce on the validity of an Edict. If an Edict conflicts with a provision of a

Decree or the unsuspended part of the 1979 Constitution, the High Court has the jurisdiction to pronounce invalid, null and void and of no effect, that part of the Edict which is in conflict with or repugnant to the Constitution. (Underlining mine).

B In effect this finding accords with the decision of this Court in Labiya's case, (supra); the Appellants do not, therefore, have any reasonable ground to complain in their issue No. 1 in this Court against the alternative finding. Such complaint is non sequitur. It would have been different had it been they have appealed against
C the finding that the issue was incompetent.

Issue No. 2 raises the question whether the Court of Appeal was right in dismissing the appeal before it. The Appellants argued that by following the decision of the High Court in its alternative finding, the
D Court of Appeal failed to understand that they (Appellants) still had a right in their claim for a declaration that there was no existing Declaration for the Chieftaincy of Jegun Idepe Okitipupa and as such the stool could not be filled by invoking the provisions of Section 26 (1) of the 1984 Edict.
E They cited the dictum of Nnaemeka-Agu J.S.C. in Labiya's case at p. 170H viz:-

*"For, nothing can be more in conflict with the judicial powers vested on the courts by Section 6(6) of the Constitution and the unlimited
F jurisdiction of the High Court of a State to hear and determine all issues relating to the civil rights and obligations of the plaintiff than to exclude the jurisdiction of Oyo State High Court from adjudicating on the chieftaincy question - clearly a civil right of the plaintiff."*

G It is, therefore, contended by learned counsel to the Appellants, that the Court of Appeal ought to have allowed their appeal and remitted the case to the High Court for their claim to be determined on the merit. We are then urged to do so.

H Learned counsel to the 4th Respondent argued that the reliefs sought by the Appellants in the High Court challenge the power of the Military Governor to act under Section 26(1) of the 1984 Edict. He submitted that there had been concurrent findings by the lower courts that the Appellants' claim constituted a challenge to the power of the Military

Governor pursuant to Section 26 (1) and by Section 1 (2) (b) (i) of the Federal Military Government (Supremacy of Powers) Decree No. 13 of 1984, which provides -

"1 (2) (b) With a View to assuring the effective maintenance of the territorial integrity of Nigeria and the peace, order and good government of the Federal Republic of Nigeria -

(i) no civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict and if any such proceedings are instituted before, on or after the commencement of this Decree the proceedings shall abate, be discharged and made void."

the courts are thereby deprived the jurisdiction to adjudicate on the Appellants' claim.

Based on the first finding of the Court of Appeal that the issue formulated by the Appellants was incompetent, the consequential order to be made by the Court of Appeal was to strike out the appeal since there was no issue in support of it. However, going by the alternative finding of the Court of Appeal that the appeal against the decision of the High Court had failed in that the Appellants' claim on the Writ of summons challenged the issuance of the letter dated 16th November, 1990 by the Military Governor contrary to the provisions of Section 1 subsection (2) (b) (i) of Decree No. 13 of 1984, the consequential order to be made is that dismissing the appeal.

Whether the appeal was struck out or dismissed, the consequences to the Appellants' case appears to me to be the same. If it is the former the decision of the High Court stands. On the other hand, if the latter still the decision of the High Court remains extant. I do not, therefore, see any point in interfering with the decision of the Court of Appeal as it will be an exercise in futility.

On the whole this appeal has failed. It is accordingly hereby dismissed with N10,000.00 costs to the 4th Respondent only.

BELGORE JSC

I agree that this appeal has no merit and I adopt as my own the reasons fully adumbrated in the judgment of the Chief Justice of Nigeria in also dismissing this appeal. I also award in favour of 4th Respondent N10,000.00 costs against the appellants.

OGWUEGBU JSC

I have had the privilege of a preview in draft of the judgment of my learned brother Uwais, C.J.N and I agree that the appeal must fail and it is hereby dismissed with N10,000.00 costs to the 4th respondent only.

MOHAMMED JSC

I have had the privilege of reading in draft the judgment of my learned brother, Uwais, C.J.N., and I agree with him that this appeal has no merit and ought to be dismissed. I have nothing more to add. The appeal is dismissed. I also award N10,000.00 costs to the 4th respondent only.

IGUH JSC

I have had the privilege of reading in advance the leading judgment just delivered by the Honourable the Chief Justice of Nigeria and I agree entirely that there is no merit in this appeal.

For the same reasons as are fully contained in the said leading judgment, I too, dismiss this appeal and abide by the order for costs therein made.

H