

SUPREME COURT OF NIGERIA
30TH JANUARY, 1998. SC. 182/1991
CORAM:- A. B. WALI, I. L. KUTIGI, U. MOHAMMED,
S. U. ONU, A. I. IGUH, JJSC.

CHIEF EUGINE C. OFFOR PLAINTIFF/RESPONDENT
(The Ajeh of Ekuowa)

AND

1. CHIEF S. C. OSAGIE 11]
(The Obi of Akumazi)] DEFENDANTS/APPELLANTS
2. JACOB OFFOR]
3. IKA LOCAL GOVERNMENT COUNCIL DEFENDANT/
RESPONDENT

CHIEFTAINCY MATTERS - Settlement of chieftaincy disputes - Though it can be vide a domestic forum - An aggrieved person should have free access to court.

CONSTITUTIONAL LAW - Chieftaincy matters - Chieftaincy law that seeks to circumscribe the provisions of the Constitution - Is void and of no effect

JURISDICTION - Chieftaincy matters - Powers of the high court - The Edict in issue derogates from the powers of the high court - To entertain Chieftaincy suits.

FACTS

Before the Agbor High Court the plaintiff/respondent filed an action against the defendants in respect of a chieftaincy dispute. The trial court ruled that it was premature for the plaintiff to have come to court without first seeking redress from the Prescribed Authority or the Executive Council, and struck out the matter for want of jurisdiction by virtue of s. 22 of Bendel State Chiefs Law No. 16 of 1979.

The plaintiff's appeal to the Court of Appeal was allowed and the

case was remitted to the high court for trial on merit by another judge. Being dissatisfied, the 1st and 2nd defendants have now appealed to the Supreme Court raising 2 issues.

ISSUES FOR DETERMINATION

"(1) Does the Traditional Rulers and Chiefs Edict No. 16 of 1979, Bendel State of Nigeria provide in its Section 22(2), (3) and (6) any condition precedent to the assumption of jurisdiction by the Courts over suits relating to Traditional Ruler and Chieftaincy title disputes, or in particular, the Eje of Ekuoma Chieftaincy dispute?

(2) Does Section 22(2), (3) and (6) of the Traditional Rulers and Chiefs Edict No. 16 of 1979, Bendel State of Nigeria derogate from the powers of the High Court to entertain suits in view of Section 6(6)(b) and Section 236(1) of the Constitution of the Federal Republic of Nigeria, 1979?"

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

Chieftaincy law that seeks to circumscribe constitutional provisions

1. *"In my view section 22(2), (3) and (6) of the Bendel State Chieftaincy Law 1979 cannot in any way seek to derogate or circumscribe the provisions of section 236(1) of the 1979 Constitution. Any attempt to so do would make it inconsistent with that Constitutional provision and therefore to that extent void. A decision that it delays the right of an aggrieved party to come to court, or that it is a condition precedent to the exercise of a right to file an action to be entertained by the High Court, seeks to circumscribe the powers of the High Court under section 236(1) of the Constitution and to that extent it is void and of no effect. It is entitled to the same fate as the provision of section 22(4) which respondent's counsel has conceded to be unconstitutional. The decision of the learned trial Judge that the action of the appellant is premature and striking same out is therefore wrong, and the appellant is entitled to succeed on this issue." I agree entirely with what is said above. (p. 223 D)*

Chieftaincy matters - Powers of the high court

2. Edict No. 16 of 1979 in section 22 sub-section 2, (3) and (6) prescribed no condition precedent to the exercise of jurisdiction by High Court. I am also not in doubt whatsoever that these sub-sections derogate from the powers of the High Court to entertain suits in view of sub-section 4 which stated that the decision of a Prescribed authority or the Executive Council "shall not be questioned in any court". (p. 224 F)

Settlement of chieftaincy disputes

3. While I do not quarrel with the existence of a domestic forum for settlement of chieftaincy disputes, an aggrieved person should be free to decide if and when he should go there and it should not be to his detriment if he is dissatisfied with such a decision and wants to go to court on the same dispute. The appeal therefore fails. (p. 224 G)

REPRESENTATION

Parties absent and not represented by counsel

CASES REFERRED TO

Bronik Motors Ltd. v. Wema Bank (1983) 6 SC. 152

Savannah Bank v. Pan Atlantic (1987) 1 NWLR (Pt. 49) 212

Ojokolobo v. Alamu (1987) NWLR (Pt. 61) 377

Western Steel workers Union v. Iron Steel workers (1987) 1 NWLR (Pt. 49) 284

Ojukwu v. Governor of Lagos State (1986) 3 NWLR (Pt. 26) 35

Egbe v. Onogun (1972) 1 NMLR 95

STATUTES & RULES REFERRED TO

Traditional Rulers and Chiefs Edict No. 16 of 1979 of Bendel State s. 22 (2) (3) (4) & (6)

Supreme Court Rules O.6 r. 8(6)

Constitution of Nigeria 1979 s. 236(1)

LEAD JUDGMENT BY KUTIGI JSC

This is an interlocutory appeal. It arose in the first instance from the ruling of Gbemudu, J. of the Agbor High Court, delivered on the 14th day of October, 1988, whereby he struck out the plaintiff's action for alleged want of jurisdiction on the ground that being a chieftaincy matter, it was premature for the plaintiff to have come to court without first seeking redress from the Prescribed authority or the Executive Council by virtue of the provisions of Bendel State Chiefs Law No. 16 of 1979.

Dissatisfied with the said ruling, the plaintiff appealed to the Court of Appeal, Benin City. The Court of Appeal in its judgment of 23rd March, 1990, allowed the appeal, set aside the ruling of the High Court and remitted the case back to the High Court for trial on its merits by another judge.

It is against the decision of the Court of Appeal that both the 1st and 2nd defendants have now jointly appealed to this Court. The 1st and 2nd defendants will from henceforth be referred to as the appellants.

At the hearing of the appeal all the parties were absent. None of them was also represented by counsel. The parties, however, filed and exchanged briefs of argument. The appeal was therefore taken as argued vide Order 6 Rules 8(6) Supreme Court Rules.

The appellants identified and formulated two issues for determination in their brief thus:-

"(1) Does the Traditional Rulers and Chiefs Edict No. 16 of 1979, Bendel State of Nigeria provide in its Section 22(2), (3) and (6) any condition precedent to the assumption of jurisdiction by the Courts over suits relating to Traditional Ruler and Chieftaincy title disputes, or in particular, the Eje of Ekuoma Chieftaincy dispute?"

(2) Does Section 22(2), (3) and (6) of the Traditional Rulers and Chiefs Edict No. 16 of 1979, Bendel State of Nigeria derogate from the powers of the High Court to entertain suits in view of Section 6(6)(b) and Section 236(1) of the Constitution of the Federal Republic of Nigeria, 1979?"

It is thus clear from the above two issues which will be considered together, that what we are actually being asked to do is to interpret

the provisions of section 22 sub-sections 2, 3 and 6 of the Traditional Rulers and Chiefs Edict No. 16 of 1979, Bendel State of Nigeria. The entire section 22 reads thus:-

"22. (1) *The conferment of Traditional chieftaincy title shall be in accordance with the Customary Law and shall be subject to the approval of the Prescribed authority or where the provisions of Section 23 have been applied, to the approval of the Executive Council.*

(2) *Where a Traditional Chieftaincy title is conferred on a person by those entitled by Customary Law so to do and in accordance with Customary Law, the Prescribed authority or the Executive Council as the case may be, may approve the appointment.*

(3) Where there is a dispute as to whether a Traditional Chieftaincy title has been conferred on a person in accordance with Customary Law or as to whether a Traditional Chieftaincy Title has been conferred on the right person, the Prescribed authority or the Executive Council as the case may be, may determine the dispute.

(4) The decision of the Prescribed Authority or the Executive council, as the case may be:-

(a) To approve or not to approve the conferment of a Traditional Chieftaincy Title on a person; or

(b) Determining a dispute in accordance with sub-section (3) of this section, shall not be questioned in any Court.

(5) The Prescribed authority shall not withhold approval of the conferment of a Traditional Chieftaincy Title on a person if such conferment is made in accordance with the Customary Law regulating the conferment of the Chieftaincy Title.

(6) The Executive Council may, on the application of an aggrieved party:-

(a) Review the decision of a Prescribed authority made under sub-section

(3) of this section and substitute its own decision therefore; or

(b) Approve the conferment of a Traditional Chieftaincy Title on a person if such approval was withheld by the Prescribed authority contrary to sub-section (5) of this section.

(7) Before exercising the power vested in it by sub-section (6) of this section, the Executive Council may cause such enquiries as appeal to it to be necessary or desirable to be held in accordance with Section 27 of this Edict."

B The thrust of argument of the appellants is that the above provisions of the law read together would appear to mean that the law intended to, and did create a domestic forum wherein Chieftaincy disputes between aggrieved parties could be settled. And that the dispute in this case being a chieftaincy dispute, it was premature for the plaintiff to come to court without first appealing to the Prescribed Authority or the Executive Council as provided for under the law. That it is only after the plaintiff has so complied with the condition precedent as laid down by the law above and thereafter feels dissatisfied with the decision of the Prescribed Authority or the Executive Council, that he can properly file an action in Court.

The plaintiff/respondent on the other hand contended that by virtue of the provisions of sections 6(6) and 236(1) of the 1979 Constitution, even if the action herein is a chieftaincy matter, the High Court has jurisdiction to entertain it without any precondition. That a resort to the Prescribed Authority or the Executive Council is an exercise in futility because under section 22(4) of the Edict above, the decision of the Prescribed Authority or the Executive Council is final. That there is no domestic forum or a condition precedent which must be exhausted by the plaintiff before going to Court in this case.

As stated earlier in this ruling, the learned trial judge relying on section 22 sub-sections 2, 3 and 6 above, decided that the action being a chieftaincy matter, the plaintiff as the aggrieved party ought to have had prior recourse to the Prescribed Authority or the Executive Council before coming to court as the last resort. Failure to take the prior step meant that the suit before him was premature. He then struck out the case with costs against the plaintiff.

On appeal to the Court of Appeal, the appeal was allowed. The ruling of the High Court was set aside and case remitted to the High Court for trial on merit by another judge. Delivering the lead judgment

which was concurred by the other Justice, Uche Omo, JCA., after making reference to sections 6 and 236 of the 1979 Constitution and to the cases of:

BROIK MOTORS LTD. v. WEMA BANK (1983) 6 SC. 152; SAVANNAH BANK v. PAN ATLANTIC (1987) 1 NWLR (Pt. 49) 212; OJOKOLOBO v. ALAMU (1987) NWLR (Pt. 61) 377; WESTERN STEEL WORKERS UNION v. IRON STEEL WORKERS (1987) 1 NWLR (Pt. 49) 284; and KANADA v. GOVERNOR OF KADUNA STATE (1986) 4 NWLR (Pt. 35) 361 observed as follows:-

"In the light of the Constitutional provision and the decisions of the Supreme Court thereon, what will be the justification for preventing an aggrieved citizen from recourse to the High Court or for the High Court to refuse to entertain any matter so brought before it?"

In my view section 22(2), (3) and (6) of the Bendel State Chieftaincy Law 1979 cannot in any way seek to derogate or circumscribe the provisions of section 236(1) of the 1979 Constitution. Any attempt to so do would make it inconsistent with that Constitutional provision and therefore to that extent void. A decision that it delays the right of an aggrieved party to come to court, or that it is a condition precedent to the exercise of a right to file an action to be entertained by the High Court, seeks to circumscribe the powers of the High Court under section 236(1) of the Constitution and to that extent it is void and of no effect. It is entitled to the same fate as the provision of section 22(4) which respondent's counsel has conceded to be unconstitutional. The decision of the learned trial Judge that the action of the appellant is premature and striking same out is therefore wrong, and the appellant is entitled to succeed on this issue."

I agree entirely with what is said above.

He continued thus:-

"Before I conclude I will comment briefly on the cases of Military Governor of Ondo State & Ors. v. Adewunmi (1985) 3 NWLR. (Pt. 13) and Edewor v. Uwegba 1987 1 NWLR. (Pt. 50) page 313 (315) which were relied on by the parties. Very briefly, Adewunmi's case, is

more apposite to a consideration of section 22(4) of the Bendel Chieftaincy Law 1979. A brazen attempt by the Governor of Ondo State to OUST the jurisdiction of the High Court of that State on Chieftaincy matters was declared invalid, unconstitutional and void. Although the decision in *Uwegba's* case did take note of the procedure set out by section 22 of the Bendel State Chieftaincy Law 1979 for "settling" dispute over traditional Chieftaincies, it did not anywhere decide that the steps set out thereunder are a condition precedent to a recourse to an action in the High Court by an aggrieved party. The real importance of that case is that it decided that before coming to a decision under section 22(6) (b) of the chieftaincy law, the Governor is obliged to set up an inquiry to examine the dispute and that his failure to do so was a gross irregularity which cannot be allowed to stand.

Accordingly this appeal will be and is hereby allowed."

Again I say I agree.

Being an interlocutory appeal, one must be brief and avoid making any observation in the judgment which might appear to prejudice the main issue yet to be tried (see for example *OJUKWU v. GOVERNOR OF LAGOS STATE* (1986) 3 NWLR (PT. 26) 35; *EGBE v. ONOGUN* (1972) 1 NWLR. 95). And having agreed with the views and conclusions of the Court of Appeal above, the issues herein for resolution must be decided against the appellants. **Edict No. 16 of 1979 in section 22 sub-section 2, (3) and (6) prescribed no condition precedent to the exercise of jurisdiction by High Court. I am also not in doubt whatsoever that these sub-sections derogate from the powers of the High Court to entertain suits in view of sub-section 4 which stated that the decision of a Prescribed authority or the Executive Council "shall not be questioned in any court". While I do not quarrel with the existence of a domestic forum for settlement of chieftaincy disputes, an aggrieved person should be free to decide if and when he should go there and it should not be to his detriment if he is dissatisfied with such a decision and wants to go to court on the same dispute.**

The appeal therefore fails. It is accordingly dismissed with costs of N10,000.00 (Ten Thousand Naira) to the plaintiff/respondent.

The judgment of the Court of Appeal is confirmed together with its order remitting the case to the High Court for trial before another judge.

WALI JSC

B

I have had a preview of the lead judgment of my learned brother Kutigi, JSC and I agree with his reasoning and conclusion for dismissing the appeal.

In so far as the provision of S. 22 (2) (3) and 6 of the Traditional Rulers and Chiefs Edict No. 16 of 1979 of defunct Bendel State puts a clog on the constitutional right of a litigant vide S. 236(1) of the 1979 constitution to resort to court, the section is unconstitutional as it derogate from the right conferred on the citizen by the said S. 236(1) supra. The respondents in this appeal are not bound to follow the provision of S. 22 of Edict No. 16 of 1979 (supra) before filing their action in the High Court.

For this and the detailed reasons in the lead judgment I also dismiss the appeal and affirm the decision of the Court of Appeal, Benin Division.

I abide by the consequential orders in the lead judgment, that of costs inclusive.

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MOHAMMED JSC

I will also affirm the judgment of the Court of Appeal and dismiss this appeal. I agree with my Lord, Kutigi JSC., in the judgment just read that this appeal has no merit at all. The trial High Court was wrong to strike out the action filed by the Plaintiff/Respondent for alleged want of jurisdiction. If the intention of Bendel State in enacting section 22 of Traditional Rulers and Chiefs Edict No. 16 is to oust the jurisdiction of the High Court it is void and unconstitutional.

Accordingly the appeal is dismissed. I abide by the order on costs made in the lead judgment.

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ONU JSC

I have had a preview of the judgment just delivered by my learned brother Kutigi, JSC and with it I am in entire agreement that the appeal lacks merit and ought therefore to fail.

B In my expatiation thereon I wish to add the following words of mine.

There is nowhere in the law applicable to the instant case, to wit: the Bendel (now Edo) State Traditional Rulers and Chief's Edict, 1979 (an existing law vide Section 274) of the 1979 Constitution that makes it C mandatory that unless in its Section 22(3) and (6) thereof, the jurisdiction of courts as enshrined in Sections 6(6) and 236 of the Constitution of the Federal Republic of Nigeria, 1979 (hereinafter referred to as the Constitution), is ousted.

D The relevant section (Section 22) of the Bendel (Edo) State Traditional Rulers and Chiefs Edict (supra) stipulates thus:-

"22 (1) The Executive Council may appoint in respect of the area (which expression shall in this Part and Part 4 be deemed to include E a reference to part of an area) of any local government council or group of councils, an authority (in this Part referred to as the prescribed authority) consisting of one person, or of more persons than one, who may be the chairman and other members of a committee established by section 5, to exercise the powers conferred by this section in respect of the F office of any minor chief whose chieftaincy title is associated with a native community in that area.

(2) Where a person is appointed, whether before or after the commencement of this Law, to fill a vacancy in the office of a minor G chief by those entitled by customary law, the prescribed authority may approve the appointment.

(3) Where there is a dispute whether a person has been appointed in accordance with customary law to a minor chieftaincy the prescribed H authority may determine the dispute.

(4) The decision of the prescribed authority -

(a) to approve or not to approve an appointment to a minor chieftaincy; or

(b) determining a dispute in accordance with sub-section (3) of this section, shall be final and shall not be questioned in any court.

(5) The Prescribed authority shall not withhold approval of the conferment of a Traditional chieftaincy Title on a person if such conferment is made in accordance with the Customary Law regulating the conferment of the Chieftaincy Title. B

(6) The Executive Council may, on the application of an aggrieved party:-

(a) Review the decision of a Prescribed Authority made under sub-section (3) of this section and substitute its own decision therefore or (b) Approve the conferment of a Traditional chieftaincy Title on a person if such approval was withheld by the Prescribed Authority contrary to sub-section (5) of this section. C D

(7) Before exercising the power vested in it by sub-section (6) of this section, the Executive Council may cause such enquiries as appear to it to be necessary or desirable to be held in accordance with Section 27 of this Edict." E

Section 6(6)(b) of the Constitution (ibid) provides:

"(6) The judicial powers vested in accordance with the foregoing provisions of this section -

(b) shall extend to all matters between persons, or between government or authority and any person in Nigeria, and so all actions and Proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person." F

By the above there is, in my view, no derogation from the provisions of Section 236 which states:- G

"236(1) Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect H

of an offence committed by any person.

(2) *The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of a State and those which are brought before the High Court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction."*

Thus, when the learned Justices of the Court of Appeal held that:-

"It is to be noted from the above, particularly the provisions of sub-section (3) thereof, that there is no mandatory provision that the prescribed authority and the Executive Council have exclusive jurisdiction of determining an appeal. The only such provision which the Respondent's Counsel concedes is unconstitutional is sub-section (4) which seeks to exclude the jurisdiction of the Courts by stating that the decision of these two bodies "shall not be questioned in any court." What is provided for by Section 22 is a procedure for settlement of a chieftaincy dispute. The question that arises therefore is whether this procedure prevents immediate recourse to the courts when a dispute arises. In other words, whether an aggrieved party must comply with the provisions of the relevant subsections before going to court as a last resort." (underlining is mine).

The negative answer rendered by the learned Justices to the situation postulated above constitutes rightly, in my view, the correct position of the law as opposed to the stance adopted by the learned trial Judge who wrongly, in my opinion, arrived at the conclusion and so struck out the action when he held that:

"In this case in hand the aggrieved party should apply to the Executive Council to review the decision of the prescribed authority before coming to the High Court."

Thus, in Eguamwense v. Amaghizemwen (1993) 9 NWLR (Part 315)1, this court reversing the Court of Appeal and allowing the appeal on the issue of whether the jurisdiction of the High Court was expressly taken away, I had occasion to state the position of the law at pages 42-43 paragraphs C - B of the Report inter alia as follows:-

"The traditional Rulers and chiefs Edict, 1979 No. 16 of Bendel (now Edo) State having by its sections 21 and 22 (ibid) expressly or by clear provisions excluded the jurisdiction of the courts in the form of declarations in respect of customary law relation to the selection of chiefs, such sub-legislative function must perforce be vested in the prescribed authority and not a function exercisable by the court. See Adigun v. Attorney-General of Oyo State (supra). It is in this wise that I hold that the High Court's jurisdiction in respect of such declaratory reliefs as sought by the respondent in the instant case was wrongly invoked"

As in the instant case the jurisdiction of the High Court was neither ousted nor contemplated, the case of Amaghizemwen (supra) is clearly distinguishable.

There being no merit in this appeal and for the more detailed reasons given by my learned brother Kutigi, JSC with which I am in entire agreement, I too, dismiss this appeal and make similar consequential orders inclusive of those as to costs.

IGUHJSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Kutigi, J.S.C. and I agree that there is no merit in this appeal.

It cannot be over-emphasized that whatever a state Edict or Law provides, they cannot override the provisions of the Constitution of Nigeria, 1979. In my view, an aggrieved party may at any stage in the selection process of a candidate in a chieftaincy matter properly challenge the same in a court of law. I can find no reason to fault the judgment of the court below in this appeal.

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

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