

SUPREME COURT OF NIGERIA
18TH DECEMBER, 1998. SC158/1995
CORAM:- M. L. UWAIIS CJN, A. B. WALL, I. L. KUTIGI,
S. U. ONU, A. I. IGUH, JJSC.

H. H. OBA L. B. OMOBORINOLA II PLAINTIFF/APPELLANT
AND
THE MILITARY GOVERNOR OF DEFENDANTS/RESPONDENTS
ONDO STATE & ORS.

***ADMINISTRATIVE LAW** - Commission of Inquiry - Complaint that the findings and recommendations of the commission are contradictory - Is unfounded - And nothing stops the State Government from acting on its white paper.*

***APPEALS** - Judgments - Comments by the Court of Appeal - Which in no way affected what the learned trial judge had done - Is not a confirmation of the judgment on grounds other than those relied upon by the trial court.*

***EVIDENCE** - Proof - Where the plaintiff raised an issue but led no evidence in proof thereof - The issue is deemed to have been abandoned - And whatever the Court of Appeal said thereon went to no issue.*

***JUDGMENTS** - Findings - Of the trial High Court - Which were all unfavourable to the plaintiff - And knocked the bottom out of his case - The case should have been dismissed outright.*

***JUDGMENTS** - Evidence - The Rule in KOJO II v. BONSIE - Where the plaintiff failed to prove his case - The learned trial judge had no alternative but to have dismissed the claims - Without recourse to the rule.*

FACTS

The plaintiff/appellant sued the defendants/respondents in the High Court of Ondo State holden at Akure. He claimed inter alia, against the defendants for a declaration that he is the paramount Ruler of Oka in the Akoko South Local Government Area and an order of injunction. The plaintiff is the Asin of Oka. Asin is the traditional name for Oba of Oka from time immemorial. The first Asin who came from Ile-Ife founded and settled in the area and in fact settled at Oka Odo on arrival. It was very late afterwards that Oke-Oka people came and settled at Ibaka Quarters. Their leader known as Olu-Ibaka was made an emissary between the Asin and the Colonial District Officer then stationed at Kabba. Sometime in 1918 or 1919, the then Asin was misled by the then Olubaka into believing that the District Officer would be coming to Oka to punish the Asin for an undisclosed offence. When the Asin did not come out to receive the District Officer the latter gave the staff of Office meant for the Asin to the Olubaka who then became the Oba and paramount ruler of Oka. The plaintiff claimed that his predecessors-in-title and his people protested to the District Officer but to no avail. When Oka was transferred to Owo in the then Western Region of Nigeria, the protest continued which resulted in setting up two Administrative Commissions of Inquiry whose findings were inconclusive. Finally, the Ondo State Government set up the Ogunteye Commission of Inquiry into the matter whose report and recommendation were not acceptable to the plaintiff because the overlordship of Olubaka over the Asin was further endorsed. Consequently, this action was instituted.

On the other hand, the 4th defendant who is the present Olubaka of Oka contended that Oka was founded by Okikan the first Olubaka who came from Ile-Ife with a crown. That Asin's quarter in Oke-Ode is just one of fifteen quarters or settlements forming the Oka of today. He said the Olubaka as of right received the staff of Office from the Colonial District Officer from Kaaba in 1904 or 1905 and thus became the paramount ruler. He said the protests of the Asins and their people were lacking in merit hence they were always dismissed by all the authorities before whom the issue had been placed.. At the conclusion of hearing,

the learned trial judge carefully considered the evidence before him and dismissed the plaintiff's claims in their entirety. Dissatisfied, the plaintiff appealed to the Court of Appeal holden at Benin City. The 4th defendant also cross-appealed. The Court of Appeal unanimously dismissed both the plaintiff's appeal and 4th Defendant's cross-appeal. Aggrieved, the plaintiff has further appealed to the Supreme Court raising six issues but the court narrowed down the issues to three.

ISSUES FOR DETERMINATION

1. *Whether or not the plaintiff's case was properly or rightly dismissed, having regard to the evidence and the applicable law,*

2. *Whether or not the lower court was right in construing the appellant's case as that of a stolen paramourcy, necessitating it, like all criminal cases, to be proved or established beyond reasonable doubt. - Ground 2.*

3. *Were the findings of the Ogunleye commission of Enquiry and the recommendations thereof contradictory and even if they were not could the report be legally acted upon? - Grounds 7 & 8*

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

Judgments - Findings

1. It should have been clear to the learned trial judge by now that after the above findings which were all unfavourable to the plaintiff, that the bottom had been knocked out of the plaintiff's case. In other words the edifice on which every other thing was placed had collapsed. The Court of Appeal was therefore absolutely right in my view when it said in its judgment that-

"Plaintiff's case therefore should have been dismissed out right without invoking the principle in KOJO 11 VS. BONSIE (supra)." (p. 2726 B)

Judgments - Evidence

2. The learned trial judge had probably forgotten that he had before now made findings which clearly made the story told by the 4th Defendant

and his witnesses more probable than that narrated by the plaintiff and his witnesses. So that the plaintiff having failed to prove his case, the learned trial judge had no alternative but to have dismissed the claims in their entirety. Again the Court of Appeal was right when it said:-

B *"In other words, that there was sufficient evidence (or lack of evidence) to have enabled the learned trial judge decide the case one way or the other without recourse to the rule in KOJO II VS. BONSIE (supra)." (p. 2726 F)*

C ***Appeals - Judgments***

3. There is nothing on record to show that the Court of Appeal confirmed the judgment of the High Court on grounds other than those relied upon by the trial court. Admittedly, the Court of Appeal made comments
D or expressed views on one thing or another which the plaintiff needed to have done in the case but which he did not do. But they were merely comments or views which in no way affected what the learned trial judge had done, which was dismissing plaintiff's claims based on the
E evidence before him. I think the Court of Appeal was right. (p. 2727 A)

Evidence - Proof

4. There is no doubt that the gist of the plaintiff's case against the fourth
F (4th) Defendant, was that between 1918 and 1919 the Olubaka the ancestor of the fourth (4th) Defendant, unlawfully obtained a staff of office meant for the plaintiff's ancestor (Asin) by lying against the Asin before the colonial Administrative Officer from Kabba. In my view even
G though the staff of office might not literally have been stolen, it would appear to have been obtained wrongfully or unlawfully. The plaintiff who raised the issue, however, led no evidence whatsoever in proof thereof. That issue must therefore be deemed to have been abandoned. So that since the plaintiff led no evidence on that aspect of his case,
H whatever the Court of Appeal said thereon went to no issue. The Court of Appeal merely made comments and did not base its decision on those comments. (p. 2729 A)

Administrative Law - Commission of Inquiry.

5. On the Ogunleye Commission of Inquiry the learned trial judge said in his judgment thus-

"The fifth point is that Learned Counsel for the plaintiff had complained that the findings and recommendations of Ogunleye Commission of Inquiry are contradictory. Judging from the last paragraph of the terms of reference quoted above it does not appear to me that his finding and recommendations are in conflict bearing in mind that the terms of reference is not on who first came to Oka and the Commission was empowered to make recommendations for ensuring peace and order in the affected Community."

The Court of Appeal for its part had this to say -

"In view of the foregoing exclamation and the fuller text of the white Paper already reproduced in this judgment, it becomes very clear that there was no contradiction whatsoever either between the Findings and Recommendations of the Ogunleye Judicial Commission of Inquiry inter se or between them and the Oka Native Law & Customs as already expounded in the body of this Judgment."

I agree completely. I need hardly say that nothing stops Uyo/ Ondo State Government from acting on its white Paper Exhibit B-B1, based on the Ogunleye Judicial Commission of Inquiry which it had accepted. (p. 2729 E)

NOTABLE POINT OF INTEREST

ONUJSC

1. Equating chieftaincy case to that of a criminal case

On findings on the stolen chieftaincy or paramountcy, it ought to be pointed out firstly that a chieftaincy being no object capable of being stolen the use of the word "stolen" is inept and should accordingly be struck down. What in essence the appellant is complaining about is that the 4th respondent was once one of his subjects and a domestic servant who overreached or betrayed him by alleging before the District Officer of Kabba Province that appellant committed a crime and so was ill-qualified from going to collect his staff and that 4th respondent in the long run

collected same and kept it for himself. All these allegations and many more propped up by the appellant fizzled away when the trial court found same to be a lie and the court below upheld same, as hereinbefore enumerated. What the court below did at a point in its judgment as can be
 B seen, was to have veered off its proper track by equating a simple chieftaincy case to that of a criminal case needing proof beyond reasonable doubt. All told, however, there was no miscarriage of justice on the final
 C conclusion arrived at by the court. Indeed, the case fell for decision on seniority between the appellant and the 4th respondent simpliciter and the two courts unequivocally found for the 4th respondent on the balance of probabilities as hereinbefore considered by me. If we discountenance the terminology imputing crime used by the court below, there was enough evidence to sustain and uphold the decisions of the two courts below.
 D (p. 2736 F)

REPRESENTATION

Chief Wole Olanipekun, SAN with B. Ola Olanipekun, Segun Ogoto and
 E Femi Balogun for plaintiff/appellant.
 Oluwarotimi O. Akeredolu, SAN (Attorney-General & Commissioner for Justice, Ondo State) with A. Adebayo (DDPP Ondo State) for 1st, 2nd & 3rd Defendants/Respondents.
 F Chief C. O. Ihensekhien, SAN with Chief E. L. Akpofure, SAN M. O. Ighodalo, A. A. Izinyon, N. I. R. Ihensekhien, G. O. K. Fbuwe, Gbenga J. Ajisafe for the 4th Defendant/Respondent.

CASES REFERRED TO

G Olubode v. Salami (1985)2 NWLR (pt.7) 292
 Sanusi v. Modu (1994)5 NWLR (Pt.347) 732
 Union Beverages Ltd v. Pepsi Cola Int. Ltd. (1994)3 NWLR (Pt.330)1
 Bello v. Alao (1989) 3 NWLR (Pt.108) 188
 H Ikabala v. Ojosipe (1988) 4 NWLR (Pt.86) 119
 Udo v Ukupa (1981) 5 NWLR (pt.191) 465
 Atolagbe v Shorun (1985) 1 NWLR (pt.2) 360
 Eguamwense v. Amaghizemwen (1993) 9 NWLR (PT.315)1

Kodilinye v. Odu (1935) 2 WACA 336

Eholor v. Osayade (1992) 6 NWLR (pt.248) 524.

STATUTES REFERRED TO

Court of Appeal Act, 1976 section 16 Evidence Act, sections 135, 136 B and 137.

LEAD JUDGMENT BY KUTIGI JSC

The plaintiff sued the Defendants in the High Court of Justice of Ondo State holden at Akure. His claims against the Defendants are contained in paragraph 60 of his Amended Statement of claim as follows:- C

"1. Declaration that the Asin is the traditional Oba, head Chief and paramount Ruler of Oka in the Akoko South Local Government Area." D

2. Declaration that the findings and Recommendations of the Ogunleye Judicial Commission of Inquiry into the headship tussle between the Olubaka and the Asin of Oka are contradictory, against Oka native law, customs and traditional and are therefore against the Rules of Natural Justice, illegal null and void." E

3. Declaration that the Ondo State Government white paper based on it is therefore illegal, null and void."

4. An injunction restraining the defendants, their Servants and or agents from acting on the Report, findings, recommendations and White Paper of any chieftaincy declaration based thereon in appointing and installing a new Olubaka of Oka." F

After the filing and exchange of pleadings the case proceeded for trial. The plaintiff gave evidence and called two other witnesses while five witnesses including the 4th Defendant personally, testified for the Defendants. A number of documentary exhibits were also tendered in evidence from both sides. G

At the conclusion of evidence counsel on both sides addressed the court. In a reserved judgment the learned trial judge carefully considered the evidence before him and dismissed the plaintiffs claims in their entirety. Said he - H

"The judgment of this court therefore, is that all the legs of claim in the amended writ of summons and amended statement of Claim having failed, the whole claim fails and it is hereby dismissed."

B Not satisfied with the judgment of the High Court the plaintiff appealed to the Court of Appeal holden at Benin City. The 4th Defendant also cross-appealed. The Court of Appeal in a unanimous judgment delivered on the 23rd June 1995 dismissed both the plaintiff's appeal and the 4th Defendants cross-appeal.

C Aggrieved by the decision of the Court of Appeal the plaintiff has further appealed to this court. Parties filed and exchanged briefs of argument in accordance with the Rules of court. These were adopted at the hearing during which time additional oral submissions were made by counsel.

D In the plaintiff's brief six issues were formulated for determination as follows:-

"1. Whether or not the lower court was right in dismissing the appellant's appeal and affirming the judgment of the trial High Court, E having rightly held that the trial High Court was wrong to have invoked the rule in KOJO VS. BONISIE . Grounds 1.

ii. Considering the fact that the trial High Court never held that the appellant did not prove his case or that the evidence adduced by him F was weak, whether the lower court was right in holding that appellant's case ought to have been dismissed outrightly for his inability to prove same. - Grounds 3 & 4

iii. Whether or not the lower court was right in construing the appellant's case as that of a stolen paramouncy, necessitating it, like all G criminal cases, to be proved or established beyond reasonable doubt. - Ground 2.

iv. Having regard to the state of evidence on record, was the lower court right in holding that appellant did not provide independent H witness or witnesses to the fact that the 4th defendant deceived the European District Officer by collecting the Staff of Office meant for him (appellant)? - Grounds 5 & 6.

v. Were the findings of the Ogunleye commission of Enquiry and

the recommendations thereof contradictory and even if they were not could the report be legally acted upon? - Grounds 7 & 8

vi. Considering the totality of the evidence adduced by the plaintiff, inclusive of Exhibit N, whether or not the plaintiff was not entitled to judgment.

It may be noted that in the Court of Appeal the plaintiff formulated seven issues for determination which are not entirely dissimilar to the issues above. The Court of Appeal rightly in my view reduced them to three thus -

"(1) Whether it was possible for the learned trial Judge to have resolved the question of usurpation of paramountcy, without recourse to the rule in KOJO II VS. BONSI (1957) 1 WLR 1223 at 1226.

(2) If the answer to issue (1) above is in the affirmative, whether the final verdict would have been in favour of the plaintiff.

(3) Whether, from the pleadings and evidence adduced, the learned trial Judge was right in holding that both the Report of the Ogunleye Commission of Enquiry and the White Paper on it were valid."

I have carefully analysed the issues formulated by the plaintiff above, and find that issues (i), (ii) & (vi) all complain about whether or not the plaintiff's case was properly or rightly dismissed, having regard to the evidence and the applicable law, issues (iii) & (iv) relate to the usurpation of paramountcy, while issue (v) is about the findings and recommendations of Ogunleye Commission of Enquiry. I will therefore consider the issues in the manner outlined above.

Before delving into the issues, it will be proper to summarise very briefly the facts of the case. The plaintiff is the ASIN of Oka. Asin is the traditional name for Oba of Oka from time immemorial. The first Asin who came from Ile-Ife founded and settled in the area traditionally associated with and named Oka today. He in fact settled at Oka Odo on arrival. It was very late afterwards that Oke-Oka people came and settled at Ibaka Quarters. Their leader known as Olu-Ibaka was made an emissary between the ASIN and the Colonial District Officer, then stationed at Kabba, because Oka then formed part of Kabba province. That sometime in 1918 or 1919, the then Asin was misled by the then Olubaka into

believing that the District Officer would be coming to Oka to punish the Asin for an undisclosed offence. When the Asin did not come out to receive the District Officer the latter gave the Staff of Office meant for the Asin to the Olubaka who then became the Oba and paramount ruler of Oka. The Plaintiff claimed that his predecessors-in-title and his people protested to the District Officer but to no avail. When Oka was transferred to Owo in the then Western Region of Nigeria, the protest continued which resulted in setting up two Administrative Commissions of Inquiry whose findings were inconclusive. Finally, the Ondo State Government set up the Ogunleye Commission of Inquiry into the matter whose report and recommendation were also not acceptable to the plaintiff because the over-lordship of Olubaka over the Asin was further endorsed. Consequently, this action was instituted.

On the other hand, the 4th Defendant who is the present Olubaka of Oka contended that Oka was founded by Okikan the first Olubaka who came from Ile-Ife with a Crown. That Asin's quarter in Oke-Ode is just one of the fifteen (15) quarters or settlements forming the Oka of today. He said the Olubaka as of right received the Staff of Office from the colonial District Officer from Kabba in 1904 or 1905 and thus became the paramount ruler. In an unbroken chain succession the Olubakas have reigned as paramount rulers in Oka over thirty five minor Chiefs were the ancestors of the plaintiff have ranked third (3), after the Olusin of Owalusin who is second (2nd) in command to the Olubaka. He said the protests of the Asins and their people were lacking in merit hence they were always dismissed by all the authorities before whom the issue had been placed. Enough of the facts and back to the issues.

Issues (i), (ii) & (vi)

As indicated above these issues will be treated together. The following submission were made on behalf of the plaintiff:

1. That the Court of Appeal having agreed that it was inappropriate for the learned judge to have invoked the Rule in KOJO VS. BONISIE in resolving the contradictory traditional evidence in the case, it should have allowed the appeal and thereafter make appropriate consequential order, and not to have restored to exploring other grounds not relied upon by

the parties to affirm the judgment.

2. That the Court of Appeal not being a Court of first instance was wrong to have observed that the plaintiff did not prove his case or that the evidence adduced by him was weak, when he failed to call any witness about the alleged wrong doing when the staff of Office was given to the Olubaka by the Colonial District Officer; or that, there was no evidence showing that people in Oka paid taxes to the Asin either as a final authority or for transmission to Colonial District Officer, or that, there was no evidence that the Asin had any direct dealing with the District Officer before the handing over of the staff of office to the Olubaka.
3. That proper consideration was not given to Exhibit "N" as well as Exhibit "C-C1" which would have titled the scale in favour of the plaintiff.

Many authorities were cited including among others the following-

OLUBODE VS. SALAMI (1985)2 NWLR (pt.7) 292

SANUSI VS. MODU (1994)5 NWLR (Pt.347) 732

UNION BEVERAGES LTD VS. PEPSI COLA INT. LTD. (1994)3 NWLR (Pt.330)1

BELLO VS. ALAO (1989) 3 NWLR (Pt.108)188

IKABALA VS. OJOSIPE (1988) 4 NWLR (Pt.86) 119

UDO VS UKUPA (1981) 5 NWLR (pt.191) 465

ATOLAGBE VS SHORUN (1985) 1 NWLR (pt.2) 360

The 1st, 2nd & 3rd Defendants who filed a joint brief or argument responded thus -

(a) The decision of the Court of Appeal properly understood was that, it was unnecessary for the High Court to have restored to the Rule in KOJO VS. BONISIE, there being no evidence on the part of the plaintiff to sustain any of the reliefs claimed by him. In other words there was no evidence on record which if believed would have titled the scale in favour of the plaintiff. That while it may be unnecessary for the High Court to have resorted to the Rule in KOJO VS. BONISIE , it was not out of place for that court to have made reference to events since 1905 event of the handing over of the staff of office to the Olubaka to the

present day which show his superiority over the Asin/plaintiff.

(b) The Court of Appeal did not dismiss plaintiff's case on grounds other than those found by the trial High Court. It only expressed its views as to the type of evidence needed by the plaintiff to have succeeded but which were lacking.

(c) On the totality of evidence, documentary and other-wise, adduced by the plaintiff in the High Court, he did not make out any case against the Defendants.

The authorities cited include -
IMONIKHE VS. ATTORNEY-GENERAL OF BENDEL STATE
 (1992)6 NWLR (pt.248) 396.

EGUAMWESE VS. AMAGHIZEMWEN (1993) 9 NWLR (PT.315)1

KODILINYE VS. ODU (1935)2 WACA 336
EHOLOR VS. OSAYANDE (1992) 6 NWLR (pt.248) 524.

On behalf of the 4th Defendant, it was submitted that the Court of Appeal was right when it said that the High Court should have dismissed the case of the plaintiff outright on the basis that the plaintiff who asserted did not prove, and that there was no need for it to have restored to the rule in KOJO VS. BONISIE. It was also submitted that the Court of Appeal did not confirm the decision of the High Court on grounds other than those relied upon and decided by the High Court which properly evaluated the evidence led before it including Exhibits C-C1 and 'N' amongst others. It was stressed that the plaintiff failed woefully because he led no evidence on the alleged usurpation of paramountcy by the Olubaka in or about 1905.

As I said already the question to be answered here is whether or not the plaintiff's case was properly dismissed having regard to the evidence and the law. I have carefully considered all the arguments of the plaintiff. There is no considered all the arguments of the plaintiff. There is no doubt that as a plaintiff he had the onerous duty of establishing his claim before the court, while the Defendants in the absence of a counter-claim, had no duty to answer more than what was pleaded (see KODILINYE VS. ODU (supra). EHOLOR VS. OSAYANDE (supra). It

is clear from the pleadings of the parties that all that the plaintiff is claiming is a declaration that as between the ASIN of OKA (plaintiff) and the Olubaka of OKA (4th Defendant), the Asin is the superior or paramount ruler. This should be so because the plaintiff's ancestor, the Asin was the first to arrive and settle in Oka. In contrast the ancestors of the 4th Defendant the 1st Olubaka arrived much later and he became a "place domestic" to the Asin. As a palace domestic the Asin used to send him on errands between the Asin and the colonial District Office in Kabba. Sometimes between 1918 and 1919 the Olubaka or palace domestic twisted the message sent to the Asin by the District Officer and collected the staff of office meant for the Asin from the District Officer thereby becoming a superior or paramount ruler over and above the Asin. B C

The record shows that the learned trial judge in his judgment on pages 203-204 made the following findings when he said:- D

"Having dealt with these legal issues, I will now go to the facts of the case. I have painstakingly read the Statement of Claim and Defence and the evidence adduced in support.

1. I find as a fact that both the plaintiff and the 4th Defendant came from Ile-Ife. E

2. I also find as a fact that they came at different times;

3. I find as fact that they settled in different parts of the hilly areas called Oka; F

4. I also find as a fact that the whole of the area was under the administration of Kabba province.

5. I find as a fact that both the Asin and Olubaka came from Ife with their Crowns;

6. I find as a fact that when Asin came he settled at a place called Odo-Iju now Odo-Oka, but I do not accept the story that Olubaka was a place domestic to the Asin just as I do not believe that Olubaka was the one who gave land to Asin; G

7. I find as a fact that Olubaka came with his people and settled at Oke-Oka. H

8. As I said somewhere in this judgment the evidence of D.W.3 is not at variance with paragraph 8 of the statement of Defence.

9. *I have considered Exhibit A-A3 which according to the plaintiff was obtained from the Archives at Ibadan Firstly, it was not signed by the maker secondly it was not dated In view of the above I am unable to place any reliance on the exhibit."*

B There was no appeal against any of the above findings of the trial High Court. **It should have been clear to the learned trial judge by now that after the above findings which were all unfavourable to the plaintiff, that the bottom had been knocked out of the plaintiff's case. In other words the edifice on which every other thing was placed had collapsed The Court of Appeal was therefore absolutely right in my view when it said in its judgment that-**

"Plaintiff's case therefore should have been dismissed out right without invoking the principle in KOJO II VS. BONSIE (supra)."

D It is pertinent to observe too that it was after making the findings set out above that the learned trial judge proceeded on page 204 of the judgment to state thus-

"All I am saying is that the evidence of both the plaintiff and E the 4th Defendant and their witnesses about the traditional history of Oka is so contradictory to each other that on no rational basis can the evidence be resolved one way or the other I have no alternative than to invoke the KOJO VS. BONSIE principle in F finding out which of the two conflicting traditional facts in recent years as established by evidence."

The learned trial judge had probably forgotten that he had before now made findings which clearly made the story told by the 4th Defendant and his witnesses more probable than that narrated G by the plaintiff and his witnesses. So that the plaintiff having failed to prove his case, the learned trial judge had no alternative but to have dismissed the claims in their entirety. Again the Court of Appeal was right when it said:-

H *"In other words, that there was sufficient evidence (or lack of evidence) to have enabled the learned trial judge decide the case one way or the other without recourse to the rule in KOJO II VS. BONSIE (supra)."*

There is nothing on record to show that the Court of Appeal confirmed the judgment of the High Court on grounds other than those relied upon by the trial court. Admittedly, the Court of Appeal made comments or expressed views on one thing or another which the plaintiff needed to have done in the case but which he did not do. But they were merely comments or views which in no way affected what the learned trial judge had done, which was dismissing plaintiff's claims based on the evidence before him. I think the Court of Appeal was right.

These findings were clearly justified when it is observed that the learned trial judge later in the argument accepted what he referred to as recent happenings:

"(1) The evidence of the defendant that Olubaka was the president of the Native Court.

(ii) That Olubaka is the prescribed authority for the whole of Oka land.

(iii) That Olubaka represents Oka in the former Council of Chiefs in the Old Western Region and now represents Oka in the Council of Obas in Ondo State.

(iv) That Olubaka is listed No.1 out of the Eleven Obas in Akoko South Local Government while the plaintiff Asin is not listed as one of the Obas - Exhibit 'J'

(v) That the plaintiff Asin is a Kingmaker to the Olubaka Chieftaincy Exhibit 'K' ."

The answer to issues (i), (ii) & (vi) combined is therefore clear and unambiguous. It is that the plaintiff's case was properly dismissed by both the trial High Court and the Court of Appeal having regard to the evidence and the applicable law. Having arrived at this conclusion I wonder whether there is any further necessity of treating the remaining issues (iii), (iv) & (v) which to me are components of this conclusion. Nevertheless I intend to deal with them albeit briefly.

Issues (ii) & (iv)

As stated above, these are about the "usurpation of paramountcy" by the Olubaka. The Court of Appeal called it "stolen paramountcy."

Now, paragraphs 24-35 of the plaintiff's Amended Statement of claim read as follows:-

"24 The Asin became very Old and in most cases he used to send the Olubaka various places to deliver messages for him.

B *25. Oka was then administered with the Northern Region of Nigeria from Kabba where the District Officer resided and had his office.*

26. On one occasion the District Officer sent the Olubaka to the Asin saying that he should meet him at Oke, Oka.

C *27. In actual fact, the District Officer wished to present to the Asin the staff of office as the paramount Ruler of the Oka people.*

28. When the message was delivered to the Asin he said he could not climb to Oke Oka because of his age (which was over 95 years) at that time and he said as the guest, it was the District Officer who should
D *come and went his host-the Asin in his home at Ebinrin (now Oka Odo).*

29. The Olubaka twisted this message. This was between 1918 to 1919. The Olubaka told the Asin that the District Officer said he was coming to punish the Asin for an "imaginary" offence. He then
E *advised the Asin to go into hiding.*

30. As the Asin was afraid of being punished for an offence which he did not commit he decided to stay in his house and not to meet the District Officer.

F *31. The Olubaka on his own prepared to meet the District Officer with great pomp and pageantry at Oke-Oka.*

32. When the District Officer asked for the Asin at Oke Oka, the Olubaka replied that he had refused to meet the District Officer and to accept the staff of office.

G *33. The District Officer then grew annoyed and presented the staff of office to the Olubaka instead of the Asin to whom he had earlier prepared to present it.*

34. From that time, any message that was meant for the Asin
H *from the District Office was sent to the Olubaka who then began to act as the paramount Ruler of Oka.*

35. The plaintiff will at the trial lead documentary evidence both from the Archives Ibadan and Kaduna to confirm this point."

There is no doubt that the gist of the plaintiff's case against the fourth (4th) Defendant, was that between 1918 and 1919 the Olubaka the ancestor of the fourth (4th) Defendant, unlawfully obtained a staff of office meant for the plaintiff's ancestor (Asin) by lying against the Asin before the colonial Administrative Officer from Kabba. In my view even though the staff of office might not literally have been stolen, it would appear to have been obtained wrongfully or unlawfully. The plaintiff who raised the issue, however, led no evidence whatsoever in proof thereof. That issue must therefore be deemed to have been abandoned. So that since the plaintiff led no evidence on that aspect of his case, whatever the Court of Appeal said thereon went to no issue. The Court of Appeal merely made comments and did not base its decision on those comments. The fourth (4th) Defendant on the other hand called an eye witness in the person of D.W. 3 to the effect that the Olubaka was, as of right, given the staff of Office by the District Officer. Issues (iii) & (iv) are therefore not relevant for a just decision of this appeal. Consequently, they are struck-out.

ISSUES (V)

On the Ogunleye Commission of Inquiry the learned trial judge said in his judgment thus-

"The fifth point is that Learned Counsel for the plaintiff had complained that the findings and recommendations of Ogunleye Commission of Inquiry are contradictory. One cannot treat this issue without looking into the terms of reference of the Commission as contained in Exhibit 'F'. The last paragraph of the terms of reference provides 'The Commission shall make such recommendations as he may think fit in ensuring peace and order in the affected community.' The Commission found as a fact that Asin was the first to settle in Oka but that there was the first to settle in Oka but that there was no overall head (overlord) over Oka until about 1904 when the Olubaka was presented with the staff of office. Judging from the last paragraph of the terms of reference quoted above it does not appear to me that his finding and recommendations are in conflict bearing in mind that the terms of reference

is not on who first came to Oka and the Commission was empowered to make recommendations for ensuring peace and order in the affected Community."

The Court of Appeal for its part had this to say -

B *"In view of the foregoing exclamation and the fuller text of the white Paper already reproduced in this judgment, it becomes very clear that there was no contradiction whatsoever either between the Findings and Recommendations of the Ogunleye Judicial Commission of Inquiry inter se or between them and the Oka Native Law & Customs as already expounded in the body of this Judgment."*

C I agree completely. I need hardly say that nothing stops Uyo/Ondo State Government from acting on its white Paper Exhibit B-B1, based on the Ogunleye Judicial Commission of Inquiry which D it had accepted. Issue (v) also fails.

All the issues having been resolved against the plaintiff, this appeal fails. It is accordingly dismissed with N10,000.00 costs against the plaintiff and in favour of each of the two sets of defendants, that is the E 1st, 2nd & 3rd defendants jointly and the 4th defendant alone, respectively.

UWAIS CJN

F I have had the advantage of reading in advance the judgment read by my learned brother, Kutigi, J.S.C. I entirely agree with him that this appeal lacks merit and that it should be dismissed.

G I too hereby dismiss the appeal and affirm the decision of the Court of Appeal (Akpabio, Ogebe and Ubaezonu, JJ.C.A) with N10,000.00 costs to each set of the Respondent.

WALI JSC

H I have the privilege of reading before now the lead judgment of my learned brother Kutigi, JSC and I entirely agree with his reasoning and conclusion for dismissing the appeal. And for these same reasons

which I hereby adopt, I also dismiss this appeal and adopt the consequential orders in the lead judgment, that of costs inclusive.

ONU JSC

B

I had the advantage of reading before now the judgment just delivered by my learned brother Kutigi, JSC. I agree with him that the appeal lacks merit and ought therefore to fail.

In making some comments on the appeal as I perceive it, I wish to make the following contribution of mine. C

At the trial High Court, the appellant who was the plaintiff claimed against the defendants, herein respondents, as follows:-

"(i) Declaration that the Asin is the traditional Oba and head chief and paramount ruler of Oka in Akoko South Local Government Area. D

(ii) Declaration that the findings and recommendations of the Ogunleye judicial commission of Inquiry are against Oka native law and custom, the rules of natural justice and therefore null and void. E

(iii) declaration that the Ondo State White Paper on the said commission of Enquiry is also illegal, null and void.

(iv) an injunction restraining the defendant their servants, and or agents from acting on the report, findings, recommendations and White paper or any chieftaincy declaration based thereon in appointing and installing a new Olubaka of Oka." F

After taking evidence from the parties and their witnesses, coupled with the receipt of such vital documentary evidence as Exhibit 'G' - a list containing Oka chiefs indicating their salaries; Exhibit 'H' showing the salaries of Olubaka and Asin between 1973 and 1991; Exhibit 'D' containing the names of Obas in Akoko South Local Government Area and Exhibit 'L' and 'M' containing registered declarations of Olubaka and Asin chieftaincy respectively, three other witnesses including the 4th respondent also testified for the defence. Learned counsel on either side addressed the court and the learned trial Judge, having earlier overruled the G H

preliminary objection as to the jurisdiction of the court to entertain the suit, in a well considered judgment, dismissed the appellant's claims in their entirety. The learned trial Judge (Coram: Falodun, J.) In his judgment held inter alia as follows:-

B *"I have no alternative than to invoke the Kojo v. Bonsie Principle in finding out which of the two conflicting traditional history (sic) is more probable by referring to facts in rent years as established by evidence.*

C *I have before me the following evidence of recent happenings which I accept:*

(i) The evidence of the defendant that Olubaka was the president of the Native Court.

D *land.*

(iii) That Olubaka represents Oka in the former Council of Chiefs in the old Western Region and now represents Oka in the council of Obas in Ondo.

E *(iv) That Olubaka is listed No.1 out of the Eleven Obas in Akoko South Local Government while the plaintiff, Asin is not listed as one of the Obas - Exhibit 'J'*

F *(v) That the plaintiff Asin is a Kingmaker to the Olubaka Chieftaincy Exhibit 'K' In my view, they seem to make the story told by the 4th defendant and his witness (sic) more probable."*

G Not satisfied with the trial court's decision, the appellant appealed to the Court of Appeal Benin Division (hereinafter referred to as the Court below) which after hearing arguments from both sides and considering the cross-appeal by the 4th respondent, dismissed both the appeal and cross-appeal respectively.

H Being dissatisfied with the said decision the appellant has further appealed to this court on a number a grounds out of which six issues (4th respondent similarly formulated the same number of issues) as arising for our determination.

They are:

"1. Whether or not the lower court was right in dismissing the

appellant's appeal and affirming the judgment of the trial High Court, having rightly held that the trial High Court was wrong to have invoked the principle in Kojo v. Bonsie - Grounds 1.

2. *Considering the fact that the trial high Court never held that the appellant did not prove his case or that the evidence adduced by him was weak, whether the lower court was right in holding that appellant's case ought to have been dismissed outrightly for his inability to prove same - Grounds 3 and 4.*

3. *Whether or not the lower court was right in construing the appellant's case as that of a stolen paramouncy, necessitating it, like all criminal cases, to be proved or established beyond reasonable doubt-Ground 2.*

4. *Having regard to the state of evidence on record, was the lower court right in holding that appellant did not provide independent witness or witnesses to the fact that the 4th defendant deceived the European the European District Officer by collecting the Staff on Office meant for him (appellant)? - Grounds 5 and 6.*

5. *Were the findings of the Ogunleye Commission of Enquiry E and the recommendations thereof contradictory and even if they were not, could the report be legally acted upon?- Grounds 7 and 8.*

6. *Considering the totality of the evidence adduced by the plaintiff, inclusive of Exhibit N, whether or not the plaintiff was not entitled to judgment."*

The above six issues, none of which favours the appellant can be broken into the following four compartments in my brief treatment of them as follows:-

1. The applicability of the principle decided in Kojo 11 v. Bonsie (1957) 1 WLR. 1223.

2. The findings on the stolen chieftaincy or paramouncy.

3. The Ogunleye Commission of Inquiry findings and their effects, and

4. The effect the documentary evidence has on the conclusion arrived at and as to whether the ultimate decisions arrived at by the two courts below were against the weight of evidence.

In respect of the first matter i.e. the applicability of the principle decided in Kojo 11 v. Bonsie the appellants general complaint is that there was a faulty evaluation or total non-appraisal of the evidence led before the trial Judge and which the court below affirmed. On a careful consideration of the appellant's grouse, I am satisfied that what, in effect, the court below, after invoking powers conferred on it by section 16 of the Court of Appeal Act, 1976 was saying was that it was unnecessary for the trial High Court to resort to the Rule in Kojo 11 v. Bonsie (supra). This is because there was no evidence in any event produced by the appellant to sustain any of the reliefs he was seeking. Thus, the traditional evidence given in appellant's favour prior to 1904-1918, to wit: that his ancestor was the first to settle in Oka; that he brought a crown from Ile-Ife and a host of paraphernalia amounted to no positive proof of superiority or paramountcy, moreso that it is a notorious fact that being the first settler in a community as the appellant claimed in respect of Oka, would not automatically confer on him the power of control over the area. Thus, while it may be necessary to revert to recent happenings in Oka to determine who between the appellant and 4th respondent is entitled to be the paramount Oba or ruler of Oka, it will not be out of place for the court to examine recent happenings between 1904-1918 and up till the present day in regard to the claim before the court, since the appellant's complaint is linked with the latter period when the staff of office of Asin was fraudulently alleged to be received by the 4th respondent's ancestor from the district officer of Kabba Province, of which Oka was then a constituent.

Be it noted that the appellant had the duty of establishing his claim vide sections 135, 136 and 137 of the Evidence Act. See also Muraina Elemo v. Fasasi Omolade & Ors. (1968) NMLR 359. The respondents as defendants had in the absence of a counterclaim no duty to answer more than what was pleaded. See Kodilinye v. Mbanefo Odu (1935)2 WACA 336 and Eholor v. Osayande (1992) NWLR (part 249) 524. As in this case the appellant failed to establish any status of superiority before the era of 'stolen chieftaincy' or alleged fraudulent acquisition of Olubaka's staff of office between 1904 and 1918, he (appellant)

having admitted that he had not succeeded in establishing before the Ogunleye Commission of Inquiry that his predecessor-or-title had at any time exercised supremacy over all Oka, the only inference that one would logically arrive at from the trial court's decision on the matter is that he (appellant) failed to discharge the onus placed on him to establish that he was Oba and traditional ruler of the Olubaka of Oka in 1918 or there-about. Besides, the idea of stolen chieftaincy being what was raised by the court below suo motu would go to no issue. I am therefore not prepared to hold as the appellant would have me to hold, nor is it correct, to say that the recent happenings considered were for the 4th respondent alone.

Set out below are extracts of what the learned trial Judge said, viz:

"I have painstakingly read the statements of claim and defence and the evidence adduced in support. I find as a fact that they settled in different parts of the hilly area called Oka. I also find as a fact that the whole area was under the administration of Kabba Province. This fact was not disputed by the parties. I find as a fact that when Asin came he settled at a place called Odo Iju now Odo Oka but I do not accept the story that Olubaka was a palace domestic to the Asin just as I do not believe that olubaka was the one who gave land to Asin. I find as a fact that Olubaka came with his people and settled at Oke with his people and settled at Oke Oka I have listened attentively and watched the demeanour of witnesses for both the plaintiff and the 4th defendant in the witness box. All of them seemed to be certain of what they were saying. This is to be expected in view of the fact that they were giving evidence of traditional history i.e. the story they were told by their ancestors. The truthfulness or falsity cannot be judged from their demeanor in the witness box for they may with utmost veracity be speaking honestly but erroneously of what took place a hundred years or over."

The court below upon being seized of the appeal after going through the record of proceedings held in confirmation, rightly in my view, inter alia, as follows:-

"In other words, the onus was squarely on the plaintiff to have proved his "acts of rulership of the entire Oka, just in the same way as

plaintiff in a land case is expected to show acts of possession or enjoyment of land to prove his title to the land in dispute."

It is trite law that an Appellate Court not normally upset the findings of fact made by trial courts. It would also not alter, reverse or set aside such findings of facts on the printed records unless such findings are unsupported or are not proper conclusions or inferences drawn from the evidence or where the trial court failed to evaluate the evidence before it. See Odubeko v. Fowler (1993)7 NWLR (part 308)637; Kuforiji v. V.Y.B. (Nig). Ltd (1981) 6-7 SC. 40 at 84; Okafor v. Idigo 111 (1984)1 SCNLR 481; Okpiri v. Jonah (1961) 1 SCNLR 174; Omoregbe v. Idugiemwanye (1985)6 SC.150 at 161; Woluchem v. Gudi (1981)5 SC. 319 at 326; Omoregie v. Edo (1970)1 All NLR 282; Orji v. Zaria Industries Ltd. (1992)1 NWLR (part 216)214; Okunzua v. Amosu (1992)6 NWLR (part 248)416 and Mogaji & Ors. v. Odofin & Ors. (1978)4 SC.91.

As the decision of the court below in the instant case was not based on the credibility of witnesses and the appellant's complaint of faulty evaluation or total non-appraisal of the evidence, is not well-founded and indeed is unjustified, its invocation of powers vested in it by Section 16 of the Court of Appeal Act, No. 43 of 1976 (now Cap.75 Laws of the Federation of Nigeria, 1990) in holding that his (appellant's) case ought to have been dismissed outrightly for his inability to prove same for want of evidence, cannot be impugned.

On findings on the stolen chieftaincy or paramountcy, it ought to be pointed out firstly that a chieftaincy being no object capable of being stolen the use of the word "stolen" is inept and should accordingly be struck down. What in essence the appellant is complaining about is that the 4th respondent was once one of his subjects and a domestic servant who overreached or betrayed him by alleging before the District Officer of Kabba Province that appellant committed a crime and so was ill-qualified from going to collect his staff and that 4th respondent in the long run collected same and kept it for himself. All these allegations and many more propped up by the appellant fizzled away when the trial court found same to be a lie and the court below upheld same, as hereinbefore enumerated.

Furthermore, on the question of who was senior, the Asin or Olubaka, the trial court found in favour of the 4th respondent. The court below for its part, after wondering on what it described as 'stolen chieftaincy' confirmed what the learned trial Judge earlier held on the point, to wit:

"I find as a fact that both the plaintiff and the 4th defendant came from Ile-Ife. I also find as a fact that they came at different times. I find as a fact that they came and settled in different parts of the hilly area called Oka. I also find as a fact the whole area was under the administration of Kabba Province. The fact was not disputed by the parties. I find as a fact that the Asin and Olubaka came from Ife with their crowns. I find as a fact that when Asin came he settled at a place called Odo Iju now Odo Oka but I do not accept the story that Olubaka was a palace domestic servant to the Asin just as I do not believe that Olubaka came with his people and settled at Oke Oka. As I said somewhere in this judgment the evidence of D.W3 is not at variance with paragraph 8 of the Statement of Claim."

What the court below did at a point in its judgment as can be seen, was to have veered off its proper track by equating a simple chieftaincy case to that of a criminal case needing proof beyond reasonable doubt. All told, however, there was no miscarriage of justice on the final conclusion arrived at by the court. Indeed, the case fell for decision on seniority between the appellant and the 4th respondent simpliciter and the two courts unequivocally found for the 4th respondent on the balance of probabilities as hereinbefore considered by me. If we discountenance the terminology imputing crime used by the court below, there was enough evidence to sustain and uphold the decisions of the two courts below.

On the findings of the Ogunleye Commission of Inquiry it was established at the trial that the commission submitted a Report which the Government accepted and thereafter proceeded to issue a white paper thereon. There was nothing show to indict the findings and recommendations of the commission by the appellant; hence his attack on the commission's findings was unavailing to him and the same ought not to be disturbed.

On documentary evidence adduced at the trial and considered in

the court below - which included Exhibit 'N' i.e. memorandum submitted on behalf of members of Oka chiefs council on the inquiry into Olubaka of Oka chieftaincy, there being nothing said or done to render any of these inadmissible and the case was decided purely on the facts with the credibility of the witnesses called by the respondents unassailable, the decisions of the two courts below constituted concurrent findings. These findings not having been shown to be perverse or to contain any error of law substantive or procedural leading to a miscarriage of justice, I see no reason to interfere with them by setting them aside. See Adimora v. Ajufo (1988) 1 NSCC 1005 at 1016; Nwangu v. Okonkwo (1987) 3 NWLR (part 60) 314; Kale v. Coker (1982)12 SC. 252 and Sobakin v. The State (1981)5 SC.75.

For these reasons and those articulated in the judgment of my learned brother Kutigi, JSC I too dismiss this appeal and I make similar consequential orders contained in the leading judgment.

IGUH JSC

I have had the privilege of reading in draft the leading Judgment just delivered by my learned brother, Kutigi, J.S.C and I agree entirely with the reasoning and conclusion therein reached.

This appeal is without substance and the same is hereby dismissed by me.

I abide by the order for costs contained in the leading judgment.

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