

SUPREME COURT OF NIGERIA
24TH APRIL, 1998. SC. 56/1993
CORAM:- S. M. A. BELGORE, I. L. KUTIGI, M. E.
OGUNDARE, U. MOHAMMED, S. U. ONU, JJSC.

TIMOTHY ADEILO ADEFULU APPLICANT
AND
CHIEF O. O. OKULAJA & ORS. RESPONDENTS

***APPEALS** - Motion to set aside judgment - On the ground of likelihood of bias - Is misconceived as the two cases exhibited are not in respect of the same suit - And the issues that called for determination in the cases are completely different.*

***NATURAL JUSTICE** - Real likelihood of bias - Circumstances under which a judge is precluded from hearing a case.*

FACTS

The Applicant who was an appellant in the appeal decided by the Supreme Court on 13th December, 1996 applied to the Supreme Court praying for the following Orders: An order setting aside the judgment of the court delivered on the 13th day of December 1996 as there was a fundamental defect which goes to the issue of jurisdiction and competence of the court; further, an order that the said judgment is a nullity by reason of the fact that the adjudicating tribunal was not constituted in such a manner as to secure its independence and impartiality in view of the subject matter and antecedents of the suit and the nature of the inquiry the court was called upon to make; and further an order that the said appeal be restored to the cause list and the appeal again be set down and heard de novo before a panel of Justices so constituted as to exclude Justices Ogundare and Onu whose participation, has rendered the judgment complained of null and void. To this application are annexed two judgments, one delivered at the Court of Appeal, Ibadan Division on the 25th day of June 1987 (Coram: Omo, Ogundare and Onu, JJCA as they

then were), the other is a judgment of the Supreme Court, delivered on 13th day of December, 1996. (Coram: Belgore, Kutigi, Ogundare, Mohammed and Onu JJSC). Although the parties and the titles to the cases are the same they are two separate and distinct cases. The appeal decided on 25th day of June 1987 was in respect of the decision of Sofolahan J. at Sagamu dated 13th day of February, 1985 and after it was decided by the Court of Appeal it went to the Supreme Court which gave its decision on 8th December 1989. The Supreme Court number is SC. 5/1988 and the Court of Appeal number is CA/1/122/1985. The Supreme Court panel was made up of Obaseki, Uwais, Kawu, Agbaje and Nnaemeka-Agu JJSC. The judgment of the Court of Appeal which was affirmed by the Supreme court is to the effect that (1) the applicant was a member of Agaigi ruling house; and (2) that he was however not nominated by the ruling house for consideration by the kingmakers and consequently his appointment and the approval of that appointment were null and void.

Following the judgment of the Supreme Court the Secretary to the Local Government in the belief that the whole exercise had to be commenced do novo issued a letter addressed to the ruling house calling it to present candidates for consideration. There was a split in the ruling house. A splinter group nominated the applicant and forwarded his name to the kingmakers for consideration. The kingmakers once again appointed him the Olofin of Ilishan and forwarded the appointment to the Governor for approval. It was at this stage that the respondents sued the applicant claiming a declaration that the nomination of the applicant and his appointment by the kingmakers were null and void, and sought an injunction. The matter was dismissed by the High Court. On appeal to the Court of Appeal (Ibadan Division) in suit No. CA/1/204/90 (Coram: Ogwuegbu, as he then was, Salami and Danlami Muhammad JJCA) allowed the appeal, nullified the nomination and appointment of the applicant. There was an appeal to the Supreme Court against this decision. The Supreme Court consisting of Belgore, Kutigi, Ogundare, Mohammed and Onu JJSC on 13th December 1996, by majority, dismissed the appeal and affirmed the judgment of the Court of Appeal, Kutigi JSC

dissented. It is this judgment that the applicant now seeks to be set aside and declared a nullity.

ISSUE FOR DETERMINATION

"When is a judge precluded from hearing a case?"

HELD (Unanimously dismissing the application per lead ruling of BELGORE JSC)

Real likelihood of bias

1. When is a judge precluded from hearing a case? The answer to this is simple: It is when he has personal interest when he would seem to be a judge in his own matter; or when having dealt with the same issue and it comes or resurfaces when he is in a superior Court and is being called upon to decide and appeal against his own decision; or because of some obvious or latent connection of his with either of the parties or all of them, it would not be conscionable of him to participate in hearing the case or generally his being a member of the tribunal would not appear to be in the interest of justice as he will not be seen to do justice. None of these has been adduced at the hearing of the appeal that culminated in the decision in appeal No. SC.56/1993 and nobody raised any objection.

(p. 975 C)

Motion to set aside judgment

2. This motion is misconceived as the two cases exhibited are not in respect of the same suit that originated in the trial Court - they are two separate cases each originated by a Writ of summons followed by pleadings. One was not for interpretation of the other. The first case declared an appointment a nullity; the second also did the same but each was in respect of separate faulty nomination of Olofin of Ilishan-Remo. Several authorities were cited by all the parties - from Iroegbu vs Urum (1981) 4 SC.1, Rex vs Sussex Justices (1924) 1 KB 256, 257; Ariori vs Elemo (1993) (sic) 1 SC. 13, 57; Petrojessica Enterprises Ltd. vs. Leventis Technical Co. Ltd. (1992) 5 NWLR (Pt 244) 675 to Adio vs A-G Oyo State (1990) 7 NWLR (Pt 163) 448 by the applicants and Madukolu vs Nkemdilim (1962) 2 SCNLR 341 and Abiola vs Federal Republic of Ni-

geria (1995) 7 NWLR (Pt 404) 1, 14, 15, 16 by the respondents - they are cases not nearly on all fours with the present application in that each concerned judge dealing with the same case unlike this dealing with two distinct cases. (p. 975 G)

B

NOTABLE POINTS OF INTEREST

BELGORE JSC

1. Supreme Court decision is final - S. 215 of the Constitution 1979

C The mischief of the applicant is in exhibiting the decision in the Court of Appeal in No. CA./1/122/1985 of 25th June, 1987 and Supreme Court decision in appeal No. SC. 56 1993 decided on 13th December, 1996 as in respect of the same suit, they are not and the parties know this and the applicants are very aware of this. Assuming they are in respect of the D same matter, certainly some great injustice must have occurred but in the face of S. 215 of the Constitution (*supra*), it would be a final decision and nothing can be done about it. However, the appeal decision of the Court of Appeal and of this Court exhibited with this application are in respect E of separate matters finding their way to this Court from the High Court through the Court of Appeal. Had Mr. Sofunde, S.A.N., who fought the cases for the applicant to this Court made this application on behalf of the applicant serious ethical questions would have arisen, but we know the F gentleman Sofunde, Esqr. is not the one to be involved in this attempt to mislead. (p. 974 H)

OGUNDARE JSC

2. Undesirability of a barrister being a counsel in his matter

G I pause here to comment briefly that the recklessness shown by Mr. Adefulu is a clear indication of his frame of mind in this matter. He did not, throughout, behave as one would expect of an officer of the Court. Rather he exhibited an attitude of a wounded lion, his father being the H Applicant in the matter. He could not isolate his personal grief from his duties to the Court. I think it will help to draw attention to what this Court, per Sir Adetokunbo Ademola CJF, said in OJIEGBE V. UBANI (1961) 1 ALL NLR 277 at p. 279; (1961) 2 NSCC 153 at p. 154.

"I think it is undesirable for a barrister to put himself into a situation in which he cannot be 'counsel' in the true sense of the word, because he is in substance the party"

Mr. Adefulu would have done himself a greater justice if he had not placed himself in the invidious position of being counsel in this matter. B (p. 984 A)

ONU JSC

3. Time to raise the issue of jurisdiction of court

The question as to the jurisdiction of court could be raised at any point in a case before judgment but not after judgment has been delivered, sealed and signed. Thus, the present application, made after over ten months of the delivery of the judgment, borders clearly on frivolity and a wild goose-chase. See the purport of the Supreme Court Rules in Order 8 Rule 16 D which provides:

"The court shall not review any judgment once given and delivered by it save to correct any clerical mistake or some error arising from any accidental slip or omission, or to vary the judgment or order so as to E give effect to its meaning and intention. A judgment or order shall not be varied when it correctly represents what the court decided nor shall the operative and substantive part of it be varied and a different form substituted." (p. 996 C) F

4. Occasion when the Supreme Court may reconsider its earlier decision

It is pertinent to point out that as no appeal lies from the decision of the Supreme Court to any other court nor is it subjected to a review thereof, there can be no prayer to restore the case to the cause list to be set down G for trial de novo. Much as this court cannot be called upon to interpret the decision complained against, it is functus officio to re-open the case much as it is an abuse of its process (see Harriman v. Harriman (1989)1 NWLR 6) to request it to set aside the case and declare it a nullity when H no valid reasons for so doing have been given. As to when the occasion may arise for this court to reconsider its earlier decisions, this has been re-stated in many cases notable among which are Oke v. Oke (1974) 1

ALL NLR 443 and Idehen v. Idehen (1991) 6 NWLR 382, the latter in which Olatawura, JSC at page 426, paragraphs B - C stated as follows:-

"The stand of this court in Oke & Anor. (supra) has been confirmed by the subsequent cases referred to in Dr. Oje's brief. Our judgment on any issue is conclusive of the matter raised and canvassed in that issue. Occasions will continue to arise where in similar situation the court will be called upon to reconsider the earlier decision. That invitation should not be regarded as an infraction or infringement of our right to pronounce a final judgment. Where we are called upon to reconsider that earlier decision, it must be based on good and valid reasons so as not to perpetuate injustice. " (Underlining is mine for emphasis).

In the case in hand, we are being asked in what to my mind amounts to a display of utter effrontery, to interpret our earlier decision for no good and valid reason. My firm view is that such a vexatious, contemptible and taunting application cannot be granted just for the asking. The decision of this court of 13th December, 1996 was therefore the final decision of the Court of final resort which it cannot on its own review or on application grant leave to appeal therefrom to any other tribunal in Nigeria vide Section 215 of the 1979 Constitution (ibid). (p. 998 C)

REPRESENTATION

J.C. Ezike, Esq. with Nnamdi Nwabueze for the applicant

A. A. Adefulu Esq. for the 4th - 7th Appellants/Respondents

K. Sofola Esq. SAN with Chief (Mrs.) C.J. Aremu for Plaintiffs/Respondents

Mrs. A. O. Asenuga, Director of Civil Litigation, Ogun State for the 2nd and 3rd Respondents

CASES REFERRED TO

Iroegbu vs Urum (1981) 4 SC.1

Rex vs Sussex Justices (1924) 1 KB 256, 257

Ariori vs Elemo (1993) 1 SC. 13, 57

Petrojessica Enterprises Ltd. vs. Leventis Technical Co. Ltd. (1992) 5

NWLR (Pt 244) 675

Adio vs A-G Oyo State (1990) 7 NWLR (Pt 163) 448

Madukolu vs Nkemdilim (1962) 2 SCNLR 341

Abiola vs Federal Republic of Nigeria (1995) 7 NWLR (Pt 404) 1, 14, 15, 16

B

LPDC v. Fawehinmi (1985) 2 NWLR 300

Metropolitan Property Company Ltd. v. Cannon (1969) 1 Q.B. 572, 599.

Ojiegbe v. Ubani (1961) 1 ALL NLR 277 at p. 279; (1961) 2 NSCC 153 at. p. 154.

C

Harriman v. Harriman (1989) 1 NWLR 6)

Oke v. Oke (1974) 1 ALL NLR 443

Idehen v. Idehen (1991) 6 NWLR 382

STATUTES AND RULES REFERRED TO

D

Constitution of the Federal Republic of Nigeria 1979. ss 213; 215 and 6(6)(a)

High Court (Civil Procedure) Rules, Order 35

Supreme Court Act cap. 424 Laws of Nigeria, 1990; ss.8 (2) and 10

E

Supreme Court Rules; Order 8 Rule 16

LEAD JUDGMENT BY BELGORE JSC

The applicant, Timothy Adeilo Adefulu prays as follows:

F

"(a) An order setting aside the judgment of this Honourable Court delivered on the 13th day of December 1996 as there was a fundamental defect which goes to the issue of jurisdiction and competence of the court on the day when the appeal was heard and the said judgment was delivered.

G

(b) FURTHER, OR IN THE ALTERNATIVE, an order that the said judgment is a nullity by reason of the fact that the adjudicating tribunal was not constituted in such a manner as to secure its independence and impartiality in view of the subject matter and antecedents of the suit and the inquiry the Supreme Court was called upon to conduct.

H

(c) FURTHER, AN ORDER that the said Appeal be restored to the cause list and the appeal again set down and heard de novo before a

panel of Justices so constituted as to exclude the Justices (Ogundare and Onu J.J.S.C) whose participation has rendered the judgment complained of null and void.

(d) *SUCH FURTHER ORDER(S) as this Honourable Court may deem fit to make.*

(e) *AND FURTHER TAKE NOTICE that at the hearing of this application the applicant will rely on the unreported judgment of the Court of Appeal No, CA/1/122/85 dated 25 June 1987 and that of the Supreme Court reported in (1989) 5 NWLR (pt. 122) 377 as well as and in particular, the supporting affidavit to this application."*

On its face, one would wonder if Justices of this Court, while in the Court of Appeal heard and decided a matter and when an appeal against their decision in the Court of Appeal came up in Supreme Court they participated and wrote the lead and concurring judgments. If this were to be the case, and with the Justices concerned being aware of their involvement in the same matter in the Court below, it would certainly have been a travesty of justice. It is therefore pertinent that all the facts be set out so that the mischief in this application will be clearly shown.

To this application are annexed two judgments, one delivered at the Court of Appeal, Ibadan Branch on the 25th day of June 1987 [Coram: Omo, Ogundare and Onu, JJCA, as they then were], the appeal was in respect of a judgment of the High Court of Ogun State (Sofolahan J); the other is a judgment of this Court, delivered on 13th day of December 1996 (Coram: Belgore, Kutigi, Ogundare, Mohammed and Onu, JJSC). Looking at the parties and the titles of the cases, one will easily be taken in that the judgment of 25th day of June 1987 was the one that found its way on appeal to the Supreme Court and decided on 13th day of December 1996. The truth is that for all the semblance in titles and parties they are two distinct and separate cases. The appeal decided on 25th day of June 1987 was in respect of the decision of Sofolahan J at Sagamu, dated 13th day of February 1985 and after it was decided by the Court of Appeal it went to Supreme Court and decided there on 8th December 1989. The Supreme Court number is SC. 5/1988 and the Court of Appeal number is CA/1/122/1985. The judgment of 8th December 1988

was delivered by a panel of this Court made up of Obaseki JSC, Uwais JSC as he then was (who read the lead judgment), Saidu Kawu JSC, Agbaje JSC, and Nnaemeka-Agu JSC. In the judgment of this case SC.5/1988, this Court explained in its rationes decisis

"1. that nomination within the meaning of Chiefs Law (Amendment) Edict No. 1 of 1971 and the declaration made thereunder especially under its S. 4(2) in regard to the selection of Olofin of Ilishan-Remo is a selection by members of the ruling house concerned to nominate a candidate and only such a candidate or candidates shall be forwarded to the Kingmakers;

2. that Agaigi Ruling House by its majority vote at its meeting decided rightly on their nomination of candidates for appointment as Olofin of Ilishan-Remo by sending the names to the Kingmakers and this is in line with S. 52 (a) of Interpretation Law;

3. any purported approval by the governor in the absence of a nomination of a candidate or where a person not nominated by the ruling house has his name included and approved by the Governor, such approval is null and void and of no effect."

This is the gist of the decision of the Supreme Court. That decision for the purpose of the Constitution was final. [See section 215 of the Constitution of the Federal Republic of Nigeria 1979]. The parties then went home, so to say, to have the procedure for the appointment of Olofin of Ilishan-Remo initiated properly so as to have legally appointed Oba.

However on 2nd day of June 1990 by a Writ of summons adopted finally in their statement of claim at the High Court of Ogun State, holden at Shagamu, the present respondents as plaintiffs claimed as follows:

"(a) Declaration that the purported nomination of Timothy Adeilo Adefulu by a splinter group led by Alhaji Lawal Balogun on Monday the 5th day of March, 1990 and the purported appointment of the said Timothy Adeilo Adefulu as the OLOFIN OF ILISHAN from Agaigi Ruling House are unlawful and therefore null and void.

(b) Injunction restraining the Secretary, Ijebu-Remo Local Government from forwarded the name of Timothy Adeilo Adefulu to the Com-

missioner for Chieftaincy Affairs for approval by the Ogun State Executive Council and the Military Governor of Ogun State from approving the said appointment and the said Timothy Adeilo Adefulu from parading himself as Olofin of Ilishan-Remo."

B After all the parties had filed and exchanged pleading, they settled issues before Sonoiki J as follows pursuant to Order 35 High Court (Civil Procedure) Rules of Ogun State:

C *"1. Whether it is open to the 1st Defendant to be nominated by the Agaigi Ruling House as a person to fill the vacancy in the Olofin of Ilishan chieftaincy having regard to the judgments in HCS/125/31, CA/1/122/85 and SC.5/1988 and the provisions of the Chiefs Law Cap. 20 Laws of Ogun State of Nigeria 1978.*

D *2. Whether the 2nd Defendant was right in inviting fresh nominations from the Agaigi Ruling House after the judgment of the Supreme Court in Suit No. SC/5/1988.*

E *3. Whether the vacancy created in the Olofin of Ilishan Chieftaincy in 1981 as a result of which the Agaigi Ruling House was invited by the Secretary, Ijebu-Remo Local Government in February 1981 to nominate candidates to fill the vacancy was filled by the 1st Defendant and if so whether a new vacancy was created on the 8th of December, 1989."*

F To all intent and purposes this was a new cause of action even though connected with Olofin of Ilishan-Remo stool but in a different way. The trial judge found in favour of the defendants including the applicant before us. The Court of Appeal [this time made up of a panel consisting of Ogwuegbu JCA (as he then was, Salami JCA and Danlami Mohammed JCA] set aside the trial Court's decision and this decision was the subject of appeal decided here on December, 1996 as appeal No. SC56/1993 by Belgore, Kutigi, Ogundare, Uthman Mohammed and Onu, JJSC, now subject of this motion.

H The mischief of the applicant is in exhibiting the decision in the Court of Appeal in No. CA./1/122/1985 of 25th June, 1987 and Supreme Court decision in appeal No. SC. 56 1993 decided on 13th December, 1996 as in respect of the same suit, they are not and the parties know this

and the applicants are very aware of this. Assuming they are in respect of the same matter, certainly some great injustice must have occurred but in the face of S. 215 of the Constitution (supra), it would be a final decision and nothing can be done about it. However, the appeal decision of the Court of Appeal and of this Court exhibited with this application are in respect of separate matters finding their way to this Court from the High Court through the Court of Appeal. Had Mr. Sofunde, S.A.N., who fought the cases for the applicant to this Court made this application on behalf of the applicant serious ethical questions would have arisen, but we know the gentleman Sofunde, Esqr. is not the one to be involved in this attempt to mislead.

This now takes me to the question pertinent to this motion. **When is a judge precluded from hearing a case? The answer to this is simple: It is when he has personal interest when he would seem to be a judge in his own matter; or when having dealt with the same issue and it comes or resurfaces when he is in a superior Court and is being called upon to decide and appeal against his own decision; or because of some obvious or latent connection of his with either of the parties or all of them, it would not be conscionable of him to participate in hearing the case or generally his being a member of the tribunal would not appear to be in the interest of justice as he will not be seen to do justice. None of these has been adduced at the hearing of the appeal that culminated in the decision in appeal No. SC.56/1993 and nobody raised any objection.** Mr. Adefulu of counsel in this application confirmed he was in Court when this Court was hearing the appeal even though not as counsel but as a son to the applicant but no objection was raised as to the composition of the Court. Had the decision been in their favour would they have raised this big storm in a teacup?

As explained earlier, **this motion is misconceived as the two cases exhibited are not in respect of the same suit that originated in the trial Court - they are two separate cases each originated by a Writ of summons followed by pleadings. One was not for interpretation of the other. The first case declared an appointment a nul-**

lity; the second also did the same but each was in respect of separate faulty nomination of Olofin of Ilishan- Remo. Several authorities were cited by all the parties - from Iroegbu vs Urum (1981) 4 SC.1, Rex vs Sussex Justices (1924) 1 KB 256, 257; Ariori vs Elemo (1993) (sic) 1 SC. 13, 57; Petrojessica Enterprises Ltd. vs. Leventis Technical Co. Ltd. (1992) 5 NWLR (Pt 244) 675 to Adio vs A-G Oyo State (1990) 7 NWLR (Pt 163) 448 by the applicants and Madukolu vs Nkemdilim (1962) 2 SCNLR 341 and Abiola vs Federal Republic of Nigeria (1995) 7 NWLR (Pt 404) 1, 14, 15, 16 by the respondents - they are cases not nearly on all fours with the present application in that each concerned judge dealing with the same case unlike this dealing with two distinct cases.

This application, without even alluding to S. 215 of the Constitution is, to say the least, frivolous and is an abuse of this Court's process. I therefore dismiss it with N10,000.00 costs to each set of the respondents.

E

KUTIGI JSC

I read in advance the ruling just delivered by my learned brother, Belgore, JSC. I agree with him that the application lacks merit and ought to be dismissed. It is true that Ogundare and Onu, JJ.SC., respectively read the lead and supporting judgments in this appeal (SC. 56/1993) on 13th December, 1996, but none of them was involved in the case either in the trial High Court or in the Court of Appeal. It is again true that Ogundare and Onu, JJ.CA., (as they then were) also read the lead and supporting judgments in Appeal No. CA/1/122/85 which judgment was again confirmed by the Supreme Court on 8th December, 1989, (Appeal No. SC. 5/1988), but again none of them was even a member of the Supreme Court then and therefore none of them could have sat in the panel which confirmed their judgments.

In SC. 5/1988, this Court confirmed the decision of the Court of Appeal to the effect amongst others, that the appointment, approval and installation of Timothy Adeilo Adefulu (applicant herein) as the Olofin of

Ilishan-Remo was irregular, unlawful, null and void. In SC. 56/1993, this Court again upheld the decision of the Court of Appeal that the exist-
ing vacancy in the stool should be filled from the list of nominations made by Agaigi Ruling House in 1981 and which the Kingmakers brushed aside and proceeded to select the applicant herein who was not nomi- B
nated by the Ruling House. The issues in each of the two cases that is SC. 5/1988 and SC. 56/1993 are clearly different even if related. I am therefore unable to see any sin committed by any of the two Justices, Ogundare and Onu, JJ.SC., to warrant setting aside the judgment of this C
Court delivered on 13/12/96 (SC. 56/1993), or to declare the said judgment a nullity. I think their participation in the said appeal was quite proper. The application is accordingly dismissed with N1,000.00 costs in favour of each set of respondents.

D

OGUNDARE JSC

I have had the privilege of reading in advance the ruling of my brother Belgore JSC just delivered. I agree with him that this application E
is totally lacking in substance. I need however, to say a few words of my own.

The Applicant who was an appellant in the appeal decided in this Court on 13th December 1996 applied to us praying for the following F
orders:

*"(a) An order setting aside the judgment of this Honourable Court delivered on the 13th day of December 1996 as there was a funda-
mental defect which goes to the issue of jurisdiction and competence of
the court on the day when the appeal was heard and the said judgment G
was delivered.*

*(b) FURTHER, OR IN THE ALTERNATIVE, an order that the said judgment is a nullity by reason of the fact that the adjudicating
tribunal was not constituted in such a manner as to secure its indepen- H
dence and impartiality in view of the subject matter and antecedents of
the suit and the nature of the inquiry the Supreme Court was called upon
to conduct.*

(c) *FURTHER, AN ORDER that the said Appeal be restored to the cause list and the appeal again set down and heard de novo before a panel of justices so constituted as to exclude the Justices (Ogundare and Onu JJ.S.C.) whose participation has rendered the judgment complained of null and void.*

(d) *SUCH FURTHER ORDER(S) as this Honourable Court may deem fit to make.*

(e) *AND FURTHER TAKE NOTICE that at the hearing of this application the applicant will rely on the unreported Judgment of the Court of Appeal No. CA/1/122/85 dated 25 June 1987 and that of the Supreme Court reported in (1989) 5 NWLR (Pt. 122) 377 as well as and in particular, the supporting affidavit to this application."*

The grounds for the application as stated in the motion paper are:

(i) *That their Lordships Ogundare and Onu JJSC who respectively read the lead and supporting Judgements in this case also read the lead and supporting judgment in Appeal No. CA/1/122/85 which judgment was upheld by the Supreme Court in Adefulu & Ors. v. Oyesile & Ors. (1989) 5 NWLR (Pt. 122) 377 and the main burden of the judgment now sought to be set aside was to conduct an inquiry as to whether on the tenour of the Adefulu v. Oyesile case the applicant is precluded from being subsequently presented for consideration as the Olofin of Ilishan-Remo: There was a likelihood of bias.*

(ii) *That the membership of the said 2 Justices in the panel of Justices in Appeal No. CA/1/122/65 is a factor which was not visible in the split decision of the Supreme Court in Appeal No. SC.56/93 or to those present in Court when the said Appeal to the Supreme Court was heard and determined."*

The motion further seeks a further and or alternative order that the case be struck out because:

"the trial court, the Court of Appeal and the Supreme Court had no jurisdiction to have entertained the action which led to the judgment of the Supreme Court in this suit (Suit No. SC/56/93) on 13 December 1996."

The grounds for the alternative Order, as stated in the motion paper, are:

"(i) None of the courts in the hierarchy of courts above has jurisdiction to interpret the judgment of the Supreme Court in Suit No. SC/5/1988 delivered on 8th December, 1989.

(ii) None of the said courts, particularly the courts inferior to the Supreme Court has the competence to RE-DETERMINE what has been determined by the Supreme Court in Suit No. SC/5/1988.

(iii) The Courts inferior to the Supreme Court only have jurisdiction to ENFORCE the said judgment of the Supreme Court in Suit No. SC/5/1988."

The motion is supported by a nine paragraph affidavit and a seven paragraph further affidavit both sworn to by Adeyemi Adefulu a legal practitioner who subsequently at the hearing of the motion appeared for the 4th-17th Appellants/Respondents above. To these affidavits are annexed (i) the judgments of the Court of Appeal (Ibadan Division) in suit No. CA/1/122/85; (ii) the judgments of this Court given on 13th December 1989 in suit No. SC. 56/1993, (iii) the judgment of the High Court given on 1st day of June 1990 in suit No. HCS/26/90; (iv) the judgments of the Court of Appeal (Ibadan Division) in suit No. CA/1/204/90 and (v) the lead judgment of Uwais JSC (as he then was) in suit No. SC/5/1988. All these judgments are between the same parties and relate to the Olofin of Ilishan Remo Chieftaincy.

The facts as gleaned from the various judgments put before us and the arguments of learned counsel for the parties at the hearing of this motion are briefly as follows:

Following a vacancy in the Olofin of Ilishan Remo Chieftaincy an attempt was made to fill the vacancy. In accordance with the Chiefs Law and the Chieftaincy declaration relating to the title, a letter went from the Secretary of the Remo Local Government to the Agaigi ruling family to present a candidate or candidates for consideration by the kingmakers with a view to an appointment being made. The ruling family met on 15/2/81 at which a number of candidates were proposed and voted upon. The present applicant as well as the 4th, the 6th and the 7th present plaintiffs/Respondents were among candidates proposed. At the family meeting a vote was taken to decide the person or persons to be nomi-

nated for consideration by the Kingmakers. Four of the candidates, each scored 82 votes with 15 against. The other two candidates - Timothy Adefulu (the Applicant in these proceedings) and Alhaji Rufai Awodein who were proposed scored 15 votes in favour and 82 votes against their nomination. Consequent upon this pattern of voting a certificate of nomination was prepared and signed by the head and Secretary of the family. The certificate contained the names of the four candidates that had majority voting in their favour. The certificate and the minutes of the family meeting were forwarded to the kingmakers for their consideration. At the meeting of the kingmakers held on 17/3/81 they not only considered the four names appearing on the certificate forwarded to them by the ruling family but also the two other candidates proposed at the family meeting but who failed to score majority voting in favour of their nomination. At the end of their deliberation, they appointed the Applicant and forwarded his name to the Governor for the approval of the appointment. The Governor approved.

The ruling family, being aggrieved, instituted an action in the High Court of Ogun State challenging both the appointment and approval of the Applicant as the Olofin of Ilishan Remo upon the grounds -

(1) that he was not a member of the ruling house and

(2) that he was not nominated by the family for consideration by the kingmakers.

The trial High Court found against the Plaintiffs and dismissed their action. They appealed to the Court of Appeal (Ibadan Division). That Court, consisting of Omo, Ogundare and Onu JJCA (as they were then), found that (1) the Applicant was a member of the ruling house and (2) that he was however, not nominated by the ruling house for consideration by the kingmakers and consequently his appointment and the approval of that appointment were null and void. The Court allowed the appeal and set aside the Applicant's appointment. This was suit No. CA/H 1/122/85. The Applicant and the present Appellants/Respondents (who were all defendants in the case) appealed against that part of the judgment of the Court of Appeal nullifying the Applicant's appointment, to the Supreme Court. The Plaintiffs in the case cross-appealed against that

finding of the Court of Appeal to the effect that the Applicant was a member of the Agaigi ruling family. The Supreme Court in suit No. SC/5/1988 and reported as Adefulu & Ors. v. Oyesile & Ors. (1989) 5 NWLR (Pt. 122) 377 dismissed both the appeal and the cross-appeal thus upholding that the Applicant is a member of the Agaigi ruling family but that as he was not duly nominated by that ruling house, his appointment and the approval of that appointment as the Olofin of Ilishan-Remo were invalid.

Following this judgment of the Supreme Court the Secretary to the Local Government in the belief that the whole exercise had to be commenced de novo, issued a letter addressed to the ruling house calling on it to present a candidate or candidates for consideration. There was a split in the ruling house. A splinter group nominated the Applicant and forwarded his name to the kingmakers for consideration. The kingmakers once again appointed him the Olofin of Ilishan and forwarded the appointment to the Governor for approval. It was at this stage that the plaintiffs/Respondents once again resorted to a court action. They sued the Applicant and the other Appellants/Respondents claiming a declaration that the nomination of the Applicant and his appointment by the kingmakers were null and void and seeking an injunction. The matter was heard by the High Court of Ogun State and was dismissed. On appeal to the Court of Appeal (Ibadan Division) in suit No. CA/1/204/90 that Court allowed the appeal holding that the exercise should not have been begun afresh but that the kingmakers should have met to consider the list of four candidates forwarded to them by the Agaigi ruling house in 1981. The Court of Appeal (Coram: Ogwuegbu, as he then was, Salami and Danlami Muhammad JJCA) nullified the nomination and appointment of the Applicant. There was an appeal to the Supreme Court against this decision. This Court consisting of Belgore, Kutigi, Ogundare, Mohammed and Onu JJSC on 13th December 1996, by majority, dismissed the appeal and affirmed the judgment of the Court of Appeal. Kutigi JSC dissented. It is this judgment and indeed the whole proceedings from the High Court in suit No. HCS/26/90 and the Court of Appeal in CA/1/204/90 that the Applicant now seeks to set aside and declare a

nullity.

I think it is more convenient to consider first the alternative prayer (2). The contention of learned counsel for the Applicant is that the proceedings commencing with suit No. HCS/26/90 amounted to an interpretation of the judgment of the Supreme Court in suit No. SC/5/1988 delivered on 8th December 1989. It is learned counsel's contention that both the High Court and the Court of Appeal being courts inferior to the Supreme Court had no jurisdiction to do so.

Mr. Adefulu who swore to the affidavits in support of the motion appeared as counsel for the 4th to the 17th Appellants/Respondents. He associates himself with the submissions of Mr. Ezike counsel for the Applicant. Mrs. Asenuga learned Director of Civil Litigation Ogun State who appeared for the 2nd and 3rd Appellants/Respondents is of a different opinion. She submits that the issues in the 2nd set of litigation beginning with HCS/26/90 raised different issues to those determined by the first set and as such that second set of litigation could not be said to be for an interpretation of the judgment of the Supreme Court in the first set. Mr. Kehinde Sofola SAN for the Plaintiff/Respondents submits that a case is not made out in support of the alternative prayer. Mr. Ezike learned counsel for the Applicant, in reply, concedes it that the second set of litigation is not an enforcement of the 1989 judgment.

I have in the course of setting out the facts leading to this application stated that the issues arising in the first set of litigation between the parties revolved around two issues to wit - (a) whether the Applicant was a member of the Agaigi ruling house and (b) whether he was nominated by the ruling house for consideration for appointment by the Kingmakers. The first issue was resolved both by the Court of Appeal and this Court in favour of the Applicant. As the second issue was resolved against him by the two appellate Courts, his appointment was nullified. After this nullification by the courts, an exercise was embarked upon with a view to making an appointment to the vacant office of Olofin of Ilishan Remo. It was the conduct of this new exercise that was in issue in the second set of litigation. I cannot see how by any stretch of imagination it could be said that the purpose of the second set of litigation

was to interpret the judgment given by this Court in December 1989. That is not to say that in resolving that second suit, the Court would not look into the judgment of this court in the earlier case to determine what was involved and what this Court decided. Surely, if there is any ambiguity in what this Court decided it is to this Court that an application will be made to clarify its judgment. That is not the case here. No-one has complained of ambiguity in the judgment of this Court in the earlier case. What has happened is that each party has decided to put on it its own interpretation and to act accordingly. The interpretation to be placed on the 1989 judgment of this Court was only incidental to the second suit and not its main purpose. I, therefore, see no substance whatsoever in the alternative prayer (2) which is hereby refused by me.

I now turn to the first prayer. This consists of series of prayers. The main complaint is that as Onu JSC and my humble self sat on the Bench of the Court of Appeal that decided the appeal in the first case, that is, CA/1/122/85, we should not have sat on the Bench of this Court that decided the final appeal in the second case. It is the contention of Mr. Ezike for the Applicant that by the presence of the two Justices, the adjudicating tribunal, that is, this Court, was not constituted in such a manner as to secure its independence and impartiality. He contends that the two Justices complained of were disqualified from sitting in view of the fact that it was their judgment affirmed by the Supreme Court in 1989 that fell to be construed in the 1996 judgment. He cited in support R. v. Kent Police Authority ex parte Godden (1971) 2 Q.B. 662 at 670. He submits that as the two Justices had expressed a view adverse to the Applicant, it was improper for them to sit again on the same matter.

Mr. Adefulu for the 4th to the 17th Appellants/Respondents in associating himself with the submission of Mr. Ezike submits that what was essential was the question: is there a real likelihood of bias? He relies on LPDC v. Fawehinmi (1985) 2 NWLR 300 and Metropolitan Property Company Ltd. v. Cannon (1969) 1 Q.B. 572, 599. He observes that the lead judgment of this Court shows over familiarity with the facts. When taken up by members of the Court to substantiate this view, that is, to show what was in the lead judgment that was not on record, he was

unable to do that. Obviously, he was only trying to be insolent.

I pause here to comment briefly that the recklessness shown by Mr. Adefulu is a clear indication of his frame of mind in this matter. He did not, throughout, behave as one would expect of an officer of the Court. Rather he exhibited an attitude of a wounded lion, his father being the Applicant in the matter. He could not isolate his personal grief from his duties to the Court. I think it will help to draw attention to what this Court, per Sir Adetokunbo Ademola CJF, said in OJIEGBE V. UBANI (1961) 1 ALL NLR 277 at p. 279; (1961) 2 NSCC 153 at p. 154.

"I think it is undesirable for a barrister to put himself into a situation in which he cannot be 'counsel' in the true sense of the word, because he is in substance the party"

Mr. Adefulu would have done himself a greater justice if he had not placed himself in the invidious position of being counsel in this matter.

Mrs. Asenuga learned counsel for the second and third Appellants/Respondents submits that the fact that the two Justices who sat in the Court of Appeal in the first suit sat in this Court in the second suit does not affect the competence of this Court. She relies on Conac Optical Nigeria Ltd. v. Chief Olu Akinyede (1995) 6 NWLR 212 at p. 221. Learned counsel refers to the issues in the two cases and submits that the issues are different even though the subject matter is the same. Learned counsel refers also to R. v. Lovegrove (1951) 1 ALL E.R 804 at p. 805. She submits that the affidavit evidence before the Court has not shown that the two Justices were parties in the case or in any way interested. She finally submits that there was no evidence in this case to create a real likelihood of bias.

Mr. Sofola SAN for the Plaintiffs/Respondents submits that the application is frivolous in the extreme and it is an abuse of the process of Court. He observes that the Applicant has not shown any precedent for this type of application. Learned Senior Advocate submits that the purpose of the application is improper in that it is to malign the judiciary. He observes that the deponent to the affidavits in support of the motion is the son of the Applicant and counsel to 4th - 17th Respondents. He states that Mr. Adefulu was present in Court when the appeal was heard.

I may note at this stage that Mr. Adefulu confirms this statement. Mr. Sofola submits that the affidavits in support of the motion are defective in that Mr. Sofunde SAN learned leading counsel for the Applicant at the hearing of the appeal knew that the two Justices that sat with others to hear the appeal once sat in the Court of Appeal in the first case and yet raised no objection. It is learned counsel's submission that if the Applicant had succeeded in the appeal he would not complain about the composition. Learned counsel submits that the purpose of this application was to deny the Plaintiff/Respondents the fruits of their judgment by delaying further the filling of the vacancy in the Olofin of Ilishan Chieftaincy. He submits that the Court is competent in that it was properly constituted when it heard the appeal. He observes that the appeal to this Court came from the Court of Appeal presided over by Ogwuegbu, Salami and Muhammad JJCA and the two Justices now being complained of did not participate in it. He urges the Court to dismiss the application.

This undoubtedly is a novel application. Section 33(1) of the Constitution of the Federal Republic of Nigeria provides thus:

"33(1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality."

It has not been suggested by the Applicant that my learned and noble brother Onu JSC and my humble self who sat in this Court at the hearing of the appeal decided in this Court in December 1996 had any interest of whatever nature in the matter. His main complaint was that as both of us once sat in the Court of Appeal in deciding a matter between the parties relating to the subject matter of the Olofin of Ilishan Chieftaincy we were disqualified from ever sitting on any matter arising between the parties in respect of the same subject matter. I think this complaint is preposterous.

In the first suit that found its way to the Court of Appeal where both Onu JSC and my humble self sat, the issues that were then in controversy were:

- (a) the status of the Applicant in the Agaigi ruling house and
- (b) the question of whether he was nominated by that ruling house.

The Court of Appeal decided the first issue in his favour and the second issue against him. Both parties went on further appeal to the Supreme Court which affirmed the findings of the Court of Appeal on the two issues. In the present suit that found its way to the Supreme Court the main issue simply was this: Following the decision of this Court in 1989, could the exercise to fill the vacancy be commenced de novo as if a new vacancy was being filled or should it have been at a stage where the Kingmakers had to consider the four candidates duly nominated by the ruling house. I cannot see how a pronouncement in the first suit could be said to create the likelihood of bias in the determination of the second suit. It is not unknown that the same panel of this Court has sat to determine different issues relating to the same subject matter and between the same parties. I cite as an example Fawehinmi v. N.B.A. (No. 1) (1989) 2 NWLR (Pt. 105) 494 and Fawehinmi v. N.B.A. (No. 2) (1989) 2 NWLR (Pt. 105) 558 where the same panel of this Court sat to consider two different issues arising in the dispute between Chief Gani Fawehinmi and the Nigeria Bar Association. The factual situation in the present case between the parties is even quite different.

In the first suit that went from the Court of Appeal [where Onu JCA (as he then was) and my humble self participated] to the Supreme Court, the issues, as I have highlighted above, were twofold, namely:

- (1) whether the Applicant who was Defendant/Respondent in the Court of Appeal was a member of the Agaigi ruling family and
- (2) whether he was one of those nominated by the said ruling family for consideration by the kingmakers for appointment.

The issues in the second suit were as contained in the settlement of issues agreed to by the parties at the trial in the High Court. These are:

- "1. Whether it is open to the 1st Defendant to be nominated by the Agaigi ruling House as a person to fill the vacancy in the Olofin of Ilishan Chieftaincy having regard to the judgments in HCS/25/81, CA/1/122/85 and SC/5/88 and the provisions of the Chiefs Law Cap. 20 Laws

of Ogun State of Nigeria 1978.

2. *whether the 2nd Defendant was right in inviting fresh nominations from the Agaigi Ruling House after the judgment of the Supreme Court in Suit No. SC/5/1988.*

3. *Whether the vacancy created in the Olofin of Ilishan Chief- B
taincy in 1981 as a result of which the Agaigi ruling House was invited
by the Secretary, Ijebu-Remo Local Government in February, 1981 to
nominate candidates to fill the vacancy was filled by the 1st Defendant
and if so whether a new vacancy was created on the 8th of December, C
1989."*

It is clear from the above that the issues that called for determination in the two suits were completely different even though the parties and the subject-matter were the same. As rightly submitted by Mrs. Asenuga, it was the executive act embarked on by the Secretary to the Local Gov- D
ernment and the splinter group in the Agaigi ruling family following the 1989 Supreme Court judgment that precipitated the taking of the second suit by the Plaintiffs/Respondents. To suggest, as is now being done by the Applicant, that a pronouncement by a Judge on the two issues of the E
membership of the Applicant in the Agaigi ruling family and whether he was nominated by that family for consideration by the Kingmakers that arose for determination in the first suit will preclude the Judge from sitting to determine the issues involved in the second suit, is, to my mind, F
puerile And if, as again is now being suggested by the Applicant, the second suit is seen as calling for the interpretation of the judgment in the first suit, who, one may ask, is in a better position to do this than the Judge who adjudicated that first suit? The question of bias or real likeli- G
hood of bias in such a situation can only arise in the figment of the imagination of a feeble and unmatured mind. As Darling, J. put it in R. v. Bennett, R. v. Newton (1913) 9 Cr. App Rep. 146 at p. 157.

*"It was a great mistake to suppose that the trial judge would be H
inclined to set up his view against the opinions of his brethren or 'to fight
for his own hand'".*

In those cases the trial Judge had become a member of the Court of Criminal Appeal when the appeals came to the latter Court and he sat to

hear the appeals. The Defendants asked for adjournment so that the trial Judge might not sit. They failed.

Mr. Ezike cites the case of R. v. Kent Police Authority and Ors. ex parte Godden (supra). But this case is not just apposite to the facts here. In that case, the applicant, a police chief inspector, was transferred to administrative duties. He made accusations of unjust treatment against his superiors. A chief constable held an inquiry and reported in May 1970 that there was no evidence of malpractice. The applicant was told the result of the inquiry but was not shown the report.

On July 4, 1970, the applicant's desk was searched by a senior officer. Erotic documents including a draft letter said to be in the applicant's handwriting were removed. The applicant denied knowledge of the documents. It was arranged for the applicant to be seen by the chief medical officer of the force, who was supplied with a copy of the report of May 1970 and the documents. He saw the applicant and on July 23, 1970 reported that after reading the reports he formed the opinion that the applicant was 'suffering from a mental disorder of paranoid type.' On July 31, 1970, he certified that the applicant was unfit for police duty on the same ground. The applicant was put on sick leave.

The applicant saw his own doctor who sent to a consultant psychiatrist. The consultant psychiatrist reported on August 18, 1970, that the applicant was 'psychiatrically completely normal' and on May 17, 1971, that in his opinion he was 'normal psychiatrically and in good mental and physical health.' The police would not allow the consultant psychiatrist to see the report of May 1970.

The police authority took steps compulsorily to retire the applicant. On January 22, 1971, they notified the applicant that they had selected the same chief medical officer as their 'duly qualified practitioner's to determine whether the applicant was 'permanently disabled' under regulation 70(2) of the Police Pensions Regulations 1971.

The applicant sought orders of prohibition and mandamus. The Divisional Court dismissed the applications. On appeal to the Court of Appeal it was held, allowing the appeal -

(1) That a medical practitioner giving a decision as to whether a person

was permanently disable under regulation 70(2) of the Police Pensions Regulations 1971 was performing a quasi-judicial function and under a duty to act fairly.

(2) That since the chief medical officer had already expressed a view adverse to the applicant an order of prohibition should go to prohibit him from determining whether the applicant was permanently disable under the regulations. B

(3) That the applicant's medical consultants were entitled to see all the material placed before any other doctor and an order of mandamus should go to the police authority that if at any time consideration were given as to whether the applicant was permanently disabled with the regulations they should supply to his medical consultant all materials which was placed by them before any duly qualified medical practitioner selected by them under regulation 70. C D

Surely, on the facts of the instant motion, the Court of Appeal Ibadan Division in Suit No. CA/1/122/85, unlike in the case cited, was not called upon to pronounce, nor did it do so, on the issues that arose for consideration in the 2nd suit, that is HCS/26/90 that came eventually on appeal to this Court and was decided in December 1996. E

Our attention has also been drawn to the case of R. v. Lovegrove (supra) where the Court of Appeal in England held that on an application or appeal to the Court of Criminal Appeal, there is as a general rule, no objection to the trial judge sitting as a member of the court to hear the application or appeal. The facts are simple. The applicant was convicted at the Bedford Assizes by Lynskey, J. of two charges of receiving property knowing it to be stolen and was sentenced to five years imprisonment. Lynskey, J. had since then become a member of the Court of Criminal Appeal and the point was discussed whether in the circumstance he should sit while the application was being heard. Lord Goddard, C.J., delivering the judgment of the Court, observed at pages 804-805 of the Report: F G H

"The applicant was convicted by LYNSKEY, J., at Bedford Assizes, and his application for leave to appeal, which has been refused by the single judge, now comes before this court of which LYNSKEY, J., is a

member. It has undoubtedly been the practice recently, if the trial judge happens to be sitting in the Court of Criminal Appeal, to adjourn the case, but the question is whether that practice need be followed in all cases in future.

B This matter was considered many years ago, and it was pointed out that in civil cases before the Supreme Court of Judicature Act, 1873, when there was no Court of Appeal and appeals were heard by judges of the three common law courts in banc, it was quite a common practice for the judge before whom the trial had taken place, and whose ruling, indeed, might be impugned, to sit as a member of the Court, even, in some cases, where he had sealed the bill of exceptions. This matter was considered in R. v. Sharman (alias Sutherland) (1913), 9 Cr. App. Rep. 130; 14 Digest 506, 5589, where an application for an adjournment was made **C** on behalf of the appellant on the ground that RIDLEY, J., who had tried the case, was presiding in the Court of Criminal Appeal. DARLING, J., giving the judgment of the court, said:

'I think this application ought not to be granted. After the as-
E *sizes, appeals come from all parts of the country; and if appellants are to be allowed to select the judges who shall hear their appeals, the business of the court could not be carried on. Before the days of the Judicature Act, when the Courts of Queen's Bench, Common Pleas and Exchequer sat in court to hear appeals (of course, not criminal appeals), it was the*
F *usual practice for the judge who tried the case to be present'.*

He concluded:

"There are cases in which, no doubt, it would be desirable that the trial judge should not sit, but where the ground of appeal is nothing but an
G *argument by the appellant that the verdict was wrong there is no reason whatever why the trial judge should not sit. In fact, it might be very useful sometimes that he should. In the present case the applicant was convicted before LYNSKEY, J., on two charges of receiving stolen prop-*
H *erty and was sentenced to five years' imprisonment. He was found in possession of stolen property. He gave no explanation which could be accepted by the jury and he was convicted. It was purely a matter for the jury and he only argues in his notice of appeal that the jury ought not to*

have convicted him. That is not a ground which this court ever entertains and the application is dismissed."

While the practice in the English courts may not put into question their impartiality, it is important to mention that that practice is not followed in this country. It is not the practice here for a judge to sit in the appellate court when his judgment at the trial court is being questioned on appeal. That, of course, is not the situation here. On the facts of this application, I can see no infringement of the provisions of section 33(1) of the Constitution.

For the reason I have given above I agree with my learned brother Belgore JSC that all the prayers sought in this motion must be refused. I, too, refuse them and unhesitatingly dismiss the motion in its entirety. As Mr. Sofola SAN has rightly submitted, the motion is frivolous, scandalous and a gross abuse of the process of the Court. It is, in my respectful view, intended to malign the integrity of this Court and of the Justices concerned in particular. It is unfortunate that the Applicant was ill-advised by his counsel in bringing this motion. Interestingly enough Mr. Sofunde SAN who led his team of counsel at the hearing of the appeal and the other learned members of that team have been excluded in this nefarious adventure. The reason must be clear and that is they, being honourable officers of the court and gentlemen, would not have anything to do with such adventure.

I abide by the order for costs made by my learned brother, Belgore, JSC.

MOHAMMED JSC

This application has no merit at all. Since the facts about the two sister appeals concerning this chieftaincy dispute are crystal clear I do not rule out mischief in filing this application. It is quite clear that the two cases referred to are not the same and I believe that the applicant and his lawyer knew it very well. For reasons best known to himself and his counsel James C. Ezike, Esq., the applicant file this application and the press gave it a wide publication showing that the learned Justices Ogundare

and Onu, JJSC, sat in an appeal from a decision in which the two learned justices participated at the lower court. Before reading the judgments in the two cases one is bound to be disturbed to hear such eminent justices sitting in the panel of the Supreme Court during the determination of appeal from their decision at the court below. But the moment you read the two judgments it becomes quite clear that the two cases are not based on the same facts.

In my view, this is a clear case of indiscipline in the legal profession and it ought to be condemned. The application is devoid of any merit and for the reasons given in the lead ruling of my learned brother, Belgore JSC, it is accordingly dismissed. I award N1,000.00 costs in favour of the plaintiffs/respondents.

D

ONU JSC

I have had the privilege to have a preview of the Ruling of my learned brother Belgore, JSC before now. I am in entire agreement with it that the application lacks substance and ought therefore to be refused.

I wish to comment briefly on the matter as follows:-

In the first place, in as much as the judgment of this court dated 13th December, 1996 arose by way of an appeal from the Court of Appeal sitting in Ibadan (Coram: Ogwuegbu, Salami and Muhammad, JJ.CA) and not the appeal from the decision of the Court of Appeal, Ibadan (Coram: Omo, Ogundare and Onu JJ.CA) in case No. CA/1/122/87 reported as Adefulu & ors. v. Oyesile & ors. (1989) 5 NWLR (Part 122) 377 vide Exhibit AA1, this application must perforce fail. This is notwithstanding the fact that the parties are the same as they relate to the Olofin of Ilishan Remo Chieftaincy and that two of the Justices who sat on the Supreme Court panel of 13th December, 1996 (Ogundare and Onu, JJ.SC) vide Exhibit AA2 (now reported in (1996) 9 NWLR (Part 475) 668) were members of the Court of Appeal panel that decided Appeal No. CA/1/112/87 that was eventually decided by this Court and reported as (1989) 5 NWLR 377 (supra). The two cases not being in substance the same, this application is lacking in substance and is mis-

conceived in my opinion.

Secondly, that learned counsel for the 4th-17th Appellants/Respondents - Adeyemi Adefulu having in his sworn affidavit in support of this application dated 27th October, 1997 and filed on 28th October, 1997 deposed in paragraph 8 thereof:

"That it was only after copies of the judgment in this Suit was (sic) published that the names of the Justices who sat in Appeal No. SC. 65/93 were known."

but albeit conceded from the Bar that as the acknowledged son of the applicant, he happened to be in court when the appeal was heard and that he was indeed then counsel for one of the seventeen appellants, the consequence of this is that the further affidavit the self same Adeyemi Adefulu swore to on 21st January, 1988 is irrefutably and irretrievably defective because it suppresses vital matters. And since the applicant in the application is seeking equitable reliefs but suppressed such vital points, he would not, in my view, merit to get the reliefs sought for the following reasons:-

1. Mr. Sofunde, SAN who earlier appeared for the appellants including the applicant in this court did not at the hearing raise any objection to the Panel of this court that sat on 13th September, 1996 as then constituted. I therefore agree with Mr. Sofola, Senior Advocate when he submitted that if the applicant has succeeded, he would not have brought this application ten months after the hearing took place, more so when Mr. Adefulu admitted bring an onlooker on the day in question over a matter concerning his father.

2. As recently decided by this court in Chime & Anor. v. Ude & ors. (1996) 1 NWLR (Part 461) 379 at page 422 Uwais, CJN had the following to say about this court's duty to supervise the disposition of cases:

"..... the court has a duty to do away with the congestion of cases filed before it, particularly where those cases are frivolous and are intended to merely overreach or deny the respondent the enjoyment of the fruit of the judgment given in his favour by the lower court or court below. The golden rule is that justice delayed is justice denied. I there-

fore, see nothing wrong or unconstitutional in this court invoking its inherent jurisdiction, required to deal with such infractions. If authority is required for the exercise of jurisdiction, recourse should be had to the provisions of Section 6 subsection 6(a) of the 1979 Constitution which

B states thus:

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

(a) shall extend, notwithstanding anything to the contrary in this Constitution to all inherent powers and sanctions of a Court of Law."

C It follows that neither the provisions of Order 6 Rule 3(2) nor the decision of this court in dismissing the appeal suo motu can rightly be said to be unconstitutional or null and void. It is only when it is shown that this court acted under a mistake of fact, such as the brief had in fact D been filed within the prescribed time, that it can ex debito justicia set aside the dismissal of the appeal under Order 6 Rule 3(2)"

3. Learned Counsel for the appellant/applicant submitted in alia that what this court did in its judgment of 13th December, 1996 was to E be called upon to interpret its decision of 8th September, 1989 and that this it did, citing in support of his contention the case of Adigun v. Governor of Oyo State (1987) 2 NWLR (Part 56) 197 at 207-213. While it is correct to say that fair hearing within the meaning of Section 33(1) of the F 1979 Constitution means a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties, vide Ntukidem v. Oko (1986) 5 NWLR (Part 45) 909, the role of interpreting its decision in the sense being presently arrogated to it cannot be right and proper. The applicant has not pin-pointed any authority for doing so.

G 4. The frivolity and contemptible manner in which this unprecedented and novel application was made, is made all the more glaring from the angle of the hideous concealment of Mr. Sofunde, SAN and his team of counsel who appeared for the appellants (among whom was the H applicant herein) in the case now sought to be declared a nullity. For obvious reasons, they would appear to have a nullity. For obvious reasons, they would appear to have nothing to do with this vexatious application aimed at bringing the judicial process into ridicule and utter degra-

dation.

Besides, to indict a decision of this court as being null and void as is being done in the case in hand, particularly in the scathing attack launched against its decision of 13th December, 1996, is to show arrant ignorance or obliviousness of the provisions of the Supreme Court Act Cap. 424 B Laws of Nigeria, 1990 particularly in sections 8 (2) and 10 which state as follows:-

"8(2) Any judgment of the Supreme Court shall have full force and effect in the Federation and shall be enforceable by all courts and C authorities in any part of the Federation in like manner as if it were a judgment of the High Court of that part of the Federation."

10. The Supreme Court shall be duly constituted if it consists of not less than five Justices."

And as to the finality of its determination, being the apex court or court D of last resort, Section 215 of the 1979 Constitution (ibid) provides:

"215. Without prejudice to the powers of the President or of the Governor of a State with respect to prerogative of mercy, no appeal shall lie to any other body or person from any determination of the Supreme E Court."

See also Rossek v. A.C.B (1993) 8 NWLR (Part 312) 382. Thus, in the judgment of this court dated 13th December, 1996, nowhere in it was it called upon to interpret anything. What indeed there was, was an appeal F to it from the Court of Appeal brought pursuant to Section 213 of the 1979 Constitution. The judgment of a superior court of record it is trite, can be declared in appropriate cases to be:-

(a) null and void where the court has acted without competence; G
or

(b) irregular or voidable, where the court acted in breach of rules of court.

Until it is so declared, it is binding. See Odiase v. Agho (1972) 1 ALL NLR 170 and Isaacs v. Robertson (1984) 3 ALL E.R. 140. In the instant H case, it was established on the admission of learned counsel for the 4th-17th Appellants/Respondents that on 15th September, 1996 he sat in this court (though not appearing in the case as applicant's counsel) to watch

the proceedings of that day which later culminated in the judgment of 13th December, 1996 without raising a finger as to its irregularity or want of competence until in October, 1997. This, in my opinion, is a belated act. The applicant's application, in my view also savours of an abuse of the court's process at least and looked upon from all angles at the highest, contemptuous. It is pertinent at this juncture to mention the impertinence of counsel for the applicant, Mr. Ezike, not to have come to court with his full records. I deprecate this remiss on the part of counsel since it is becoming the stock-in-trade of counsel to come to court ill-prepared, badly dressed and/or citing authorities for which no books were hitherto brought into court.

The question as to the jurisdiction of court could be raised at any point in a case before judgment but not after judgment has been delivered, sealed and signed. Thus, the present application, made after over ten months of the delivery of the judgment, borders clearly on frivolity and a wild goose-chase. See the purport of the Supreme Court Rules in Order 8 Rule 16 which provides:

"The court shall not review any judgment once given and delivered by it save to correct any clerical mistake or some error arising from any accidental slip or omission, or to vary the judgment or order so as to give effect to its meaning and intention. A judgment or order shall not be varied when it correctly represents what the court decided nor shall the operative and substantive part of it be varied and a different form substituted."

After the above general comment on the application I now wish to specifically add in respect of the prayers sought by the applicant by way of emphasis as follows:-

In prayer (a) the applicant seeks an order to set aside the judgment of this court delivered on 13th day of December, 1996 as there was a fundamental defect which goes to the issue of jurisdiction and competence of the court on the day when the appeal was heard and the said judgment was delivered. This court has always considered questions as to lack of jurisdiction a substantial point of law to be decided. See Akinsanya v. U.B.A. (1988) 4 NWLR (Part 36) 273 at 402. Such that an

objection that a court to entertain a matter or an action has no jurisdiction is in this court's view very fundamental. It can be raised at any stage of the proceedings in the High Court, in the Court of Appeal and in this Court by the parties.

See Oloriode v. Oyebi (1984) 5 SC. 1 and Oloba v. Akereja (1988) 3 NWLR 508; it is a question that has to be determined by the court before it can proceed to consider any other issue. Having earlier held elsewhere in this Ruling that the challenge to the jurisdiction of this court to have delivered the judgment in this case is a frivolity, this point is but a non-issue. Regarding whether there was a defect in this court's competence on the 13th December, 1996 decision by reason of the participation of Ogundare and Onu, JJ.SC who both read the lead and supporting judgments in Appeal No. CA/1/122/85 which judgment was upheld by this court in Adefulu & ors. v. Oyesile & ors. (1989) 5 NWLR (Part 122) 377; that the main burden of the judgment now sought to be set aside was to conduct an inquiry as to whether on the tenor of the Adefulu v. Oyesile case the applicant is precluded from being subsequently presented for consideration as the Olofin of Ilishan-Remo in that act, there can be no bias or likelihood of same. While it is the law that any defect in competence is fatal, it is only the proceedings of a court without competence that can be declared a nullity vide Oke v. Aiyedun (1986) 4 SC. 61 at 65. Where no such defect has been made out, as in the instant application, likelihood of bias cannot be inferred. See Ikehi Olue & ors. v. Obi Ezenwali & ors. (1976) 2 SC. 23; Obadara & ors. v. The President, Ibadan West District Grade B Court (1964) 1 ALL NLR 336 and L.P.D.C. v. Fawehinmi (1985) 2 NWLR (Part 6) 300. Nor can any argument of over familiarity with the 1996 case (Exhibit AA2) or with the 1989 decision (Exhibit AA1) by the two justices be sustained in the light of all I have hereinbefore said. No argument was advance to demonstrate how the competence of the two members of the Supreme Court panel that decided the two cases alleged to be the same or identical, was affected. The judgment of the Supreme Court on 13th December, 1996 (Exhibit AA2) being final, no appeal lies therefrom.

On the second prayer, the contention is that the judgment is a

nullity by reason of the fact that the adjudicating tribunal was not constituted in such a manner as to secure its independence and impartiality in view of the subject-matter and antecedents of the suit as well as the nature of the inquiry the Supreme Court was called upon to conduct. In furtherance of arguing this prayer, it was submitted that the said case be restored to the cause list and the appeal set down and heard de novo before a panel of Justices so constituted as to exclude the Justices (Ogundare and Onu, JJSC) whose participation, it is contended, has rendered the judgment complained of null and void. In answer to the query raised herein, it is pertinent to point out that as no appeal lies from the decision of the Supreme Court to any other court nor is it subjected to a review thereof, there can be no prayer to restore the case to the cause list to be set down for trial de novo. Much as this court cannot be called upon to interpret the decision complained against, it is functus officio to re-open the case much as it is an abuse of its process (see Harriman v. Harriman (1989) 1 NWLR 6) to request it to set aside the case and declare it a nullity when no valid reasons for so doing have been given. As to when the occasion may arise for this court to reconsider its earlier decisions, this has been re-stated in many cases notable among which are Oke v. Oke (1974) 1 ALL NLR 443 and Idehen v. Idehen (1991) 6 NWLR 382, the latter in which Olatawura, JSC at page 426, paragraphs B - C stated as follows:-

"The stand of this court in Oke & Anor. (supra) has been confirmed by the subsequent cases referred to in Dr. Oje's brief. Our judgment on any issue is conclusive of the matter raised and canvassed in that issue. Occasions will continue to arise where in similar situation the court will be called upon to reconsider the earlier decision. That invitation should not be regarded as an infraction or infringement of our right to pronounce a final judgment. Where we are called upon to reconsider that earlier decision, it must be based on good and valid reasons so as not to perpetuate injustice." (Underlining is mine for emphasis).

In the case in hand, we are being asked in what to my mind amounts to a display of utter effrontery, to interpret our earlier decision for no good

and valid reason. My firm view is that such a vexatious, contemptible and taunting application cannot be granted just for the asking. The decision of this court of 13th December, 1996 was therefore the final decision of the Court of final resort which it cannot on its own review or on application grant leave to appeal therefrom to any other tribunal in Nigeria B vide Section 215 of the 1979 Constitution (ibid). For the above reasons and the fuller ones set out in the lead Ruling of my learned brother Belgore, JSC I too refuse this application. I make the same consequential orders inclusive of those as to costs contained therein.

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