

SUPREME COURT OF NIGERIA

15TH MAY, 1998. SC. 119/1993

**CORAM:- S. M. A. BELGORE, I. L. KUTIGI, M. E. OGUNDARE,
S. U. ONU, A. I. IGUH, JJSC**

SAMUEL ODENIJI & ANOR PLAINTIFFS/APPELLANTS
(For themselves and on behalf of
Abolowojaiye family)

AND

SALAWU AKINPELU & ANOR DEFENDANTS/RESPONDENTS
(For themselves and on behalf of Akinpelu
family)

OBA YESUFU OLOYEDE ASANIKE

The Olubadan of Ibadan

***APPEALS** - Concurrent findings of fact - Which were not shown to be in breach of any law or procedure or has otherwise occasioned a miscarriage of justice or is perverse - Will not be interfered with.*

***CHIEFTAINCY MATTERS** - Traditional evidence - Where the respondents gave convincing traditional evidence as against the contradictory evidence adduced by the appellants - The trial court was perfectly right when it applied the test on traditional evidence as enunciated by the authorities to find for the respondents.*

FACTS

The Plaintiffs/appellants sued the defendants/respondents in the High Court of Oyo State holden in Ibadan claiming as follows: A declaration that the 1st and 2nd defendants, their agents and others claiming through them are not descendants of Abolowojaiye family through their paternal side and therefore cannot aspire to take any rights, benefits of the purported installation of the 1st defendant as Baale Abolowojaiye village. They also claimed for a perpetual injunction against the 1st defendant from parading himself as the Baale of Abolowojaiye village. One Labulo Abolowojaiye, a great Ibadan warrior was the reputed founder of

Abolowojaiye village where he was the first Baale. The Plaintiffs contended that the defendants descended from the slave child Akinpelu who Labulo adopted as his child. They further contended that Labulo in order to differentiate Akinpelu from the direct issues he begat, incised "Gombo" marks on Akinpelu's checks as against the "mefa - mefa" marks on Labulo and his natural children. The defendants contended to the contrary and averred that Labulo was paternally related to Akinpelu.

At the conclusion of trial, the learned trial judge, in a reserved judgment found that the defendants were descendants of Akinpelu who was related by blood to Abolowojaiye, consequently he dismissed the plaintiffs' claims. Being dissatisfied with the trial court's decision, the plaintiffs appealed to the Court of Appeal Ibadan division, which also dismissed the appeal. Further aggrieved, they have now appealed to the Supreme Court raising five issues, while the respondents formulated a single issue, which was preferred by the court.

ISSUE FOR DETERMINATION

Whether the Akinpelu family is related to the Labulo Abolowojaiye family on the father side or not.

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

Traditional evidence

1. In his evidence, the 1st Appellant admitted that both Akinpelu and Labulo indiscriminately circumcised the "Gombo" and "mefa - mefa" marks on their respective faces, which knocks out the averment and evidence of the Appellants that the "mefa - mefa" marks were the exclusive preserves of the Labulos while the Gombo marks were for the Akinpelu family exclusively. The evidence of P.W.2 is similar to that of P.W.1 in relation to the tribal mark distinction. He too admitted that Akinpelu family members had "mefa - mefa" marks while Labulo members also had Gombo marks. This witness even went further to admit that the 1st Respondent lived at Temidire-Oje in Abolowojaiye compound at Ibadan. The Appellants' denial of blood relationship with the Respondents was in no way assisted by the evidence of P.W.4 as herein below exemplified.

P.W4, Salimonu Adeyemo, a half brother of the 1st Appellant, for his part, after his evidence in chief gave the following answers under the intense heat of cross-examination by learned counsel for the Respondents thus:

"..... Any member of Akinpelu family who had six tribal marks had it at his pleasure. I know Adeleru who is from Labulo. He Adeleru had Gombo marks. He had Gombo marks in honour of the family of his mother who had Gombo marks - Lawusi was born by Akinsola my own father who was from Labulo family - Mosun is a daughter of Lawusi. She had Gombo marks"

The 1st and 2nd Respondents on their parts gave convincing traditional evidence of the founding by settlement of Akando by the Abolowojaiye family from time immemorial till date. Thus, the trial court was perfectly right when it applied the test on traditional history⁵ as enunciated in the cases of

(1) Ikpang v. Edoho (1978) 2 LRN 29 at 39-40 and

(2) Mogaji v. Odofin (1978) 4 SC. 91 at 94-95.

to express a preference for the Respondents' story to the effect, inter alia, that -

"I accept as true the traditional evidence of the 1st and 2nd defendants that Abolowojaiye family in truth and in fact consists of Labulo, Akinpelu, Kukoyi, Kudeti and Ehinge. The mere fact that it is only the Akinpelu branch that has been active to contest their rights to the throne of Baale of Abolowojaiye Village should not be the cause of their being stigmatised as slaves who are not in any way related to Labulo Abolowojaiye family. Of course both Labulo and Akinpelu are full-blooded relations" (p. 1266 E)

Concurrent findings of fact

2. In conclusion, the court below dealt with what it rightly, in my opinion, regarded as the issue before it and in relation to which it observed

⁵ See the case of Ayotebi v. Gov of Oyo State (1994) 9 KLR where the plaintiff's version of traditional history was also rejected.

with an air of finality thus:-

"The issue before the court below was whether the respondents are descendants of Abolowojaiye family through their paternal side. If the answer is in the positive, then they can aspire to and take benefits of the stool of Baale Abolowojaiye. The learned trial Judge answered this question in the positive. He found rightly, in my view, that both parties heavily relied on traditional evidence as to their origin and those who founded the Abolowojaiye Village. He referred to the statement of the law on traditional evidence by Aniagolu, JSC in Ikpang v. Edoho & ors. (1978) 2 LRN 29 at 34-41 and Adenle v. Oyegbade (1967) NMLR 136 at 139. Both cases are reaffirmations of the principle laid down in Kojo II v. Bonsie & ors. (1957) 1 WLR 1223 which the learned counsel for the appellants argued was not followed by the trial Judge in arriving at his decision"

The above are concurrent findings of fact with which I am loath to interfere⁶, not having been shown to be in breach of any known law or procedure or has otherwise occasioned a miscarriage of justice or is perverse. See Ebba v. Ogodo (1984) 4 SC. 84 at 98 and Chukwueke v. Nwankwo (1985) 2 NWLR 195. (p. 1271 E)

REPRESENTATION

F Fred Agbaje for the Appellants
Respondent not represented

CASES REFERRED TO

G Ikpong v. Edoho (1978) 2 LRN 29 at 39-40
Mogaji v. Odojin (1978) 4 SC. 91 at 94-95
Latunde v. Lajinfin (1989) 3 NWLR (Part 108) 177
Ebba v. Ogodo (1984) 4 SC. 84 at 98

H ⁶ See the following cases where the Supreme Court refused to disturb concurrent findings of fact by the lower courts: Ugbo v. Aburime (1994) 12 KLR 363; Otitaju v. Gov. of Ondo State (1994) 7 KLR 77. But see Aneze v. Anyaso (1993) 6 KLR 11 where the concurrent findings were held to be wrong.

Chukwueke v. Nwankwo (1985) 2 NWLR 195

Njoku v. Ene (1973) 5 SC. 293

Ebbav. Ogodo (1984) 4 SC. 84

Ohinwendu v. Mbamali (1980) 3-4 SC. 31

Enang v. Adu (1981) 11-12 SC. 25

B

LEAD JUDGMENT BY ONU JSC

In the High Court of Oyo State holden in Ibadan the Plaintiffs (Appellants herein) sued the Defendants (Respondents herein) claiming in paragraph 27 of their Amended Statement of Claim as follows:- C

"(1) A declaration that the 1st and 2nd defendants, their agents and others claiming through them are not descendants of Abolowojaiye family through their paternal side and therefore cannot aspire to take any rights, benefits of the purported installation of the 1st defendant as Baale Abolowojaiye Village in Lagelu Local Government Area on 27th April, 1987 by the 3rd defendant is null and void. D

(2) A perpetual injunction against the 1st defendant from parading himself as the Baale of Abolowojaiye Village in Lagelu Local Government of Ibadan." E

Pleadings were ordered, filed, subsequently amended and exchanged by the parties excluding the 3rd Respondent who filed none and did not participate in the trial.

F

The case went to trial and in a well considered judgment the learned trial Judge, Abiodun Alao, J. dismissed the Appellants' claims in their entirety on 4th November, 1988.

Being dissatisfied with the trial court's decision, the Appellants appealed to the Court of Appeal sitting in Ibadan (Coram: Akanbi and Ogwuegbu, JJ.CA as they were then and Salami, J.C.A) which also dismissed their appeal on 23rd January, 1992. G

Further aggrieved by that decision of the Court of Appeal (which I shall hereinafter refer to simply as the court below in the rest of this H judgment, appellants filed a Notice of Appeal containing seven grounds attacking the decision.

For a better appreciation of the facts giving rise to the case, I

think it is pertinent to set them out as follows:-

B One Labulo Abolowojaiye, a great Ibadan warrior was the reputed founder of Abolowojaiye Village where he was the first Baale. During one of the various wars fought by Labulo, he was said to have captured a woman called Akode who was nursing a male child (Akinpelu) at the time of her capture. Labulo later married Akode who had issues for him and who in that regard were half brothers and sisters of Akinpelu. It was Appellants' case that Labulo adopted Akinpelu as his child but in order to differentiate Akinpelu from the direct issues he begat from Akode, Labulo C incised "Gombo" marks on Akinpelu's cheeks which were similar to those Akode had. These were marks distinguishable with "mefa - mefa" marks on Labulo and his natural children. As a matter of fact, the 1st Appellant (Samuel Odiniji) while testifying as P.W.1 as the oldest living member of D Labulo family, stated that no member of his (Labulo) family had ever had Gombo marks on his or her face.

He went further to show how the Akinpelu family is not in any way related to Labulo family in that while Labulo family worship the E gods of Sanponna and Ogun, the Akinpelu family worship Osun. It was further the case of the Appellants that Labulo family is in no way related to Akinpelu family more especially that the two families intermarried each other, whereas in Yoruba custom, people who are related do not inter- F marry.

Albeit, the rivalry between Labulo and Akinpelu families over succession to the Baaleship of Abolowojaiye was brought to a head when, to stem the wrangles, the 1st Respondent was unanimously nominated to fill the vacancy - an act the 3rd defendant endorsed. The Appellants' G dissatisfaction with that arrangement is what has led to the case herein on appeal.

The parties exchanged Briefs in accordance with the rules of this court. While the Appellants submitted five issues as arising for de- H termination, the Respondents formulated a single issue for the resolution of the appeal. I prefer the lone and dominant question proffered by the Respondents which asks:

Whether the Akinpelu family is related to the Labulo Abolowojaiye

family on the father side or not.

In arguing this single issue the gravamen of the Appellants' claim and by ordinary interpretation would appear, in my view, to be predicated on the words "ARE THEY NOT DESCENDANTS OF ABOLOWOJAIYE FAMILY THROUGH THEIR PATERNAL SIDE?" In other words, what they are contending is that if it can be established that 1st and 2nd Respondents are descendants of Abolowojaiye family through their paternal side, then the consequence would be:-

"A declaration that the 1st and 2nd defendants therefore CAN ^Caspire to take any rights, benefits of the purported installation of the 1st defendant as Baale of Abolowojaiye Village in Lagelu Local Government Area on 27th April, 1987 by the 3rd defendant, is proper and valid." And should the above proposition be acceptable as the pivot upon which the entire case revolves, then it would be logical to conclude that Labulo ^Dand Akinpelu families hailed from the same paternal line and that by the same token appointment/installation of 1st Respondent as the Baale of Abolowojaiye was in order. The Appellants' view, as appeared clear throughout the entire proceedings including the appeal in the court below, was to the contrary. That Appellants were from the word go reticent and not forthcoming about what other branches or lines existed and are eligible to succeed to the Baaleship of Abolowojaiye Village apart from Labulo family can be seen from the original Statement of Claim wherein ^Ethey mentioned nothing about these brethren until in paragraph 3 of their Statement of Defence the Respondents later pleaded as follow:-

"With reference to paragraphs 5, 6, and 7 the 1st and 2nd defendants aver that Labulo migrated to Akanda Village with his brothers ^Gnamely Akinpelu, Ajayi, Kudetil, Kukoyi and Eyinge and also a sister. All these people were of same parentage with Labulo."

The above pleading invoked a Reply to the statement of Defence from Appellants wherein they averred:

"Plaintiffs deny paragraph 3 to the extent that Labulo is of the ^Hsame parentage with Akinpelu, rather Labulo was Akinpelu's step-father."

It is significant to note that whereas the Appellants agreed that Labulo

was paternally related to Kukoyi, Ajayi, Kudeti and Ehinge, they singled out Akinpelu family of the Respondents as not having the same lineage. This is irrespective of the fact that P.W.2, Suara Babatunde and 2nd Appellant testifying as P.W.4, admitted these other lines in the Abolowojaiye family and of the serious and tenacious efforts made by the Appellants to disown the Akinpelu family by using the issue of tribal marks to disqualify it from the Baaleship of Abolowojaiye. See paragraph 11 of the Amended Statement of Claim and the evidence of 1st Appellant when he said inter alia

" I do not know any sister of Labulo. Akinpelu's mother was captured as a slave from the battle ground. Labulo family members have six tribal marks whereas members of Akinpelu family have "Gombo" mark. The tribal mark is to distinguish Labulo family from Akinpelu family. There is no member of Labulo family who has "Gombo" tribal mark. I know Adeleru. He is from Kukoyi family. He has "Gombo" tribal mark. It is possible that some members of Akinpelu family may have six tribal marks but such of them who do are not members of Labulo family"

In his evidence, the 1st Appellant admitted that both Akinpelu and Labulo indiscriminately circumcised the "Gombo" and "mefa - mefa" marks on their respective faces, which knocks out the averment and evidence of the Appellants that the "mefa - mefa" marks were the exclusive preserves of the Labulos while the Gombo marks were for the Akinpelu family exclusively. The evidence of P.W.2 is similar to that of P.W.1 in relation to the tribal mark distinction. He too admitted that Akinpelu family members had "mefa - mefa" marks while Labulo members also had Gombo marks. This witness even went further to admit that the 1st Respondent lived at Temidire-Oje in Abolowojaiye compound at Ibadan. The Appellants' denial of blood relationship with the Respondents was in no way assisted by the evidence of P.W.4 as herein below exemplified. P.W.4, Salimonu Adeyemo, a half brother of the 1st Appellant, for his part, after his evidence in chief gave the following answers under the intense heat of cross-examination by learned counsel for the

Respondents thus:

"..... Any member of Akinpelu family who had six tribal marks had it at his pleasure. I know Adeleru who is from Labulo. He Adeleru had Gombo marks. He had Gombo marks in honour of the family of his mother who had Gombo marks - Lawusi was born by Akinsola my own father who was from Labulo family - Mosun is a daughter of Lawusi. She had Gombo marks" B

The 1st and 2nd Respondents on their parts gave convincing traditional evidence of the founding by settlement of Akando by the Abolowojaiye family from time immemorial till date. Thus, the trial court was perfectly right when it applied the test on traditional history as enunciated in the cases of C

(1) Ikpang v. Edoho (1978) 2 LRN 29 at 39-40 and

(2) Mogaji v. Odofin (1978) 4 SC. 91 at 94-95. D

to express a preference for the Respondents' story to the effect, inter alia, that -

"I accept as true the traditional evidence of the 1st and 2nd defendants that Abolowojaiye family in truth and in fact consists of Labulo, Akinpelu, Kukoyi, Kudeti and Ehinge. The mere fact that it is only the Akinpelu branch that has been active to contest their rights to the throne of Baale of Abolowojaiye Village should not be the cause of their being stigmatised as slaves who are not in any way related to Labulo Abolowojaiye family. Of course both Labulo and Akinpelu are full - blooded relations" (Underlining is mine for emphasis). E F

Concerning the tribal marks on the faces of the parties and other claims as pedestals for the superiority or inferiority of their contending claims, the learned trial Judge after a thorough evaluation of their case observed as follows:- G

"..... But from the evidence adduced before me it is clear that both the plaintiffs Labulo family and the defendants Akinpelu family have both the six and "Gombo" tribal marks. For instance P.W.2 Supara Babatunde stated that Muniratu Abefe from Akinpelu line has six tribal marks while P.W.4 also stated that both Adeleru and Mosun daughter of Lawusi have Gombo tribal marks. The son of the first defendant the H

present Baale of Abolowojaiye family has six tribal marks. These pieces of evidence violently contradicted the evidence of P.W.1 that there is no member of Labulo family with "Gombo" marks. From the indiscriminate manner that both Gombo and six tribal marks are circumcised on the faces of members of both families I am of the view that the "Gombo" marks are not meant to be the distinguishing marks for slaves. I am inclined to accept the story of the defendants that Gombo tribal facial marks came into Akinpelu family as a result of Ifa oracle which divined that Akinpelu's children must have "Gombo" marks so as to prevent them from dying young. Another reason advanced by the plaintiffs to show that they and the 1st and 2nd defendants are not related is that the Labulo family worships Sanponna god of small pox and Ogun god of Iron whereas the Akinpelu family worships Oshun god of water. I do not think that that evidence is true. The evidence of the 1st and 2nd defendants that the Akinpelu family worships Oshun in addition to Ogun and Sanponna because it was the god of water called Oshun who saved their children from dying young, is in my view, more probable. Another reason why the Labulo family denied any blood relationship with Akinpelu family is that girls or women from Labulo family like Lawumi, Kudiratu and Oyayoyin got married to men from Akinpelu family. The plaintiffs contended that under Yoruba custom there cannot be such marriages among relatives. While I am prepared to accept the Yoruba custom which forbids marriage between close relatives, I am not prepared to accept the three instances of marriage if at all they exist between the Labulo women and Akinpelu men to destroy the long established blood relationship between the two families of Labulo and Akinpelu. As the couples were not produced before the court for both the court and parties to see, it may be unfair to charge them with incest and to conclude that the marriages were improperly solemnised in accordance with Yoruba custom. If such marriages exist they are most improperly contracted. In addition the plaintiffs feebly attempted to say that there is no member of Akinpelu family living at Abolowojaiye compound, Temidire, Oje, Ibadan."

See Latunde v. Lajinfin (1989) 3 NWLR (Part 108) 177, a case bearing some traits or similarities to the one in hand where action was instituted

in 1973 in the Customary Court Grade "A" holden at Ibadan. There, Plaintiff/Respondent had sued the Defendants/Appellants as per his amended writ of summons thus:

"1. Declaration that the defendants are not member of Delesolu Family or Lajinfin Family of Oje, Ibadan.

2. Declaration under native law and custom that the defendants and their descendants are not entitled to be head of Delesolu Family.

3. Order that the plaintiff's descendants have always been and are entitled to be the head of Delesolu Family in accordance with native law and custom.

4. Injunction restraining the 2nd defendant from parading himself as the Head of Delesolu Family."

He succeeded on virtually all heads of claims. In an appeal to the Court of Appeal, the appellants still lost and in dismissing their further appeal to this court, it was held (per Uwais, JSC as he then was) inter alia that -

"Although the traditional evidence adduced by the parties in the case was conflicting, the evidence was tested by the trial Customary court by reference to numerous factors such as facial marks and native law and inheritance and custom on inheritance of wife and property by a younger brother before accepting the plaintiff's traditional evidence. It was held in addition that these being concurrent findings of fact by the two lower courts, the Supreme Court declined to disturb them."

The trial court in the case in hand held in conclusion:

"Looking at the case as a whole, I am of the view that the Labulo branch of Abolowojaiye family wants to preserve the Baaleship of Abolowojaiye village for their own line alone. They have fought gallantly for it but they have not succeeded. Their greed should stop there. Both sides to this dispute are advised to go back home and reconcile with one another. The Baale of Abolowojaiye is a minor chieftaincy over which they should not waste their valuable money and time."

In upholding the entire decision of the trial court the court below had this to say:

"In view of the above findings, counsel submitted that the king pin of the appellants' case had been demolished and that it would not

make any difference even if the 3rd defendant did not contest the averments against him.

On the issue of fair hearing, learned counsel stated that such a situation did not arise in the suit against the appellants vis-a-vis the 3rd defendant.

Issues one to three cover ground one of the original ground of appeal and grounds one and three of the additional grounds of appeal. The learned counsel for the appellants lost sight of the main relief contained in paragraph 27(1) of the amended statement of claim which I again set out hereunder:-

"A declaration that the 1st and 2nd defendants, their agents and others claiming through them are not descendants of Abolowojaie family through their partanal (sic) side and therefore, cannot aspire to take any rights, benefits of the purported installation of the 1st defendant as Baale"

"This is their claim in the court below. Except they prove the above claim the action of the third defendant cannot be called into question. Therefore, whether the 3rd defendant filed his statement of defence or not, whether he was present at the trial or not, his evidence will not aid any of the parties as to whether the respondents are brothers of the full blood of the appellants and therefore entitled to succeed to the stool.

The contest at that stage was between the appellants and the respondents. If the court below had found in favour of the appellants, then the action of the 3rd defendant would have been declared null and void whether he participated in the proceedings or not.

As the learned counsel for the respondents rightly submitted, the issue of fair hearing canvassed by the learned counsel for the appellants did not also arise in the suit. There was no evidence led to substantiate the averment in paragraph 23A of the amended statement of claim. There is no specific claim that the 3rd defendant appointed the 1st respondent as Baale contrary to native law and custom of Abolowojaie. There is no relief sought against the 3rd defendant alleging breach of Section 33(1) of the Constitution of the Federal Republic of Nigeria, 1979 as amended.

The principles of fair hearing does (sic) not exist in the air. It

must relate to a specific claim in the Writ of Summons or statement of claim. Where there is a right to a hearing and there was one, was there a requirement that notice of the proceedings be given to the parties, a right to an oral hearing, to cross-examine witnesses or to be legally represented which were not complied with? In the case of Lagunju v. Olubadan-in-Council (supra), the ordinance enjoined the Governor as the approving authority to hold due enquiry and consultation with persons concerned with the selection if there is any dispute and an enquiry was in fact conducted. The conduct of the said enquiry gave rise to the proceedings. In the appeal before us no hearing or enquiry was conducted. Therefore, the principle of natural justice put in the two maxims of audi alteram partem and nemo iudex in causa sua did not arise or call for determination in the court below or this court. The complaints levelled against the 3rd defendant in failing to file his statement of defence, participate in the proceedings and the denial of fair hearing are non-issue in the court below having regard to the claim brought in the lower court. The facts and circumstances of the case of Lagunju v. Olubadan-in-Council (supra) and the other cases cited by the learned appellants' counsel on fair hearing are a far cry from those of the present appeal."

With these two courts below I entirely agree.

In conclusion, the court below dealt with what it rightly, in my opinion, regarded as the issue before it and in relation to which it observed with an air of finality thus:-

"The issue before the court below was whether the respondents are descendants of Abolowojaiye family through their paternal side. If the answer is in the positive, then they can aspire to and take benefits of the stool of Baale Abolowojaiye. The learned trial Judge answered this question in the positive. He found rightly, in my view, that both parties heavily relied on traditional evidence as to their origin and those who founded the Abolowojaiye Village. He referred to the statement of the law on traditional evidence by Aniagolu, JSC in Ikpang v. Edoho & ors. (1978) 2 LRN 29 at 34-41 and Adenle v. Oyegbade (1967) NMLR 136 at 139. Both cases are reaffirmations of the principle laid down in Kojo II v. Bonsie & ors. (1957) 1 WLR 1223 which the learned counsel

for the appellants argued was not followed by the trial Judge in arriving at his decision "

The above are concurrent findings of fact with which I am loath to interfere, not having been shown to be in breach of any known law or procedure or has otherwise occasioned a miscarriage of justice or is perverse. See Ebba v. Ogoto (1984) 4 SC. 84 at 98 and Chukwueke v. Nwankwo (1985) 2 NWLR 195.

In consequence, the lone issue considered herein is answered in the affirmative. The Appellants' appeal fails and is accordingly dismissed with no order as to costs.

BELGORE JSC

I agree with Onu, J.S.C that this appeal has no merit and for the same reasons in the judgment of Onu, J.S.C., I also dismiss it with no order as to costs.

KUTIGI JSC

I read in advance the judgment just delivered by my learned brother, Onu, JSC. There is no doubt at all that being a case of concurrent findings of fact, the plaintiffs/appellants in order to succeed must show that the findings were perverse or unjustifiable (see for example NJOKU V. ENE (1973) 5 SC. 293; EBBA v. OGODO (1984) 4 SC. 84; OHINWENDU v. MBAMALI (1980) 3-4 SC. 31; ENANG v. ADU (1981) 11-12 SC. 25. This they failed to do. The appeal therefore fails and it is hereby dismissed with N10,000.00 costs to the respondents.

OGUNDARE JSC

I agree that there is no substance in this appeal and that it be dismissed.

The issue before the trial Court was whether the defendants (who are now Respondents) in this appeal are descendants of Abolowojaiye

family through their paternal side. The plaintiffs (who are now Appellants) contended in that Court that the defendants descended from the slave child and were in no way related to their family, the Abolowojaiye family. The defendants contended to the contrary. The learned trial Judge took evidence and after addresses by learned counsel for the parties, in a reserved judgment found that the defendants were descendants of Akinpelu who was related by blood to Abolowojaiye. Consequently he dismissed the plaintiff's claim for declaration and injunction. The plaintiff's appeal to the Court of Appeal was equally dismissed. The latter Court affirmed the findings of the trial Court on the main issue in the case. They have now further appealed to this Court.

It has not been shown to my satisfaction that the concurring findings of fact made by the two Courts below are in any way perverse or not supported by evidence. The attitude of this Court to such findings is that the Court will not interfere with the concurring findings of the two Courts below unless they are perverse or not supported by the evidence. As the plaintiffs have failed to discharge the burden on them in this Court, the appeal fails.

It is for the above reason and the fuller reasons in the judgment of my brother Onu JSC that I too dismiss this appeal and as the Defendants did not participate in the hearing of this appeal I too make no order as to costs.

IGUH JSC

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Onu, J.S.C. and I agree entirely that this appeal is without substance and should be dismissed.

The main issue for consideration in this appeal is whether or not the Akinpelu family has paternal blood relationship with the Labulo Abolowojaiye family and therefore entitled to aspire to their throne as head Chief or Baale of Abolowojaiye village in the Lagelu Local Government Area. The appellants deny the existence of such relationship and stigmatised the Akinpelu family as "slaves" of Labulo Abolowojaiye, a

great warrior who founded Abolowojaiye village and became the first Baale of the village.

The learned trial Judge after a careful consideration of all the evidence led by the parties found as follows -

B *"I accept as true the traditional evidence of the 1st and 2nd defendants that Abolowojaiye family in truth and in fact consists of Labulo, Akinpelu, Kukoyi, Kudeti and Ehinge. The mere fact that it is only the Akinpelu branch that has been active to contest their right to the throne of Baale of Abolowojaiye village should not be the cause of their being stigmatised as slaves who are not in any way related to Labulo Abolowojaiye family. Of course both Labulo and Akinpelu lines are full blooded relations. Each branch in my view is entitled to aspire to the stool of Baale of Abolowojaiye Village.*

D *Looking at the case as a whole I am of the view that the Labulo branch of Abolowojaiye family wants to preserve the Baaleship of Abolowojaiye Village for their own line alone. They have fought gallantly for it but they have not succeeded. Their greed should stop there.*
 E *Both sides to this dispute are advised to go back home and reconcile with one another. The Baale of Abolowojaiye is a minor chieftaincy over which they should not waste their valuable money and time."*

F The Court of Appeal, for its own part, commenting on these crucial findings of the learned trial Judge per the leading judgment of Ogwuegbu, J.S.C., as he then was, stated thus -

"I have myself reviewed the traditional evidence and I no reason to disagree with the findings of the learned trial Judge.

G *He accepted as true the evidence of the respondents that Abolowojaiye family in truth and infact consists of Labulo, Akinpelu, Kukoyi, Kudeti and Ehinge and the existence of these branches were admitted by P.W. 4 in his evidence except that of Akinpelu."*

H These are concurrent findings of fact by both the trial court and the Court of Appeal. They are neither perverse nor unsupported by evidence. They were also not reached as a result of any wrong approach to the evidence or a wrong application of a principle of substantive law or procedure. In the circumstances, there is no reason whatever to inter-

fere with them. See Enang v. Adu (1981) 11-12 S.C. 25 at 42, Nwadike v. Ibekwe (1987) 4 N.W.L.R (Part 67) 718, Igwego v. Ezeugo (1992) 6 N.W.L.R. (Part 249) 561 at 576 etc.

It is for the above and the more elaborate reasons contained in the judgment of my learned brother, Onu, J.S.C. that I, too, dismiss this B appeal as lacking in substance. I subscribed to the order for costs contained in the leading judgment.

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