

SUPREME COURT OF NIGERIA

15TH MAY, 1998. SC. 132/1995

**CORAM:- A. B. WALI, M. E. OGUNDARE, E. O. OGWUEGBU,
U. MOHAMMED, A. I. IGUH, JJSC.**

ONEHI OKOBIA PLAINTIFF/APPELLANT
AND
1. MAMODU AJANYA DEFENDANTS/
2. ANKPA TRADITIONAL COUNCIL RESPONDENTS

***APPEALS** - Grounds of appeal - Competence - Where the issue was not raised at the Court below - The appellant is estopped from complaining about it.*

***APPEALS** - Evidence - Wrongful exclusion of evidence - Where a trial court wrongfully excluded evidence - And the Appeal Court cannot reasonably hold that the decision of the trial court - Would have been the same if the evidence had been admitted - The decision will be set aside.*

***APPEALS** - Interlocutory decision - A decision made by the Trial court on wrongful admission or rejection of evidence - Is part of the main trial and not an interlocutory decision - Unless a special case has been made in respect of the issue.*

***APPEALS** - Court of Appeal Act 1976 - General powers under s. 16 - May be resorted to by the Court of Appeal in dealing with wrongful admission or rejection of evidence - By taking one of three steps.*

***APPEALS** - Ground of appeal - Which shows the trial court erred in law in admitting inadmissible evidence and rejecting admissible evidence - Is proper - And gives the Court of Appeal power to consider the documents that were tendered during trial but rejected.*

***CHIEFTAINCY MATTERS** - Election - Where the 1st respondent was*

properly nominated - And there is convincing evidence that he is a popular choice for the stool - He was rightly elected in accordance with the native law and custom.

PLEADINGS - *Relief not pleaded - A trial judge has no power to grant a relief not pleaded by the parties.*

FACTS

The plaintiff/appellant at the Ankpa High Court, in Kogi State took out a writ and claimed for the following reliefs inter alia; a declaration that the (Recommendation and approval) by the 3rd and 2nd defendants of the 1st defendant as the Onu or village Head (Onu-Enjema) of Enabo is null and void as the said 1st defendant was not selected in accordance with the native Law and Custom relating to the appointment of the clan Head of Enabo; a declaration that it is the plaintiff's family in the Ibele sub-clan whose legitimate turn it is to produce the next clan Head of Enabo, in accordance with the native law and custom of the Enabo people; and an order of injunction.

At the conclusion of trial the learned trial judge entered judgment in favour, of the plaintiff. Dissatisfied with the decision, the defendants appealed to the Court of Appeal, Jos Division. That court in a unanimous decision allowed the appeal and set aside the judgment of the trial High Court and declared the 1st defendant duly elected as the Onu Ejeha of Enabo. The appellant has now appealed against that judgment to the Supreme Court. The issues raised by the respective counsel for the parties were basically similar. The following four issues were however identified as relevant for the determination of the appeal.

ISSUES FOR DETERMINATION

"1. *Whether the appellant can, for the first time before this court challenge the competence of the 3rd and 4th additional grounds of appeal of the 1st respondent as well as the entire appeal of the 2nd respondent before the lower court having not raised the issue thereat.*

2. *Whether the Court of Appeal was right in setting aside the High court's decision nullifying Exhibit G when there was no appeal*

against the decision.

3. *Whether the Court of Appeal was right in setting aside the ruling of the High Court in respect of Exhibit M.*

4. *Whether the Court of Appeal was right in upholding the election of the 1st respondent in accordance with the law and custom of Enabo people."*

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

Grounds of appeal - Competence

1. Since the issue about the competency of those grounds was not raised at the court below the learned counsel for the appellant is estopped from complaining about those grounds of appeal in this court. Any complaint against those grounds should have started at the court below. Having failed to do so there the appellant will be raising a new issue if allowed to do so, through the back door. In Tukur v. Taraba State (1997) 6 SCNJ 81 when the appellant in this court, in that case, challenged the competency of a third ground of appeal before the lower court it was held, per Ogundare, J.S.C. as follows:

"The contention that ground 3 was outside the purview of the appeals before the court below was not made an issue before that court. The appellant has neither sought nor obtained the leave of this court to raise an issue not canvassed in the court below. This line of attack is not open to be appellant in this court. I, therefore discountenance it."

The situation is the same here. As quite correctly submitted by learned counsel for the 1st respondent in this appeal, any defect in any ground of appeal before the lower court ought to have been raised at the commencement or hearing of the appeal before the court of Appeal and not in this court. There was no complaint by the appellant at the court of Appeal when those grounds were filed. The appellant took part in all the proceedings at the lower court which presupposed the existence of a valid appeal. He is therefore too late in the day to turn around and complain against the competency of any ground of appeal filed by the respondents before that court. (p. 1288 A)

Pleadings - Relief not pleaded

2. The request by counsel for the nullification of Exhibit 'G' could only be considered if such a relief had been prayed for in the pleadings. A trial judge should not import into his judgment issues not pleaded. In deciding a case a judge must keep strictly to the pleadings of the parties and the issues joined and must not stray from the pleadings even when the interest of justice so demands or where he is invited by the parties to do so without amendment to the pleadings.⁷ See Dipcharima and Anor . v. Ali and anor. (1974) All NLR 908 and Adebisi .v. Oke (1967) NMLR. 64. In the case of Taiwo .v. Lawani (1975) 2 S.C. 25 this court held that an amendment of pleadings sought at the time of address and which goes to a relief not originally claimed will be refused. It is significant to observe that the learned trial judge who had earlier rejected the admission of Exhibit's 'G' and 'M' during the trial turned round in his judgment to consider the two Exhibits before declaring them a nullity. He is wrong to do so and has no power to grant a relief not pleaded by the parties. (p. 1290 B)

Appeals - Ground of appeal

3. This ground of appeal has given the Court of Appeal power to consider both Exhibits 'G' and 'M' which were documents tendered during the trial but rejected by the trial court. Generally the wrongful admission of inadmissible evidence and the wrongful rejection of admissible evidence may lead to the judgment of the trial court being reversed on appeal. In my view the 1st respondent had followed the proper procedure when he filed a ground of appeal showing that the trial court had erred in law in admitting inadmissible evidence and rejecting admissible evidence and, next applied for and obtained the leave of the Court of Appeal to file the same out of time . The Court of Appeal's decision on this issue is unassailable (p. 1291 F/1294 B)

⁷ On whether the Court can grant reliefs not claimed see also Union Bank Ltd v. Ogbob (1995) 2 KLR 461; Ogboni v. Ojah (1996) 6 KLR (pt 42) 1097

Appeals - Evidence

4. An Appeal Court will set aside the decision of a trial court which has wrongfully excluded evidence in the trial if the Appeal Court cannot reasonably hold that the decision would have been the same if the wrongfully excluded evidence had been admitted. It is immaterial that the appellant failed to request the admission of the evidence at the court below. See Alhaji A.W. Elias v. Olayemi Disu & ors. (1962) A.N.L.R. part 1 215. (p. 1293 C)

Appeals - Interlocutory decision

5. A decision made by the trial court on wrongful admission of evidence or wrongful rejection of evidence is part of the main trial and not an interlocutory decision unless a special case has been made in respect of the issue. Thus a party wishing to appeal against the judgment of the trial court can file one of the grounds of appeal alleging that inadmissible evidence had been admitted during trial or admissible evidence had been rejected. Both are fundamental as the error might occasion a miscarriage of justice. (p. 1293 E)

Appeals - Court of Appeal Act

6. The Court of Appeal may resort to its general powers under section 16 of the Court of Appeal Act 1976⁸ in dealing with wrongful admission of inadmissible evidence and wrongful rejection of admissible evidence by taking one of the following three step: 1. If the Appeal Court is of the opinion that the inadmissible evidence cannot reasonably have affected the decision it will not interfere. 2. If it is of the opinion that without the inadmissible evidence, the decision would have been different it will interfere; and 3, if, however, there is other evidence in the case, and although the appeal court thinks that the inadmissible evidence must have influenced the decision, yet it is unable to say without the inadmissible evidence the decision would or would not reasonably have been differ-

⁸ See Anyigor v. Owata (1993) 3 KLR 148 where the Supreme Court also considered the provision of s. 16 Court of Appeal Act, 1976.

ent, the proper course is to order for a retrial see Ajayi .v. Fisher (1956) 1 FSC 90. (p. 1293 G)

Chieftaincy matters - Election

B 7. It is quite clear that the lower court, per Okezie J.C.A. relied on Exhibit 'G' step IV and Exhibit 'M' to conclude that he was satisfied that the 1st appellant was duly elected Onu Ejeha of Enabo in accordance with the native law and custom of Enabo. Following the guidelines in Exhibit 'G' step IV the Ministry of Local Government and Social Development, C Benue State Government directed the secretary of Ankpa Traditional Council to set up a higher Panel comprising the members mentioned in the guidelines to select and or elect the suitable candidate for the vacant stool of Onu /Village Head of Enabo. The panel met at Ofugo on 3rd D December, 1985 and resolved in Exhibit 'M' as follows:

"From the evidence available in the main body of this report panel is fully convinced that the post of Village Headship of Enabo is rotational amongst the four ruling houses-that is, Ibele, Ogwuche, Omogo E and Ajode, and that this time it is the turn of Omogo family to rule. This made the panel to accept the nomination of Alhaji Mamodu Ajanya from Omogo ruling house and recommend that he is appointed to the throne of the Village Headship of Enabo. Further more the panel based its recom- F mendation on the fact that Alhaji Mamodu Ajanya's nomination was properly made by the majority of the Kingmakers and appointed by almost all the people present at the meeting as opposed to that of Adugba Okobia who was nominated by a private person outside the Kingmakers".

G In addition to the resolution in Exhibit 'M' it is abundantly clear that the evidence given in favour of the 1st respondent before the trial court is very convincing that the 1st respondent is a popular choice for the stool of Onu of Ejeha of Enabo. I agree with the lower court that he was rightly elected in accordance with the law and custom of Enabo H people. (p. 1294 D/1295 G)

NOTABLE POINTS OF INTEREST**WALI JSC***1. Both parties and the court are guided by the pleadings*

I hold the same view as the court of Appeal that Exhibit M having been properly pleaded, the learned trial judge was wrong to have excluded and rejected it in his judgment. A document referred to in a pleading becomes part of that pleading. See Day .v. William Hill (1949) 1 KB 632; B.G.C.C. v. C.I. M. S. Ltd. (1962) 1 All NLR 570 and Lawal v. G.B.O. Ltd. (1972) 3 SC 124. I also hold the same view as the Court of Appeal that the Ministry of Local Government and Social Development was right in issuing Exhibit G the guide line for the selection and appointment of village head paragraph IV (f) and that the report Exhibit M produced pursuant to Exhibit G is valid and applicable to the case in hand. Exhibit G is not ultra vires as declared by the learned trial judge suo motu as none of the parties raised the issue, nor was the learned trial judge addressed by the parties on the same before pronouncing on it. Both the parties and the court are bound and guided by the pleadings and no court should unsolicitedly grant a relief not claimed for in the pleadings of the parties before it. See Umulikoro v. N.P.A. (1995) 5 S.C.N.J. 113 at 122; Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (pt.68) 118 and Edebiri v. Edebiri (1997) 4 SCJN 177. There was no where in the pleadings before the court where issue of nullity of Exhibit G was raised. The Exhibit was still valid and properly considered and made use of by the Court of Appeal in arriving at its decision that the 1st Respondent Mamodu Ajanya was duly selected, appointed, approved and recognised as the Onu Ejaha of Enabo community of Ankpa, now in Kogi State of Nigeria. (p.1298 G)

OGUNDARE JSC*2. Power of the Court of Appeal to give a decision that meets the justice of the case*

On the issue that the court below should not have considered the issue of Exhibit 'M' raised by the Defendant before it as there was no application to appeal out of time against the trial court's ruling on Exhibit 'M', my simple answer (in additional to what my brother Mohammed, JSC said

on the issue) lies in order 3 rule 22 of the Court of Appeal Rules which provides-

"22. No interlocutory judgment or order from which there has been no appeal shall operate so as to bar or prejudice the court from giving such decision upon the appeal as may seem just."

The court below was, therefore, not precluded from considering the validity or otherwise of Exhibit 'M' notwithstanding that the Defendants did not appeal against the trial court's ruling on the document. By virtue of order 3 rule 22, they could still raise the issue on appeal as they, in fact, did in the court below. It is not necessary for them to seek extension of time to appeal against the interlocutory decision of the trial court, as submitted by Mr. Obishai, learned counsel for the Plaintiff/Appellant. (p. 1299 G)

D

REPRESENTATION

Charles Obishai for the appellant

Fred Agbaje for the 1st respondent

E P. A Akubo with J. A. Abrahams for the 2nd respondent

CASES REFERRED TO

Tukur v. Taraba State (1997) 6 SCNJ 81

F Atuyeye v. Ashamu (1987) 1 NWLR (Part 49) 268

Dipcharima v. Ali (1974) All NLR 908

Adebisi v. Oke (1967) NMLR. 64.

Taiwo v. Lawani (1975) 2 S.C. 25

Ogigie v. Obiyan (1997) 10 NWLR (pt.524) 179 at 195

G Owena Bank (Nigeria)Plc v. N.S.E. Ltd (1977) 8 NWLR (pt.515) I at 14

Elias v. Disu (1962) A.N.L.R. Part 1 215

Ajayi v. Fisher (1956) 1 FSC 90.

Day v. William Hill (1949) 1 KB 632

H Umulikoro v. N.P.A. (1995) 5 S.C.N.J. 113 at 122

Edebiri v. Edebiri (1997) 4 SCNJ 177

STATUTES AND RULES REFERRED TO

Evidence Act, s 227

Court of Appeal Act, s. 16

Court of Appeal Rules, Order 3 rule 22

B

LEAD JUDGMENT BY MOHAMMED JSC

This is an appeal from the judgment of the Court of Appeal, Jos Division. The appeal concerns a dispute over the appointment of the First Respondent, Mamodu Ajanya, as the clan/village head of Enabo. Soon after the appointment the appellant, as plaintiff, at the Ankpa High Court, now in Kogi State, took out a writ and claimed for the following reliefs:

"(a) A declaration that the appointment (Recommendation and approval) by the 3rd and 2nd Defendants, of the 1st Defendant as the Clan or Village Head (Onu-Enjema) of Enabo is null and void as the said 1st Defendant was not selected in accordance with the Native law and Custom relating to the appointment of the Clan Head of Enabo.

(b) A declaration that the 2nd and 3rd Defendants acted without jurisdiction when they purported to determined without evidence or sufficient evidence or without complying with step IV of the guideline that the 1st defendant was the clan Head of Enabo.

(c) A declaration that it is the plaintiff's family in the Ibele Sub-Clan whose legitimate turn it is to produce the next clan Head of Enabo, in accordance with the Native Law and custom of the Enabo people.

(d) An order of injunction to restrain the 1st defendant from posing or acting in any manner as the clan Head of Enabo."

Pleadings were filed and exchanged between the parties. The trial opened with witness on both sides giving evidence. At the conclusion of the trial the learned trial judge declared;

"1. That the 1st defendant was not selected in accordance with the native law and custom relating to the appointment of the Onu Ejeha of Enabo; accordingly, his appointment, recommendation and approval by the 2nd and 3rd defendants are null and avoid and of no effect and,

2. It is the legitimate turn of the plaintiff's family, the Ibele sub-clan of Ejeha (Ijaha) clan of Enabo to produce the Onu Ejaha to suc-

ceed Ameh Amana.

The 1st defendant is hereby restrained from posing or acting in any manner as the Onu Ejaha (clan head) of Ejeha clan of Enabo."

Dissatisfied with the decision, Mamodu Ajanya and Ankpa Traditional council, as 1st and 2nd appellants respectively, filed an appeal to the Court of Appeal, Jos Division. The Court of Appeal in a unanimous well considered decision allowed the appeal and set aside the judgment of the trial High Court and declared the 1st Respondent duly elected as the Onu Ejeha of Enabo. It is against that judgment that the appellant, Onohi Okobi, appealed to this court on six grounds of appeal.

The issues raised for the determination of this appeal from the grounds of appeal in the three briefs filed by the respective counsel for the appellant, the 1st respondent and the 2nd respondent are basically similar. I need not reproduce all the issues in this judgment. I can identify however, the following questions to be relevant for the determination of this appeal:

"1. *Whether the appellant can, for the first time before this court challenge the competence of the 3rd and 4th additional grounds of appeal of the 1st respondent as well as the entire appeal of the 2nd respondent before the lower court having not raised the issue thereat.*

2. *Whether the Court of Appeal was right in setting aside the High court's decision nullifying Exhibit G when there was no appeal against the decision.*

3. *Whether the Court of Appeal was right in setting aside the ruling of the High Court in respect of Exhibit M.*

4. *Whether the Court of Appeal was right in upholding the election of the 1st respondent in accordance with the law and custom of Enabo people."*

In considering the first issue I will reproduce the first and second grounds of appeal filed by the appellant for the prosecution of their appeal. The grounds read:

'(1). *The court of Appeal lacked the jurisdiction to entertain and determine the 3rd and 4th grounds of appeal in the first defendant/respondent's additional grounds of appeal for they were incompetent hav-*

ing being couched as "errors in law" instead of "mixed law and facts".

(2). The court of Appeal had no jurisdiction to entertain and determine the appeal of the third defendant/second respondent in that all its four grounds of appeal were incompetent.

PARTICULARS

(a) Ground I was couched as a criminal appeal instead of a civil appeal. B

(b) Grounds 2 and 3 were couched as an "error in law" whereas the complaint were on facts not law.

(c) Ground 4 alleged that "the trial court misdirected itself on fact when he "(sic) made its final orders. C

(d) Misdirection cannot be alleged on a final order of a court."

Let me point out that the learned counsel for the appellant did not attack or raise any objection at the lower court when leave of the court was sought to file the grounds of appeal he is now complaining against. As a matter of fact the grounds now being objected to were filed at the court below as additional grounds of appeal. The proceedings on that day, 7/7/92, read as follows; D

"7/7/92 Mamodu Ajanya & ors v. Onehi Okobia E

S.S. Obende for 1st appellant.

D.A. Agada for 2nd appellant.

S.P. Ejale for the respondent

Motion for:- F

1. Leave to file and argue additional grounds of appeal.
2. Extension of time within which to file the appellants brief of argument.

Ejale:- I am not opposing but I shall be asking for N300.00 G costs.

Court:- Orders as prayed. Time for filing 1st appellant's briefs is hereby extended by 30 days. Costs of N200.00 in favour of the respondent. Appeal is adjourned to 2/11/92 for hearing. H

Learned counsel for the appellant before the court of Appeal, from the proceedings above, did not raise any objection to filing the grounds of appeal which Charles Obishai Esq, is now arguing before this court to

be incompetent. Since the issue about the competency of those grounds was not raised at the court below the learned counsel for the appellant is estopped from complaining about those grounds of appeal in this court. Any complaint against those grounds should
 B have started at the court below. Having failed to do so there the appellant will be raising a new issue if allowed to do so, through the back door. In Tukur v. Taraba State (1997) 6 SCNJ81 when the appellant in this court, in that case, challenged the competency of a third ground of appeal before the lower court it was held, per
 C Ogundare, J.S.C. as follows:

*"The contention that ground 3 was outside the purview of the appeals before the court below was not made an issue before that court. The appellant has neither sought nor obtained the leave of this court to
 D raise an issue not canvassed in the court below. This line of attack is not open to be appellant in this court. I, therefore discountenance it."*

The situation is the same here. As quite correctly submitted by learned counsel for the 1st respondent in this appeal, any
 E defect in any ground of appeal before the lower court ought to have been raised at the commencement or hearing of the appeal before the court of Appeal and not in this court. There was no complaint by the appellant at the court of Appeal when those grounds were
 F filed. The appellant took part in all the proceedings at the lower court which presupposed the existence of a valid appeal. He is therefore too late in the day to turn around and complain against the competency of any ground of appeal filed by the respondents before
 G that court. In Saka Atuyeye .v. Emmanuel Ashamu (1987) 1 NWLR (part 49) 268 this court dealt with the issue of incompetency of the appeal before the court of appeal because there was no valid ground of appeal to support the notice of appeal. In Atuyeye's case(supra) counsel for the appellant raised similar objection before the court of Appeal
 H against the validity of any of the grounds of Appeal. On appeal to the supreme court the learned counsel, Mr.Oseni, raised the issue again and submitted that he had complained before the lower court that all the grounds of appeal filed before the court of Appeal were incompetent.

This court considered learned counsel's objection because it was not a new issue. Although Mr. Oseni was not successful in that appeal, this court considered the issue about the competency of the grounds of appeal filed before the court of Appeal because the issue was not new as is the case in the present appeal. His Lordship Oputa, J.S.C, made an observation in his contribution to the lead judgment in Atuyeye's case which I find instructive and an answer to the submission made by the learned counsel for the appellant in this appeal. In his judgment, Oputa JSC, opined thus: "I agree with Chief Williams that the plaintiffs (the present appellants) in the court below took steps which presupposed the existence of a valid appeal. When the present respondent as defendant/appellant in the court below filed a motion for stay of execution pending his appeal, the present appellants who were then plaintiffs/respondents filed a counter-affidavit opposing the motion, and took part in the arguments. During the appeal itself, they, the respondents, filed a brief in answer to the defendants/appellant's brief. I agree that all these steps taken by the plaintiffs are consistent with the existence of a valid appeal before the court of Appeal. It is too late now for the Appellant in this court after losing in the Court of Appeal to argue that there was no valid appeal. What were they fighting against in the court below"?

The answer to the question in issue I is that the appellant cannot question, in this court, the competency of the 3rd and 4th additional grounds of appeal filed by the 1st respondent and all the 4 grounds of appeal supporting the appeal of the 2nd respondent before the Court of Appeal. The issue is therefore resolved in favour of the respondents.

I will consider the issues raised in respect of the High Court's rejection of Exhibits 'G' and 'M' and its reconsideration of the rejected exhibits before declaring both of them null and void.

Learned counsel for the appellant, Charles Obishai, made a futile endeavour to save the erroneous decision of the trial judge on the nullification of Exhibit 'G' wherein the learned counsel argued that during final addresses the two counsel representing the defendants (respondents in this appeal) opposed the use of Exhibit 'G' and requested the trial court to declare it invalid, ultra vires and void. The learned trial judge acceded to

their request and declared the Exhibit ultra vires and void. Learned counsel for the 2nd respondent, quite correctly, replied to the submission of Mr. Obishai that the issue of nullification of Exhibit 'G' had not been pleaded and further pointed out that none of the reliefs prayed for by the appellant sought for the nullification of Exhibit 'G'. I quite agree with this submission. **The request by counsel for the nullification of Exhibit 'G' could only be considered if such a relief had been prayed for in the pleadings. A trial judge should not import into his judgment issues not pleaded. In deciding a case a judge must keep strictly to the pleadings of the parties and the issues joined and must not stray from the pleadings even when the interest of justice so demands or where he is invited by the parties to do so without amendment to the pleadings. See Dipcharima and Anor . v. Ali and anor. (1974) All NLR 908 and Adebisi .v. Oke (1967) NMLR. 64. In the case of Taiwo .v. Lawani (1975) 2 S.C. 25 this court held that an amendment of pleadings sought at the time of address and which goes to a relief not originally claimed will be refused. It is significant to observe that the learned trial judge who had earlier rejected the admission of Exhibit's 'G' and 'M' during the trial turned round in his judgment to consider the two Exhibits before declaring them a nullity. He is wrong to do so and has no power to grant a relief not pleaded by the parties.**

The next issue is the question raised by the learned counsel for the appellant on the power of the court of Appeal to decide on the nullification of Exhibit 'G' and reversing the trial court's interlocutory ruling on Exhibit 'M' when there was no appeal filed against the decision of the High Court. Mr. Obishai pointed out that there was no ground of appeal challenging the decision of the High Court nullifying Exhibit 'G' Secondly, the proceedings in which Exhibit 'M' was rejected was rounded up with a ruling which was an interlocutory decision. The Court of Appeal had no power to consider the issue of rejection of Exhibit 'M' since the defendants (respondents in this appeal) did not file an appeal against the ruling within the statutory period. Counsel further pointed out that the 1st respondent's motion before the court of Appeal for additional grounds

of appeal which was granted by the court below on 7/7/92 had no prayer for extension of time to appeal against the ruling rejecting Exhibit 'M'.

Here again I have to refer the learned counsel for the appellant to the earlier decision I made in this judgment that a matter which was not made an issue at the lower court cannot be brought for the consideration of the Supreme Court, without leave. The appellant's counsel before the lower court had ample opportunity to oppose the motion for filling the additional grounds of appeal but he did not do so. Rather than doing so, he told the trial court that he was not opposing the motion but would like to be paid N300.00 costs. It is too late in the day to complain about the grant of a prayer before the lower court which was not opposed.

Ground 4 of the additional grounds of appeal filed before the court of Appeal reads:

"The learned trial judge erred in law in admitting inadmissible evidence and rejecting admissible evidence and this error occasioned a miscarriage of justice."

PARTICULARS OF ERROR

a. The 2nd and 3rd defendants at the trial pleaded reliance on some documents at paragraph 20 of their statement of defence.

b. Pursuant to the said plea, counsel to the 2nd and 3rd defendants sought to tender through D.W. 8 a document titled "Step IV Panel Report of investigation/Selection of Onu/Village head of Enabo held at Ofugo on 3rd December, 1985." The document was rejected and marked as Exhibit "M" rejected -page 137 of the record."

This ground of appeal has given the Court of Appeal power to consider both Exhibits 'G' and 'M' which were documents tendered during the trial but rejected by the trial court. Generally the wrongful admission of inadmissible evidence and the wrongful rejection of admissible evidence may lead to the judgment of the trial court being reversed on appeal. Mr. Obishai referred to recent decisions of this court in the cases of Ogigie .v. Obiyan (1997) 10 NWLR (pt.524) 179 at 195 and Owena Bank (Nigeria)Plc .v.N.S.E. Ltd (1977) 8 NWLR (pt.515) I at 14 and submitted that the Court of Appeal had no jurisdiction to set aside the trial court's interlocutory ruling on Exhibit

"M" when it determined the 1st respondent's interlocutory appeal filed after 16 months without enlargement of time to appeal. But the decisions of this court in both Ogigie v. Obiyan (supra) and Owena Bank (Nig.) PLC. v. N.S.E. Ltd. (supra) were not based on the same ratio as the case B in hand. In Ogigie v. Obiyan (supra) my learned brother, Uwais, CJN, held as follows:

"Although a party can include an appeal against a ruling in an interlocutory application when he comes to appeal against the final judgment, and this is to be encouraged in order to avoid unnecessary delay by C appealing separately, there is a procedure to be followed in order to meet the unavoidable technicalities involved. By section 25 subsection (2) (a) of the Court of Appeal Act 1976, the prescribed for appealing against an interlocutory decision is 14 days, while the time prescribed for appealing D against a final decision is three months.

In order to marry the two appeals together one has to obtain leave to appeal out of time against the interlocutory ruling. Clearly this has not been done in this case. Therefore, the appeal.....is E incompetent. Accordingly the additional ground of appeal No. 1 before the court of Appeal is hereby struck out"

In Ogigie's case the interlocutory decision referred to above was a ruling on an application for a grant of interlocutory injunction F brought by the respondent to restrain the appellants from entering the land in dispute and doing or constructing anything on it or any part thereof pending the determination of the suit. In Owena Bank's case the respondent, as an interested party wishing to appeal out of time, did not apply for enlargement of time within which to seek leave to appeal, leave to G appeal and extension of time within which to appeal. The Court of Appeal, without such application, granted extension of time to appeal gratuitously. This court held that the lower court was wrong to do so. The two rulings in the two cases mentioned above were interlocutory deci- H sions.

The issue of wrongful admission of evidence and wrongful exclusion of evidence is covered by a statutory provision. Section 227 of the Evidence Act reads:

"(1) The wrongful admission of evidence shall not of itself be a ground of the reversal of any decision in any case where it shall appear to the court on appeal that the evidence so admitted cannot reasonably be held to have affected the decision and that such decision would have been the same if such evidence had not been admitted. B

(2) The wrongful exclusion of evidence shall not of itself be a ground for the reversal of any decision in any case if it shall appear to the court on appeal that had the evidence so excluded been admitted it may reasonably be held that the decision would have been the same. C

(3) In this section the term " decision" includes a judgment, or order, finding or verdict."

An Appeal Court will set aside the decision of a trial court which has wrongfully excluded evidence in the trial if the Appeal Court cannot reasonably hold that the decision would have been the same if the wrongfully excluded evidence had been admitted. It is immaterial that the appellant failed to request the admission of the evidence at the court below. See Alhaji A.W. Elias .v. Olayemi Disu & ors. (1962) A.N.L.R.part 1 215. D E

A decision made by the trial court on wrongful admission of evidence or wrongful rejection of evidence is part of the main trial and not an interlocutory decision unless a special case has been made in respect of the issue. Thus a party wishing to appeal against the judgment of the trial court can file one of the grounds of appeal alleging that inadmissible evidence had been admitted during trial or admissible evidence had been rejected. Both are fundamental as the error might occasion a miscarriage of justice. The Court of Appeal may resort to its general powers under section 16 of the Court of Appeal Act 1976 in dealing with wrongful admission of inadmissible evidence and wrongful rejection of admissible evidence by taking one of the following three step: 1. If the Appeal Court is of the opinion that the inadmissible evidence cannot reasonably have affected the decision it will not interfere. 2. If it is of the opinion that without the inadmissible evidence, the decision would have been different it will interfere; and 3, if, however, there F G H

is other evidence in the case, and although the appeal court thinks that the inadmissible evidence must have influenced the decision, yet it is unable to say without the inadmissible evidence the decision would or would not reasonably have been different, the proper course is to order for a retrial see Ajayi .v. Fisher (1956) 1 FSC 90.

In my view the 1st respondent had followed the proper procedure when he filed a ground of appeal showing that the trial court had erred in law in admitting inadmissible evidence and rejecting admissible evidence and, next applied for and obtained the leave of the Court of Appeal to file the same out of time . The Court of Appeal's decision on this issue is unassailable

The last issue whether the court of Appeal was right in upholding the election of the 1st respondent in accordance with the law and custom of Enabo people. It is quite clear that the lower court, per Okezie J.C.A. relied on Exhibit 'G' step IV and Exhibit 'M' to conclude that he was satisfied that the 1st appellant was duly elected Onu Ejeha of Enabo in accordance with the native law and custom of Enabo. Exhibit 'G' step IV is quite relevant to this decision and I reproduce it hereunder:

"On the submission of the report by the above panel, the Traditional Council will confirm the traditional method of selection as the case may be where there is no dispute. Where there is a dispute, however, the Traditional Council shall cause a higher panel to be set up comprising the following members:

- (I) The Chairman to the Local Government council concerned;
- (II) The secretary to the Local Government council concerned;
- (III) Three traditional appointees to be appointed by the Traditional Council, one of whom must be from that area or nearest that area whether or not such a member is on the Traditional Council, e.g. a District Head;
- (IV) The Social Development Secretary of the Local Government area in question; and
- (v) The Secretary to the Traditional council who will be the secretary to the panel.

The role of the Resolution Panel at such a selection meeting like that of the smaller panel referred to (d) above is to guide and supervise deliberations, in short to facilitate but not to usurp the powers of traditional king-makers/selectors/elders whose sole duty it shall be to select and /or elect a candidate to fill a vacant District/clan headship or village /kindred headship, in keeping with their laid-down traditional norms and custom. The investigations and selections must be held at the District Headquarters. The terms of reference of the panel shall include:

(1) The investigation of the dispute in conformity with the Local custom;;

(11) The submission of requisite recommendations to the Traditional council.

In the case of the dispute village /Kindred headship, it shall suffice that the following shall constitute the Resolution panel:-

(1) A supervisory councillor nominated by the Chairman to the Local Government Council and approved by the President of the Traditional council;

(11) The District Head of the area plus one member of the Traditional council from the area or nearest the area approved by the Traditional Council;

(111) The social Development Secretary of the Local Government concerned;

(IV) The Secretary to the Traditional council who shall be secretary.

Like the case of District / clan Heads above mentioned, the investigations and selection on village / Kindred headship must be held in confirm ity with the Local custom and tradition of the community."

Following the guidelines in Exhibit 'G' step IV the Ministry of Local Government and Social Development, Benue State Government directed the secretary of Ankpa Traditional Council to set up a higher Panel comprising the members mentioned in the guidelines to select and or elect the suitable candidate for the vacant stool of Onu /Village Head of Enabo. The panel met at Ofugo on 3rd December, 1985 and resolved in Exhibit 'M' as follows:

"From the evidence available in the main body of this report panel is fully convinced that the post of Village Headship of Enabo is rotational amongst the four ruling houses-that is, Ibele, Ogwuche, Omogo and Ajode, and that this time it is the turn of Omogo family to rule. This made the panel to accept the nomination of Alhaji Mamodu Ajanya from Omogo ruling house and recommend that he is appointed to the throne of the Village Headship of Enabo. Further more the panel based its recommendation on the fact that Alhaji Mamodu Ajanya's nomination was property made by the majority of the Kingmakers and appointed by almost all the people present at the meeting as opposed to that of Adugba Okobia who was nominated by a private person outside the Kingmakers".

In addition to the resolution in Exhibit 'M' it is abundantly clear that the evidence given in favour of the 1st respondent before the trial court is very convincing that the 1st respondent is a popular choice for the stool of Onu of Ejeha of Enabo. I agree with the lower court that he was rightly elected in accordance with the law and custom of Enabo people.

In the result, this appeal fails and it is dismissed. The judgment of the court of Appeal declaring the 1st respondent duly appointed and recognised as Onu Ejaha of Enabo in Ankpa Division (now in Kogi State) is hereby affirmed. I direct the appellant to pay N10,000.00 costs to each respondent.

WALI JSC

I have read before now the lead judgment of my learned brother Uthman Mohammed with which I entirely agree.

As elaborately shown and treated by my learned brother in his lead judgment, the learned trial judge committed error in law when, after admitting Exhibit M in evidence, excluded it while writing his judgment. He also proceeded to nullify Exhibit G suo motu a relief not claimed by any of the parties to the suit.

In the 2nd and 3rd Defendants / Respondents' statement of de-

fence the facts relating to Exhibit M were pleaded in paragraphs 2 and 3 follows:-

"2. The 2nd and 3rd defendants further aver that their actions were in line with the wishes of the people of Enabo and will at the trial rely on the reports, recommendations and approval letters accordingly. B

3. The 2nd and 3rd defendants will at the hearing of this case urge the court to hold that:-

(a) their action in approving the appointment of 1st defendant as Onu Ejaha is proper and in accordance with native law and custom of Enabo people. C

(b) the step iv of the guide line for the appointment is not a sine-qua non for the 3rd defendant in praying into chieftaincy matters in the council's domain."

The Court of Appeal after a thorough and careful examination of the pleadings and the evidence adduced, came correctly to the following conclusions:-^D

"I have therefore come to the conclusion that Exhibit M is admissible in evidence under section 90 and 90(1) of the Evidence Act just like the Attah's letter annexed to Exhibit A which the learned trial judge heavily relied in coming to his decision in the case. E

It is also my view, that the Ministry of Local Government and social Development Benue State, which is in law charge with chieftaincy matters in the state was right in issuing Exhibit 'G' the guidelines for the selection, appointment and approval of district / clan Heads and village /kindred heads throughout Benue State. It is perfectly within the portfolio of the said Ministry in the case of a dispute over the selection of Onu Ejaha of Enabo in the instant case to appoint the 5 man committee under Exhibit G step iv (f) (i) . (ii)(iii)and (iv) which made Exhibit M. F G

It should be noted, that there is no where in the statement of claim, where the plaintiff asked that Exhibit G be declared null and void and of no effect. A court of law cannot grant a relief not asked for by the parties. This is now trite law and requires no further flogging. The learned trial judge was therefore in error to have declared Exhibit G invalid and ultra vires. This amounts to a declaration of war. How does the commu- H

nity of Enabo resolve that dispute except by submitting the issue to the Ankpa Traditional council in accordance with the terms of reference laid down in Exhibit G.

Having held that Exhibits G. and M are valid and admissible in evidence, what follows next is obvious. After the said investigation of the dispute Exhibit M was duly issued. Based on Exhibit M. approval of the 1st Appellant as the Onu Ejaha of Enabo was given as per Exhibit L of 19/5/86 with reference to government of Benue State's letter ref. MLG/SLC -14/S.6/76 7/5/86 which the secretary to Ankpa Local Council conveyed to 1st Appellant. Annexed to the said letter conveying Government's approved of appointment of Momodu Ajana 1st Appellant as the village head Onu Ejaha Enabo Not legible is a letter reference No. ATC/APP /1/36 of 5/ by the Secretary Ankpa Traditional council, appointing the 1st appellant Alhaji Momodu Ajanya to the membership of Ankpa Traditional council.

I am satisfied that the panel on Exhibit G step iv in compliance with the local custom of the Enabo community found the 1st appellant duly selected. I am satisfied, that in accordance with Exhibit G, that the 1st Appellant was duly elected Onu Ejaha of Enabo in accordance with the native law and custom of Enabo.

on issue 2, I resolve it in favour of the appellant. I hold that the 1st appellant was properly selected in accordance with the native law and custom of Enabo community of Ankpa relating to the appointment of the village head of Onu Ejaha of Igala. Accordingly, I also hold, that his appointment, recommendation of the 2nd and 3rd defendants respectively are valid. It is the legitimate turn of the 1st appellant's sub-klan to be appointed in accordance with Exhibit M."

I hold the same view as the court of Appeal that Exhibit M having been properly pleaded, the learned trial judge was wrong to have excluded and rejected it in his judgment. A document referred to in a pleading becomes part of that pleading. See Day .v. William Hill (1949) 1 KB 632; B.G.C.C. v. C.I. M. S. Ltd. (1962) 1 All NLR 570 and Lawal v. G.B.O. Ltd. (1972) 3 SC 124. I also hold the same view as the Court

of Appeal that the Ministry of Local Government and Social Development was right in issuing Exhibit G the guide line for the selection and appointment of village head paragraph IV (f) and that the report Exhibit M produced pursuant to Exhibit G is valid and applicable to the case in hand. Exhibit G is not ultra vires as declared by the learned trial judge suo motu as none of the parties raised the issue, nor was the learned trial judge addressed by the parties on the same before pronouncing on it. Both the parties and the court are bound and guided by the pleadings and no court should unsolicitedly grant a relief not claimed for in the pleadings of the parties before it. See Umulikoro v. N.P.A. (1995) 5 S.C.N.J. 113 at 122; Union Beverages Ltd.v. Owolabi (1988) 1 NWLR (pt.68) 118 and Edebiri .v. Edebiri (1997) 4 SCJN 177. C

There was no where in the pleadings before the court where issue of nullity of Exhibit G was raised. The Exhibit was still valid and properly considered and made use of by the Court of Appeal in arriving at its decision that the 1st Respondent Mamodu Ajanya was duly selected, appointed, approved and recognised as the Onu Ejaha of Enabo community of Ankpa, now in Kogi State of Nigeria. D E

It is for these and the more detailed reasons in the lead judgment of my learned brother Uthman Mohammed JSC that I also hereby affirm the judgment of the Court of Appeal and dismiss the appeal.

I adopt the consequential orders in the lead judgment including that of costs. F

OGUNDARE JSC

I agree with the judgment of my learned brother, Mohammed JSC just delivered. G

On the issue that the court below should not have considered the issue of Exhibit 'M' raised by the Defendant before it as there was no application to appeal out of time against the trial court's ruling on Exhibit 'M', my simple answer (in additional to what my brother Mohammed, JSC said on the issue) lies in order 3 rule 22 of the Court of Appeal Rules which provides- H

"22. No interlocutory judgment or order from which there has been no appeal shall operate so as to bar or prejudice the court from giving such decision upon the appeal as may seem just."

The court below was, therefore, not precluded from considering the validity or otherwise of Exhibit 'M' notwithstanding that the Defendants did not appeal against the trial court's ruling on the document. By virtue of order 3 rule 22, they could still raise the issue on appeal as they, in fact, did in the court below. It is not necessary for them to seek extension of time to appeal against the interlocutory decision of the trial court, as submitted by Mr. Obishai, learned counsel for the Plaintiff/Appellant.

I adopt the reasonings of my learned brother on the other issue raised in this appeal.

I, too like him, dismiss this appeal and affirm the judgment of the court below. I abide by the order for costs in the lead judgment of my brother, Mohammed JSC.

OGWUEGBU JSC

I have been privileged to read in draft the judgment just delivered by my learned brother Mohammed, J.S.C. I am in agreement with his reasoning and conclusion.

I would also dismiss the appeal and I hereby dismiss it with costs as assessed in the said judgment.

IGUH JSC

I have had a preview of the leading judgment just delivered by my learned brother, Mohammed, J.S.C. and I agree entirely with the reasoning and conclusion therein.

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

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