

SUPREME COURT OF NIGERIA
3RD DECEMBER, 1999. SC. 265/1993
CORAM:- A. G. KARIBI-WHYTE, M. E. OGUNDARE, S. U.
ONU, A. I. IGUH, E. O. AYoola, JJSC

MR. OLADITI ADESOLA PLAINTIFF/APPELLANT
(On behalf of himself and the
other members of Aderin Branch
of Oluokun Family)

AND

1. ALHAJI RAIMI ABIDOYE ... 1ST DEFENDANT/RESPONDENT/
CROSS-APPELLANT

2. OBA YESUFU O. ASANIKE 2ND DEFENDANT/RESPONDENT
(For himself and/or as the Olubadan of
Ibadan Land and on behalf of the
Olubadan-in-Council)

CHIEFTAINCY MATTERS - Court - Precondition for access to the court
- In respect of disputes arising from the determination of the prescribed
authority - Under s. 22 of Chiefs Law of Oyo state.

CHIEFTAINCY MATTERS - Jurisdiction - Minor chieftaincies - The
determination of disputed minor chieftaincies - Is a jurisdiction vested in
the prescribed authority - The High Court has no jurisdiction in such
cases.

CHIEFTAINCY MATTERS - Minor chief - Title of Mogaji - A person
appointed Mogaji of his family in Ibadan - Assumes the position and
status of a minor chief - Within the meaning of s. 22 of the Chiefs Law.

CONSTITUTIONAL LAW - Court - Access to - S. 22(5) of the Chiefs
Law of Oyo State - The provisions thereof - Is not in violation of s. 33 (2)
(a) of the Constitution - And has not interfered with the appellant's ac-
cess to the court.

CONSTITUTIONAL LAW - Statutory provisions - Conflict with the Constitution - Section 22 of the Chiefs law - The operation of the provisions - Is not in conflict with that of s. 236 of the 1979 Constitution.

COURTS - Jurisdiction - Lack of - Where a court has no jurisdiction to hear and determine a matter - Legal implications.

EVIDENCE - Issue of fact - Admission - A person is precluded from resiling from an issue already admitted - But a different consideration applies where the fact so admitted - Is a conclusion of law.

INTERPRETATION OF STATUTES - The word "may" - In section 22 (5) of the Chiefs Law - Should be construed as imperative - Since the aggrieved has no choice of action in the remedy provided for him.

JURISDICTION - Concurrent jurisdiction - Exercise of - The inequities of the exercise of concurrent jurisdiction - Between an inferior tribunal and the High Court.

JURISDICTION - Court - Challenge of jurisdiction - Where the parties fought a case erroneously - On the basis that the court had jurisdiction - A party is not estopped from subsequently taking the contrary position.

JURISDICTION - Waiver - Objection - Where there is no power to exercise jurisdiction - No legal action results - And the question of a waiver does not arise.

WORDS & PHRASES - The word "may" - In provisions of statutes - How properly construed.

WORDS & PHRASES - The word "Chief" - How properly defined and its connotations.

FACTS

The plaintiff/appellant at the High Court, Ibadan sought several declarations and injunctive reliefs against the defendants/respondents concerning entitlement to become "Mogaji Oluokun or head of the family of Oluokun Family. The appellant claimed inter alia that he should be appointed by the 2nd respondent as the next and rightful candidate presented by the Aderin branch of the Oluokun family to fill the vacant position of Mogaji or Head of family in compliance with historical antecedents, native law and custom. The appellant claimed that it was the turn of his branch of Oluokun family the Aderin branch, to succeed to the post of Mogaji of that family. The appellant was nominated by his branch of the family to the Olubadan (2nd respondent) to fill the position. The 1st respondent was also nominated to the position by his branch of the family (the Adetunji branch). His nomination was supported by the remaining five surviving branches of the Oluokun family. The 1st respondent claimed that the Oluokun family has not adopted the principle of rotation among the surviving branches of the family in the appointment of the Mogaji. The 2nd respondent, who is the prescribed authority after considering the merits of the case of both contenders approved the nomination of the 1st respondent and installed him as the Mogaji of the Oluokun family of Ibadan.

At the conclusion of hearing, the learned trial judge found in favour of the appellant and granted all the reliefs sought. The 1st respondent appealed to the Court of Appeal Ibadan division against the decision of the High Court. That Court in allowing the appeal, held that that High Court lacked jurisdiction to entertain the appellants suit. The Court relied on s. 22 of the chiefs Law of Oyo State 1978 for this decision. The appellant has now appealed to the Supreme Court. The appeal was decided on two main issues.

ISSUES FOR DETERMINATION

Whether the Court of Appeal was right in regarding the title of "Mogaji" in Ibadan land as a minor chieftaincy within the meaning of section 22 of the Chiefs Law, cap.21 Vol.1 Laws of Oyo State of Nigeria 1978.

"Whether the "Unlimited jurisdiction" granted to the State High Courts by the Constitution of the Federal Republic of Nigeria 1979, did or should not ensure for the Plaintiff/Appellants to have their rights in law and on the merits determined, irrespective of the "so-called" prematurity and inexhaustiveness of his remedies as provided for by the Chiefs Law, volume 1, cap.21, Laws of Oyo State of Nigeria, 1978."

HELD (Unanimously dismissing the appeal per lead judgment of **KARIBI-WHYTE JSC**)
Evidence - Issue of fact

1. It is true that as an issue of fact a person is precluded from resiling from and abandoning an issue already admitted. It is however a different consideration whether the fact so admitted amounts to a conclusion of law. (p. 3204 F)

Challenge of Jurisdiction
 2. It is an elementary but cardinal principle of the exercise of jurisdiction that where the court lacks jurisdiction the parties cannot confer and vest jurisdiction on it. Accordingly the fact that the parties fought a case erroneously on the basis that the court had jurisdiction when there was none cannot estop a party from subsequently taking the contrary position
 F - See Shitta-Bey v. Attorney-Gen. for the Federation (1998)10 NWLR (pt.579) 392 SC. (p. 3204 G)

Jurisdiction - Lack of
 3. If a Court has no jurisdiction to hear and determine a matter before it, any step taken in relation to the matter is a nullity and void - See Timitimi v. Amabebe & ors. 14. WACA. 374 Madukolu v. Nkemdilim (1962) 1 ALL NLR.587. Hence in the instant case the competence of the learned trial judge to exercise jurisdiction will rest entirely on construction of the provisions of the Chieftaincy Law of Oyo State. (p. 3205 C)

Words and phrases - The word "Chief"
 4. The word "chief" has been variously defined in different laws where

the expression has been used with minor and insubstantial variations. All the definitions are consistent on the view that a chief means a native whose authority and control is recognized by a native community. It is accepted that a chief is an acknowledged leader in his society and among members of his community, which status carries with it both social prestige and political functions. (p. 3206 D)

Chieftaincy - Minor chief

5. I have no doubt in my mind that a person appointed a Mogaji of his family in Ibadan, assumes the position and status of a minor chief. This is because his title of Mogaji is associated with Ibadan community, and it is a title other than a recognized chief. The title makes him eligible to appointment as a senior chief in the Ibadan Chieftaincy hierarchy leading to the ultimate position of the Olubadan of Ibadan. The Court of Appeal was therefore right in regarding the title of Mogaji in Ibadan, as a minor chief within the meaning of section 22 of the Chiefs Law, Part 3, Cap.21, Vol.1 Laws of Oyo State, 1978. (p. 3208 C)

Words & Phrases - The word "May"

6. The construction of the word "may" in provisions of statutes has always raised difficulties. This is not because of the imprecision of the word because it is not, but essentially because the word "may" assumes a technical meaning depending upon the intendment of the statutory provision in which it is used. Although the etymological meaning "must" is permissive and facultative, and seldom can mean "must" and imperative, it assumes this last mentioned character, when there is anything in the provision that makes it the duty on the person on whom the power is conferred to exercise that power. When the exercise of the power is coupled with a duty on the person to whom it is given to exercise it, then it is imperative. (p. 3211 C)

Interpretation of statutes - The word "may"

7. In the instant case, there is a duty on the aggrieved who desires to set aside the decision of the prescribed authority to make his representation

to the Commissioner for Chieftaincy Affairs within twenty-one days of the decision. The use of the expression "may" in this situation is not merely facultative, but mandatory. There is no alternative. The aggrieved has no choice of action in the remedy provided for him. - See Bakare v. Attorney-General of the Federation (1990)5 NWLR (pt.152) 516. Accordingly, the word "may" in section 22(5) of the Chiefs Law of Oyo State, 1978 should be construed as imperative; the exercise of the right not being optional. (p. 3211 F)

C Constitutional law - Court

8. The essence of the provisions of section 22(5) is to afford the person aggrieved by the decision of the prescribed authority to make representation to the Commissioner for Chieftaincy Affairs. The provision is not in violation of section 33(2)(a) of the Constitution and has not interfered with Appellant's access to the court. - See Umaru v. Abdul -Mutallabi (1998)11 NWLR (pt.573) 247. (p. 3212 C)

E Jurisdiction - Waiver

9. It is an elementary proposition of law that where there is no power to exercise jurisdiction, no legal action results. A fortiori the question of a waiver does not arise. What is not within the control or competence of a party cannot be subject matter of a waiver, - See Fawehinmi Construction Co. Ltd. v. O.A.U. (1998)6 NWLR (pt.553)171. (p. 3212 G)

Chieftaincy matters - Court

10. The precondition for access to the court in respect of disputes arising from the determination of the prescribed authority are that (a) the prescribed authority must have made a determination, (b) the aggrieved should have made a representation to the Commissioner for Chieftaincy Affairs within twenty-one days of the giving of the decision, and (c) the Commissioner for Chieftaincy Affairs should have determined the dispute after due inquiry. These steps exhaust the remedy available to persons aggrieved under the exercise of powers vested in the prescribed authority by section 22 of the Chiefs Law of Oyo State 1978. Appellant

does not appear to have satisfied any of the above steps. (p. 3215 A)

Constitutional law - Statutory provisions

11. It seems to me that whereas section 22 vests in the prescribed authority the determination of facts and law relating to the appointment of a minor chief, other than in a court of law, the review of the determination of the prescribed authority re-enforced by subsections (5) and (6) of section 22 is vested in the commissioner for Chieftaincy affairs, whose determination unlike that of the prescribed authority is subject to judicial supervision. Learned counsel to the Appellants has submitted that section 22 of the Chiefs Law is in conflict with sections 6(6)(b) and section 236 of the Constitution 1979. I find no conflicts in the operation of these provisions. (p. 3215 D)

Jurisdiction - Concurrent jurisdiction

12. Having vested the determination of disputed minor chiefs in the prescribed authority, the aggrieved by statute compelled to resort to a particular remedy, should be left to exhaust his remedy. Since the right and the remedy are given uno flatu, the one cannot be dissociated from the other.- See Lord Watson in Barraclough v. Brown (1897) AC at pp. 621-622. The inequities of the exercise of concurrent jurisdiction between the inferior tribunal and the High Court was pointed out by Lord Denning MR in Healey v. Minister of Health (1955) 1QB. 221-228. He observed that there is the possibility of "two inconsistent findings, one by the Minister and the other by the Court. That would be a most undesirable state of affairs." This is what happened in this case. The decision of the High Court was different from that of the prescribed authority. He then stated what I regard as the crux of the matter. He said; "In my opinion, if the court were to entertain this declaration, it would be going outside its province altogether. It would be exercising a jurisdiction to "hear and determine" which does not belong to it, but to the Minister. (p. 3215 H)

Chieftaincy matters - Jurisdiction

13. In the instant case, the determination of disputed minor chieftaincies

is a jurisdiction by statute vested in the prescribed authority. I agree with the submission of learned Counsel to the Respondents that the High Court has no jurisdiction to exercise the jurisdiction vested in the prescribed authority. (p. 3216 D)

B
NOTABLE POINTS OF INTEREST
IGUH JSC

1. A rule of court may be overlooked in the interest of justice but not statutory provision

C Although a Rule of Court, in an appropriate cause, may, because of the peculiar and exceptional circumstances of the case be dispensed with in the overall interest of justice and so long as no miscarriage of justice is thereby occasioned, a statutory provision may not be ignored by a Court
D of Law. Accordingly, where, as in the present case, a special statutory provision is made for the filing of or the prosecution of a relief, the procedure so laid down ought to be followed and complied with unless it is such that may be waived. See Ariori and others v. Elemo and others
E (1983) 1 S.C. 13 (p. 3226 B)

AYOOLA JSC

2. How to answer the question whether a person is a chief within the law
F Section 2 of the Chiefs Law, defined "chief" as including "a person whose chieftaincy title is associated with a native community and includes a minor chief and a recognized chief". From this definition, it is evident that the question whether a person is a chief within the law is, at best, a question of mixed law and fact. The factual aspects of the question are
G two fold, namely, : first, whether the title in question is a "chieftaincy title"; and, secondly, whether, if it is, it is one associated with a native community. The result of affirmative answers to these questions of fact is that the person in question is a "chief". Where the parties expressly or
H by implication agree on the factual issues and the case has been fought on the basis of those agreed factual issues, none of them should be permitted on appeal to build his case on a different factual basis or as if the factual aspects remains at large. (p. 3229 G)

3. *The intendment of s. 22 of the Chiefs Law*

Where the "prescribed authority" approves an appointment without determining a dispute relating to the appointment, the decision of the "prescribed authority" may still be challenged pursuant to section 22 (5) of the Law. The intendment of these provisions is to ensure, within the ambit of the Chiefs Law, a comprehensive and speedy machinery for determining questions arising from disputed appointments with less formality than would attend litigation. (p. 3231 B)

REPRESENTATION

Olakunle Sonibare for appellant

A. Abimbola for respondents

CASES REFERRED TO

Shitta-Bey v. Attorney-Gen. for the Federation (1998)10 NWLR (pt.579) 392 SC.

Timitimi v. Amabebe 14. WACA. 374

Madukolu v. Nkemdilim (1962) 1 ALL NLR.587

Bakare v. Attorney-General of the Federation (1990)5 NWLR (pt.152) 516.

Umaru v. Abdul -Mutallabi (1998)11 NWLR (pt.573) 247

Ariori v. Elemo (1983) 1 S.C. 13

Fawehinmi Construction Co. Ltd. v. O.A.U. (1998)6 NWLR (pt.553)171

Barracrough v. Brown (1897) AC at pp. 621-622

Healey v. Minister of Health (1955) 1QB. 221-228

Laoye v. Oyetunde (1942)10 WACA 4

Olaniyi v. Aroyewun (1991)7 SCNJ. 40

Okotie-Eboh v. Okotie-Eboh (1986) NWLR (pt.16) 264

Bronik Motors Ltd. v. Wema Bank Ltd. (1893) 1 SCNLR. 296, (1983) 6 SC. 158

Onyema v. Oputa (1987) 3 NWLR (pt.69)250

STATUTES REFERRED TO

Chiefs Law, Vol. 1 cap 21 Laws of Oyo State of Nigeria 1978; ss. 2 and

22.

Constitution of the Federal Republic of Nigeria, 1979; ss. 6(6) (b); 33 (2) (a) and 236.

LEAD JUDGMENT BY KARIBI-WHYTE JSC

B

This appeal is essentially about the interpretation of the provisions of section 22(5) of the Chieftaincy Law cap. 21 Vol.1 of the laws of Oyo State, 1978. The need for the interpretation was provoked by the criticisms of the procedure alleged adopted in the filling of the vacant position of the Mogaji of the Oluokun family of Ibadan.

C

THE FACTS.

On the 21st August, 1986, Gbadamosi Adeleke, the Asiwaju Balogun and the last Mogaji of Oluokun family Ibadan died. A vacancy accordingly for a successor was created. Plaintiff, Mr. Oladiti Adesola from the Aderin branch of the Oluokun family was interested and was nominated to the Olubadan of Ibadan, the 2nd Defendant in this action by this branch of the Oluokun family to fill the vacant position. He claimed it was the turn of his branch of the Family to fill the vacant position. Alhaji Raimi Abioye Olatunji of the Adetunji branch of the Oluokun family also interested was nominated for the vacant position to the Olubadan of Ibadan, the 2nd Defendant in this action by his branch of the Oluokun Family. His nomination was supported by the remaining five surviving branches of the Oluokun Family. Raimi Abioye Olatunji relied on the claim that the Oluokun family has not adopted the principle of rotation among the surviving branches of the Family in the appointment of the Mogaji. He claimed that the Mogaji of the Oluokun Family is appointed from the candidate chosen by the majority of the surviving branches of the Family. The qualities of ability to promote the interest of the family and general acceptability to the majority of the surviving branches are the deciding considerations.

E

F

G

H BEFORE THE PRESCRIBED AUTHORITY

The two nominations were submitted to the Olubadan of Ibadan. The 2nd Defendant, and the Prescribed Authority under the law whose decision was final. Both parties were invited by the Olubadan to defend

their claims to nomination and election to the vacant position of Mogaji of the Oluokun family. Both parties appeared before the Olubadan-in-council with their witnesses and gave evidence. The matter was adjourned for decision to the 20th October, 1986. On the 17th October, 1986, before the decision of the Olubadan-in-council, appellant brought an ex parte motion seeking an interlocutory injunction to restrain the 1st defendant from parading himself as the new Mogaji elect by the 2nd Defendant., and from performing any rites, ceremonies activities and duties as condition precedent to his installation as the new Mogaji or Head of the Oluokun family of Ibadan, and also from being actually installed as the Mogaji or Head the Oluokun family of Ibadan.

EX PARTE APPLICATION

The ex parte motion also sought to restrain the 2nd Defendant by himself, his agents, privies and servants from taking any steps or actions whatsoever pursuant to the installation of the 1st Defendant as the new Mogaji or Head of Oluokun Family of Ibadan, and also for actually so installing him.

The application also sought to restrain the 2nd Defendant from initiating, organizing and installing any person whatsoever to fill the vacant position of the Mogaji or Head of the family of Oluokun of Ibadan.

On the 20th October, 1986, the Olubadan of Ibadan, the prescribed Authority, who also is the 2nd Defendant in this action, approved the nomination of the 1st Defendant and installed him as the Mogaji of Oluokun family of Ibadan.

ISSUE OF WRIT OF SUMMONS IN THE HIGH COURT

In the writ of summons filed by Appellant/Plaintiff on the 17th October, 1986 at the High Court, Ibadan, the sought for the following reliefs-

1. *A declaration that Mr. Oladiti Adesola, the plaintiff is the rightful Mogaji Oluokun as against Alhaji Raimi Abidoye Olatunji, the 1st defendant, who was wrongly installed the Mogaji or Head of the family of Oluokun by the 2nd Defendant.*
2. *A declaration that the installation of the 1st defendant Alhaji Raimi Abidoye Olatunji as Mogaji of Head of Family by the 2nd*

defendant is null and void and without effect as it contravenes natural justice, and repugnant to native law and custom.

3. *An injunction restraining the 1st defendant, Alhaji Raimi Abidoye Olatunji from performing any of the duties rites and activities belonging to the office of the Mogaji Oluokun or Head of the Oluokun Family.*

Appellant as Plaintiff filed a statement of claim, on the 1st December, 1986 and subsequently amended the same. The 2nd last Defendants filed their statements of defence on the 4th and 13th February, 1987 respectively. The 1st Defendant subsequently filed an amend statement of defence. Appellant filed a reply to the amended statement of defence of the 1st Defendant. The case proceeded to trial before Ibidapo-Obe J who granted all the reliefs sought.

D Appeal to the Court of Appeal

The 1st Defendant appealed against the decision of the learned trial judge to the Court of Appeal Division, Ibadan. 1st Defendant as Appellant filed nine grounds of appeal. The issue of the jurisdiction of the Court to hear the plaintiff's action was raised for the first time on appeal. Ground 9 relevant is as follows -

"The learned trial Judge erred in law in assuming jurisdiction to adjudicate upon and determine this case when:-

(i) *The action brought by the plaintiff is premature under the Chiefs Law, vol.1 Cap.21 Laws of Oyo State of Nigeria, 1978.*

(ii) *The plaintiff had not exhausted his remedy under the law before filling an action in court and*

(iii) *The decision of the prescribed authority is final and cannot be questioned in any court."*

The Court of Appeal after hearing argument allowed the appeal of the 1st Defendant. The action of the Plaintiff/Respondent was accordingly struck out as having been heard without jurisdiction. The judgment on the 11th H July, 1988 of Ibidapo-Obe J was thereby set aside.

Appeal to the Supreme Court.

The judgment of the court of Appeal was based entirely on the consideration of ground 9 which raised the issue of jurisdiction of the

Court of trial. Plaintiff, who was the Respondent in the court below, not being satisfied has appealed to this Court. The 1st Defendant on his part also filed a cross-appeal.

Appellant filed two original grounds appeal on the 9th day of August, 1993 and was granted leave of this court on the 11th January, 1995 to file three additional grounds of appeal. The additional grounds of appeal are an improvement of and cover the grounds in the original grounds of appeal.

The original grounds of appeal are as reproduced below:-

"GROUNDS OF APPEAL"

(1) *The learned Appellate justices erred in law when they held as follows: ".....all persons within its (section 22's) contemplation have a duty to exercise the "power" "May" in subsections (2), (3), (4), (5) and (6) to section 22 of the chiefs Law Granted and imposed a duty.*

PARTICULARS OF ERROR OF LAW

(1) The Learned Appellate justices erred in law by holding that the failure of the Appellate to make representation to the commissioner of Chieftaincy affairs before having access to Court which is not statutory mandatory is to the case of the Appellant.

(2) The Learned Appellate Justices wrongly construed the provision of sections 22 subsections (2), (3), (4), (5) and (6) of the Oyo State chiefs Law Cap.21 of 1978 without regard to section 6(6)(b), 33(2)(b), 236 and 274(3)(d) of the constitution of the Federal Republic of Nigeria 1979.

PARTICULARS

(i) The High Court has unlimited jurisdiction in the civil matters.

(ii) The exercise of the unlimited jurisdiction of the High Court is not statutory subject to any condition procedure.

(iii) The Learned Appellant Justices wrongly gave a blanket construction and interpretation to section 22 subsections (2), (3), (4), (5) and (6) of the Oyo State Chiefs Law Cap. 21 of 1978 without considering the effect of the provisions of sub-section 4 of the statute which is an express ouster of the jurisdiction of the court.

RELIEF SOUGHT FROM THE SUPREME COURT

(i) *To allow the appeal and set aside the decision of the Court of Appeal and restore the judgment of the High Court.*

(ii) *To give judgment to the Plaintiff/Respondent/Appellant.*

(iii) *Any other or further orders as the court may deem fit."*

B Also reproduced hereunder are the additional grounds of appeal

GROUND OF APPEAL

C That the Court of Appeal erred in Law in holding that the Plaintiff/Appellant's suit was premature as he had not exhausted his remedies under the provisions of sections 22(4) 22(5), and 22(6) of the Chief & Law, Volume 1, Cap 21 Law of Oyo State of Nigeria 1978.

PARTICULARS OF ERROR

D Even where the said actions or steps taken by the Plaintiff/Appellant was premature, it was an irregularity. Such mere irregularity cannot vitiates the judgment of the Trial Court.

E Going by the provisions of the Chiefs Law, the said provisions are not mandatory on the Plaintiff/Appellant. The Court of Appeal did not give enough or probably any attention to the reason(s) adduced by the Plaintiff/Appellant why he filed the present suit at the Ibadan High Court before the Olubadan-in-Counsel announced his findings.

F The Plaintiff/Appellant filed this suit at the High Court before announcement of the findings Olubadan-in-Council in the INTEREST OF JUSTICE AND FAIR PLAY because there was the story all over the place that it was the 1st defendant who the Olubadan-in-Council had approved.

G The Court of appeal did not at anytime consider the CONSTITUTION RIGHT of the Appellant to go to court as a FUNDAMENTAL RIGHT inalienable to the APPELLANT. The Court of Appeal erred in Law in holding that the Trial Court lacked jurisdiction to entertain the suit.

PARTICULARS OF ERROR

H The Court of Appeal specifically found that such as issue of jurisdiction was not canvassed by the Defendant/Respondent at the Trial Court.

The Defendant/Respondent at the trial court failed to raise any

objection in his pleadings as to the issue of jurisdiction in the Court of Trial.

The Defendant/Respondent having participated fully and through and through in the trial he would be deemed to have waived his right to object, thus making it too late for him to complain at anytime, or at the Court of Appeal. B

Whether the Court of Appeal was right in holding that section 22(4) of the Chiefs Law 1978 did not oust the jurisdiction of the Oyo State High Court.

PARTICULARS OF ERROR

 C

That by virtue of sections 6(2),6(6)(b), section 236 and section 274(3) of the Constitution of the Federal Republic of Nigeria 1979, section 22(4) of the Chief Law 1978 was inconsistent with the 1979 constitution, and to the extent that it purported to oust the jurisdiction of the High Court would be ultra vires, void and of no effect. D

No state Legislation shall legislate the High Court out of jurisdiction since by section 236 of the 1979 Constitution the High Court of a state has (an) UNLIMITED JURISDICTION in any matter, such as that of this case validly brought before it." E

Respondent has filed a notice of Cross-appeal.

"GROUNDS OF APPEAL

The learned justices of the Court of Appeal erred in law in failing to consider grounds 1,2,3,4,5,6,7 and 8 of the grounds of appeal contained in the Amended Notice of Appeal dated 16th March, 1993 and reduced to issues 1,2,3, and 4, of the brief of argument filed and argued. F

PARTICULARS OF ERROR IN LAW

Although the Defendant/Respondent in the lower court filed 9 grounds of appeal, formulated five issues thereon and argued the said issues in his Amended Brief of Argument dated 6th May, 1992, the learned justices of the Court of Appeal in their judgment of 26th July, 1993 considered only ground 9 of the grounds of appeal and issue no 5. of the brief and based their judgment solely on that issue without considering the others and argument based thereon in the Appellants Brief of Argument. G H

The Court of Appeal has the legal duty to consider each and every ground of appeal and issues argued before it before giving judgment either way.

If the Court of Appeal had considered the 9 other four issues they would have come to the same conclusion that the other four issues ought also to succeed.

RELIEFS SOUGHT FROM THE SUPREME COURT

1. *To allow this cross-appeal and consider grounds 1,2,3,4,5,6,7 and 8 of the grounds of appeal and the issues formulated thereon and arguments canvassed in the printed briefs of the parties.*

2. *To affirm the judgment of the Court of Appeal on all the five issues formulated and argued before it.*

3. *Any other relief or reliefs as the court may deem fit.*

Briefs of Argument and Respondents' Preliminary Objection to the Appeal

Learned Counsel to the parties have filed their briefs of argument, which they adopted and relied upon at the hearing of this appeal. Learned Counsel for the Respondent raised, in his brief of argument, preliminary objection to the hearing of appellant's appeal on the grounds of incompetence. He observed that the Appellant has filed two separate notices of appeal. The 2nd notice of appeal was filed on the 23rd November, 1993 beyond the three months statutorily allowed after delivery of judgment. It was submitted there being no application for extension of time granted by the Court, the notice of appeal was incompetent and should be struck out.

Secondly, since the issues for determination were formulated on the incompetent grounds of appeal, there are no issues properly formulated. The issues formulated should accordingly be struck out. The court pointed out to learned counsel for the Respondent, that it granted leave to Appellant to file and serve additional grounds of appeal and said grounds having been filed no question of incompetence of the grounds of appeal or the issues on which they are based arises.

The preliminary objection which was unnecessary arose from the lack of familiarity of counsel with the trends in the conduct of the

appeal. The order of this court granting application for additional ground of appeal was served on the Respondent. Learned Counsel for the Respondent no longer wished to pursue the preliminary objection which was accordingly struck out.

Formulation of issues for Determination.

B

Learned Counsel to the parties have formulated the issues for determination, though couched in different words but in substance aiming at identical results.

Appellant

C

Learned Counsel to the Appellant has formulated the issues as follows-

Issues for Determination in the Appeal

The Issues for determination in the appeal shall be put as follows:

D

4.1 Whether the Court of Appeal was right to have categorized and or RAISED (the status) (of) the title of MOGAJI, OR HEAD OF FAMILY, to that of a CHIEF, (minor or otherwise): to bring same within the purview and or determination of sections 22(3), 22(4) , 22(5), and 22(6) of the Chiefs Law, Volume 1, Cap 21, Laws of Oyo State of Nigeria, 1978.

4.2 Whether, if the answer to the above, (4.1), is in the NEGATIVE, the Honourable Court of Appeal will, shall or should RIGHTLY and or PROPERLY have assumed jurisdiction to rightly and properly determine the Appeal, totally on the MERITS.

F

4.3 Whether the "UNLIMITED JURISDICTION" granted to state High Courts by the Constitution of the federal Republic of Nigeria, 19979, did or should nor ENURE FOR THE Plaintiffs/Appellants to have their RIGHTS in law and on the merit determined, irrespective of the "so-called" prematuredness and inexhaustiveness of his remedies as provided for by the Chiefs Law Volume 1, Cap 21, Laws of Oyo State of Nigeria, 1978."

G

H

Respondent

On his part, learned Counsel to 1st Respondent states his formulation as follows-

"Issues for determination:

1. Whether the Counsel of Appeal was right in treating the title of MOGAJI in Ibadan land as a minor Chieftaincy within the provision of Section 22 of the Chief Law, Volume 1, CAP 21 Laws of Oyo State of Nigeria, 1978.

2. Whether the Court of Appeal was right in holding that the action brought by the appellant is pre-premature for failure of the appellant to comply with the statutory provision of Section 22 of the Chiefs Law of Oyo State and so the High Court lacks jurisdiction to entertain the case.

3. Whether the Court of Appeal was right in holding that the word "MAY" used in the context of Section 22 of the Chiefs Law is MANDATORY and not DISCRETIONARY.

4. Whether the court of Appeal was right in holding that Section 22 of the Chiefs Law of Oyo State does not conflict with Sections 6(6) (b) and 236 of the Constitution of Federal Republic of Nigeria 1979 to vest jurisdiction in the High Court to grant declaratory action to the appellant in matters relating to that section of the Chiefs Law."

During argument before us learned Counsel for Appellant conceded that only his issues 2 and 3 survive the preliminary objections of the Respondent.

Comment on the issues formulated

A careful reading and comparison of the two formulations discloses the nature of the different approaches adopted by learned Counsel in the formulation of the issues. Whereas the formulation of the issue no.1 are identical, Appellants formulation of the issue no.2 adopts a negative approach enabling the exercise of jurisdiction, whereas learned Counsel to the Respondent adopts a positive approach of the effect of non-compliance with the provision of section 22 of the Chiefs Law of Oyo State, Cap.21 Vol.1, Laws of Oyo State 1978. There is no difference in substance and indeed in words between the Appellants third issue, and the Respondent's fourth issue. However in the interest of clarity I have considered the issues necessary for the determination of this appeal on the grounds of appeal surviving the objection. I have relied on issues 2

and 3 of the appellant.

I have stated in this judgment that the gravamen of this case lies in the proper construction of the provisions of section 22 of the Chiefs Law. This falls within the surviving issues 2 and 3. I am of opinion that this will involve a determination of the status of the Mogaji whether he is a minor Chief within the meaning of section 22(3) 22(4), 22(5) and section 22(6).

(i) Arguments of Counsel-Appellant

Arguing the 1st issue for determination, which is related to ground 2 it was submitted that the Court of Appeal was wrong to have elevated the Mogaji to the status of a minor chief, and accordingly to raise the title of Mogaji within the family to that of a Chief. This brings the contention within the purview of the meaning of the construction of section 22(3), 22(4) 22(5) and 22(6) of the Chief's Law of Oyo State of Nigeria 1978.

It is the contention of the Appellant that the Mogaji is not a chief or a minor Chief within the meaning of the Chiefs Law. cap.21 vol.1, Laws of Oyo State, 1978. It was submitted that a Chief is defined as "a person whose Chieftaincy title is associated with a native community and includes a minor chief and a recognized chief." Learned Counsel queried whether the Mogaji can fall within the above definition. He argued referring to paragraph 8 of the amended statement of claim and paragraph 6 of the amended statement of defence that the Mogaji is and has to be the Head of Oluokun family as found by the trial judge. It is therefore not a chieftaincy title as provided under the Chiefs Law.

Learned Counsel referred specifically to Ibadan District Counsel and submitted that the Mogaji is not one of the ten Chieftaincies designated. The Mogaji as a title is not included. The Privy Counsel decision of Laoye & Ors. v. Oyetunde (1942) 10 WACA. 48 was cited in support.

(ii) Respondent

In his answer to the submissions of the Appellant, learned counsel to the Respondent observed that the parties had fought the case in the trial Court and in the Court of Appeal on the basis that the title of Mogaji in Ibadan, unlike other parts of Yoruba land is a minor chieftaincy. Learned Counsel referred to paragraphs 5, 6, 25, 33, 45 of the Appellant's state-

ment of claim in support. Reliance was also placed on the judgment of S.B. Rhodes J, C.B.E. in Bakare Adesola Oluokun & anor. v. Salami Adedaja Adigun & ors, Suit No1/9/1946 tendered by Appellant and admitted as Exh. "p.4" At p.2 of Exhibit p4, S.B. Rhodes J observed as

B follows -

" (1) *The Oluokun family is one of the important families at Ibadan.*

C (2) *The Mogaji is the person properly appointed by the family to be the head of the family and when such an appointment has been constitutionally recognized by the Olubadan-in-Council, the Mogaji becomes eligible for appointment to the rank of a Senior Chief and by stages up to the office of the paramount chief of Ibadan known as the Olubadan..... "*

D Again at pp.7-8 of Exhibit "p.4" it is stated as follows- *"However, the defence of the Third Defendant is that they have no power to create Mogajis. That is matter for the family concerned; but that they have the power to recognize after appointment, such recognition carries with it the*
 E *right to collect the Native Administration Tax from the taxable members of his area, and that it is a stepping stone to the rank of a senior chief ending up to that of Olubadan if lucky."*

Learned counsel referred to the averment in paragraph 5 of the 2nd
 F Defendant's statement of defence, and to the evidence of the Secretary to the Olubadan-in-Council in the trial page 94. It was submitted that the title Mogaji is associated with Ibadan Community as a minor chieftaincy in that no one can be appointed to the title of a senior Chief without being first appointed a minor chieftaincy of Mogaji. This, it is argued is why
 G the Olubadan-in-Council is the prescribed authority for the appointment of Mogajis in Ibadan land. Learned Counsel to the respondents referred to the reference made by Appellant's Counsel to the Law of Western Region 1959 as in-appropriate and inapplicable to this case. He pointed
 H out that the ten Chiefs named in the schedule to that law were the Chiefs governed by Part 11 of that law. Furthermore in the Chiefs Law of Oyo State applicable in this case, only the Olubadan of Ibadan is named in Part 11, all other chieftaincies are in Part 111. It was submitted that the

decisions of Laoye & ors. v. Oyetunde (1942)10 WACA 4, and Alhaji Salami Olaniyi v. Aroyewun (1991)7 SCNJ. 40 cited in support of the submission that the Mogaji in Ibadan is not a chief do not support the proposition. Laoye v. Oyetunde, it was submitted was based on an interpretation of Section 2(2) of Ordinance No. 14 of the Laws of Nigeria 1930, and where a chief has been differently defined. In fact what the court held was that the Bale of Ogbomoso is not a head chief or a chief in the Colony of Lagos. It was not held that Bale of Ogbomoso is not a chief.

Also Olaniyi v. Aroyewun held that a village head is not a "chief" within the purview of the Chiefs (Appointment and Deposition) Law, of Kwara State unless he has been appointed a graded chief by the Governor of Kwara State under sections 3 and 5 of the said Law. In that case the word "chief" is defined differently and was based on section 5(1) of the Chieftaincy Disputes (Preclusion of Courts) Ordinance No. 30 of 1948.

Based on the forgoing Learned Counsel proffered his definition of the Mogaji as follows -

"(i) "Mogaji" in Ibadan land (unlike other parts of Yoruba land) means a person whose chieftaincy title is associated with Ibadan community and it is a minor chieftaincy.

(ii) It is just not the head of a family but also a minor chieftaincy which is in the words of the appellant marked by "ranking" "ordering" and promotion"

It was accordingly submitted that the title of "Mogaji" in Ibadan is a minor chieftaincy of which the Olubadan of Ibadan is the prescribed Authority. The Mogaji becomes eligible for appointment to the rank of a senior chief and by stages up to the position of the Paramount Chief of Ibadan, known as the Olubadan of Ibadan.

(ii) The system of Chieftaincy in Ibadan is governed from the junior Chieftaincy of Mogaji to appointment to the senior chieftaincy.

(iii) The Mogaji is a minor chief associated with Ibadan community and the Olubadan of Ibadan is the prescribed authority for the recognition and installation.

Learned Counsel derived his conclusion from the definition of the word "Chief" in section 2 of the Chiefs Law of Oyo State, 1978, Cap.21 Vol.1 Laws of Oyo State. Chief there is defined as

"a person whose chieftaincy title is associated with a native community and includes a minor chief and a recognized chief"

It was finally submitted that the Court of Appeal was right in treating the title of "Mogaji" in Ibadan as a minor Chief within section 22 of the Chiefs Law of Oyo State 1978. The above were the submissions of the parties on the issue whether the Court of Appeal was right in regarding the title of "Mogaji" in Ibadan land as a minor chieftaincy within the meaning of section 22 of the Chiefs Law, cap.21 Vol.1 Laws of Oyo State of Nigeria 1978.

Consideration of Counsel's submission

There seems to me no doubt that this is a threshold issue, the resolution of which determines the fate of Appellants' claim. This is because the issue whether the Olubadan of Ibadan can exercise jurisdiction in this matter depends upon whether the title "Mogaji" comes within the definition of minor chief, within Part 111 of the Chiefs Law. This is the issue in contention in the court below, though assumed by both parties during the trial.

Learned Counsel to the Respondents has submitted that since the parties had contested the case before the High Court and the Court of Appeal on the basis that the title of Mogaji in Ibadan was a minor Chieftaincy, the Appellant cannot now resile from that position. I do not share this view.

It is true that as an issue of fact a person is precluded from resiling from and abandoning an issue already admitted. It is however a different consideration whether the fact so admitted amounts to a conclusion of law. It is an elementary but cardinal principle of the exercise of jurisdiction that where the court lacks jurisdiction the parties cannot confer and vest jurisdiction on it. Accordingly the fact that the parties fought a case erroneously on the basis that the court had jurisdiction when there was none cannot estop a party from subsequently taking the contrary position - See Shitta-Bey v.

Attorney-Gen. for the Federation (1998)10 NWLR (pt.579) 392 SC.

It follows from this principle that jurisdiction cannot be acquired by consent of the parties, nor can it be enlarged by estoppel. - See Okotie-Eboh v. Okotie-Eboh (1986) NWLR (pt.16) 264. This principle is fortified by the well settled principle that the issue of jurisdiction which determines the competence to exercise jurisdiction can be raised at any stage of a trial and indeed even for the first time on appeal - See Bronik Motors Ltd. & anor v. Wema Bank Ltd. (1893) 1 SCNLR. 296, (1983) 6 SC. 158, Onyema v. Oputa (1987) 3 NWLR (pt.69)250.

If a Court has no jurisdiction to hear and determine a matter before it, any step taken in relation to the matter is a nullity and void - See Timitimi v. Amabebe & ors. 14. WACA. 374 Madukolu v. Nkemdilim (1962) 1 ALL NLR.587. Hence in the instant case the competence of the learned trial judge to exercise jurisdiction will rest entirely on construction of the provisions of the Chieftaincy Law of Oyo State.

Whether the Mogaji is a Chief

It is the contention of the Appellant that the Mogaji who is accepted by both sides as the title for the head of family in Ibadan land, is not a Chief within the definition of the word in the Chieftaincy Law, cap.21, Vol.1, Laws of Oyo State, 1978. It is however, the contention of the Respondent that the title Mogaji falls within the definition of the word "Chief" and accordingly the Mogaji comes within the meaning of the word "Chief" as defined.

It is necessary for our purpose to determine into what category the title Mogaji falls. Although not expressly so stated it is admitted that the Mogaji is a title. It is acknowledged as the title given to a head of family in Ibadan land. Accordingly, the title Mogaji to found jurisdiction must fall within the definition of the word, "chief". The definition of the words "chief" "minor chief" "recognized chief," "recognized chieftaincy" in section 2 of the Chiefs Law Cap.21, vol.1, Laws of Oyo State, 1978 provide as follows-

"chief" means a person whose chieftaincy title is associated with a native community and includes a minor chief and a recognized chief.

"minor chief" means a chief other than a recognized chief "recognized chief" means a person appointed to a recognized chieftaincy. "recognized chieftaincy" means a chieftaincy to which the provisions of Part 2 apply.

- B Analyzing the qualities and functions of the holder of the title of Mogaji, it seems to me accepted without dispute that he is the head of his native community appointed by his family and recognized by the Olubadan of Ibadan. This description comes within the accepted definition of the word "chief" in section 2 of the Chieftaincy Law Cap.21 vol.1 of Laws of Oyo State 1978. The fact that the holder of the title of Mogaji, the head of a family, is not indicated as one of the designated ten chiefs in Ibadan does not take the title out of the definition because the definition of the word "chief" includes a recognized chief and a minor chief. A minor chief is a chief other than a recognized chief.

The word "chief" has been variously defined in different laws where the expression has been used with minor and insubstantial variations. The word has been defined in the interpretation Ordinance 1946, No.7 of 1947 subsequently repeated and replaced by the interpretation Act. 1964, No.1 of 1964, section 18. **All the definitions are consistent on the view that a chief means a native whose authority and control is recognized by a native community.**

- F We have already reproduced in this judgment the definition of the word in section 2 of the Chiefs Law of Oyo State, which is applicable to this case. This definition would seem to me to be derived from the definition of the word in section 2 of the Chiefs Law, Cap.19 of the Laws of Western Nigeria, 1959, which is identical. It is difficult to refute the argument that the operating and dominant consideration in the definition of the word is the holding of a title recognized by the native community. **It is accepted that a chief is an acknowledged leader in his society and among members of his community, which status carries with it both social prestige and political functions.** Learned Counsel for the Appellant cannot be understood to be suggesting that the holder of the title of Mogaji in Ibadan land does not fall within the above definition.

A similar situation fell for judicial determination in the early West

African Court of Appeal decision in Ononye v. Obanye 11 WACA. 60 In this case Plaintiff claimed, a declaration, that as "Okpala" he is the head of Mgbelekeke family, and that as such head he was entitled to all the rights attached to that office according to native law and custom, and that he is the proper representative of the family according to native law and custom. There, as in the instant case, it was contented that the "Okpala" was merely the head of the extended family, which only enabled him to bring action in the name of the family. The Court rejected the contention and relying on Dr. Meeks, book on Law and Authority in a Nigerian Tribe, held that the Okpala could be regarded as a Chief.

In Osamor v. Obi Izediuno & anor. (1955-56) WRNLR. 118 the Court interpreting the provision of the Interpretation Ordinance was held that the control and authority of a Juju Priest, if recognized by a native Community would bring such a person within the definition of chief. The court pointed out at p. 120 that the Ordinance does not state the nature of the authority or extent of the control needed to make a person a chief and that it need not be necessarily administrative.

I agree with learned counsel to the Respondent that the decisions relied upon by Appellant in support of the proposition that the Mogaji is not a chief are not appropriate and therefore cannot be binding precedents. Laoye & ors. v. Oyetunde (1942)10 WACA. 4, was a decision that the Bale of Ogbomoso is not a head chief. It was not a decision that the Bale of Ogbomoso was not a chief. Again Alhaji Salami Olaniyi v. Aroyewun (1991)7 SCNJ. 40 which held that a village head is not a chief within the purview of the Chiefs (Appointment and Deposition) Law of Kwara State, unless he has been appointed a graded chief by the Governor of Kwara State under sections 3 and 5 of the Law. The definition of the word "chief" in that Law which is based on the provisions of section 5 (1) of the Chieftaincy Dispute (Preclusion of Courts) Ordinance No.80 of 1948 is different.

Considering a number of the admitted facts in the credentials of H the holder of the title of Mogaji, it is inescapable to conclude that:

(i) *He is the person properly appointed by the family to be its head.*

(ii) *On being thus appointed, he becomes eligible for appointment to the rank of a senior chief and by stages up to the status of the paramount chief of Ibadan, known as Olubadan of Ibadan.*

(iii) *The Oluokun family is one of the important families of Ibadan.*

(iv) *He is given the power to collect the native administration tax from the taxable members of his area.*

(v) *Exhibit p4, Statement of judgment S.B. Rhodes. If the above facts are admitted and no longer require any further evidence in proof. - See Bello v. Farmers Supply Co. Ltd. (1998) 10 NWLR (pt.568)64.*

I have no doubt in my mind that a person appointed a Mogaji of his family in Ibadan, assumes the position and status of a minor chief. This is because his title of Mogaji is associated with Ibadan community, and it is a title other than a recognized chief. The title makes him eligible to appointment as a senior chief in the Ibadan Chieftaincy hierarchy leading to the ultimate position of the Olubadan of Ibadan.

The Court of Appeal was therefore right in regarding the title of Mogaji in Ibadan, as a minor chief within the meaning of section 22 of the Chiefs Law, Part 3, Cap.21, Vol.1 Laws of Oyo State, 1978.

The Issue No.2 The next issue for consideration is whether the court of trial had jurisdiction to determine the claims before it as it did. This is the second issue for determination formulated by the Appellant as follows-

"Whether if the answer to 5.1 (above) is in the negative, the Honourable Court of Appeal should, will or shall rightly and properly assume jurisdiction to rightly and properly determine the issue"

Appellant's submissions

Learned Counsel to the Appellant sought and was granted leave to argue issue 4 together with issue 2. Issue number 4 states-

"Whether the Honourable Court of Appeal, should not have assumed jurisdiction to determine the case on the merits - the law and evidence led, (by the parties and their witnesses)."

In arguing the appeal learned counsel submitted that even given the exer-

cise of unlimited jurisdiction of the High Court as formulated in issue 3, he would still contend that the Court lacked the requisite jurisdiction. Issue 3 as formulated states as follows -

"Whether the "Unlimited jurisdiction" granted to the State High Courts by the Constitution of the Federal Republic of Nigeria 1979, did or should not ensure for the Plaintiff/Appellants to have their rights in law and on the merits determined, irrespective of the "so-called" prematurity and inexhaustiveness of his remedies as provided for by the Chiefs Law, volume 1, cap.21, Laws of Oyo State of Nigeria, 1978." Learned counsel relied on the construction of section 22(6) of the Chiefs Law, which is as follows -

"Any person aggrieved by the decision of the prescribed authority may within twenty-one (21) days make representation to the Commissioner"

In the argument of learned counsel to the Appellants, the offending interpretation is the opinion of Nsofor JCA, where the word "may" in the section is construed as imposing a duty. Reading the leading judgment the learned justice said,

"Now in connection with determination and settlement of certain minor chieftaincy disputes, section 22 of the Chiefs Law 1978 has created and set up an adjudicative procedure and machinery. It gave "power" to seek a remedy and to give a remedy. In my view all persons within its (section 22's) contemplation have a duty to exercise the power. May in sub-sections (2)(3)(4)(5) and (6).... imposed a duty"

Learned Counsel relied on the definition of the word "may" in Black's Law Dictionary, and the judgment of Uche Omo JCA in Chief Sarim Adeniran Degbekun v. Oba Yesufu Omoloye (unreported Court of Appeal decision CA/1/125/86) to argue that the word "may" in section 22(5) of the Chiefs Law of Oyo State 1978 was not mandatory on the Plaintiff/Appellant. Accordingly Section 22(5) did not impose any duty on the Plaintiff/Appellant to make representation to the Commissioner. It was submitted such a course of action being optional, ought not take precedence over the constitutional right of access to the courts, which is his fundamental right.

Finally, learned Counsel submitted that Respondents having participated in the trial of the action to conclusion should be taken to have waived their right to object to the jurisdiction at the trial. It was argued that it was too late for Respondents to take advantage of the want of jurisdiction. It can at best be regarded as an irregularity. The decisions of Sonuga & ors. v. Anadein & ors. (1967) NMLR and Gani Fawehinmi v. NBA NO.1 (1989) 2 NWLR (pt.105)494 were cited and relied upon.

Reply by Respondent

In his reply, learned Counsel to the Respondent submitted that the word "may" in any statute can be used as discretionary or mandatory. It was submitted that it was the duty of the Court to discover the real intention of the statute. This can be done by considering the whole scope of the statute to be construed. Learned Counsel referred to the opinion of Nsofor JCA for the meaning of the word "may," where he said.

It is important to note that the word "may always gives a power but the further question whether given the power there is a duty to exercise it must depend on the words creating the power;" (lines 10-12 p. 433)

Learned Counsel cited Julius v. Lord Bishop of Oxford (1880)5 AC.214/223 and Bakare v. AG of the Federation (1990)5 NWLR (pt.152)516 for the cases where the word "may" is held to be mandatory. Learned counsel went on to submit that on a reading together of the provisions of section 22(5) and (6) an aggrieved party like the appellant has no option but to appeal within 21 days to the Commissioner in charge of chieftaincy matters who has the duty to cause an inquiry to be held into the dispute.

Consideration of Counsel's Submissions -

It is relevant to set out the actual words of the statute and any associated provisions to enable a proper interpretation of the provision. Section 22(5) provides as follows -

"Any person aggrieved by the decision of the prescribed authority in exercise of the powers conferred on the prescribed authority by sub-sections (2),(3) and (4) of this section may within twenty one days, from the date of the decision of the prescribed authority, make representations

to the Commissioner to whom responsibility for chieftaincy affairs is assigned that the decision be set aside and the Commissioner may, after considering the representations, confirm or set aside the decision."

It seems to me clear from the above provision that the person aggrieved by the decision of the prescribed authority is allowed twenty-one days B from the date of the decision of the prescribed authority to make representations to the Commissioner for Chieftaincy Affairs to set aside the decision. This is the remedy and channel provided for him. There is no question as to whether or not he may appeal to the Commissioner for C Chieftaincy Affairs, this being the remedy provided under the statute. Accordingly the word "may" although etymologically permissive, is in this context mandatory.

The construction of the word "may" in provisions of statutes has always raised difficulties. This is not because of the im- D precision of the word because it is not, but essentially because the word "may" assumes a technical meaning depending upon the intendment of the statutory provision in which it is used. Although the etymological meaning "must" is permissive and facultative, E and seldom can mean "must" and imperative, it assumes this last mentioned character, when there is anything in the provision that makes it the duty on the person on whom the power is conferred to exercise that power. When the exercise of the power is coupled F with a duty on the person to whom it is given to exercise it, then it is imperative.

In the instant case, there is a duty on the aggrieved who desires to set aside the decision of the prescribed authority to make his representation to the Commissioner for Chieftaincy Affairs G within twenty-one days of the decision. The use of the expression "may" in this situation is not merely facultative, but mandatory. There is no alternative. The aggrieved has no choice of action in the remedy provided for him. - See Bakare v. Attorney-General of H the Federation (1990)5 NWLR (pt.152) 516. Accordingly, the word "may" in section 22(5) of the Chiefs Law of Oyo State, 1978 should be construed as imperative; the exercise of the right not being op-

tional.

It was further submitted that the exercise of the option should not take precedence over the constitutional right of access to court; which is a fundamental right. This point could be summarily dismissed by B reference to the provisions of section 33 (2)(a) of the Constitution 1979 which recognizes fair hearing where a law

"(a) provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering C authority before that authority makes the decision affecting that person."

The essence of the provisions of section 22(5) is to afford the person aggrieved by the decision of the prescribed authority to make representation to the Commissioner for Chieftaincy Affairs. The D provision is not violation of section 33(2)(a) of the Constitution and has not interfered with Appellant's access to the court. - See Umaru v. Abdul -Mutallabi (1998)11 NWLR (pt.573) 247.

Appellant also contented that having taken part in the trial, Respondent should be deemed to have waived his objection to want of E jurisdiction, having not raised the issue in their pleadings. It is accordingly too late for Respondent to complain and to take advantage of the defect which is a mere irregularity already accepted by them, and acted F upon without any prejudice to them. The decisions of Sonuga & ors. v. Anadein & ors. (1967) NMLR.77 and Gani Fawehinmi v. N.B.A. (1989) 2 NWLR (pt.105)494 were cited in support.

The decision of Gani Fawehinmi v. N.B.A. (No.1)(1989)2 NWLR G (pt.105) 494, cited and relied upon by Appellants counsel is inappropriate, that case is not based on want of jurisdiction.

It is an elementary proposition of law that where there is no power to exercise jurisdiction, no legal action results. A fortiori the question of a waiver does not arise. What is not within the H control or competence of a party cannot be subject matter of a waiver, - See Fawehinmi Construction Co. Ltd. v. O.A.U. (1998)6 NWLR (pt.553)171. Learned Counsel to the Respondent accurately summarized the gravamen of the appeal referring to issues 2,3 & 4, when

he said at para. 6.01 of his brief.

"The sum total of the issues is whether, the Court of Appeal was right in holding that the action of the appellant is premature and that in spite of the provisions of sections 6(6)(b) and 236 of the Constitution of the Federal Republic of Nigeria 1979, the High Court of the state has no jurisdiction to grant the declaration action sought by the appellant in this suit."

Exercise of the Powers and the Remedy-Construction of Section 22.

The rights and remedies of the persons appointed under the provisions of part 3 of the Chiefs Law are clearly provided in section 22 of the Chiefs Law as follows:-

"22(2) where a person is appointed, whether before or after the commencement of this law, to fill a vacancy in the office of a minor chief by those entitled by customary law so to appoint and in accordance with customary law, the prescribed authority may approve the appointment."

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

(4) The decision of the prescribed authority

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

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

(5) Any person aggrieved by the decision of the prescribed authority by subsections (2), (3) and (4) of this section, may within twenty one days from the date of the decision of the prescribed authority, make representations to the Commissioner to whom responsibility for chieftaincy affairs is assigned that the decision be set aside, and the Commissioner may, after considering the representations confirm or set aside the decision.

(6) Before exercising the powers conferred by subsection (5) of this section, the Commissioner may cause such inquiries to be held in accordance with section 21 as appear to him necessary or desirable.

(7) Where the Commissioner in his determination under subsec-

tion (5) of this section sets aside an appointment to a chieftaincy, he shall required the persons responsible under customary law for the appointment of the person to fill the vacancy in that chieftaincy to appoint another person in accordance with the customary law within such time as he may specify."

There is no doubt on the face of the claim, before the learned trial judge the Appellant is disputing the appointment by the prescribed authority, the Olubadan of Ibadan of Raimi Abidoye Olatunji as the Mogaji of Oluokun family of Ibadan.

The remedy provided by S.22(3) is for the prescribed authority to determine such a dispute. The decision of the prescribed authority to approve or not to approve an appointment to a minor chieftaincy or determination that a person has been appointed in accordance with customary law to a minor chieftaincy shall be final and shall not be questioned in any court. That is not the end of the remedy. However, a person aggrieved by the exercise of powers under subsections (2), (3) and (4) is entitled within 21 days of the making of the decision to make representations to the Commissioner for Chieftaincy Affairs, who may confirm or set aside the decision of the prescribed authority. On his part, the Commissioner for Chieftaincy Affairs may cause such inquires to be held as appears to him necessary or desirable for the determination of the dispute.

These are the procedural steps provided by the Chieftaincy Law for the redress of grievance in respect of disputes arising from the decision of the prescribed authority. It is obvious from these provisions that whereas the decision of the prescribed authority is not subject to the jurisdiction of the courts, the aggrieved still has an opportunity to make representations to the Commissioner for Chieftaincy Affairs, who is the administering authority, before any decision affecting the aggrieved is made.- (See S.33(2)(a). The relevant sections of the Chieftaincy Law do not contain any provisions making the determination of the administering authority final any conclusive. - See S.33(2)(b). The determination of the Commissioner for Chieftaincy Affairs, is clearly not excluded from the jurisdiction of the Court. Accordingly, the issue of access to the

courts is not foreclosed as to make the provision a violation of the fundamental right of access to the courts.

The precondition for access to the court in respect of disputes arising from the determination of the prescribed authority are that (a) the prescribed authority must have made a determination, (b) the aggrieved should have made a representation to the Commissioner for Chieftaincy Affairs within twenty-one days of the giving of the decision, and (c) the Commissioner for Chieftaincy Affairs should have determined the dispute after due inquiry. These steps exhaust the remedy available to persons aggrieved under the exercise of powers vested in the prescribed authority by section 22 of the Chiefs Law of Oyo State 1978. Appellant does not appear to have satisfied any of the above steps.

It seems to me that whereas section 22 vests in the prescribed authority the determination of facts and law relating to the appointment of a minor chief, other than in a court of law, the review of the determination of the prescribed authority re-enforced by subsections (5) and (6) of section 22 is vested in the commissioner for Chieftaincy affairs, whose determination unlike that of the prescribed authority is subject to judicial supervision. Learned counsel to the Appellants has submitted that section 22 of the Chiefs Law is in conflict with sections 6(6)(b) and section 236 of the Constitution 1979. I find no conflicts in the operation of these provisions.

Section 22 of the Chiefs Law, has vested in the prescribed authority the determination of the disputed minor chiefs. The aggrieved party has also been compelled by statute to pursue a special remedy under the Chiefs Law. "It would be mischievous" in the words of Lord Herschell in Barracrough v. Brown (1897) AC. 615, to hold that when a party is compelled by statute to resort an inferior court he can come first to the High Court to have his right to recover determined. Such a proposition is not supported by authority and is I think, unsound in principle" I entirely agree. Having vested the determination of disputed minor chiefs in the prescribed authority, the aggrieved by statute com-

pelled to resort to a particular remedy, should be left to exhaust his remedy. Since the right and the remedy are given uno flatu, the one cannot be dissociated from the other.- See Lord watson in Barraclough v. Brown (1897) AC at pp. 621-622.

B The inequities of the exercise of concurrent jurisdiction between the inferior tribunal and the High Court was pointed out by Lord Denning MR in Healey v. Minister of Health (1955) 1QB. 221-228. He observed that there is the possibility of "two inconsistent findings, one by the Minister and the other by the Court. That
C would be a most undesirable state of affairs." This is what happened in this case. The decision of the High Court was different from that of the prescribed authority. He then stated what I regard as the crux of the matter. He said; "In my opinion, if the court
D were to entertain this declaration, it would be going outside its province altogether. It would be exercising a jurisdiction to "hear and determine" which does not belong to it, but to the Minister.

In the instant case, the determination of disputed minor
E chieftaincies is a jurisdiction by statute vested in the prescribed authority. I agree with the submission of learned Counsel to the Respondents that the High Court has no jurisdiction to exercise the jurisdiction vested in the prescribed authority. In Eguamwense v. Amghhizemwen (1994) 9 NWLR (pt.315). This Court held that where
F the right and the remedy has been granted by statute, the right and remedy being uno flatu must be taken together. Appellant has not complied with any of the preconditions enabling him to bring to the action. Indeed he applied for a declaration even before the prescribed authority gave his
G decision. Appellant has not even applied to the Commissioner for Chieftaincy Affairs, within twenty-one days of the determination by the prescribed authority. For the above reasons Appellant has not resorted to the remedies statutorily available to him on the infringement of the al-
H leged right by the prescribed authority. Appellant has therefore not satisfied the preconditions for bringing an action. The action of Appellant is accordingly premature and does not give rise to a cognizable cause of action. The Court of Appeal was accordingly right to hold that the learned

trial judge lacked the requisite to hear and determine the claims before him. The Appellant's suit in the High Court was accordingly properly struck out. Having decided this appeal on the ground of want of jurisdiction in the Court of trial, it is not necessary to decide the issues raised in the cross-appeal which concerns the merit of the claim before the court. B

I assess the costs of this appeal in favour of the Respondents at N10,000 to the 1st Respondent.

OGUNDARE JSC

I have read in advance the judgment of my learned brother Karibi-Whyte JSC delivered. For the reasons given by him in the said judgment, I too agree that this appeal lacks merit.

On Issue (1), the contention of the Plaintiff/Appellant that the Mogaji is not a Chief within the contemplation of the Chiefs Law lacks, in my humble view, substance. The case was fought in the court below on the basis that the title is a chieftaincy title. Not only that, it is generally, accepted - and evidence was led on this - that a Mogaji is appointed by the family and the Olubadan who is the paramount ruler of Ibadan recognizes and installs the Mogaji. In support of his case the Plaintiff/Appellant tendered in evidence Exhibit P4, the judgment in Suit No. 1/9/1946 between Bakare Adesola Oluokun and Belo Adedeji Oluokun on behalf of themselves and the other members of the family of Oluokun (deceased) as Plaintiffs versus Salami Adedoja Adigun, Abasi Okunola, for himself and/or as the Olubadan of Ibadan and the Olubadan-in-Counsel, as Ibadan Native Authority, as defendants, delivered by Steven Bankole Rhodes J. on 20 December 1946. This judgment is binding on the parties in this case. From the general tenor of the evidence led in that case and the findings of the learned trial Judge I do not see now the Plaintiff/Appellant can now contend in this case that a Mogaji in Ibadan is not a chief. Clearly from the welter of evidence before the trial judge including Exhibit P4, the Mogaji title is associated with some important families in Ibadan. Within the Community of Ibadan, the Mogaji is a minor chief. He was entitled to collect the Native Administration Tax from the taxable

members of this area. The title is a stepping stone to the rank of a senior chief in Ibadan ending to that of the Olubadan, if lucky to go so far before death. With all these qualifications, I think it is right to rule that the Mogaji in Ibadan is a minor chief within the contemplation of the Chiefs Law.

On Issues 2 and 3, I agree with the reasoning of my learned brother Karibi-Whyte JSC which I hereby adopt as mine. I am of the view that the Plaintiff/Appellant jumped the gun in instituting his action. He should first have exhausted the remedies laid down in the Chiefs Law before embarking on litigation in court. That being so, I agree with the Court below that his action was premature. It was rightly struck out.

Finally I too dismiss this appeal with N10,000.00 costs to the 1st Defendant/Respondent.

D

ONU JSC

I had the advantage to read before now the judgment of my learned brother Karibi-Whyte, JSC. Just delivered. I am in entire agreement with him that for the reasons given therein, this appeal lacks merit and ought therefore to fail.

It is my wish to add thereto by way of expatiation the following brief comments of mine.

The Plaintiff/Appellant, by a Writ of summons dated the 17th day of October, 1986, at the High Court, Ibadan sued the Defendant/Respondents seeking the Following reliefs:-

"1. A declaration that Mr. Oladiti Adesola, the Plaintiff is the rightful Mogaji Oluokun, as against Alhaji Raimi Abidoye Olatunji, the 1st defendant, who was wrongly installed the Mogaji or Head of the Family of Oluokun by the 2nd Defendant.

2. A declaration that the installation of the 1st Defendant Alhaji Raimi Abidoye Olatunji as Mogaji or Head of Family by the 2nd Defendant is null and void and without effect as it contravenes natural justice, and repugnant ti native law and custom.

3. An injunction restraining the 1st Defendant, Alhaji Raimi

Abidoye Olatunji, from performing any of the duties rites and activities belonging to the Office of the mogaji Oluokun or Head of the Oluokun Family."

Pleadings were ordered, filed, and exchanged by the parties. They were subsequently amended. The case then proceeded to trial before the trial court (per Ibidapo-Obe, J.), which granted all the reliefs sought.

The 1st Defendant being aggrieved by the decision of the trial court appealed to the Court of Appeal, Ibadan Division, (hereinafter in this judgment referred to as the court below). The court below in a well considered judgment allowed the appeal of the 1st Defendant with the consequence that the action was struck out as having been heard without jurisdiction.

The appeal herein is against this decision wherein the learned counsel for the appellant subsequently formulated the following issues for our determination:-

"4.2. *Whether, if the answer to the above, (4.1), is in the NEGATIVE, the Honourable Court of Appeal will, shall or should RIGHTLY and or PROPERLY have assumed jurisdiction to rightly and properly determine the appeal totally on the MERITS.*

4.3. *Whether the "UNLIMITED JURISDICTION" granted to State High Courts by the Constitution of the Federal Republic of Nigeria, 1979, did or should not ENSURE FOR THE Plaintiffs/Appellants to have their RIGHTS in law and on the merits determined, irrespective of the so-"called" prematurity and inexhaustiveness of his remedies as provided for the Chiefs Law Volume 1, Cap.21, Laws Oyo State of Nigeria, 1978."*

The Respondent, for his part submitted the following issues for determination:-

"1. *Whether the Court of Appeal, was right in treating the title of MOGAJI in Ibadan-land as a minor chieftaincy within the provision of Section 22 of the Chiefs Law Volume 1, Cap. 21 Laws of Oyo State of Nigeria, 1978.*

2. *Whether the Court of Appeal, was right in holding that the action brought by the appellant is premature for failure of the appellant*

to comply with the statutory provisions of Section 22 of the Chiefs Law of Oyo State, and so the High Court lacks jurisdiction to entertain the case.

3. Whether the Court of Appeal, was right in holding that the word "MAY" used in the context of Section 22 of the Chiefs Law is MANDATORY, and not DISCRETIONARY.

4. Whether the Court of Appeal, was right in holding that Section 22 of the Chiefs Law of Oyo State, does not conflict with Sections 6(6)(b) and 236, of the Constitution of the Federal Republic of Nigeria, 1979, to vest jurisdiction in the High Court to grant declaratory action to the appellant in matters relating to that section of the Chiefs Law."

In essence, the real question in this appeal as I conceive it, is whether the Court of Appeal was right when it held that the appellant was precluded by Section 22(3) of the Chiefs Law from seeking the remedies he sought in the Court in the first instance.

This Court had been opportuned to answer a question similar to the one posed above in the case of Sunday Eguamwense v. James I. Amaghizemwen (1993) 9 NWLR (Part 315) 1 - wherein the question posed was as to whether the High Court can exercise its declaratory jurisdiction in respect of a matter already decided by the statutorily prescribed authority in exercise of a statutory power in/under Section 22 of the Traditional Rulers and Chiefs Law No. 16 of 1979, of Bendel (now Edo) State, which is in pari materia with Section 22 of the Chiefs Law of Oyo State, Cap.21 Volume 1, Laws of Oyo State, 1978.

This Court in allowing the appeal in the Amaghizemwen Case (supra), whose facts are not too dissimilar with those in the instant case where I observed at pages 42-43, of the Record, inter-alia, as follows:-

".....in the circumstances of this, what indeed Section 22(4) (a) and (b) of the Traditional Rulers and Chiefs Edict, 1979, enacts is peremptory and clear and so not in way null and void as contended. It is in the light of the above, that the cases of Governor of Ondo State v. Adewunmi (1988)3 NWLR (Part 82) 280; and Labiya v. Anretiola (1992) 8 NWLR (Part 258) 139, sought to be distinguished from the instant case for what they decided. Equally, the ascendancy of

the Constitution over all other laws not having been disputed, what my learned brother, Karibi-Whyte, J.S.C. said in Kalu v. Odili (1992) 5 NWLR (Part 240) 130 at page 188, regarding the supremacy which are in Pari materia with our local enactment or principles of Common Law or equity constituting received laws in Nigeria, in my view, remains appo- B
site.

The High Court by virtue of Section 22(4) of the Traditional Rulers and Chiefs Edict is merely assigned a supervisory role in the instant case it therefore lacked jurisdiction to entertain the case herein on appeal by way of declaratory judgments and the court below was in error C
to have affirmed same. As the respondents did not appeal against the decision of the Oba of Benin to contest whether as prescribed authority he decided the matter rightly or wrongly, his (appellant's) resort to the law court in my opinion was wrong. The suit taken out in the trial court D
is consequently incompetent and the court below was wrong to have upheld it."

The learned Justice of Appeal who wrote the leading judgment (Nsofor, JCA) in the instant, in justifying his reasons for upsetting the decision of E the trial court held inter-alia, as follows:-

"Now, in connection with the determination and settlement of certain of "minor chieftaincy disputes" Section 22 of the Chiefs Law, 1978, has created and set up an adjudicative procedure and machinery. It gave a "power" to seek a remedy and to give a remedy. In my view, all F
persons within its (Section 22's) contemplation have a duty to exercise the "power", "May" in subsections (2), (3), (4), (5) and (6) of Section 22 of the Chiefs Law created and imposed a duty. And here the dicta of Lord Herschell in Barraclough v. Brown (1897) A.C. 615 at page 620 G
instructive and apt deserve my respective quotation.

.....
.....
Applying the principles above discussed to the case on appeal. I H
confess, I find some merit and substance in the learned submissions by the Counsel for the Appellant in support of the issue No.5 (supra). My resolution of the issue is, accordingly, positively in the affirmative and

eo ipso ground 9 of the appeal succeeds and therefore disposes of the appeal."

To my mind, the above extract with which I cannot agree more, is unimpeachable, and I so hold. I agree with the court below that the High Court before which the action herein on appeal was commenced should have declined jurisdiction.

In the latest case on the point of Alhaji S.A. Sarumo v. Oba Yesufu Asanike & Ors. (1996) 7 NWLR (Part 460) 370, whose facts are on all fours with those in the instant case, wherein the appellant was the Mogaji of Alli Iwo Family of Ibadan, he filled a Writ of Summons in the Ibadan Judicial Division, of the Oyo State High Court claiming against the respondents jointly and severally certain chieftaincy reliefs. He followed this with a Motion on Notice filed on 1/12/86 to preserve the statues quo of the subject of litigation praying for various Orders of Interim Injunction. On being shown the contents of the application, the 1st respondent refused service and proceeded with the meeting of the Olubadan Advisory Council slated for that day. At the end of the meeting the appellant was deposed and the 2nd respondent was appointed his successor.

Consequently, the appellant withdrew his application for interim injunction and filed and amended Writ of Summons claiming additional reliefs. He claimed, inter-alia, declaratory reliefs challenging the appointment of the 2nd respondent as the Mogaji of Alli Iwo Family, and injunctive reliefs against both respondents. The High Court struck out the action on the ground that it was not properly constituted and that it lacked jurisdiction.

Aggrieved, the appellant appealed to the Court of Appeal. At the Court of Appeal, the 2nd respondent sought and obtained leave to argue a fresh point on appeal to the effect that the Chieftaincy in question being a minor Chieftaincy, the appellant ought to have complied with the provision of Section 22(5) of the Chiefs Law Cap. 21, Laws of Oyo State, 1978. In resolving the appeal, the Court of Appeal considered the provisions of Sections 22(2)-(5) of the Chiefs Law Cap.21, Laws of Oyo State, 1978, as it had done in the case herein on appeal. Following the

decision by this court in the Amaghizemwen Case (supra) the Court of Appeal, held rightly in my view, inter alia that where, in a Chieftaincy matter, as in the case under consideration, a party has not challenge the validity of the decision of the Prescribed Authority either by appeal to the executive council for review or by certiorari removing it to the High Court to be quashed, it is inappropriate to do so by an action for declaration.

This is why reference made by the appellant in the instant case to the Laws of Western Region of Nigeria of 1959, in my view, is inappropriate. The appropriate Chiefs Law extant on the matter in relation to Ibadan is the Chiefs Law of Oyo State, 1978, Cap.21 wherein only the Olubadan of Ibadan is the Prescribed Authority in Part 11, while all other chieftaincies in Ibadan are deregulated into Part 111 thereof.

Hence, the title of Mogaji in Ibadan cannot be anything lesser than a minor Chieftaincy of which the Olubadan is the Prescribed Authority. It is upon this understanding that a Mogaji may rise through the ranks to become an Olubadan of Ibadan that the parties herein fought this case in both the High Court and in the court below.

It is for these reasons and the fuller ones contained in the leading judgment of my learned brother Karibi-Whyte, J.S.C. which I adopt as mine that I too dismiss this appeal. I abide by the consequential orders inclusive of those as to costs contained therein.

IGUHJSC

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

The only live issue before this court in this appeal is issue 3, which in the appellant's brief, is described as jurisdictional in nature. In this regard, it is evident from the proceedings that the case was fought by both parties on the assumption that it is a chieftaincy matter. They also appear to be in agreement that the provisions of the Chiefs Law of Oyo State, Cap.21, Laws of Oyo State of Nigeria, 1978 are therefore

applicable to the case. But it was then submitted on behalf of the appellant that in-as-much-as Section 22(4) of the said Chiefs Law, Cap.21, Laws of Oyo State of Nigeria ousts or purports to oust the jurisdiction of the courts, it is oppressive and inconsistent with the provisions of sections 6(6) and 236(1) of the 1979 Constitution and therefore null and void.

Section 22 of the Chiefs Law provides as follows -

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

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

(4) *The decision of the prescribed authority-*

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

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

(5) *Any person aggrieved by the decision of the prescribed authority in exercise of the powers conferred on the prescribed authority by subsections (2), (3) and (4) of this section may, within twenty-one days from the date of the decision of the prescribed authority, make representations to the Commissioner to whom responsibility for chieftaincy affairs is assigned that the decision beset aside and the Commissioner may, after considering the representations, confirm or set aside the decision.*

(6) *Before exercising the powers conferred by subsection (5) of this section, the Commissioner may cause such inquiries to be held in Commissioner with section 21 as appear to him necessary or desirable.*

(7) *Where the Commissioner, in his determination under subsection (5) of this section sets aside an appointment to a chieftaincy, he shall require the persons responsible under customary law for the appointment of the person to fill the vacancy in that chieftaincy to appoint*

another person in accordance with the customary law within such time as he may specify.

Accordingly, pursuant to section 22(3) of the Chiefs Law of Oyo State, where there is a dispute as to whether a person has been rightly appointed to a minor Chieftaincy in accordance with customary law, the prescribed authority is conferred with the jurisdiction to determine such dispute. Section 22(4) of that Law however provides that his decision shall be final and shall not be questioned in any court.

Section 22(5) of that Law then confers on any person aggrieved by the decision of the prescribed authority to make representation to the Commissioner for Chieftaincy Affairs within 21 days for such a decision to be set aside and the Commissioner may, after considering the representations, confirm or set aside the decision. It is thus clear that although the decision of the prescribed authority under section 22(4) of the Law may be said to be final and shall not be questioned in any court, there is express provision by an aggrieved person to make representations to the Commissioner for Chieftaincy Affairs within the stipulated period of 21 days for the same to be set aside. The Commissioner is expressly conferred with jurisdiction, after considering the representations, to confirm or set aside the decision complained of pursuant to the said provisions of section 22(5) of the Chiefs Law.

It is thus clear that under section 22(3) of the Chiefs Law, the determination of the validity or otherwise of the appointment of a person in accordance with customary law to a minor chieftaincy is expressly vested in the prescribed authority. An aggrieved party in the matter of any such decision of the prescribed authority is, however, not without remedy. He may prescribed authority is, however, not without remedy. He may appeal against the same by way of representations for a review thereof by the Commissioner for chieftaincy Affairs as prescribed under Section 22(5) of the Law.

A close examination of the issue that has arisen for determination in the present case together with the submissions Learned Counsel thereupon seems to revolve not so much on the question of the ouster of jurisdiction provided in section 22(4) of the Chiefs Law but on whether

or not the express statutory provision or precondition laid down under section 22(5) of the Law needed the complied with by the appellant who was aggrieved by the decision of the prescribed authority as aforementioned.

B Although a Rule of Court, in an appropriate cause, may, because of the peculiar and exceptional circumstances of the case be dispensed with in the overall interest of justice and so long as no miscarriage of justice is thereby occasioned, a statutory provision may not be ignored by a Court of Law. Accordingly, where, as in the present case, a special
C statutory provision is made for the filing of or the prosecution of a relief, the procedure so laid down ought to be followed and complied with unless it is such that may be waived. See Ariori and others v. Elemo and others (1983) 1 S.C. 13

D In the present case, there is a dispute between the appellant and the 1st respondent as to whether or not the latter had been appointed in accordance with customary law to the minor chieftaincy in issue. The matter, pursuant to the provisions of Section 22(3) of the Chiefs Law,
E was referred to the 2nd respondent, the prescribed authority, for determination. Evidence was duly heard, at the end of which the 2nd respondent decided the issue in favour of the 1st respondent. The real question for determination is whether the appellant is entitled to discountenance
F the adjudicative statutory provisions laid down under section 22 subsections (5), (6) and (7) of the Chiefs Law and to resort to a declaratory action in the trial court in the assertion of his grievance against the decision of the prescribed authority in the dispute. I think not. In my view,
G the appellant, if he is dissatisfied or aggrieved by the decision of the prescribed authority is enjoined statutorily to appeal or make representation within 21 days to the Commissioner to whom responsibility for Chieftaincy affairs is assigned for the decision in issue to be set aside. This is because a clear statutory provision prescribed under the law, in this case
H section 22(5) of the Chiefs Law, 1978 may not, in my judgment, be discountenanced or contravened at will particularly where, again as in the present case, the validity of such provision of the law is not in question. I think it inappropriate in the present case for the appellant to have

resorted to a declaratory action directly in the High Court in pursuit of his grievance against the decision of the appropriate authority in exercise of the powers of the latter under section 22 subsections (2) and (3) of the Chiefs Law. The appellant's action, in my view, is in contravention and defence of the provisions of section 22(5) of the said Chiefs Law of Oyo B State. I entirely agree with the court below that the Chiefs Law, 1978 of Oyo State having set up the procedure or machinery for the appointments of and the determination of disputes as to minor chieftaincies, inclusive of the one in dispute in the present action, such statutory provisions therein enacted in respect of the rights and remedies of the parties C must be taken uno flatu as the one cannot be dissociated from the other.

My above view would appear to find support in the observation of Lord Herschell in the decision of the English House of Lords in Barraclough v. Brown and others (1897) A.C. 615 at 620. In that case, D the noble Lord in circumstances which were not too dissimilar to the present case had cause to state as follows-

"..... But, apart from this, I think it would be very mischievous to hold that when a party is compelled by statute to resort to an inferior court, he can come first to the High Court to have his right to recover - the very matter relegated to the inferior court - determined. Such a proposition was not supported by authority, and is I think, unsound in principle" E

In the present case, it cannot be disputed that the provisions of Section 22(5) of the Chiefs Law of Oyo State, compel a party aggrieved by the decision of the appropriate authority to resort to a specified person, to wit, the Commissioner for Chieftaincy Affairs, for redress. I find it difficult to accept that the appellant is entitled to ignore or discountenance the provisions of the said section 22(5) of the Chiefs Law of Oyo State and decide to go to the High Court - a superior court to have his grievance relegated to inferior adjudicating body, the Commissioner for Chieftaincy Affairs determined. F G H

It is my respectful view, therefore, that the court below was right when it held that the trial court lacked jurisdiction to entertain the appellant's claims.

It is for these and the more detailed reasons contained in the leading judgment that I, too, dismiss the appeal as unmeritorious and without substance, I abide by the consequential orders including those as to costs therein made.

B _____

AYOOLA JSC

I have had the privilege of reading in draft the judgment delivered by my learned brother, Karibi-Whyte, JSC. I agree with him that this appeal should be dismissed.

The matter originated in the High Court of Oyo State where the appellant, as plaintiff, sought several declarations and injunctive reliefs against the two respondents concerning entitlement to become "Mogaji Oluokun or head of the family of Oluokun" the appellant claimed inter alia that he should be appointed by the 2nd respondent as the next and rightful candidate presented by the Aderin branch of the Oluokun family..... to fill the vacant post of Mogaji or Head of family in compliance with historical antecedents, native law and custom." The action arose because, the appellant alleged, the Olubadan-in-Council presided over by the Olubadan of Ibadan land, the 2nd respondent, imposed Alhaji Raimi Olatunji, the 1st respondent, on the Oluokun family as their new Mogaji.

The case of the appellant in the High Court was that it was the turn of his branch of Oluokun family, the Aderin branch, to succeed to the post of Mogaji of that family and that the 1st respondent who was not from that branch was wrongfully approved by the 2nd respondent as Mogaji. The High Court, Ibidapo-Obe, J., found in favour of the appellant and declared the "approval or and installation of the 1st defendant (respondent)" null and void and without effect. In the result, the learned judge restrained the 1st respondent "from performing the duties, rites and obligations appertaining (sic appertaining) to the office of the Mogaji-Oluokun."

The 1st respondent appealed to the Court of Appeal from the decision of the High Court. That court in allowing the appeal, held that the High Court lacked jurisdiction to entertain the appellant's suit. It set

aside the judgment of the High Court and struck out the suit. Nsofor, JCA, who delivered the leading judgment of the Court of Appeal with which Kolawole, and Salami JJCA agreed, was of the view that section 22 of the Chiefs Law of Oyo State which was a law to provide inter alia for the appointment and approval of chief and for the determination of B certain chieftaincy disputes, "has set up a procedure or machinery statutorily to bring about the settlement of 'certain chieftaincy disputes' including the Oluokun family Mogaji chieftaincy dispute." Being of the view that: "the law gives the right and the remedy 'uno flatu', the one C cannot be dissociated from the other," he concluded, in effect, that aggrieved persons within the intendment of section 22 of the Chiefs Law must first of all seek a remedy within the adjudicative procedure and machinery established by that section.

On this appeal from the decision of the Court below the appellant D after an initial, but very feeble, attempt to raise the contention that the Mogaji of Oluokun family was not a "chief" within the definition of that word in the Chiefs Law, was constrained to abandon that issue and confined, his argument, at the end of the day, to the issue whether the Court E of Appeal was right in holding that the High Court lacked jurisdiction to entertain the suit because the appellant had not first utilized the machinery established by the Chiefs Law for determining chieftaincy disputes and exhausting the remedies provided by that law.

Both in the High Court and in the Court of Appeal, the question F never arose whether or not the Mogaji of Oluokun family is a "chief" under the Chiefs Law. The case was fought on the footing that the Mogaji is a "chief". It is now too late in the day to contend to the contrary. G

Section 2 of the Chiefs Law, defined "chief" as including "a person whose chieftaincy title is associated with a native community and includes a minor chief and a recognized chief". From this definition, it is H evident that the question whether a person is a chief within the law is, at best, a question of mixed law and fact. The factual aspects of the question are two fold, namely, : first, whether the title in question is a "chieftaincy title"; and, secondly, whether, if it is, it is one associated with a

native community. The result of affirmative answers to these questions of fact is that the person in question is a "chief". Where the parties expressly or by implication agree on the factual issues and the case has been fought on the basis of those agreed factual issues, none of them
B should be permitted on appeal to build his case on a different factual basis or as if the factual aspects remains at large.

It is for this reason that I do not think that it is necessary for me to pronounce on the general question whether the post of Mogaji in Ibadan
C is a "chieftaincy title" or on the question whether Mogaji of Oluokun family is a chief, the parties having fought the case on the footing that the Mogaji is a chief within the law, thereby making an inquiry of fact on the issue or a pronouncement of law unnecessary.

The real question in this appeal is whether the Court of Appeal
D was right when it held that the appellant was precluded by section 22(3) of the Chiefs Law from seeking the remedies he sought in the High Court in the first instance. Subsection 3 of section 22 of the Chiefs Law provides that:

E *"Where there is a dispute whether a person has been appointed in accordance with customary law to a minor chieftaincy the prescribed authority may determine the dispute."*

Subsection 4 of that section reads:

F *(a) "That decision of the prescribed authority to approve or not to approve an appointment to a minor chieftaincy or*

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

Subsection 5 provides that:

G *"Any person aggrieved by the decision of the prescribed authority by subsection (2), (3) and (4) of this section may make representation to the Commissioner to whom responsibility for chieftaincy affairs is assigned that the decision be set aside....."*

H In this case the appellant had submitted the dispute envisaged in section 22(3) of the Law to determination by the 2nd respondent, the "prescribed authority". In doing so, he did the right thing, acting in consonance with the provisions of that subsection. The intendment of sec-

tion 22(3) read with section 22(2), of the Law is that the "prescribed authority" vested with power to approve the appointment of a "minor chief" should also have the power to determine the dispute in relation to the appointment, instead of having the question of a disputed appointment resolved by another body before deciding whether or not to approve an appointment. Where the "prescribed authority" approves an appointment without determining a dispute relating to the appointment, the decision of the "prescribed authority" may still be challenged pursuant to section 22 (5) of the Law. The intendment of these provisions is to ensure, within the ambit of the Chiefs Law, a comprehensive and speedy machinery for determining questions arising from disputed appointments with less formality than would attend litigation.

The provisions of section 22 do not exclude the exercise of supervisory jurisdiction by the High Court. However, in this case it has not been suggested that the declaration claimed were sought as supervisory remedies as they do not challenge any "decision" made by the prescribed authority but act of "installation".

I agree with the court below that the High Court should have declined jurisdiction in this case. By enacting the Chiefs Law matters relating to chiefs to whom that Law applies, have become massively regulated by statute. Although it cannot strictly be said that the Chiefs Law created entirely new rights, one cannot ignore the fact that by regulating the enjoyment and assertions of existing rights relating to chieftaincy the whole system of chieftaincy has been reformed and modified. It is in this sense that it is more expedient to yield primacy to the remedies it provides and the machinery it established for any claim to those remedies. The case of Barraclough v. Brown (1897) AC 615; 1895 - 1899 ALLER (Rep) 239 established the principle that where a party claims to recover by virtue of a statute, he cannot at the same time prosecute his claim, by means other than those prescribed by the statute which alone confers the right. That principle is extended to situation such as in this case where the whole system of nomination, appointment and installation of chiefs has become massively regulated by statute.

In sum, I am of the view that the Court of Appeal came to a right

decision. For these reasons and the detailed reasons contained in the judgment of my learned brother, Karibi-Whyte, JSC. I too would dismiss the appeal with N10,000.00 costs to the 1st respondent only.

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