

SUPREME COURT OF NIGERIA
5TH FEBRUARY, 1999. SC. 22/1993
CORAM:- S. M. A. BELGORE, A. B. WALI, I. L.
KUTIGI, U. MOHAMMED, S. U. ONU, JJSC.

1. CHIEF JOSEPH ADESINA

(Head of Olasuka Ruling House) PLAINTIFFS/

2. ANTHONY ADEGBITE OKEYODE RESPONDENTS

(For themselves and on behalf of
members of Olasuka Ruling House)

AND

OBALA OF OTAN-AIYEGBAJU & 5 ORS. DEFENDANTS/
APPELLANTS

7. EDWARD A. A. ADENIRAN DEFENDANT/RESPONDENT

ACTIONS - Counter claim - Is a cross action with plaintiff becoming the defendant - If plaintiff cannot be the proper opposing party - The counter claim is to be struck out.

ACTIONS - Locus standi - Chieftaincy matters - The plaintiffs had locus standi - To initiate these proceedings.

ACTIONS - Chieftaincy matters - Registered chieftaincy declaration - To be impeached - Persons who made the law and got it registered must be parties.

CHIEFTAINCY MATTERS - Registered Chieftaincy Declaration - Is valid and binding until amended or set aside by a competent court.

FACTS

After the demise of Oba G.A. Oyejobi Adeniran Olamodi II on 14/8/82, the king-makers of Otan-Aiyegbaju chieftaincy were requested by the secretary to the Oyo State Government through the Secretary of Ila Local Government to select a candidate from Olasuka Ruling House, which was one of the four Ruling Houses under the Owa of Otan-

Aiyegbaju 1957 Chieftaincy Declaration. The others are Olamodi, Olatanka and Olanika. The Olanika Ruling House met and nominated the 2nd respondent as their candidate. The nomination was conveyed to the king-makers for deliberations but the king-makers did not act in time. After the Secretary to Ila Local Government wrote a reminder to the king-makers on the issue, the king-makers met and appointed Edward A. A. Adeniran, the 7th respondent in this appeal, to fill the vacant stool left by his demised father. Dissatisfied with the action of the king-makers the 1st and 2nd respondents brought an action in the Oyo State High Court claiming several declaratory and injunctive reliefs, which included a declaration that by the Olanika chieftaincy Declaration of 1957, it is the Olanika Ruling House that is entitled to present the next candidate to the Otan-Aiyegbaju kingmakers, for appointment as the next Owa of Otan-Aiyegbaju.

On the other hand, Edward A. A. Adeniran, the 7th respondent counter-claimed, asking for a declaration that the Olamodi Ruling House is the only ruling house which has the right to provide candidate or candidates for the Olotan chieftaincy,

At the close of hearing the trial judge dismissed the plaintiffs/respondents' entire claim. On appeal to the Court of Appeal the 1st and 2nd respondents' appeal was allowed. Dissatisfied with the decision of the Court of Appeal the defendants/appellants have now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“(1) Whether or not grounds 1 - 10 of the plaintiffs/appellants Grounds of Appeal were competent to sustain the plaintiffs' appeal.

(2) Whether or not the Court of Appeal was correct to have predicated its judgment on three of the erroneous grounds of appeal.

(3) Whether or not it was right for the Court of Appeal to postulate that certain parties to wit: “the State Government and the Ila Local Government and the Ila Local Government had to be in (sic) the opposite side before the 1957 Chieftaincy Title Declaration could be contested (page 317 of the Record). Etc see p. 319

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

Counter claim - Is a cross action

1. A counter-claim is a cross-action, with the plaintiff becoming the defendant to the counter claim - *S. Oragbade v. Chief S.J.M. Onitiju* (1962) All NLR p. 32. Thus if the plaintiff cannot be the proper opposing party to the claim in the counter-claim the proper thing is to strike it out. (p. 321 D)

Registered chieftaincy declaration - To be impeached

2. The 1957 Otan-Aiyegbaju Chieftaincy Declaration cannot be impeached without making those who made the law and got it registered necessary parties to the suit. The lower court is therefore quite right to strike out the counter-claim filed by the 7th respondent. (p. 321 F)

Locus standi - Chieftaincy matters

3. The learned Justice of the Court of Appeal considered the issue of locus standi and dismissed the opinion of the learned trial judge that the appellants had no locus standi to bring this action. The 1st respondent as head of Olasuka Ruling House sued on behalf of the Ruling House and the 2nd respondent who was unanimously nominated as the candidate of Olasuka Ruling House for the vacant stool sued for himself. It is without doubt that the plaintiffs had locus standi to initiate these proceedings. I agree entirely with Akpabio JCA, that the respondents had locus standi to sue. (p. 321 F)

Registered Chieftaincy Declaration - Is valid and binding

4. It is crystal clear that the provisions of 1957 Chieftaincy Declaration on the succession to the throne of Owa of Otan-Aiyegbaju makes the case of the plaintiffs/respondents meritorious. Learned Justice Ogwuegbu JCA (as he then was) in his contribution to the lead judgment of Akpabio JCA made an apt conclusion to the whole case in the following words:

“The appellants’ claim is based on Exhibit ‘M’ which is a sub-

siduary legislation. It has not been amended and has remained in force since 29/6/57. It is deemed to be the customary law regulating succession when a vacancy occurs in the Olotan Chieftaincy. Since it was registered it excludes any other customary law or usage and will continue to be in force until amended or set aside by a competent court."

In the result, this appeal fails and it is dismissed. (p. 322 E)

NOTABLE POINTS OF INTEREST

C ONU JSC

1. *Competent appeal - Can always be amended*

It is my firm view that the argument proffered by the appellants above is misconceived firstly, because the import of the above rule of court is that as long as there is a competent appeal with only one valid ground of appeal, even if all other grounds of appeal were faulty, Order 3 Rule 2 (5) (ibid) allows for amendments, meaning that any party can amend with the leave of court. What the application of the appellants could have achieved was for the court to have allowed the respondents amend their grounds of appeal. (p. 325 H)

2. *Inadequacy of grounds of appeal - Court may frame issues suo motu*

Secondly, the case of Ekpan v. Uyo (supra) showed that inspite of the strong criticism of the inadequacy of the grounds of appeal and the Brief filed therein, this Court went ahead to do justice between the parties by framing its own issues for determination and thereby deciding the case on the merit. (p. 326 B)

G 3. *Striking out incompetent grounds - Is not dismissal of case on merit*

It ought to be borne in mind that striking out incompetent grounds does not mean dismissal of the case on merit. See Chief T. O. S. Benson v. Nigeria Agip Co. Ltd. (1982) 5 SC. 1 at 5; N. A. Williams v. Hope Rise Voluntary Society (1982) ALL NLR 1 at 6-7 where in the first case this Court dismissed the appellants' appeal for failure to file their Brief five months after time had elapsed and in the second case, that waiting for 23 days as opposed to the 6 days granted by the rules was fatal.

(p. 326 F)

4. When a plaintiff avers to be a descendant of a chieftaincy line

It is not sufficient in a chieftaincy suit as in the instant case merely for the plaintiff to say he is a descendant of a chieftaincy line; in addition to B belonging to a Ruling house, he must demonstrate how his interest arose. See Momoh & Anor. v. Olotu (1970) 1 ANLR 117. In the case in hand, the 1957 Declaration did not provide for a male descendancy for the title simpliciter. The 1st - 6th respondents', objection to the appeal in the C court below, therefore, in my view, went beyond technicalities. The learned trial Judge (Sijuade, J.) did not hold in the alternative; he merely went further to consider the import of holding that the respondents have locus standi, thus destroying the wordings of the 1957 Declaration which D gave Kingmakers the right to select from the family whose turn it is to present a candidate. (p. 328 A)

REPRESENTATION

Chief Folake Solanke, SAN with C. J. Chukura Esq. for the appellant E
Adeniran Akinwumi Esq. for the respondents

CASES REFERRED TO

Chief T. O. S. Benson v. Nigeria Agip Co. Ltd. (1982) 5 SC. 1 at 5 F
N. A. Williams v. Hope Rise Voluntary Society (1982) ALL NLR 1 at 6-7
Momoh v. Olotu (1970) 1 ANLR 117
Bala v. Bankole (1986) 3 NWLR pt. 27, page 141 and 143
Anukwa v. Ohia (1986) 5 NWLR pt. 40 p. 150
Onuma v. Nwokoro (1987) 1 NWLR pt. 48 page 149 G
Ekpan v. Uyo (1986) 3 NWLR (part 26) 63
Anyaoke v. Adi (1986) 3 NWLR (part 31) 731
Attorney-General Kwara State v. Olawale (1993) 1 NWLR (part 272) H
645
Okpala v. Ibeme (1989) 2 NWLR (part 102) 208
Layinka v. Gegele (1993) 3 NWLR (part 283) 518

STATUTES & RULES REFERRED TO

Oyo State High Court Civil Procedure Rules 1978; Order 23 rule 1. Court of Appeal Rules 1981; order 3 rules 2(2), (3), (4) and (6), order 3 rule 23.

B Chiefs Law of Oyo State Cap. 21 of 1978; part 2, S. 3, S. 2.

LEAD JUDGMENT BY MOHAMMED JSC

C This is an appeal from the judgment of the Court of Appeal, Ibadan Division. The issue in dispute is succession to the stool of Owa of Otan-Aiyegbaju. The claim of the 1st and 2nd plaintiffs, who are respondents in this appeal, is as follows:

D “1. That pursuant to the Olota Chieftaincy declaration of 1957, it is only the Olasuka Ruling House that is entitled to present the next candidates to the Otan-Aiyegbaju Kingmakers, for appointment as the next of Owa of Otan-Aiyegbaju.

E 2. That the 2nd plaintiff being the only candidate from Olasuka Ruling House, that was presented to the 3rd, 4th, 5th, 6th, 7th and 8th defendants as the Kingmakers of Otan-Aiyegbaju; is the lawful and legitimate Owa-Elect of Otan-Aiyegbaju.

F 3. That the 9th defendant being one of the sons of the immediate past Owa of Otan-Aiyegbaju, His Highness, Oba G. A. Oyejobi Adeniran, Owa Olamodi II, from the Olamodi Ruling House, is not entitled to be appointed the Owa-Elect of Otan-Aiyegbaju; therefore, his appointment and recommendation through the 2nd defendant to the 1st defendant for appointment as the next Owa of Otan-Aiyegbaju, by the 3rd, 4th, 5th, 6th, 7th and 8th defendants is ultra vires the 3rd to the 8th defendants, therefore, illegal null and void and of no effect.

G 4. An injunction restraining the 1st defendant, his agents, and privies from approving the appointment of the 9th defendant as the next Owa of Otan-Aiyegbaju.

H 5. An injunction restraining the 2nd to the 8th defendants, their servants, agents or privies from parading the 9th defendant as the Owa-Elect of Otan-Aiyegbaju.

6. An injunction restraining the 9th defendant from parading

himself as the Owa-Elect of Otan-Aiyegbaju."

The dispute in the chieftaincy of Otan-Aiyegbaju started after the demise of Oba G. A. Oyejobi Adeniran Olamodi II, on 14/8/82. Pursuant to a letter written by the Secretary to Oyo State Government to the Secretary to Ila Local Government, the latter wrote a letter to the Kingmakers of Otan-Aiyegbaju chieftaincy to select a candidate from Olasuka Ruling House. Under the Owa of Otan-Aiyegbaju 1957 Chieftaincy Declaration, there are four Ruling Houses namely, Olamodi, Olasuka, Olatanka and Olaruka. Whenever a vacancy arises, the Kingmakers will select a person from the Ruling House whose turn under the rotation order is to produce a candidate to fill the vacant stool. Since the deceased Oba G. A. Oyejobi Adeniran Olamodi II was from Olamodi Ruling House, the next candidate for the succession to the stool of Owa of Otan-Aiyegbaju under the order of rotation shall come from Olasuka Ruling House.

The Olasuka Ruling House met and nominated the 2nd respondent as their candidate for the vacant stool of Owa of Otan-Aiyegbaju Chieftaincy. The nomination was duly conveyed to the Kingmakers for their deliberations. The Kingmakers did not act in time. After some days, the Secretary to Ila Local Government wrote another letter directing the kingmakers to select a candidate from Olasuka Ruling House for the appointment. It was after the issuance of the second letter from the Secretary to the Local Government that the Kingmakers met and appointed Edward A. A. Adeniran, the 7th respondent, in this appeal, to fill the stool left vacant following the demise of his father. The appointment was obviously contrary to the provisions of rotation in the 1957 Chieftaincy Declaration for the Owa of Otan-Aiyegbaju stool. Dissatisfied with the action of the Kingmakers the 1st and 2nd respondents went to court and claimed as per their writ of summons.

Pleadings were called and delivered. The kingmakers and Edward A. A. Adeniran denied the claim. Edward A. A. Adeniran in addition to his denial filed a counter claim against the plaintiffs as follows:

"i. Declaration that the Declaration setting out the method of selection of a person to be Olotan of Otan made by the Ifelodun District Council and approved at Ibadan on the 27th day of May, 1957, and

registered on the 29th day of June, 1957, and also approved to remain unchanged by the government of Oyo State following the recommendation of Ademola Chieftaincy Review Panel is null, void and of no effect as it recognizes Olasuka, Olaruka, and Olatanka as distinct ruling houses apart from Olamodi Ruling House which is the only ruling house known and recognized in respect of Olatan of Otan Chieftaincy title in accordance with the native law and custom of Otan-Aiyegbaju.

ii. Declaration that there is only one ruling house which has the right to provide candidate or candidates for the Olotan Chieftaincy and its identity is Olamodi.”

The case was heard by Sijuwade J. (as he then was). At the close of the hearing where witnesses on both sides gave evidence the learned trial judge dismissed the entire claim of the plaintiffs. For the reason given in his judgment, the learned trial judge granted the first prayer in the counter claim filed by Edward A. A. Adeniran in the following words:

“On the other hand, the counter-claim of the 7th defendant in leg one succeeds. The Chieftaincy Declaration on Olotan of Otan-Aiyegbaju made in 1957 that is Exhibit ‘M’ or rather on Owa of Otan-Aiyegbaju (as it is now known) which is also referred to in Exhibit ‘L174’ to ‘L180’ in this case is declared for the reasons given above, null and void and of no effect, and it is accordingly set aside with costs which I shall now proceed to assess.”

Dissatisfied with this judgment the 1st and 2nd plaintiffs (Respondents in this appeal) went before the Court of Appeal on eleven grounds of appeal. In the appeal before this court, Chief Folake Solanke, SAN submitted in issue 1, in the appellant’s brief, that grounds 1 - 10 filed by the respondents at the Court of Appeal were incompetent to sustain the Plaintiffs/Respondents appeal. In view of this submission it is imperative to reproduce all the grounds of appeal filed by the Plaintiffs/Respondents before the Court of Appeal. The grounds cover 13 pages of this judgment, but one cannot appreciate the arguments of appellants Counsel against the grounds if they are not reproduced in full. They are as follows:

“(1) The learned trial judge erred in law when he reasoned as follows:

- (a) I have gone through the pleadings of the parties and I have seen
nowhere the plaintiffs have traced themselves
as male descendants of Olamodi The
right to the ascension of the throne of Owa B
of Otan-Aiyegbaju as I said earlier in this judg-
ment is commonly accepted by both parties
as strictly hereditary and restricted to only
male Omo Owa of male descendants.
- (b) From the pleadings of the parties there are certain facts which I find C
undisputed by the parties and which I intend
to restate here below as forming the histori-
cal background and development of the chief-
taincy tussle within the family, and which also D
regard as findings of fact by this court as
well.
- (c) That the succession to Owa of Otan-Aiyegbaju chieftaincy is heredi- E
tary, and only male Omo Owa of their male
descendants can contest the stool.
- (d) It should be noted that the family tree attached to the state-
ment of claims of the plaintiff is virtually the
same with the one filed to the statement of F
defence and counter-claim, but for the pur-
pose of this judgment, and having regard to
the details of the dates of reign of some of
these past Owas which were not challenged
by the defence during the proceedings, reli- G
ance will be placed on the former.
- (e) I have also gone through the averments in paragraphs 66, 67, 68 and
69 of the statement of claim in the submis-
sion of Mr. Adeniran to show that the 2nd H
plaintiff had asserted his right as being quali-
fied to be nominated, and the implication of
the averment of the pleadings in paragraph

12 of the Statement of Defence of 7th defendant on those paragraphs which I hold does not improve the situation as it does not discharge the burden imposed on the 2nd plaintiff. What paragraph 12 of the statement of defence of 7th defendant reads is:-

“12. As regards paragraphs 66, 67 and 68, the 9th defendant (now 7th defendant) admits that any male direct descendant of Olamodi I from the male line is entitled to be considered for nomination for the chieftaincy title of Olotan of Otan-Aiyegbaju.”

PARTICULARS

The learned trial judge’s reasoning; that he had gone through the pleadings and had not found where the plaintiffs traced themselves as male descendants of Olamodi, even though the same learned trial judge admitted issues were not joined on the matter. Contravenes established rules of practice and procedure whereby parties are bound by their pleadings and by the same reasoning it could not be held or inferred the 7th defendant’s father was unanimously nominated as the Owa of Otan-Aiyegbaju and reigned as such notwithstanding because, we have not been told who the 7th defendant’s grandfather was and so on to great, grandfather to the lineal ancestor Olamodi which by the family tree the trial judge himself relied upon spanned over a period of 500 years.

Issues therefore were not joined because it is a basic presumption known to all the parties to the dispute that only male Omo Owa from the patrilineal descendants are usually considered, the fact that the 2nd plaintiff was so considered. Confirmed the basic presumption otherwise extent and limit of the case litigants are bound to meet will remain a mirage.

This is further contained in paragraph 5 of the findings of the court, quoted in paragraph 5 of the findings of the court, quoted in paragraph (c) above. It is trite law that no party shall be taken by surprise, if the defendants had doubted whether the 2nd plaintiff had descended from

the male lineage should have joined issue specifically on that.

Again, the learned trial judge did not avert his mind to the provisions of the principal law which conferred locus standi on the Olasuka family and not individuals, and which said Olasuka the learned trial judge had held was legally traced to Olamodi their lineal ancestor.

(2) The learned trial judge erred in law and in fact when he held as follows:

“I have even taken into consideration the evidence of Chief Thomas Babarinle the Odofin of Otan-Aiyegbaju that Okeyode, Egunnike and Edward Adeniaran were those whose nomination were considered by the kingmakers on 19/4/83, and the fact that Okeyode was rejected might be due to many reasons. On this score alone the plaintiffs case must fail.”

PARTICULARS

The learned trial judge went on an illusory voyage of discovery unknown to law, since his reasoning that the fact that Okeyode was rejected might be due to many reasons which neither the witness nor any other witness testified to before the court. A court should not speculate on any evidence not led before it.

(3) The learned trial judge erred in law and in fact when he held as follows:

“I must admit that the drafting of the said declaration is not far from being clumsy, but the use of the phrase shall select and the word ‘family’ tend to confuse the powers, right and duty of the organs concerned in the whole exercise.

Exhibits ‘H’ and ‘J’ which seem to qualify the word family as used in exhibit ‘M’ by adding the word ‘Ruling’ do not improve the situation. Words and phrases should be given their ordinary and intended meaning by the maker of the document. The selection which is required to be made is unambiguously directed to the family, but whose turn it is to present a candidate. Perhaps this other qualification gives the impression that the family being referred to in paragraph (e) should be read to mean ruling family. And even then that Ruling family relevant is not concerned with the selection.”

“If Exhibit ‘M’ is regarded as having been duly registered a

declaration it is expected under the Chief Law to include among other things:

“4(2) (v) the method of nomination by each ruling house; and” which it does not contain ... exhibit ‘M’ being a subsidiary regulation as to the appropriate customary law applicable to the appointment and selection for a traditional chief in my view can always be examined in the light of the enabling enactment of law.

PARTICULARS

The learned trial judge did not avert his mind to the widely accepted legal guidelines applicable to interpretation, that where a subsidiary legislation is in conflict with the Principal law under which it is made, the subsidiary law is void only to extent of the conflict, hence the Principal Law prevails over the inconsistent part of the subsidiary. The inadvertence on the part of the learned trial judge made him to rule that the Olasuka Ruling family which had already by the family tree traced its genealogy to the lineal Ancestor Olamodi has no locus standi to sue, because the Declaration exhibit ‘M’ says the family shall not be concerned as a body. While part 2 of the applicable law Cap 21 Chiefs Law of Oyo State 1978 applies as the learned trial judge himself, so held as paragraph 9 of his judgment on his findings of fact.

(4) The learned trial judge erred in law when considering the motion of the Oyo State Government and Ila Local Government to withdraw from the suit as he did not properly evaluate the pleadings before him and thereby excluding the Government of Oyo State and Ila Local Government who were necessary parties to prove before the court that they complied with the law.

PARTICULARS

When as at the date of the motion the plaintiffs reply and counter-claim had been served on the Government and therein the plaintiffs had contended that Oba Oyejobi Adeniran was crowned pursuant to the 1957 Olotan of Otan-Aiyegbaju Chieftaincy declaration.

This is because the Principal parties who performed the crowning were both the Ila Local Government and the then Government of Western Region of Nigeria of which OYO STATE is the successor.

The learned trial judge had therefore failed to observe a principal tenet of Natural Justice of giving both the Oyo State Government and the Ila Local Government the opportunity of showing whether or not they complied with the law they took an Oath to defend and uphold.

Statement of Claim filed 28/7/83. 9th defendant's defence and counter-claim filed on 10/10/84. Reply to defence and counter-claim was filed on 15/10/84. Motion to be struck from the case was brought on 22/11/85. Hence both the Oyo State Government and the Ila Local Government never filed a defence before ... the motion was moved and prayer to be struck out granted.

Whereas Order 23 Rule 1 Oyo State High Court Civil Procedure Rules 1978 reads as follows:

NO DEMURER SHALL BE ALLOWED."

When it became apparent to the 7th defendant's counsel that his counter-claim cannot be granted unless both the Oyo State Government and Ila Local Government were joined, the counsel brought an application dated 27/5/86 which for personal reasons best known to the judge he refused to list for adjudication.

Furthermore, the kingmaker that gave evidence was not a kingmaker at the time. Further that the judgment of the learned trial judge is an exercise in futility as it is not binding on both the Oyo State Government and Ila Local Government and usurpation of the power conferred on the Commissioner by virtue of section 25 by forcing an inquiry or parties who are not convinced another futile enquiry should be held. As again the judgment is not binding on the Olamodi family not being a party to the suit nor was the 7th defendant suing or being sued as a representative of the said family.

Paragraphs 8, 9, 10 of the affidavit in support of motion dated 22/11/85 read as follows:-

(8) "That if the 1st defendant was aware that the nomination of the 9th defendant was proper the 1st defendant would have made the appointment.

(9) That the 1st and 2nd defendants had acted in accordance with the provisions of the Law and they are not in anyway at fault or

involved in the matter.”

(5) That the learned trial judge has erred in law by overruling himself and acting as an appellate court over his Ruling on the motion of Oyo State Government and Ila Local Government to withdraw from the B action.

PARTICULARS

The learned trial judge accepted the submission of the counsel to Oyo State Government and Ila Local Government, to the effect that they complied with the law and that the 1st to 6th defendants had acted wrongly. C

The sum total of the judgment dated 17/7/86 is that the 1st to 6th defendants acted rightly contrary to the view of the learned trial judge held on the reaction; wherein the Governor alleged they acted wrongly.

Paragraphs 5 to 12 of the affidavit in support of motion dated D 22/11/85 read as follows:-

(5) “That Mrs. v. Asaolu, Senior State Counsel solicitor to the 1st and 2nd defendants/applicants informed me and I verily believed him that there is nothing in the statement of claim that calls for any statement E of defence by the 1st and 2nd defendants to be filed.

(6) That looking through the whole of the statement of claim there is no triable issue that necessitates the suits going into trial against the 1st and 2nd defendants/applicants.

F (7) That the allegations in the statement of claim are internal matters between the plaintiff and the 3rd to 9th defendants which ought to be resolved by the parties.

(8) That if the 1st defendant was aware that the nomination of the 9th defendant was proper the 1st defendant would have made ap- G pointment.

(9) That there is no approval of the 9th defendant by the 1st defendant so the plaintiff cannot complain.

H (10) That the 1st and 2nd defendants had acted in accordance with the provision of the law and they are not in anyway at fault or involved in the matter.

(11) That the affair is premature and also misconceived because the 1st and 2nd defendants had not done anything at all in connection

with the nomination and/or appointment of the Owas of Olotan-Aiyegbaju and as such the action and abuse of the Court process.

(12) That it is the usual practice of the Government to stay action when there is court action on a case the Government does not want to interfere with the court process.”

(6) The learned trial judge erred in law when he held as follows:

“Whilst the defence does not seriously challenge the admissibility of exhibit M which is also reproduced and incorporated in Ademola Chieftaincy Declaration Review Commission Report exhibits L174 - L180, the bone of contention of the defence which the plaintiff’s counsel for the reason on the other has both in his response as well as his pleading refrained absolutely from adverting his mind to it is that, declaration and it is, does not give any right to the royal family of Otan-Aiyegbaju Ruling House or otherwise to make such nomination of any candidate to the kingmakers for consideration as the Chief Law under which it was made invariably provides ...

In the circumstances, exhibit ‘O’ which is the paper of the nomination upon which leg two of the plaintiff’s claim’s based cannot be Ovalidated as it is an exercise *ultra vires* the family presenting it and the 1st - 6th defendants by virtue of the provisions of exhibit ‘H’ cannot be held to have violated the declaration since they are free to select from the family whose turn it is to present a candidate.”

PARTICULARS

The application letter exhibit D cannot be an exercise in futility as it was done pursuant to exhibits G, H, and J which were discretionary powers conferred on the Commissioner by virtue of the Principal Law Section 3 of the Chiefs Law Cap. 21 1978 Law of Oyo State. The procedure adopted is known to the Principal and it overrides any subsidiary legislation.

(7) The learned trial judge erred in law and in fact when he held as follows:-

“I refer to the evidence of the 2nd P.W. Anthony Okeyode under cross-examination by Chief Abolade where he admitted as follows:-

It is not because of the agitation of Elemu, and Onigbo Families to become the Olotan of Otan-Aiyegbaju that brought into being the 1957 Declaration, but rather because of the non-compliance strictly with the rotational system.

B This is a piece of contradiction which the plaintiff might wish to take advantage but which in the light of other findings above by me, cannot relieve them of the burden of proof that rests on the plaintiffs in a case of this nature.”

PARTICULARS

C The learned trial judge took irrelevant and inadmissible evidence into consideration since customary law are proved by preponderance of evidence, there is no such admissible evidence before the court. The evidence of the 4th defendant and that of the 7th defendant relied upon D are inadmissible evidence because both 4th and 7th defendants are estopped from denying what they or their representative in interest had admitted in writing further more oral evidence cannot be used to vary a written document.

FURTHER PARTICULARS

E “Whilst the plaintiffs contended rigorously of the existence of four Ruling Houses in Otan-Aiyegbaju namely: Olamode, Olasuka, Olatanka and Olaruka and supported same by both oral and document- F tary evidences and their counsel submitted that the 7th defendant being a son to immediate Late Owa is estopped by virtue of S. 150 Notwithstanding this defect, the production of exhibit L174 - L180 tendered by the consent of the parties counsel seems to have G cured this effect.”

(8) The learned trial judge erred in law when he held as follows:

“This leads me to the other serious point of contention as to the existence of the number of ruling houses at Otan-Aiyegbaju. And in doing this, both sides have referred to the meaning of the phrase.

H “Ruling House” under the Chief’s Law which is:

“In relation to a Chieftaincy means the descendants of a lineal ancestor entitled in accordance with customary law to provide from amongst their own numbers a candidate or candidates for appointment by the

kingmakers as holder of that chieftaincy. See S. 2 of the Chiefs Law Cap. 21 Law of Oyo State 1978.

The fact as presented by both sides support the existence of four ruling houses which are not ruling houses in consonance with the meaning given to a ruling house under the Chiefs' Law but more or less branches of one family tree with a common lineal ancestor called Olamodi who was the first Olotan of Otan-Aiyegbaju."

PARTICULARS

The learned trial judge, by holding that Olasuka, Olatanka and Olaruka as branches of Olamodi their lineal ancestor cannot be Ruling House as per definition of Ruling House in the Chiefs Law Cap. 21 section 2 (1978) Laws of Oyo State, has ignored a principal canon of interpretation. Assuming that Olamodi is one Ruling House the claim of rotational order by the branches is not against Natural Justice equity and good conscience.

(9) The learned trial judge erred in law and in fact when he held as follows:

"The plaintiffs have not proved that the 7th defendant or any agent of his used any undue influence, fraud, or misled the kingmakers at the latter meeting of 19th April, 1983, when the one Egunnike were being considered. The fact that the kingmakers did not confine their election to the Olasuka branch of the Royal Family, I hold in the light of the foregoing facts does not offend against the native law and custom of the people of Otan-Aiyegbaju and appointment of the 7th defendant as Owa Elect of Otan-Aiyegbaju was therefore validly and legally made and it cannot therefore be declared null and void."

PARTICULARS

Since the learned trial judge had ruled the 1957 declaration null and void and of no effect, and as the preliminary exercise of nomination was based on the directive from the Government to the Ila Local Government down to the kingmakers on the assumption that the 1957 was legal and subsisting such preliminary exercise are similarly null and void. Furthermore the principal law recognizes no customary Law except that which is contained in the 1957 declaration. An exercise carried in fur-

therance of a custom unknown to is an exercise in futility.

(10) The learned trial judge erred in law by failing to evaluate the implications of exhibits C, E, F, and L on the whole proceeding.

PARTICULARS

B The learned trial judge erred in law and in fact for failing to appreciate that even if the parties had in the past not followed the law or strict order of rotation by the report and findings of the Ademola Commission of Inquiry, the parties are presumed to have freshly affirmed their commitment to the order of Rotation in the 1957 Olotan Chieftaincy Declaration.

(11) The judgment is against the weight of evidence.”

The grounds came under severe attack by both Chief Folanke Solanke, SAN, for 1st to 6th respondents (appellants in this appeal) and D Chief G. O. K. Ajayi for the 7th respondent, Edward A. A. Adeniran. The two learned Senior Advocates made considerable submissions, supported by authorities and urged the Court of Appeal to declare grounds 1 - 10 incompetent. Learned Justice of the Court of Appeal, Akpabio, JCA, E who wrote the lead judgment, with which Sulu-Gambari and Ogwuegbu JJCA (as they then were) concurred, agreed with the submissions of the two Senior Advocates that grounds 2, 3, 6, 7, 8, 9 and 10 were incompetent. The grounds were accordingly struck out. The learned justice was F however unable to accept that grounds 1, 4, and 5 were not competent. He therefore dismissed the objection raised against them.

At the conclusion of his judgment, Akpabio JCA, allowed the appeal filed by the plaintiffs, basing his reasoning on issues 8, 9, 12, 13 and 14 formulated to cover grounds 1, 4 and 5. The judgment of Sijuwade G J. was accordingly set aside. The plaintiffs’ claim 1, 3, 4 and 5 were granted and the counter-claim filed by Edward Adeniran was dismissed.

Dissatisfied with the decision of the Court of Appeal, Chief Solanke, SAN, filed 10 grounds of appeal and sought for the following H reliefs:

“(i) *That the judgment of the Court of Appeal Ibadan date 6/9/91 be set aside.*

(ii) *That the claims of the plaintiffs be dismissed with substan-*

tial costs.

(iii) *That judgment be entered in favour of defendants/appellants.*

(iv) *Any further Order or Orders as the Supreme Court may deem fit to make.*”

B

Both learned Counsel formulated 10 issues from the ground appeal. I have looked into those issues and with respect I identify the following issues as relevant for the determination of this appeal.

“(1) *Whether or not grounds 1 - 10 of the plaintiffs/appellants Grounds of Appeal were competent to sustain the plaintiffs’ appeal.*”

C

(2) *Whether or not the Court of Appeal was correct to have predicated its judgment on three of the erroneous grounds of appeal.*

(3) *Whether or not it was right for the Court of Appeal to postulate that certain parties to wit: “the State Government and the Ila Local Government and the Ila Local Government had to be in (sic) the opposite side before the 1957 Chieftaincy Title Declaration could be contested (page 317 of the Record).*

D

(4) *Whether or not the Court of Appeal was correct in not considering the other vital facts to be legally proved by the appellants to establish “locus standi” in addition to belonging to a Ruling family.*

E

(5) *Whether or not the evidence on record was sufficient to support the appeal.*

F

(6) *Whether assuming that the particulars were faulty; should the appeal of the plaintiffs/ respondents have been dismissed on technical grounds without given them a fair hearing, and without the consideration of order 3 Rule 2(5) and (6) of the Court of Appeal Rules?*

G

(7) *Whether the Honourable Court of Appeal was right in granting the declarations having held that grounds 1, 4 and 5 of the appeal were proper even though ground 11 was struck out?”*

After the decision of the High Court, in this case, the appeal to the Court of Appeal, Ibadan, would have been a very straight-forward one in view of the provisions of the 1957 Chieftaincy Declaration for the Stool of Owa of Otan-Aiyegbaju. But Mr. Akinwunmi Adenira, learned counsel for the plaintiffs/appellants before the Court of Appeal, made a

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simple appeal difficult when he filed 11 grounds of appeal with particulars which were written in wide and irrelevant details. The grounds and the particulars given to them cover most of the pages in the judgment of the Court of Appeal. To make it worse the learned counsel formulated 22 issues, couched in a particular style which make their meaning difficult to decipher. I agree entirely with both Chief Folake Solanke, SAN and Chief G. O. K. Ajayi, SAN, that the way the grounds of appeal were couched made it difficult for them to formulate issues from them.

However, the learned Justice of the Court of Appeal went through such difficult analysis, following the observations and objections raised by the two Senior Advocates, and concluded that grounds 2, 3, 6, 7, 8, 9 and 10 were incompetent because the so called particulars given to the grounds did not identify how the decision, finding or holding of the learned trial judge was faulty or erroneous. The learned Justice however accepted that grounds 1, 4 and 5, although in-elegantly drafted, had some substance and he gave them a pass mark.

Chief Folake Solanke, SAN, in this appeal, submitted on the issue in respect of grounds 1, 4 and 5 that the grounds were incompetent because they too were in breach of Order 3 Rules (2) 2(3) and 2(4) of Court of Appeal Rules 1981. In support of her argument she referred to cases of Bala v. Bankole (1986) 3 NWLR pt. 27, page 141 and 143; Anukwa v. Ohia (1986) 5 NWLR pt. 40 p. 150 and Onuma v. Nwokoro (1987) 1 NWLR pt. 48 page 149. Learned Senior Advocate also referred to the issues raised by Mr. Adeniran on the said grounds and argued that the Court of Appeal was in error to rely on those issues which the learned counsel formulated against incompetent grounds. She emphasized that an issue for determination in an appeal must be formulated in concrete terms and must be related to and arise from the grounds of appeal filed - A. G. of Kwara State v. Olawale (1993) 1 NWLR pt. 272 p. 645 and Okpala v. Ibeme (1989) 2 NWLR pt. 102 p. 208.

I have earlier in this judgment disapproved strongly the way and manner Mr. Adeniran formulated the grounds of appeal against the judgment of the trial High Court. However I have also looked into grounds 1, 4 and 5 which the learned Justice of the Court of Appeal gave the pass

mark and I agree with the lower court that although the grounds were inelegantly drafted they can be accepted as having sailed through.

I now consider the matter raised in issue 3, where it has been observed that since the Government of Oyo State and Ila Local Government were no longer parties to the proceedings the learned trial judge was in error to entertain the counter-claim of the 7th respondent, Edward A. A. Adeniran. I cannot see how Chief Folake Solanke, SAN, could fault this opinion. In the first declaration prayed for by the 7th respondent in the counter-claim he sought for the nullification of Owa of Otan-Aiyegbaju 1957 Chieftaincy Declaration and declare instead that there was only one Ruling House instead of four for succession to the throne of Owa of Otan-Aiyegbaju. This obviously cannot be justiciable without making both the Oyo State Government and Ila Local Government necessary parties to the action.

A counter-claim is a cross-action, with the plaintiff becoming the defendant to the counter-claim, *S. Oragbade v. Chief S.J.M. Onitiju* (1962) All NLR p. 32. Thus if the plaintiff cannot be the proper opposing party to the claim in the counter-claim the proper thing is to strike it out. The 1957 Otan-Aiyegbaju Chieftaincy Declaration cannot be impeached without making those who made the law and got it registered necessary parties to the suit. The lower court is therefore quite right to strike out the counter-claim filed by the 7th respondent.

The learned Justice of the Court of Appeal considered the issue of locus standi and dismissed the opinion of the learned trial judge that the appellants had no locus standi to bring this action in the following words:

“But in the instant case, it was the turn of Olasuka family to produce the next Owa Otan-Aiyegbaju, according to the Chieftaincy declaration of 1957, and the second appellant had already been nominated by his family as the Owa elect. He cannot therefore be said not to have had any interest in the subject matter, nor to have failed to show how his interest arose. So the holding of the learned trial judge that the appellants had no locus standi to bring the action was clearly erroneous and

must be set aside. As far as the assertion of the learned trial judge that there was no assertion in the Statement of Claim of the appellants that the 2nd appellant descended from a male line and not a female line, as required by the 1957 declaration, this was not a disputed point, as no issue was joined in it. Both parties attached their family trees or Genealogies to their Statement of Claim and Statement of Defence respectively. That of the appellant clearly shows that their ancestor Olasuka had once been an Owa. So wherein lies the controversy? Issues Nos. 8 & 9 formulated in respect of ground 1 of the appeal must be answered in the negative. It was wrong for the learned trial judge to have held that the appellants had no locus standi.”

The 1st respondent as head of Olasuka Ruling House sued on behalf of the Ruling House and the 2nd respondent who was unanimously nominated as the candidate of Olasuka Ruling House for the vacant stool sued for himself. It is without doubt that the plaintiffs had locus standi to initiate these proceedings. I agree entirely with Akpabio JCA, that the respondents had locus standi to sue.

In sum, even though grounds 1, 4 and 5, which were found competent by the Court of Appeal and the issues formulated against them were inelegantly drafted it is crystal clear that the provisions of 1957 Chieftaincy Declaration on the succession to the throne of Owa of Otan-Aiyegbaju makes the case of the plaintiffs/respondents meritorious. Learned Justice Ogwuegbu JCA (as he then was) in his contribution to the lead judgment of Akpabio JCA made an apt conclusion to the whole case in the following words:

“The appellants’ claim is based on Exhibit ‘M’ which is a subsidiary legislation. It has not been amended and has remained in force since 29/6/57. It is deemed to be the customary law regulating succession when a vacancy occurs in the Olotan Chieftaincy. Since it was registered it excludes any other customary law or usage and will continue to be in force until amended or set aside by a competent court.”

In the result, this appeal fails and it is dismissed. The judg-

ment of the Court of Appeal, Ibadan Division, in which it is allowed an appeal brought by the plaintiffs/respondents from the judgment of Sijuwade J. is hereby affirmed. I award N10,000.00 costs in favour of the plaintiffs/respondents.

B

BELGORE JSC

C

This appeal lacks merit as the Court of Appeal on all the facts found the trial court's judgment was based on monumental error. For the reasons already advanced in the judgment of my learned brother, Uthman Mohammed, JSC. I also dismiss the appeal with N10,000.00 (Ten thousand naira) costs to the respondents.

D

WALI JSC

E

I have read in advance, a copy of the lead judgment of my learned brother Uthman Mohammed, JSC and I agree with his reasoning and conclusions for dismissing the appeal.

For the same reasons ably advanced in the lead judgment, I also dismiss the appeal. I abide by the consequential orders made in the lead judgment.

G

KUTIGI JSC

I read in advance the judgment just rendered by my learned brother Mohammed, J.S.C. I agree with it. I have no doubt in my mind at all that pursuant to Olotan Chieftaincy Declaration of 1957, it is only the Oluksa Ruling House that is now entitled to present a candidate to the Otan-Aiyegbaju Kingmakers for appointment as the next Owa of Otan - Aiyegbaju. A court must give judgment according to the justice of the

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case. The appeal must therefore fail and it is dismissed. The judgment of the Court of Appeal is affirmed with N10,000.00 costs to the Plaintiffs/Respondents

B

ONU JSC

Having had the advantage of reading before now the judgment just delivered by my learned brother Mohammed, JSC I am in entire agreement with him that the appeal lacks merit and ought therefore to fail.

My learned brother Mohammed, JSC has so carefully and dexterously analyzed and reviewed the facts as well as considered the issues that my task has indeed become less burden some. Suffice it to say, that I will not duplicate efforts in going over all those points any more unless where the need arises. Of the ten issues the appellants have proffered (the respondents have adopted same) for our determination, all of which learned Senior Advocate, Mrs. Solanke for them, has strenuously argued, I find only three worthy of comments, to wit:

1. Whether or not grounds 1 - 10 of the plaintiffs/appellants grounds of appeal in the Court of Appeal were competent to sustain the plaintiffs's appeal.

2. Whether or not the Court of Appeal was correct to have predicated its judgment on three of the erroneous grounds of appeal.

3. Whether or not the Court of Appeal was right when it allowed the appeal in the alternative on ground I which merely dealt with "locus standi" of the appellants.

On the first issue above, learned Senior Advocate's argument both in the appellant's brief and in the oral expatiation she made, was firstly to the effect that grounds 1-10 of the appeal filed in the court below by the respondents were incompetent, being in breach of Order 3 rule 2(2), (2) and (4) of the Court of Appeal Rules, 1981 as amended.

Secondly, that as grounds of appeal are vital to any appeal because they provide the infrastructure for an appeal, the grounds must satisfy the above stated provisions. We were therefore urged to strike

out the grounds of appeal under attack since they do not satisfy the said provisions and should have been struck out. The cases of Bala v. Bankole (1986) 3 NWLR (part 27) 141 at 143; Anukwa v. Ohia (1986) 5 NWLR (part 40) 150 and Onuma v. Nwokoro (1987) 1 NWLR (part 48) 14; Ekpan v. Uyo (1986) 3 NWLR (part 26) 63 and Anyaoke v. Adi (1986) 3 NWLR (part 31) 731, were cited in support of the proposition. It was further contended that the lead judgment strained to salvage grounds 1, 4 and 5 from legal death; that ground 1 did not in fact attack any findings of the learned trial Judge but was directed against its reasoning and furthermore, the said ground having not been differently formulated as the other grounds, was itself struck out for being incompetent. Grounds 4 and 5, it was maintained, are also vitiated by the profuse "non-particulars" which latter metamorphosed into arguments in the Brief.

It was also argued that the court below was wrong by bending backwards to save legally worthless grounds of appeal by not advertent at all to the issue of estoppel raised against the respondents on grounds 4 and 5 which deal with "non-joinder" of the State Government and Ila Local Government, adding that the respondents could not validly complain after their counsel's voluntary concession.

It was in addition contended that the court below committed a serious error in relying on the purported issues raised on the said grounds. An issue for determination in an appeal, it is maintained, must be formulated in concrete terms and must be related to and arise from the grounds of appeal filed. The cases of Attorney-General Kwara State v. Olawale (1993) 1 NWLR (part 272) 645; Okpala v. Ibeme (1989) 2 NWLR (part 102) 208 and Layinka v. Gegele (1993) 3 NWLR (part 283) 518 were called in aid.

In conclusion, it was argued that grounds 1-10 being *sui generis* the court below is bound to base its findings and decisions on cold facts as found on the record and not to embark on speculations.

It is my firm view that the argument proffered by the appellants above is misconceived firstly, because the import of the above rule of court is that as long as there is a competent appeal with only one valid ground of appeal, even if all other grounds of appeal were faulty, Order 3

Rule 2 (5) (ibid) allows for amendments, meaning that any party can amend with the leave of court. What the application of the appellants could have achieved was for the court to have allowed the respondents amend their grounds of appeal.

B Secondly, the case of Ekpan v. Uyo (supra) showed that inspite of the strong criticism of the inadequacy of the grounds of appeal and the Brief filed therein, this Court went ahead to do justice between the parties by framing its own issues for determination and thereby deciding the case on the merit. What the Supreme Court in fact did was in conso-

C nance with Order 3 Rule 2(6), Court of Appeal Rules (ibid) which is reproduced thus:-

"Notwithstanding the foregoing provisions the court in deciding the appeal shall not be confined to the grounds set forth by the appellant.

D *Provided that the court shall not if it allows the appeal rest its decision on any ground not set forth by the appellant unless the respondent has had sufficient opportunity of contesting the case on that ground."*

All that the court below in this case did was to do justice to the parties -

E call it substantial justice (see Ajakaiye v. Idehai (1994) 8 NWLR (part 364) 504 at 526); Artra Ind. Ltd. v. NBCI (1997) 1 NWLR (part 483) 574 and Dakat v. Dashe (1997) 12 NWLR (part 531) 46) to the parties to avoid an unfortunate delay in trial because when incompetent grounds

F are struck out, that is not the end of the case. The party can still bring notice of motion to amend and the usual ritual continues. It ought to be borne in mind that striking out incompetent grounds does not mean dismissal of the case on merit. See Chief T. O. S. Benson v. Nigeria Agip Co. Ltd. (1982) 5 SC. 1 at 5; N. A. Williams v. Hope Rise Voluntary

G Society (1982) ALL NLR 1 at 6-7 where in the first case this Court dismissed the appellants' appeal for failure to file their Brief five months after time had elapsed and in the second case, that waiting for 23 days as opposed to the 6 days granted by the rules was fatal.

H The issue is thus resolved against the appellants.

On the second issue for determination the appellants are arguing that grounds 1, 4, and 5 are incompetent grounds because no particulars were given.

The question naturally gives rise to another question: What are the particulars required to a misdirection or error in law?

The respondents have postulated, and rightly in my view, that all that they had to do in the instant appeal was "To show in what respect the Judge misdirected himself". A perusal of the case of Okorie & 2 ors. v. Udom & ors. 5 FSC. 162 at 164 is instructive. There, Ademola, CJF observed as follows:-

"Of the three grounds of appeal filed, objection was taken by Counsel for Respondents to ground (c), which was one of misdirection, on the ground that in the three instances quoted the particulars of the various misditections were not given. It has been pointed out from time to time that merely quoting of judgment without showing in what respect the Judge misdirected himself, is worthless. Counsel was not allowed to argue the ground of appeal, and it was accordingly struck out. See also Western Steel Works Ltd. & Anor. v. Iron & Steel Workers Union of Nigeria & Anor (1987) 2 SC. 11 at 34 where this Court observed that the grounds of appeal were sufficiently detailed to contain the particulars which in the grounds of appeal in that case were net.

In the instant case, the respondents showed in what respect the Judge misdirected himself or in what respect the error in law had arisen which in effect, meant challenging the Judge's statement, reasoning or conclusions. The appellants in the case in hand relied heavily on the obiter dicta of Uwais, JSC (as he then was) in the case of Anyaoke & ors. v. Adi & ors. (1986) 6 SC. 75 at 86. In that case, counsel rather than file a brief, referred the Supreme Court to the grounds of appeal, and their particulars, which he alleged were sufficiently detailed. Hence, the observation in passing that "Grounds of Appeal and their particulars" cannot ADEQUATELY be substitutes for the contents of the appellants' brief of argument. But inspite of the observation, this Court went ahead to do justice to the case. See also Clay Ind. (Nig.) Ltd. v. Aina (1997) 8 NWLR (part 516) 208; Ilodiba v. NCC Ltd. (1997) 7 NWLR (part 512) H 174; J.E. Oshevire Ltd. v. Tripol Motors (1997) 5 NWLR (part 503) 1 and Musa v. Yerima (1997) 7 NWLR (part 511) 27.

See also Order 3 Rule 23 of Court of Appeal Rules (ibid).

This issue is also resolved against the appellants and in respondents' favour.

On issue No. 3 as couched above, the gravamen of ground 1 dealt with is locus standi. It is not sufficient in a chieftaincy suit as in the instant case merely for the plaintiff to say he is a descendant of a chieftaincy line; in addition to belonging to a Ruling house, he must demonstrate how his interest arose. See Momoh & Anor. v. Olotu (1970) 1 ANLR 117. In the case in hand, the 1957 Declaration did not provide for a male descendancy for the title simpliciter. The 1st - 6th respondents' objection to the appeal in the court below, therefore, in my view, went beyond technicalities. The learned trial Judge (Sijuade, J.) did not hold in the alternative; he merely went further to consider the import of holding that the respondents have locus standi, thus destroying the wordings of the 1957 Declaration which gave Kingmakers the right to select from the family whose turn it is to present a candidate.

The court below rightly reviewed the learned trial Judge's decision on the matter and overruled him on his conclusion to the effect that the nomination paper (Exhibit D) from Olasuka Ruling House putting the 2nd respondent forward as the only candidate from the latter Ruling House pursuant to the Directive contained in Exhibit H. was an exercise in futility since the Declaration Exhibits M and L gave the Kingmakers only the power to select.

If therefore the respondents who now have locus standi have produced the 1957 Declaration which conferred the right on the Olasuka Ruling House to put forward a candidate, then what happened in the case of Prince Ahya Adigun & 2 Ors. v. Attorney-General of Oyo State (1987) All NLR 111 at 127 is on all fours here, since as Obaseki, JSC aptly put it in that case and which forcefully applies here:

"If there is a registered declaration of the Customary Law regulating the appointment, the evidence is straight forward and would consist in the production of the registered declaration, in which case a single witness would suffice."

Thus, the court below was right in my view, to have granted two of the declarations sought by the respondents as well as the ancillary orders of

injunction about which the appellants are complaining.

In addition, the lower court was right, in my view, to have struck out the counter-claim filed by the 7th respondent.

This issue is also accordingly resolved against the appellants.

Finally, for the reasons I have herein given and the more elaborate ones proffered in the leading judgment of my learned brother Mohammed, JSC I too dismiss this appeal. I make similar consequential orders inclusive of those regarding costs.

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