

SUPREME COURT OF NIGERIA
26TH FEBRUARY, 1999. SC. 222/1993
CORAM:- S. M. A. BELGORE, A. B. WALI, I. L. KUTIGI,
E. O. OGWUEGBU, U. MOHAMMED, JJSC.

DAJAP KUTSE & ORS. APPELLANTS
AND
ATTORNEY-GENERAL,
PLATEAU STATE & ORS. RESPONDENTS

***APPEALS** - Concurrent findings on facts - The attitude of the Supreme Court - Is not to disturb such findings - Where it is based on the lawful evidence before the lower courts.*

***CUSTOMARY LAW** - Modification - Declaration - Once enquiry was conducted - And it reflects substantially the custom of the people - The modified customary law shall be approved.*

***STATUTES** - Plateau State Local Government Edict 1976 -Provisions of section 72 - Powers of the Local government to make declarations - And modifications of customary law - The reason for the provisions is that no custom is ossified.*

FACTS

In actions consolidated for hearing before the High Court of Plateau State the plaintiffs/appellants claimed inter alia for an order nullifying the Plateau State Legal Notice No. 7 of 1978 as promulgated on information. The aforesaid Legal Notice No. 7 modified the process of selecting the District Head of Kerang. It provided for the families from which the District Head shall be chosen, it also provided for who shall be the members of the traditional selectors. The Notice was issued in accordance with section 72 of Plateau State Local Government Edict 1976. The Kerang town is the most prominent abode of the tribe of those generally referred to as Sura and it is where the District Head resides. The plain-

tiffs' case is that their respective houses or collectively, Galadima House is one of the Ruling houses in Kerang District and cannot be excluded from the Ruling Houses of Kerang in the selection of the District Head.

At the conclusion of hearing, the learned trial judge found that in a accordance with the law, a committee was set up to investigate and make recommendation leading to legal Notice No. 7 now in issue. He found no substance in the plaintiffs' case and dismissed it accordingly. Aggrieved, the plaintiffs unsuccessfully appealed to the Court of Appeal. The plaintiffs have further appealed to the Supreme Court raising 2 issues.

ISSUES FOR DETERMINATION

"1. Whether having regard to the finding of fact that the appellants were members of the Pwasbin Ruling House of Kerang District, the learned Justices of the Court of Appeal were right in dismissing the appellants' appeal.

2. If the answer to the above is in the affirmative, whether the court below was wrong in its decision that there was no obligation to consult the appellants in promulgating the Legal Notice No. 7 of 1978."

HELD (Unanimously dismissing the appeal per lead judgment of **BEL-GORE JSC.**)

Plateau State Local Government Edict 1976

1. But before I advert the to this issue of findings of fact, it is pertinent I dwell on the local government powers of declarations of which the Plateau State Local Government Edict, 1976 Section 72 is an example.

The provisions in Local Government Edict in most of the States in the former Northern Nigeria runs in this vein:-

"72.(1) A Local government shall have power to make declarations and to recommend modifications of Customary Law of its area of authority. The reason for the provisions is that no custom is ossified. Changes do take place by expansion of some families, by breaking up into factions and reduction or obliteration of some families by deaths or certain disqualifications. Thus it is legally recognised that occasional

modifications must be made. (p. 463 G)

Customary law - Modification

2. What is always essential before a modification will be made into declaration is an inquiry. The appellants never denied there was an inquiry, their posture is that they knew there was an inquiry but they were not formally invited to appear before it. There was no suggestion that they were prevented from appearing before the inquiry tribunal to make any representation if they had so wished. Once an inquiry was conducted, and it reflects substantially the custom of the people, and it is not repugnant to natural justice, equity and good conscience and when presented to the Governor he satisfies himself that the proposed modification represents the customary law of the people, he shall approve the modified customary law. Thus in this case there is no evidence of fraud, or lack of natural justice, equity and good conscience. (p. 464 G)

Concurrent findings on facts

3. This is a matter entirely based on concurrent findings of lower courts on facts. The attitude of this court is not to disturb such findings. The findings were based on the lawful evidence before the lower courts. Ojo vs. Government of Oyo State (1989) 1 NWLR. (Part 95) 1 Awaogbo vs. Eze (1995) 1 NWLR. (Part 372) 393. (p. 465 B)

REPRESENTATION

A. A.Damun, for the Appellants.

M.Y. Saleh for the 2nd & 4th Respondents.

H.N. Fwangchi (Mrs) Dpp Plateau State for the 1st & 3rd Respondents

CASES REFERRED TO

Ojo vs. Government of Oyo State (1989) 1 NWLR. (Part 95) 1

Awaogbo vs. Eze (1995) 1 NWLR. (Part 372) 393

Odunsi vs. Bamgbala (1995) 1 NWLR. (Part 374) 641

Ajao vs. Alao (1986) 5 NWLR. 805).

STATUTE REFERRED TO

Plateau State Local Government Edict, 1976 s. 72.

LEAD JUDGMENT BY BELGORE JSC

B This appeal came up as a result of actions consolidated for hearing from the High Court of Plateau State. The claims concern the Plateau State Local Government Legal Notice No. 7 of 1978 on District Headship of Kerang in Mangu Traditional Council. The aforesaid Legal Notice No. 7 modified the process of selecting the District Head of Kerang. The Notice provides, inter alia as follows:-

"1. *The District Head of Kerang shall continue to be chosen by the traditional selectors from any of the adult male families of Pulkum, Kohop, Guwen and kohop Paug.*

D 2. *The traditional selectors shall be persons holding the following offices, namely:-*

(a) *Madaki;*

(b) *Galadima;*

E (c) *Sarkin Tsafi;*

(d) *Baraya;*

(e) *mishkahan Dikibin."*

F The Notice was issued in accordance with Section 72(3) (c) of Plateau State Local Government Edict 1976. The present appellants who were plaintiffs in the trial court and appellants in the Court of Appeal claimed as follows:

G "A. *An order nullifying the Plateau State Legal Notice No. 7 of 1978 as promulgated on the basis of false and fraudulent information.*

B. *A declaration that the plaintiffs' respective houses or collectively, Galadima House is one of the Ruling houses in Kerang District and cannot be excluded from the Ruling Houses of Kerang in the selection of the District Head.*

H C. *An order restraining the Defendant, its servants, its agents or privies from preventing the plaintiffs from participating in the selection of the District Head of Kerang."*

After hearing all evidence, learned trial judge found that in accor-

dance with the law a committee was set up to investigate and make recommendation leading to Legal Notice No. 7, now in issue. He found no substance in the plaintiffs' suit and dismissed it accordingly. The Court of Appeal to which the plaintiffs appealed to, also dismissed the appeal by upholding the findings of the trial court. Thus the appeal to B this court.

The Kerang town is the most prominent abode of the tribe general referred to as Sura. It is at Kerang that the District Head resides, thus making it the headquarters of Sura District. Being dissatisfied with the decision of the Court of Appeal which affirmed the judgment of the trial C court, the plaintiffs/appellants in their appeal to this court raised the following issues for determination:-

"1. Whether having regard to the finding of fact that the appellants were members of the Pwasbin Ruling House of Kerang District, the he learned Justices of the Court of Appeal were right in dismissing the D appellants' appeal.

2. If the answer to the above is in the affirmative, whether the court below was wrong in its decision that there was no obligation to E consult the appellants in promulgating the Legal Notice No. 7 of 1978."

The Court of \appeal looked into the Legal Notice and found, as trial court did, that due and thorough investigation was conducted in accordance with Local Government Edict of 1976 before Legal Notice F No. 7 was issued. There was no proof of fraud as claimed by the appellants and it was held that the appellants' claim must fail. The entire action was based on historical evidence which essentially was in facts. The trial court made copious findings of fact and the Court of Appeal found no reason to interfere with those findings. **But before I advert the to G this issue of findings of fact, it is pertinent I dwell on the local government powers of declarations of which the Plateau State Local Government Edict, 1976 Section 72 is an example.**

The provisions in Local Government Edict in most of the States H in the former Northern Nigeria runs in this vein:-

"72.(1) A Local government shall have power to make declarations and to recommend modifications of Customary Law of its area

of authority.

(2) *Where a Local Government exercises the powers conferred upon it by this section, it shall submit the declaration to the Commissioner stating the customary law which appears to it to apply in its area.* (3) *The*

B *Commissioner upon receipt of the declaration and if satisfied that it accurately records the customary law in question and is not repugnant to natural justice, equity and good conscience, shall submit the same to the Governor, who after satisfying himself shall by order direct that the cus-*
C *tomary law stated in the declaration areas modified in the recommendation as the case may be, shall be the customary law applying to the matter for the area to which the declaration or recommendation relates.*

(4) *A declaration or recommendation may be in respect of the customary law applying generally to specified persons or classes of persons.* (5) *A*
D *recommendation of modification of customary law may be submitted whether or not a declaration of an order under this section with respect to the same has been made.* (6) *The power conferred under this section shall not extend to customary law relating to any matters for which the*

E *provision is made in the Chiefs (Appointment and Deposition) Law."*

The reason for the provisions is that no custom is ossified. Changes do take place by expansion of some families, by breaking up into factions and reduction or obliteration of some families by deaths or certain disqualifications. Thus it is legally recognised
F **that occasional modifications must be made.** Colonial administration,

according to the evidence before the trial court, even appointed as District Head in the same Kerang a person whose qualification was not blood affinity to any Ruling House but mere enlightenment because of this exposure, even though this was done against protests. **What is always**
G **essential before a modification will be made into declaration is an inquiry.** The appellants never denied there was an inquiry, their

posture is that they knew there was an inquiry but they were not
H **formally invited to appear before it. There was no suggestion that they were prevented from appearing before the inquiry tribunal to make any representation if they had so wished. Once an inquiry was conducted, and it reflects substantially the custom of the people,**

and it is not repugnant to natural justice, equity and good conscience and when presented to the Governor he satisfies himself that the proposed modification represents the customary law of the people, he shall approve the modified customary law. Thus in this case there is no evidence of fraud, or lack of natural justice, B equity and good conscience.

This is a matter entirely based on concurrent findings of lower courts on facts. The attitude of this court is not to disturb such findings. The findings were based on the lawful evidence before C the lower courts. Ojo vs. Government of Oyo State (1989) 1 NWLR. (Part 95) 1 Awaogbo vs. Eze (1995) 1 NWLR. (Part 372) 393; Odunsi vs. Bamgbala (1995) 1 NWLR. (Part 374) 641; Ajao vs. Alao (1986) 5 NWLR. 805).

I find no merit in this appeal and I accordingly dismiss it with D N10,000.00 (Ten Thousand Naira) costs to each set of respondents.

WALI JSC

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I have read before now, the lead judgment of my learned brother Belgore, JSC and I agree with his reasoning and conclusion for dismissing the appeal. I adopt them as mine and also hereby dismiss the appeal.

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

KUTIGI JSC

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I read in advance the judgment just rendered by my learned brother Belgore, JSC., I agree with his reasoning and conclusions therein. The appeal is dismissed with costs as assessed.

OGWUEGBU JSC

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I have had the advantage of the lead judgment just read by my learned brother Belgore, J.S.C. I agree that the appeal is on concurrent

findings of facts. The trial court took pains to examine the facts before making its findings on them. The court below upheld those findings of facts.

B The position is that there are two concurrent findings of facts by two lower courts. This court will be reluctant to upset the two concurrent findings as no exceptional circumstance has been shown to warrant such interference.

C I agree that the appeal is devoid of any merit and it is hereby dismissed. I abide by the order as to costs made by my learned brother Belgore, J.S.C.

MOHAMMED JSC

D I have had the preview of the judgment just delivered by my learned brother, Belgore, JSC, in draft and I agree that the appellants have failed to disturb the concurrent findings of the two lower courts. I too agree with the lower court that there is no substance in the suit filed by the E appellants before the High Court.

This appeal has therefore failed. It is accordingly dismissed. I also award N10,000.00 costs in favour of the respondents.

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