

SUPREME COURT OF NIGERIA

21ST MAY, 1999. SC. 227/1992

**S. M. A. BELGORE, M. E. OGUNDARE, U. MOHAMMED,
O. ACHIKE, U. A. KALGO, JJSC**

PRINCE YAYA ADIGUN & ORS. APPELLANTS
AND
SECRETARY IWO LOCAL
GOVERNMENT & ORS. RESPONDENTS

COURTS - Abuse - Of court process - Relitigation of a matter - That was finally decided by the Supreme Court in a previous suit - Is an abuse of court process.

SUPREME COURT - Decision - Finality of - Once the Supreme Court has effectively decided on a matter before it - And there is no ambiguity to be corrected - It becomes *functus officio*.

SUPREME COURT - Inherent powers - Of the court - When it can be invoked.

FACTS

The Plaintiffs/appellants took out a writ of summons in the Oshogbo High Court claiming against the defendants/respondents inter alia for a declaration that after the judgment of the Supreme Court in suit No. S.C. 98/1986 of 20th March, 1987 nullifying the registered Declaration of 4th January, 1979 and 28th July, 1981 the Ogunmakinde Ande Ruling House automatically became the only Ruling House in accordance with the Customary Law applying to the Oluwo of Iwo Chieftaincy with accrued right to present a candidate for the Oluwo of Iwo chieftaincy. The plaintiffs are the Head and principal members of Ogunmakinde Ande Ruling House of Iwo. The stool of Oluwo of Iwo was vacant following the death of the last Oluwo sometime in 1982. It was before the death of the last Oluwo that for the first time a statutory Declaration of Oluwo of

Iwo chieftaincy was made . The Declaration Exhibit P1 in this suit Gazetted on 19th July, 1979 recognized Ogunmakinde Ande Ruling House as the only Oluwo of Iwo Ruling House. This met with some opposition resulting in the setting up of the Agiri Commission of Enquiry based on whose report another Declaration was made in 1981 (Exhibit P2.). The new declaration dropped the Ogunmakinde Ande Ruling House and recognized three other houses, to wit Adagunodo, Gbase, and Alawusa as the only recognized Ruling Houses. Dissatisfied, the present plaintiffs and others of the Ogunmakinde Ande Ruling House challenged the 1981 Declaration in a suit at the Oshogbo High Court. That suit culminated in the Supreme Court judgment in suit No SC 98/1986 where it was unanimously held that the Agiri Commission of Enquiry violated the principle of fair hearing as it never afforded the plaintiffs the opportunity of being heard and thus the Declaration of 1981, Exhibit P2, is void. Further that Ogunmakinde Ande Ruling House is not the only Ruling House of Oluwo of Iwo chieftaincy. Still dissatisfied the plaintiffs unsuccessfully applied to the Supreme Court by way of motion under the inherent jurisdiction of the court praying that the judgment be amended to read inter alia that the Ogunmakinde Ande Ruling House is the only Ruling House from which the appointment to the Oluwo of Iwo chieftaincy is to be made. As a result of the Supreme Court judgment in suit No SC 98/1986 and the ruling on the subsequent application, the then Oyo State Government set up an Administrative Panel sometime in July 1987 before which the plaintiffs appeared and thus made representation. The panel's report recommended four Ruling Houses including that of the plaintiffs. But before the state government could take the further step of issuing a declaration, the plaintiffs went back to the High Court to initiate the present suit.

At the end of the hearing, the learned trial judge dismissed the plaintiffs' claims. Aggrieved they appealed to the Court of Appeal. And further filed an application at the court for an injunction restraining the defendants from giving effect to the judgment of the trial High Court pending the determination of the appeal. The application was partially successful. Aggrieved the defendants appealed to the Court of Appeal. The Court of Appeal allowed the appeal. The plaintiffs have now further

appealed to the Supreme Court.

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

Supreme Court - Decision

1. There was hardly anything resembling ambiguity in the previous judgment of Supreme Court as given on 20th day of March, 1987, nor was there any reason other than mischief in bringing this motion. Once the Supreme Court in its decision has effectively decided on the matter before it and there is no ambiguity or slip to be corrected, it becomes functus officio of the Court to reopen it. Finality of the decision of the Supreme court is entrenched in the constitution. Therefore once the decision of the court is clear, it is final in the sense that the thrust of the ratio decidendi is manifest in it. (p. 1380 G)

Supreme Court - Inherent Powers

2. Inherent powers of the court can only be invoked if there is a missing link in the main body of the judgment and some steps must be taken to fill the gaps or ambiguity so that the justice of the issues will be clear. That is why this court can sometimes be called upon to dot the 'i' and fill in the gaps in the slips apparent in a judgment. Otherwise the court cannot under the guise of so-called "inherent powers" alter or add to a clear and unambiguous judgment once given. Fons et origo of our jurisdiction is the constitution and it is the constitution that we must revert to in considering our rules and practice. (Adegbenro V. Akintola (1963) 1 All NLR 552; Nafiu Rabi V. Kano State (1980) 8-11 SC. 130). (p. 1381 A)

Courts - Abuse

3. What the plaintiffs are claiming is no more than the original claims that culminated in the appeal that was finally decided in 1987 in this court on the 20th day of March, 1987. It seems the suit was meant to pre-empt issuance of a new Declaration based on the Report of Bolanle Awe's Administrative Panel. The "accrued right" the plaintiffs claimed was to the effect that only Ogunmakinde Ande Ruling House was the sole Ruling

House, a matter finally decided by this Court in 1987. If all the new suit was meant to achieve was to maintain Ogunmakinde Ande's family as the sole Ruling House, it was certainly an abuse of Court process because it disregarded the clear pronouncement of this court that it was not the sole Ruling House. It is for this reason of abuse of court process that I on 23rd day of February, 1999 dismissed this appeal. (p. 1381 H)

NOTABLE POINTS OF INTEREST

C ACHIKE JSC

1. There must be an end to Litigation

It is a well-known maxim that there must be an end to litigation. Public policy demands it otherwise there will be confusion of such magnitude in knowing what a case or judgment of the court stands for if the very same case is continually placed before the court for an unending adjudication. Surely, it will savour of impertinence for litigants to exercise the courts on matters that had been fully disposed of under the fancied notion that such acts are covered by the "inherent jurisdiction" of the court whereby unambiguous decisions of the court can be re-litigated indirectly. (p. 1384 G)

KALGO JSC

F *2. Wrong exercise of discretion*

I have no doubt that the full effect of the orders sought in the motion on notice was to stop the respondents from complying with the Supreme Court decision in the Suit No. 98/1986. Therefore when the learned trial judge, after refusing the reliefs sought by the appellants in the motion on notice proceeded to nullify the steps or actions taken by the respondents in an effort to comply with the orders of the Supreme Court in the said case, without any reasonable grounds, he was wrongly exercising his discretion and his conduct would in my respectful view, amount to abuse of the court process. See Metropolitan Bank Limited v. Pooley (1885) 10 A.C. 210 at 220; Edet v. State (1988) 4 NWLR (Pt 91) 722. (p. 1390 A)

REPRESENTATION

Adeniyi Akintola Esq. for the appellants

Alhaji Y.A. Agbaje, SAN with Chief Mrs. C.J. Aremu for 1st respondent.

E. Abiodun Esq., T.A. Abdul-Wahab for the 2nd respondent.

B

CASES REFERRED TO

Adegbenro v. Akintola (1963) 1 All NLR 552;

Nafiu Rabi'u v. Kano State (1980) 8-11 SC. 130).

Adigun v. Attorney-General of Oyo State (1987) (No.2) 2 NWLR (Part C 56) 197).

Metropolitan Bank Limited v. Pooley (1885) 10 A.C. 210 at 220

Edet v. State (1988) 4 NWLR (Pt 91) 722

J.C. Limited v. Ezenwa

Dieli v. Iwuno (1996) 4 NWLR (pt 445) 622

D

LEAD JUDGMENT BY BELGORE JSC

On the 23rd day of February, 1999, I dismissed this appeal and adjourned to today to give reasons for the decision. I now hereby give E reasons for the judgment.

The appellants Prince Yaya Adigun and two others for themselves and on behalf of Ogunmakinde Ande Ruling House of Iwo brought a suit against the Military Governor of Oyo (now substituted by Military F Administrator of Osun State), and Secretary Iwo Local Government and sixteen others (who are various chiefs of Iwo town) claiming as follows:

(i) *Declaration that in the absence of an Oluwo of Iwo, no new declaration of custom regulating the succession to the Oluwo of Iwo G Chieftaincy can be made.*

(ii) *Declaration that until a new Declaration regulating succession to Oluwo of Iwo chieftaincy has been made, the Ogunmakinde Ande Ruling House in accordance with the Customary Law applying to that H Chieftaincy is the only Ruling House to present a candidate for the Oluwo of Iwo.*

(iii) *Declaration that the right of Ogunmakinde Ande to present a candidate for the vacant stool of Oluwo of Iwo had accrued since the*

Judgment of the Supreme Court on 20th March, 1987, which invalidated both the declaration of 4th January, 1979 and that on 28th July, 1981.

(iv) Declaration that any action of the Defendants jointly and or severally that takes or purports to take away the accrued right of Ogunmakinde Ande Ruling House is unconstitutional being retroactive in effect.

(v) Injunction restraining the Defendants jointly and or severally by their officers servants and or agents and howsoever from taking any step whatsoever which may directly or indirectly affect the accrued right of the plaintiffs and or from appointing or causing an appointment of a candidate or candidates from any family other than the Ogunmakinde Ruling House.

(iv) Declaration that after the judgment of the Supreme Court in Suit No. SC. 98/1986 of 20th March, 1987 nullifying the registered Declaration of 4th January, 1979 and 28th July, 1981, the Ogunmakinde Ande Ruling House automatically became the only Ruling House in accordance with Customary Law applying to the Oluwo of Iwo Chieftaincy with accrued right to present a candidate for the Oluwo of Iwo Chieftaincy."

The claims was filed as part of Statement of Claim on the 29th March, 1988. The first plaintiff is the Head of Ogunmakinde Ande Ruling House of Iwo, the second and third plaintiffs Alade Lamuye and Tiamiyu Ajani are principal members of the family. There was vacant stool of Oluwo of Iwo, one of the principal towns of the Yorubas. The last Oluwo died sometime in 1982. It was before the death of the last Oluwo that for the first time a statutory declaration of Oluwo of Iwo chieftaincy was made following Justice Aparas Commission in 1979. The Declaration, Exhibit P1 in this suit, was registered in the Gazette on 19th July, 1979 and recognized Ogunmakinde Ande Ruling House as the only Oluwo of Iwo Ruling House. This no doubt met with some opposition and another panel was set up, termed Agiri Commission of Enquiry, which turned in its report culminating in another Declaration in 1981, Exhibit P2 in this suit. Exhibit P2 dropped Ogunmakinde Ande Ruling House of the plaintiffs and recognized three other houses, to wit,

Adagunodo, Gbase, and Alawusa as the only Ruling Houses of Oluwo of Iwo Chieftaincy. As a result of this new Declaration (i.e Exhibit P2) the Ogunmakinde Ande Ruling House led by the present first plaintiff, Prince Yahaya Adigun joined by Prince Alade Lamuye and Prince N.O. Abanikande (all also plaintiffs in the present suit) and others challenged the 1981 Declaration in a suit at the former Oyo High Court sitting at Oshogbo in 1981 claiming as follows:

"(i) a declaration that by the Customary Law prevailing in Iwo, the Ogunmakinde Ande Ruling House is the only Ruling House from which appointment to the Oluwo of Iwo Chieftaincy is to be made.

(ii) a declaration that the instrument dated the 28th day of July, 1981 is in so far as it purports to declare the Customary Law prevailing in Iwo with respect to the appointment to the Oluwo of Iwo Chieftaincy, is wrong and accordingly illegal and void and

(iii) and injunction restraining all servants, officers and agents of the Government of Oyo State or of the Iwo Central Local Government from acting pursuant to or taking any steps to implement the aforesaid declaration registered on 29th July, 1981."

The High Court dismissed the three claims on 16th June, 1982. On appeal, the Court of Appeal dismissed the appeal and a further appeal was lodged at Supreme Court. In a unanimous judgment on 2nd March, 1987, (the appeal, SC. 98/1986), it was held that Agiri Commission of Enquiry violated the principle of fair hearing and natural justice by denying the plaintiffs the hearing granted Adagunodo, gbase and Alawusa Families. The court allowed the appeal in respect of claims (ii) and (iii), and dismissed the appeal in respect of claim (i). Thus the Supreme Court held as follows:-

"(i) that Ogunmakinde Ande Ruling House is not the only Ruling House of Oluwo of Iwo chieftaincy.

(ii) that the Declaration of 1981, Exhibit P2, is void as it never afforded Ogunmakinde Ande Family opportunity of being heard by Agiri Commission of Enquiry and thus its purported declaration of customary law could not be sustained.

(iii) that Exhibit P2 should not be enforced and injunction asked

for was therefore granted and the Government was ordered to set up another commission to ascertain the true customary law and tradition as to appointment of Oluwo of Iwo."

However, despite the clear wording of the Court's judgment the B plaintiffs returned to Supreme Court by way of motion under 'inherent jurisdiction' of the court praying as follows:

"(1) *That notwithstanding the provisions of order 8 rule 16 of the Supreme Court Rules this Honourable Court shall entertain the prayers contained in paragraph (ii) of this Motion on Notice.*

C (2) *That the judgments delivered by the Justices of this Honourable Court on 20th day of March, 1987 be amended to read as if*

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D (a) *the decision to dismiss the first claim of the plaintiffs (i.e. the claim for declaration that the customary law prevailing in Iwo, the Ogunmakinde Ande Ruling House is the only Ruling House from which the appointment to the Oluwo of Iwo Chieftaincy is to be made) were deleted and that there should be substituted therefore a decision granting*
E *the said declaration.*

(b) *all references to orders (in the nature of mandatory or prohibitory injunction or of mandamus or otherwise however, not included among the reliefs claimed by the plaintiffs and directed against the said*
F *plaintiffs or directed against any of the other parties to the action were deleted from the said judgments.*

(3) *Such further or other orders as this Honourable Court may deem fit to make."*

G **There was hardly anything resembling ambiguity in the previous judgment of Supreme Court as given on 20th day of March, 1987, nor was there any reason other than mischief in bringing this motion. Once the Supreme Court in its decision has effectively decided on the matter before it and there is no ambiguity or slip to**
H **be corrected, it becomes functus officio of the Court to reopen it. Finality of the decision of the Supreme court is entrenched in the constitution. Therefore once the decision of the court is clear, it is final in the sense that the thrust of the ratio decidendi is manifest**

in it. Inherent powers of the court can only be invoked if there is a missing link in the main body of the judgment and some steps must be taken to fill the gaps or ambiguity so that the justice of the issues will be clear. That is why this court can sometimes be called upon to dot the 'i' and fill in the gaps in the slips apparent in a judgment. Otherwise the court cannot under the guise of so-called "inherent powers" alter or add to a clear and unambiguous judgment once given. Fons et origo of our jurisdiction is the constitution and it is the constitution that we must revert to in considering our rules and practice. (Adegbenro V. Akintola (1963) 1 All NLR 552; Nafiu Rabi V. Kano State (1980) 8-11 SC. 130). The Supreme Court unanimously dismissed the application (See Prince Yahaya Adigun & Ors. v. Attorney-General of Oyo State & Ors. (1987) (No.2) 2 NWLR (Part 56) 197).

As a result of the judgment of this court given on 20th day of March 1987, and the ruling on the application delivered by this court on 14th day of April, 1987, Oyo State Government set up an Administrative Panel sometime in July, 1987 before which the plaintiffs appeared and thus made representation. The Administrative Panel presided over by Professor Bolanle Awe submitted its report to the Oyo State Government in December, 1987, which the Government considered and accepted in February, 1988, by a White paper. The Panel's report recommended four Ruling Houses for Oluwo of Iwo Chieftaincy as follows:-

1. Adagunodo;
2. Gbase;
3. Alawusa; and
4. Ogunmakinde Ande.

But before Oyo State Government could take the further step of issuing a Declaration on that Chieftaincy, the plaintiffs went back to the High Court to initiate the new suit giving rise to this appeal now before this court. **What the plaintiffs are claiming is no more than the original claims that culminated in the appeal that was finally decided in 1987 in this court on the 20th day of March, 1987. It seems the suit was meant to pre-empt issuance of a new Declaration based on the**

1382 Adigun v. Sec. Iwo Local Govt. (1999) 5 KLR Belgore JSC
Report of Bolanle Awe's Administrative Panel. The "accrued right"
the plaintiffs claimed was to the effect that only Ogunmakinde Ande
Ruling House was the sole Ruling House, a matter finally decided
by this Court in 1987. If all the new suit was meant to achieve was
to maintain Ogunmakinde Ande's family as the sole Ruling House,
it was certainly an abuse of Court process because it disregarded
the clear pronouncement of this court that it was not the sole Rul-
ing House. It is for this reason of abuse of court process that I on
23rd day of February, 1999 dismissed this appeal.

OGUNDARE JSC

I dismissed this appeal on 23rd day of February, 1999 and indi-
cated then that I would give my reasons for so doing today.

I have had a privilege of the preview of the reasons given by my
Lord Belgore JSC for he too dismissing the appeal. I agree entirely with
the reasons given by him which I hereby adopt as mine. The claims of
the Plaintiffs/Appellants are no more than another futile attempt to have
the judgment of this court given on 20th day of March 1987 reserved
notwithstanding the ruling of this court given on 14th day of April 1987
to the effect that it had no jurisdiction so to do. This court, or any other
court for that matter, would have no jurisdiction to sit on appeal against
the judgment of this court - see Section 215 of the constitution of the
Federal Republic of Nigeria 1979. Consequently it is equally my view
that the suit leading to this appeal is an abuse of the process of court and
was rightly dismissed by the two courts below.

MOHAMMED JSC

On the 23rd day of February, 1999, this appeal was heard. At
the end of the hearing I dismissed it and announced that I would give my
reasons for dismissing the appeal on 21st May, 1999.

I have gone through the reasons given by my learned brother
Belgore J.S.C., for dismissing the appeal and I agree with his opinion and

adopt same as mine. I do not intend to add anything over his opinion. I too agree that the plaintiffs/appellants' suit is nothing short of an abuse of court process. It is for that reason that I dismissed the appeal on 23rd May, 1999.

B

ACHIKE JSC

On the 23rd day of February, 1999, when this appeal came before us, after listening to submissions of counsel for both parties, I dismissed the appeal and awarded N10,000.00 costs to each set of Respondents. The appeal was however adjourned to today to enable the court to give reasons for the decision. C

Not much time should be accorded to this appeal. This court in Suit No. SC. 98/1986 had delivered a unanimous judgment allowing the appeal from the decision of the Court of Appeal, i.e. in relation to claims (ii) and (iii), but dismissed the appeal in respect of claim (i). This Court's holdings were as follows: D

"(i) that Ogunmakinde Ande Ruling House is not the only Ruling House of Oluwo of Iwo chieftaincy. E

(ii) that the Declaration of 1981, Exhibit P2, is void as it never afforded Ogunmakinde Ande Family opportunity of being heard by Agiri Commission of Enquiry and thus its purported declaration of customary law could not be sustained. F

(iii) that Exhibit P2 should not be enforced and injunction asked for was therefore granted and the Government was ordered to set up another commission to ascertain the true customary law and tradition as to appointment of Oluwo of Iwo." G

Notwithstanding the above judgment of this Court the Plaintiffs were back again at this court wherein, by motion under "inherent jurisdiction" of this court, they prayed the court as follows:

(1) That notwithstanding the provisions of Order 8 rule 16 of the Supreme Court Rules this Honourable Court shall entertain the prayers contained in paragraph (ii) of this Motion on Notice. H

(2) That the judgments delivered by the Justices of this

Honourable Court on 20th day of March, 1987 be amended to read as if

-
(a) the decision to dismiss the first claim of the plaintiffs (i.e. the claim for declaration that the customary law prevailing in Iwo, the Ogunmakinde Ande Ruling House is the only Ruling House from which the appointment to the Oluwo of Iwo chieftaincy is to be made) were deleted and that there should be substituted therefore a decision granting the said declaration.

(b) all references to orders (in the nature of mandatory or prohibitory injunction or of mandamus or otherwise however, not included among the reliefs claimed by the plaintiffs and directed against the said plaintiffs or directed against any of the other parties to the action were deleted from the said judgments.

(3) Such further or other orders as this Honourable court may deem fit to make."

Speaking for myself, I am in grave pains to appreciate how any reasonable person, and indeed, reasonable counsel can be heard to have brought this motion on the pretext that the judgment of this court delivered on 20th March, 1987 saviours of ambiguity. On the contrary, I am satisfied of the judgment of 28th March, 1987 was set out with the utmost that can hardly be excelled in terms of its clarity. No counsel can by ruse or mere subterfuge prevail on the court, even under the grand design of doctrine of slip rule, to extend the hearing of an appeal that has been fully determined by this court. This court, and any court for that matter, which has fully determined the matter in controversy between the parties is rendered Functus officio and any challenged to its judgment can only be by way of appeal. Obviously, the decision of this court is by the 1979 constitution final and cannot be tinkered under any pretence whatsoever. It is a well-known maxim that there must be an end to litigation. Public policy demands it otherwise there will be confusion of such magnitude in knowing what a case or judgment of the court stands for if the very same case is continually placed before the court for an unending adjudication. Surely, it will savour of impertinence for litigants to exercise the courts on matters that had been fully disposed

of under the fancied notion that such acts are covered by the "inherent jurisdiction" of the court whereby unambiguous decisions of the court can be re-litigated indirectly.

It is clear to me that the attempt by the appellants in their new suit is to indirectly subvert the decision of this court dated 20th March, 1987. Surely, this court cannot be used to expose its previous decision to indignity by any grand design of the Appellants. The design must be roundly condemned as an abuse of process of court. I found no merit whatsoever, in this appeal. And it is for all I have been saying that on 23rd February, 1999 I dismissed this appeal with N10,000.00 costs to each set of Respondents.

KALGO JSC

On the 23rd of February, 1999, I dismissed this appeal and adjourned the appeal to today to give my reasons therefor. I now do so.

This case has a chequered history. In 1982, the appellants filed an action in the High Court claiming, *inter alia*, a declaration that Ogunmakinde Ande Ruling House was the only ruling house from which appointment to the Oluwo of Iwo Chieftaincy could be made. They lost in the High Court and on appeal to the Court of Appeal, the appeal was dismissed. They further appealed to the Supreme Court in suit No. 98/1986, Yaya Adigun & Ors .V. A.G of Oyo State & Ors in which judgment was delivered on 20th March, 1987 and this court decided that the appellant's family that is the Ogunmakinde Ande Ruling House, was not the only Ruling House at Iwo from which the Oluwo of Iwo could be appointed. The court also declared null and void the existing Declaration of Customary Law of the land regulating the appointment of Oluwo of Iwo, and ordered:-

"A proper inquiry to be the basis of a new and proper declaration should be set in motion so that the stool vacancy can be filled with a minimum delay."

This order of the Supreme Court was carried out by the Oyo State Government. In July 1987, it set up an Administrative Panel of Inquiry which

enquired into the Oluwo of Iwo chieftaincy, heard all the relevant evidence from all the Ruling Houses including the appellants and submitted its report in December, 1987. The Panel, in its report recommended that 4 Ruling Houses under the Iwo Customary Law, are entitled to be appointed to the Oluwo of Iwo chieftaincy and these are Adagunodo, Gbase, Alawusa and Ogunmakinde Ande Ruling Houses. The Oyo State Government considered the report and accepted the recommendations of the panel and came out with the white paper for implementation in February, 1988. The appellants did not challenge this decision of the Oyo State Government as manifested in the white paper.

On the 29th of March, 1988, the appellants took out a writ of summons in the Oshogbo High Court (hereinafter called the trial court) claiming against the Oyo State Government and 16 others the following reliefs:-

"(i) Declaration that in the absence of an Oluwo of Iwo no new declaration of custom regulating the succession to the Oluwo of Iwo Chieftaincy can be made.

(ii) Declaration that until a new Declaration regulating succession to Oluwo of Iwo Chieftaincy has been made, the Ogunmakinde Ande Ruling House in accordance with the Customary Law applying to that Chieftaincy is the only Ruling House to present a candidate for the Oluwo of Iwo.

(iii) Declaration that the right of Ogunmakinde Ande to present a candidate for the vacant stool of Oluwo of Iwo had accrued since the Judgment of the Supreme Court on 20th March, 1987, which invalidated both the declaration of 4th January, 1979 and that on 28th July, 1981.

(iv) Declaration that any action of the Defendants jointly and or severally that takes or purports to take away the accrued right of Ogunmakinde Ande Ruling House is unconstitutional being retroactive in effect.

(v) Injunction restraining the Defendants jointly and or severally by their officers servants and or agents and howsoever from taking any step whatsoever which may directly or indirectly affect the accrued right of the plaintiffs and or from appointing or causing an appointment

of a candidate or candidates from any family other than the Ogunmakinde Ruling House.

(vi) Declaration that after the judgment of the Supreme Court in Suit No. S.C. 98/1986 of 20th March, 1987 nullifying the registered Declaration of 4th January, 1979 and 28th July, 1981 the Ogunmakinde Ande Ruling House automatically became the only Ruling House in accordance with the Customary Law applying to the Oluwo of Iwo Chieftaincy with accrued right to present a candidate for the Oluwo of Iwo Chieftaincy."

While the case was going on in the trial court, the Oyo State Government processed the recommendation of the panel through the Chieftaincy Committee which finally came out with the new Declaration, which was approved and registered on 15th July, 1988.

Meanwhile evidence on the case was heard in the trial court and in the end the learned trial judge, Popoola J. delivered his judgment on the 14th of July, 1988 dismissing all the claims of the appellants. They then appealed to the Court of Appeal on that day, and on the same day filed a motion on notice in the trial court for injunctions restraining the respondents from taking any step or action in connection with the Declaration of the Oluwo of Iwo Chieftaincy or appointing or nominating any body to the stool of Oluwo of Iwo or giving effect to the judgment of the trial court pending the determination of the appeal.

After the approval and registration of the new Declaration, action soon commenced with a view to complying with the order of the Supreme Court in suit No. 98/1986 without any further delay. In the result, the Adagunodo Ruling house whose turn it was to produce candidate for the Chieftaincy stool was invited to meet and submit a candidate of their choice. They met on 16th July, 1988, and nominated the 2nd respondent whose name was then forwarded to the Kingmakers on 27th July, 1988. The Kingmakers recommended the 2nd respondent for appointment as the Oluwo of Iwo.

While the motion on notice filed by the appellants on 14th July, 1988 was still pending they proceeded to file an Ex-parte motion on 19th July, 1988 in the trial court containing the same reliefs as the motion on

notice. The motion Ex-parte was heard by Adeniran J. (Popoola J. having gone on leave) and left the motion on notice still pending. He granted the reliefs in the motion Ex-parte pending the determination of motion on notice. On the return of Popoola J. after his leave, he heard the motion
 B on notice and refused it in toto but proceeded to grant consequential order nullifying all the actions and steps taken by the respondents with regards to the appointment of new Oluwo of Iwo in compliance with the earlier order of the Supreme Court.

C The respondents were not happy with the consequential order and so they appealed to the Court to Appeal. The Court of Appeal allowed the appeal on 17th July, 1992 and set aside the consequential order made by Popoola J. The appellants now appealed to this Court against the decision of the Court of Appeal and filed their briefs in accordance
 D with the rules of this court. In their respective briefs the appellant formulated II issues, the 1st respondent raised only I and the 2nd respondent set out 5 issues for the determination of this court.

E As this appeal is against the decision of the Court of Appeal from the ruling of the learned trial judge on the motion on notice, it is interlocutory. It is also pertinent to observe that the reliefs granted by Adeniran J. in the Ex-parte application expired on 18th October, 1998 after the ruling on motion on relief.

F The motion on notice filed by the appellants in the trial court on 14th of July, 1988 seek the following reliefs:-

G *"(i) The order restraining the 1st and 2nd defendant/respondents jointly or severally by themselves, their servants, agents and / or officer or otherwise howsoever from announcing the name of any family other than Ogunmakinde Ande Ruling House of provide a candidate to fill the vacancy in the Oluwo Chieftaincy or from approving or taking any step whatsoever to fill the vacancy in the Oluwo of Iwo Chieftaincy until the determination of the Appeal now before the Court of Appeal, Ibadan.*

H *(ii) Order of Injunction restraining the 3rd Defendant/Respondent by himself, his officers, servants, agents, privies or otherwise howsoever from announcing the name of family other than Ogunmakinde Ande Ruling House to provide a candidate to fill the vacancy in the*

Oluwo of Iwo Chieftaincy or from taking any step whatsoever to fill the vacancy in the Oluwo of Iwo Chieftaincy until the final determination of the Appeal pending before the Court of Appeal, Ibadan.

(iii) *Order of Injunction restraining the 3rd to 16th Defendants/ Respondents by themselves, their agents and on servants or otherwise howsoever from taking any steps whatsoever to appoint any person as the new Oluwo of Iwo any family other than Ogunmakinde Ande Ruling House of Iwo until the final determination of the Appeal now pending in the Court of Appeal, Ibadan.*

(iv) *Order or Injunction restraining the Defendants/Respondents jointly and /or severally by themselves, their agents, servants, privies or otherwise howsoever from acting under or pursuant to the judgement delivered in this case by the High Court of Justice, Oshogbo on 14th day of July, 1988 until the final determination of the Appeal now pending before the Court of Appeal, Ibadan."*

It is very clear from the above that by the reliefs claimed in the substantive action and those in the motion on notice, the appellants seek to prevent the respondents from enjoying the fruits of the decision in their favour in the Supreme Court case suit No. SC. 98/1986 and at the same time disregarding the orders of the Supreme Court in the matter. I entirely agree with the learned trial judge when in his ruling appealed against on page 90 of the record said:-

"It is therefore clear that whereas the Supreme Court had in its judgment delivered on 20th March 1987 in the said Suit No. 98/86 ruled that the plaintiffs (now appellants) family, that is the Ogunmakinde Ande Ruling House, was not only family in Iwo from which the Oluwo could be appointed, and whereas the Oyo State Government's decision made in February 1988, namely that FOUR RULING HOUSES, namely (1) Adagunodo, (2) Gbase (3) Alawusa (4) Ogunmakinde Ande, were entitled to the Oluwo of Iwo Chieftaincy has uptill date not been challenged the plaintiffs are by this motion seeking to deprive the Defendants of not only the fruits of the judgment of this court, and that of the Supreme Court in Suit No. 98/1986..... but also of the benefits of the said decision of Oyo State Government which decision the plaintiffs

have uptill date not questioned nor challenged in any form."

I have no doubt that the full effect of the orders sought in the motion on notice was to stop the respondents from complying with the Supreme Court decision in the Suit No. 98/1986. Therefore when the learned trial
B judge, after refusing the reliefs sought by the appellants in the motion on notice proceeded to nullify the steps or actions taken by the respondents in an effort to comply with the orders of the Supreme Court in the said case, without any reasonable grounds, he was wrongly exercising his
C discretion and his conduct would in my respectful view, amount to abuse of the court process. See Metropolitan Bank Limited V. Pooley (1885) 10 A.C. 210 at 220; Edet V State (1988) 4 NWLR (Pt 91) 722; J.C. Limited v. Ezenwa; Dieli v. Iwuno (1996) 4 NWLR (pt 445) 622.

The Court of Appeal in the lead judgment of Salami JCA also
D found that the appellants attitude in filing a fresh action and the motion on notice over and above the clear and final decision of the Supreme Court constitutes an harassment of the courts, and the court is entitled to protect
E itself from such harassment which amounts to an abuse of its process. I entirely agree with them on this, and find that they are right in setting aside the consequential order of the trial court nullifying the steps or actions taken in order to comply with the decision of the Supreme Court.

Finally, for the reasons stated above, I find that there is no merit
F in this appeal and that is why I dismiss it on the 23rd of February, 1999.

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