

SUPREME COURT OF NIGERIA
21ST JANUARY, 2000. SC. 198/1992
CORAM:- M. L. UWAIS CJN, S. M. A. BELGORE,
I. L. KUTIGI, M. E. OGUNDARE, U. MOHAMMED,
S. O. UWAIFO, A. O. EJIWUNMI, JJSC.

1. EFUNWAPE OKULATE

(For Demike Family)

2. OLANREWAJU OGUNDIPE

(For Ogundipe Family)

.... APPELLANTS

3. IJEBU REMO LOCAL GOVERNMENT

4. ATTORNEY-GENERAL OF OGUN STATE

5. THE GOVERNOR OF OGUN STATE

AND

GBADAMOSI AWOSANYA & 2 ORS. RESPONDENTS

(For themselves and on behalf of Olisa Family)

APPEALS - Concurrent findings - Will not be disturbed by the Supreme Court - Unless special circumstances exist.

JUDICIAL PRECEDENTS - Family status and membership - Supreme Court decision in *Adeyemi v. Opeyori* - Was rightly followed by the trial court - As it remains the law.

JURISDICTION - Conflict between state law and the Constitution - Concerning the jurisdiction of Ogun State high court - The State law is void - To the extent of its inconsistency with the Constitution.

JURISDICTION - State high Courts - Unlimited jurisdiction they have under the Constitution - Can only be limited by a potent decree - But not by a decree that has become a Federal Act - Or by a State Law.

JUDGMENTS - Standard judgment of a court - What to watch out for therein.

SUPREME COURT - *Departure or overruling its previous decision - will only be done in an appropriate situation - But the present invitation to do so has no merit.*

WORDS & PHRASES - *"Family status" - Means the position of a person within a class of persons constituting a family - Membership of a family - Is not the same as the family status of a person - Family membership has to do with affinity.*

FACTS

Before the Ogun State High Court, the plaintiffs/respondents filed an action against the defendants/appellants claiming inter alia, a declaration that the 1st and 2nd defendants are not entitled to be appointed to the chieftaincy post in dispute as they are not members of Oresolu family. It was the appellants' contention that the claim before the trial High Court was concerned with family status. That by virtue of s. 10(1) of the High Court Law of Ogun State, jurisdiction in matters relating to marriage, family status, guardianship of children, etc, is conferred on a Customary Court and not High Court. The trial court relying on the Supreme Court decision in *Adeyemi v. Opeyori* maintained that there is a distinction between family status and membership it held that family membership is in issue in this case, overruled the appellants' contention and found in favour of the respondents.

Appellants appeal to the Court of Appeal was dismissed. Being dissatisfied, they have further appealed to the Supreme Court raising 3 issues.

ISSUES FOR DETERMINATION

1. *Whether the court below was not in error when it held that the claim of the plaintiffs/respondents was not in the main and in substance one for the determination of an issue of family status.*

2. *Whether the court below was not in error when it held that in the circumstances of this case, the High Court has original jurisdiction to entertain the suit.*

3. *Whether the court below was not in error when it held in effect*

that the judgment of the trial court was not unreasonable having regard to the evidence led in the case.

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

Words & phrases - Family status

1. It means that from a combination of both definitions, the term 'family status' must be the standing or position of a person within a class of persons constituting a family. Membership of a family cannot be properly regarded the same as the family status of a person because it is not. In my opinion, family membership is no more than family affinity or consanguinity or lineage - see The Shorter Oxford English Dictionary vol. 1 (supra) pages 33, 402 and 1217 - as distinguished from the status held by a member within his family. It would seem to follow that one cannot talk of the family status of a person without first ascertaining which family he belongs to. (p.128 G)

Family status and membership

2. In the present action, the lower court cited Adeyemi v. Opeyori (supra) and felt itself bound, quite rightly, by it. It therefore had to hold that what was sought in relief 1 by the plaintiffs/respondents was the ascertainment of the membership of a family which they say was asserted by the 1st and 2nd defendants/appellants. It maintained that it was not their family status (or status in that family) as contended by the appellants in the course of their defence of the action that the said relief meant in substance. It was on the basis of that contention by the appellants which, with due respect, I consider not sustainable, that this court was invited to overrule Adeyemi v. Opeyori (supra) and hold that membership of a family confers, or is the same as, family status; and on that ground to set aside the judgment of the lower court in this case as being erroneous. I do not accept that the lower court erred on the issue. It followed the decision of this court of which no other option was open to it as long as the decision remains the law on the point. (p. 129 E)

Supreme Court - Departure or overruling its previous decision

3. It is true that this court is entitled to depart from or overrule its earlier decision when called upon to do so in an appropriate situation. It will have to be convinced to take that course if it is shown (1) that the previous decision is clearly wrong and there is a real likelihood of injustice being perpetuated: see Bucknor-Maclean v Inlaks Ltd (1980) 8-11 S.C. 1; or (2) that the previous decision was given per incuriam: see Odi v Osafire (1985) 1 NSCC 14; (1985) 1 NWLR (pt. 1) 17; or (3) that a broad issue of public policy was involved: see Bronik Motors Ltd v. Wema Bank Ltd (1983) 5 SC 158; (1983) 14 NSCC 226 citing Jones v. Secretary of State (1972) 1 All ER 145 at 149 per Lord Reid. I find that the invitation to this court to overrule Adeyemi v. Opeyori (supra) has no merit. I accordingly answer the first issue in the negative. (p. 130 A)

Conflict between state law and the Constitution

4. To the extent that the above-quoted section of the High Court Law tends to limit the jurisdiction of the High Court of Ogun State, the lower court held that it was in conflict with s. 236 (1) of the 1979 Constitution, then applicable, and therefore null and void. The result was that it held that the High Court had jurisdiction to entertain the action. There is no doubt in my mind that the learned Justice was right. The court below had the authorities of this court to guide it in reaching that decision. (p. 131 A)

Jurisdiction - State High Courts

5. The decision in Bronik Motors case (supra) was firmly that the State High Courts had unlimited jurisdiction to hear and determine any cause or matter unless specifically precluded by the Constitution or any other appropriate enactment as long as it retains its potency (such as a Decree) from exercising such jurisdiction. This was reiterated in Savannah Bank of Nigeria Ltd v Pan Atlantic Shipping & Transport Agencies Ltd (1987) 1 NWLR (pt. 49) 212; (1987) 1 S.C. 198; (1987) 18 NSCC (pt. 1) 67. This court then reached the conclusion that the Federal Revenue Act, 1973 having lost the pre-eminence it had when a Decree [which pre-

eminent position was held it had got by this court in American International Insurance Co. Ltd v. Ceekay Traders Ltd (1981) 5 S.C. 81 before the coming into force of the 1979 Constitution] was incapable of excluding the jurisdiction of State High Courts; and therefore to the extent that it still purported to do so was in conflict with the 1979 Constitution and void.¹ I must therefore hold, a fortiori, that the proviso to s. 10(1) of the High Court Law of Ogun State purporting to limit the jurisdiction of the High Court is unconstitutional and therefore, to the extent of its conflict with the 1979 Constitution, is void. (p. 132 D)

Standard judgment of a court

6. What therefore to watch out for in a standard judgment are: (1) Are the parties to the case appropriately stated? (2) Is the nature of the claim and cause of action known and considered? (3) Have the issues in controversy been appreciated and dealt with? (4) Has the evidence been properly received, and every relevant aspect thereof evaluated and given its probative value? (5) Have findings supported by the evidence been made and conclusions in fact and in law drawn? (6) Has the accepted and treated evidence on both sides (if a civil case) been put on either side of the imaginary scale to see to which side it tilts favourably? (7) Has verdict or decision been reached, judgment given and consequential orders, where necessary, made? All these matters can be found in a combination of such authorities as Polycap Ojogbue v. Ajie Nnuba (1972) 1 All NLR (pt. 2) 226 AT 232; Mogaji v. Odofin (1978) 4 S.C. 91 at 93. (p. 134 E)

¹ This holding has raised a crucial point in respect of previous Supreme Court decisions in Sadikwu v. Dalori (1996) 4 KLR (pt. 40) 796 and Oyeniran v. Egbetola (1997) 5 KLR (pt. 51) 936. These decision withdrew the jurisdiction of the High Court in respect of land matters dealing with customary right of occupancy. The present holding seems to have justified a recent Court of Appeal decision per Ubaezonu JCA in Nelson v. Ebanga (1999) 1 KLR (pt 75) 69 at 86D and 87A in which the learned Justice held that s. 41 of the Land Use Act cannot limit the unlimited jurisdiction of the High Court entrenched in s. 236(1) of the 1979 Constitution.

Concurrent findings

7. Where there have been concurrent findings of the two lower courts, this court makes it a policy not to disturb them unless special circumstances exist to warrant interference. Such special circumstances include perverse findings, error in procedural or substantive law occasioning a miscarriage of justice: see Chinwendu v. Mbamali (1980) 3-4 S.C 31. (p. 137 A)

NOTABLE POINTS OF INTEREST
OGUNDARE.JSC

1. Court not to embark on academic exercise

A court (particularly the final court) does not embark on an academic exercise for the sake of it. Once it is apparent that an issue placed before it is no longer necessary for the proper determination of the case, that issue is left for another day when it may properly arise for determination. In Adeyemi v. Opeyori (supra) the definition of the phrase "family status" was a live issue and this Court dealt with it. In the instant appeal the definition of that phrase, is no longer a live issue in that the proviso in which it occurs has been found to be unconstitutional, null and void; it has become otiose. (p. 141 F)

EJIWUNMI.JSC

2. Unlimited jurisdiction of High Courts - How curtailed

The phrase in the provisions of Section 236(1) which says "Subject to the provisions of the Constitution" was inserted in the section to emphasize that only the provisions in the Constitution can affect the unlimited jurisdiction of the High Courts. It cannot be argued that the said provisions of Order 10(1) of the Ogun State High Court Law is any where a part of the Constitution of 1979. The fact that the Constitution created the High Courts of a State does not in my humble view empower any of the States of the Federation to make any law that conflicts with the provisions of the Constitution. The tail cannot be seen to be wagging the dog. It follows from what I have said above that the court below was

right to have held that the High Court is entitled to take, hear and determine any issue brought for determination by a litigant in exercise of his legal right. (p. 148 D)

REPRESENTATION

B

Chief Mrs. C. J. Aremu for the appellants

Chief B. O. Benson, SAN with I. A. Idowu for the respondents

CASES REFERRED TO

C

Bucknor-Maclean v Inlaks Ltd (1980) 8-11 S.C. 1

Bronik Motors Ltd v. Wema Bank Ltd (1983) 5 SC 158; (1983) 14 NSCC 226

Jones v. Secretary of State (1972) 1 All ER 145 at 149

Adeyemi v. Opeyori (1976) 9 - 10 SC. 31

Nwafia v. Nwanakwulo (1966) N.M.L.R. 219

Onwuka v. Ediala (1989) 1 NWLR (pt. 96) 182

Adebayo v. Ighodalo (1996) 5 NWLR (pt. 450) 507

Ivienagbor v. Bazuaye (1999) 9 NWLR (pt. 620) 552

Omoregie v. Edo (1971) All NLR 282

Ebba v. Ogoto (1984) 1 SCNLR 372

Chukwueke v. Nwankwo (1985) 2 NWLR (pt. 6) 195

Ajuwa v. Odili (1985) 2 NWLR (pt. 9) 710

Fatuade v. Onwoamanam (1990) 2 NWLR (pt. 132) 322

STATUTES REFERRED TO

High Court Law Cap. 44 vol. III Laws of Ogun State 1978 ss. 10(1) & (2)

The Constitution of the Federal Republic of Nigeria 1979 ss. (3), 4 (8) and 236 (1)

LEAD JUDGMENT BY UWAIFO JSC

H

This appeal is from a judgment of the Court of Appeal, Ibadan Division, given on 20 May, 1992. Judgment had been given in favour of the plaintiffs by the High Court, Ijebuode, Ogun State. The defendants

then contested it on appeal on three issues but in the main that the claim, in substance, involved the determination of family status and therefore the High Court did not have original jurisdiction to entertain it. The reliefs sought by the plaintiffs were -

B *As against the 1st and 2nd defendants, a declaration that they or any member of their respective families are not entitled to be nominated, approved and/or appointed to the chieftaincy post of Olisa of Makun, Sagamu, as they are not members of Oresolu Family.*

C *As against the 3rd, 4th and 5th defendants, perpetual injunction restraining them from ever recognizing, approving, appointing and/or gazettement either of the 1st and 2nd defendants or anyone from their families as the Olisa of Makun, Sagamu.*

D On further appeal to this court, the same issues canvassed in the Court of Appeal were raised for determination. I set them out as follows:

1. Whether the court below was not in error when it held that the claim of the plaintiffs/respondents was not in the main and in substance one for the determination of an issue of family status.

E *2. Whether the court below was not in error when it held that in the circumstances of this case, the High Court has original jurisdiction to entertain the suit.*

F *3. Whether the court below was not in error when it held in effect that the judgment of the trial court was not unreasonable having regard to the evidence led in the case.*

G Perhaps it is pertinent to remark here that the issue of jurisdiction, though pleaded, was not taken in limine at the trial court. The case was fought in full before counsel for either party addressed the issue. Consequently, the learned trial judge (Delano J.) resolved the issue of jurisdiction along with the merits of the case. So did the court below, including the findings of fact made by the trial court.

H The defendants (hereinafter referred to as the appellants) would appear to want this court to take the same course upon the issues raised. I shall accordingly consider and resolve seriatim the three issues raised for determination in the appellants' brief. I have adopted this approach even though I am aware that had I taken first the second issue and re-

solved it in the negative, the first issue would have been rendered rather unnecessary. But it must not be forgotten that it was indeed the first issue that necessitated having a full court to hear the appeal. Both counsel dealt with it exhaustively in their respective briefs of argument as a live matter in the proceedings. I felt that to parry the issue in the circumstances, even purely on the rule of judicial expediency, would appear unsatisfactory. B

First Issue:

On the first issue, learned counsel for the appellants, Chief (Mrs.) Aremu, argued that the claim before the trial High Court was concerned with family status. From that premise, the contention is that the High Court of Ogun State did not have original jurisdiction to entertain the suit by virtue of section 10(1) [erroneously stated in the brief as s. 9(1)] of the High Court Law, Cap. 44 of the Laws of Ogun State, 1978, wherein D original jurisdiction is denied to the High Court over matters relating to "marriage, family status, guardianship of children and inheritance or disposition of property on death". Instead, that provision proceeds to confer jurisdiction in such matters on a Customary Court. For the purposes E of issue 1, I shall look at the claim to ascertain what relief was in essence sought therein. The first relief seeks a declaration that the 1st and 2nd defendants or any members of their respective families are not members of Oresolu Family and consequently are not entitled to be nominated, F approved and/or appointed to the chieftaincy post of Olisa of Makun, Sagamu

The statement of claim traces the family tree or genealogy of Olisa Family of Makun, Sagamu, identifying the lineage of the plaintiffs with it. It excludes the 1st and 2nd defendants. The purpose of relief 1 G is to establish that only members of the said Olisa Family qualify to be appointed to the Olisa of Makun chieftainship. The 1st and 2nd defendants also set out in their statement of defence the genealogical tree of Olisa Family of Makun different from that of the plaintiffs, and identifying themselves therewith through Demike and Ogundipe family branches. H What was therefore joined on the pleadings in regard to relief 1 is whether or not the 1st and 2nd defendants can be said to be members of Olisa

Family of Makun.

The said defendants as appellants contest in this court, as they did in the two courts below, that relief 1 calls for a determination of the "Family status" of the 1st and 2nd defendants. They argue in their brief inter alia:

B *"it is the term 'family status' within this contest [of s.10 (1) of the High Court Law of Ogun State] that has called for interpretation. With great respect to this Honourable Court, what it has done so far is to interpret 'family status' as 'status within the family'. It is respectfully*
 C *submitted, however, that 'family status' does not necessarily mean 'status within the family'. Being a member of a family is a 'status' by itself. In a strict legal sense, 'status' is the sum total of an individual's rights, obligations and disabilities conferred or imposed upon him irrespective*
 D *of his own volition."*

With due respect, although this may be an interesting argument, it does not take account of widely accepted definitions of 'family' and 'status' in many standard reference books. For example, The shorter
 E Oxford English Dictionary Vol. 1, 3rd edition, page 723 defines 'family' as "The body of persons who live in one house or under one head, including parents, children, servants, etc. The group consisting of parents and their children, whether living together or not; in wider sense, all those who are nearly connected by blood or affinity Those
 F descended or claiming descent from a common ancestor; a house, kindred, lineage." And in vol 11 page 2115, 'status' as used in Law is defined as "The legal standing or position of a person as determined by his membership of some class of persons legally enjoying certain rights or subject
 G to certain limitations Position or standing in society, profession, and the like." **It means that from a combination of both definitions, the term 'family status' must be the standing or position of a person within a class of persons constituting a family. Membership of a**
 H **family cannot be properly regarded the same as the family status of a person because it is not. In my opinion, family membership is no more than family affinity or consanguinity or lineage - see The Shorter Oxford English Dictionary vol. 1 (supra) pages 33, 402 and**

1217 - as distinguished from the status held by a member within his family. It would seem to follow that one cannot talk of the family status of a person without first ascertaining which family he belongs to. That was the position taken by this court in Adeyemi v. Opeyori (1976) 10 NSCC 455. In that case, in order to consider the definition of 'family status' reference was made to Ford v. Ford (1946-47) C.L.R. 524 where Lathan C. J. said at page 529: "A person may be said to have a status in law when he belongs to a class of persons who, by reason only of their membership of that class, have rights or duties, capacities or incapacities, specified by law which do not exist in the case of persons not included in the class and which in most cases at least could not be created by an agreement of such persons These consequences follow as a matter of law from the fact of membership of a particular class of persons." Relying on this observation, this court said at page 466 per Idigbe JSC:

"It follows therefore that no question as to a person's status in any particular family can arise until it be first established that he is a member of that family."

In the present action, the lower court cited Adeyemi v. Opeyori (supra) and felt itself bound, quite rightly, by it. It therefore had to hold that what was sought in relief 1 by the plaintiffs/respondents was the ascertainment of the membership of a family which they say was asserted by the 1st and 2nd defendants/appellants. It maintained that it was not their family status (or status in that family) as contended by the appellants in the course of their defence of the action that the said relief meant in substance. It was on the basis of that contention by the appellants which, with due respect, I consider not sustainable, that this court was invited to overrule Adeyemi v. Opeyori (supra) and hold that membership of a family confers, or is the same as, family status; and on that ground to set aside the judgment of the lower court in this case as being erroneous. I do not accept that the lower court erred on the issue. It followed the decision of this court of which no other option was open to it as long as the decision remains the law on the point.

It is true that this court is entitled to depart from or overrule its earlier decision when called upon to do so in an appropriate situation. It will have to be convinced to take that course if it is shown (1) that the previous decision is clearly wrong and there is a real likelihood of injustice being perpetuated: see Bucknor-Maclean v Inlaks Ltd (1980) 8-11 S.C. 1; or (2) that the previous decision was given per incuriam: see Odi v Osafire (1985) 1 NSCC 14; (1985) 1 NWLR (pt. 1) 17; or (3) that a broad issue of public policy was involved: see Bronik Motors Ltd v. Wema Bank Ltd (1983) 5 SC 158; (1983) 14 NSCC 226 citing Jones v. Secretary of State (1972) 1 All ER 145 at 149 per Lord Reid. I find that the invitation to this court to overrule Adeyemi v. Opeyori (supra) has no merit. I accordingly answer the first issue in the negative.

D Second Issue:

This issue relates to the provisions of s. 10 of the High Court Law (Cap. 44) vol. 11, Laws of the Ogun State, 1978. The said section reads:

"10. (1) To the extent that such jurisdiction may be conferred by the State Legislature, the jurisdiction by this Law vested in the High Court shall include all the civil jurisdiction which at the commencement of this Law was, or at any time afterwards may be exercisable in Ogun State for the judicial hearing and determination of matters in difference, or for the administration or control of property and persons, and also all the criminal jurisdiction which at the commencement of this Law was, or at any time afterwards may be there exercisable for the repression or punishment of crimes or offences or for the maintenance of order; and all such jurisdiction shall be exercised under and according to the provisions of this Law and not otherwise:

Provided that, except in so far as the Governor may by Order in Council otherwise direct and except in suits relating to the administration of intestate estates, transferred to the High Court under the provisions of section 30 of the Customary Courts Law, the High Court shall not exercise original jurisdiction in any matter which is subject to the jurisdiction of a customary court relating to marriage, family status, guardianship of

children and inheritance or disposition of property on death.

(2) *The jurisdiction of the High Court shall include such jurisdiction as may be vested in it by Federal Law.*"

To the extent that the above-quoted section of the High Court Law tends to limit the jurisdiction of the High Court of Ogun State, the lower court held that it was in conflict with s. 236 (1) of the 1979 Constitution, then applicable, and therefore null and void. The result was that it held that the High Court had jurisdiction to entertain the action. As Sulu-Gambari JCA put it in regard to the said s. 236(1):

"Being a provision of the Constitution, any law particularly law of a State which is in conflict with it becomes null and void and that the provision of section 10 (1) of the Ogun State High Court Law to the extent that it seeks to limit the jurisdiction of the High Court as provided by section 236 of the 1979 Constitution is of no effect; and that the High Court had jurisdiction to determine the case as it did."

There is no doubt in my mind that the learned Justice was right. The court below had the authorities of this court to guide it in reaching that decision.

Section 236 (1) of the 1979 Constitution conferred unlimited jurisdiction on the High Court of a State in these words:

"236. (1) Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person."

The provision in s. 10(2) of the High Court Law of Ogun State should not be lost sight of. It acknowledges that the jurisdiction of the High Court shall include such jurisdiction as may be vested in it by Federal Law. The 1979 Constitution was promulgated by a Federal Act known as the Constitution of the Federal Republic of Nigeria (Enactment) Act,

1978: see laws of the Federation of Nigeria 1990, Vol. IV, Cap. 62, page 2329. It will be clear from that that even s. 10 of the High Court of Ogun State contradicts itself in the manner it purports to limit the jurisdiction given to the High Court by a Federal Act.

B However, this court had in Bronik Motors Ltd v. Wema Bank Ltd (supra) declared that it was the 1979 Constitution that conferred unlimited jurisdiction on the High Court of a State and not the State Law. As Obaseki JSC put it [see (1983) 14 NSCC at p. 266]:

C *"An examination of the provisions of the 1979 Constitution reveals that the Constitution has been positive and clear, and loud not silent or secretive in the language used in granting jurisdiction to the courts it has created and the courts to be created by law passed by a State House of Assembly It is the people of the Federal Republic of Nigeria who granted unlimited jurisdiction to the High Court they established for the State and not the people of the State."*

What this means or must imply is that no State can take away the jurisdiction conferred by the entire Federation on State High Courts. **The decision in Bronik Motors case (supra) was firmly that the State High Courts had unlimited jurisdiction to hear and determine any cause or matter unless specifically precluded by the Constitution or any other appropriate enactment as long as it retains its potency (such as a Decree) from exercising such jurisdiction. This was reiterated in Savannah Bank of Nigeria Ltd v Pan Atlantic Shipping & Transport Agencies Ltd (1987) 1 NWLR (pt. 49) 212; (1987) 1 S.C. 198; (1987) 18 NSCC (pt. 1) 67, particularly at pages 81-84, where Coker JSC who read the leading judgment observed at 83:**

G *"The question now is: Whether section 8(1) of the Federal High Court Act still retains the potency of a Decree which until the 1979 Constitution has superior force than (sic) the then Constitution? Is it a valid existing provision of the Act as defined in section 274 (1) (a) having H regard to the unlimited jurisdiction conferred on State High Courts by section 236 of the Constitution. Put differently, can an Act of the National Assembly overrule a specific provision of the Constitution? Section 1 (3) of the Constitution says in such a case the Constitution shall*

prevail over the inconsistent provision of the Act or Law."

This court then reached the conclusion that the Federal Revenue Act, 1973 having lost the pre-eminence it had when a Decree [which pre-eminent position was held it had got by this court in American International Insurance Co. Ltd v. Ceekay Traders Ltd (1981) 5 S.C. 81 before the coming into force of the 1979 Constitution] was incapable of excluding the jurisdiction of State High Courts; and therefore to the extent that it still purported to do so was in conflict with the 1979 Constitution and void. I must therefore hold, a fortiori, that the proviso to s. 10(1) of the High Court Law of Ogun State purporting to limit the jurisdiction of the High Court is unconstitutional and therefore, to the extent of its conflict with the 1979 Constitution, is void. The second issue is accordingly answered in the negative.

Third Issue:

The argument of the appellants in respect of the third issue is that had the learned trial judge approached the evaluation of the evidence properly, he would have come to the conclusion that they were descendants of Oresolu. They underpinned the instances they cited in their brief of argument on what Sulu-Gambari JCA observed that:

"Even though the method of approach invoked by the learned trial judge may not be orthodox and much heavy whether had been made by the learned counsel for the appellants in criticizing the approach of the learned trial judge, I do not see and it has not been established before us that there has occasioned a miscarriage of justice by the unacceptable approach (which is alleged) of the learned trial Judge. This is therefore not an occasion in which I feel bound to interfere with the findings of facts of the learned trial judge."

The appellants then went on to contend that the learned Justice "having himself admitted that the approach of the learned trial judge in evaluating the evidence was unorthodox and unacceptable, ought to have exercised extreme care before coming to the conclusion that in so doing, the judgment of the learned trial Judge did not occasion a miscarriage of justice."

The learned Justice of the Court of Appeal, as can be observed,

did not condemn the method of approach of the learned trial judge which he thought 'may not be orthodox' but he indeed said it did not occasion a miscarriage of justice. Even the phrase 'unacceptable approach' contained in the observation of the learned Justice merely repeated the appellants' counsel's tag on the learned trial judge's approach. That is indicated by the learned Justice in parenthesis. He did not himself make or adopt that stricture. I think on the present issue, the essential focus should be on whether the learned trial judge made proper findings and reached the correct judgment upon the facts before him. It is not the method or approach that necessarily determines those ends. As I understand it, so long as a judge does not arrive at his judgment merely by considering the case of one party before considering the case of the other, his judgment, if right, will not be set aside simply on the method of assessment of the evidence or approach to the entire case he may have adopted. It can be no cause for worry that different judges adopt varied approaches. There are those who may even begin with the defence case: see Woluchem v. Gudi (1981) 5 S.C. 291 at 294 per Idigbe JSC. And they may be able to properly cope with that approach provided it is always remembered that it is the plaintiff who must prove his case on the balance of probabilities. **What therefore to watch out for in a standard judgment are: (1) Are the parties to the case appropriately stated? (2) Is the nature of the claim and cause of action known and considered? (3) Have the issues in controversy been appreciated and dealt with? (4) Has the evidence been properly received, and every relevant aspect thereof evaluated and given its probative value? (5) Have findings supported by the evidence been made and conclusions in fact and in law drawn? (6) Has the accepted and treated evidence on both sides (if a civil case) been put on either side of the imaginary scale to see to which side it tilts favourably? (7) Has verdict or decision been reached, judgment given and consequential orders, where necessary, made? All these matters can be found in a combination of such authorities as Polycap Ojogbue v. Ajie Nnuba (1972) 1 All NLR (pt. 2) 226 AT 232; Mogaji v. Odofin (1978) 4 S.C. 91 at 93; Bello v. Eweka (1981) 1 S.C. 101 at 119; woluchem v**

Gudi (supra) at 294, 306, 309; Ezeoke v. Nwagbo (1988) 1 NWLR (pt. 72) 66; (1988) 1 NSCC 414 at 424; Duru v. Nwosu (1989) 4 NWLR (pt 113) 24 at 35-36; 54-55.

Now, to some of the specific instances criticized by learned counsel for the appellants in the judgment under consideration. First, it was B contended that the account of the 1st and 2nd respondents as to how the chieftaincy title of Olisa was brought from Ile-Ife contained 'incongruity' which should have alerted the learned trial judge and the court below to 'consider the improbability of an Olisa and the King of Ife for that matter C merely leaving their domain for another for no apparent reason.' The aspect of the evidence of P.W.1, Adebayo Akilo, was quoted in the brief as follows:

"In Ijebu custom including Remo, it is the custom that the Olisa D is next in rank to the Oba. Ogunkan was Olisa to Oba Osoribiya in Ile-Ife. Osoribiya and Ogunkan left Ile-Ife together I do not know what led to Osoribiya and Olisa Ogunkan leaving Ile-Ife."

Although to the well initiated in the Ijebu custom, it may sound improbable, as contended by appellants' counsel, that a reigning Oba and his E next in rank would migrate from Ile-Ife, what would make it so was not borne out by the evidence. That means that anyone who may have to decide that issue on what is available in the record of proceedings cannot justifiably be influenced by such improbability. The 1st p.w. gave that F evidence reproduced above in cross-examination. However, the evidence in fuller detail does not relate to a reigning Oba but to a prince of Ile-Ife because the portion of that evidence which was omitted from the quotation reads: "Osoribiya was a prince in Ile-Ife. Osoribiya is senior to Olisa G It is true that on the emigration of a prince, he has to migrate with an emblem of his father to show that he is a prince." I can see nothing improbable in a prince migrating from his father's kingdom with a chief to somewhere else.

The second contention was that "it is incredible and most highly H improbable that a man would 'take' a title from the cradle of the Yoruba Kingdom to a small village, and keep the title in the air just like that." I do not understand the aspect that the title was kept in the air. The evidence-

in-chief on the point reads: "The first Olisa is Ogunkan. He hailed from Ile-Ife. He came to settle at Agbele. Agbele is where Osoribiya and Ogunkan first settled. Agbele is in Makun. Ogunkan brought the chieftaincy title of Olisa to Makun from Ile-Ife. Oresolu was the Olisa of Makun. He was the first Olisa to be installed in Agbele, Makun." This is clear enough. What appeared to be a contradiction as to who was the first Olisa to be installed must be read against the averments in paras. 2 and 3 of the amended statement of claim which read:

"2. *Ogunkan hailed from Ile-Ife from where he originally brought the chieftaincy title of Olisa. This Ogunkan was the father of Oresolu the first Olisa to be installed at (Agele) Makun, Sagamu.*

3. The first ever Olisa of Makun, Sagamu, was Oresolu, who reigned about 200 years ago."

It thus appears that Ogunkan was not installed Olisa but claimed the chieftaincy title by right having brought it from Ile-Ife. But his son Oresolu was the first to be installed Olisa after his father Ogunkan died. This seems even to fit reasonably into the averment in para. 46 of the 1st and 2nd defendants/appellants' statement of defence that Oresolu was appointed and installed by Osoribiya as his first Olisa in Agbele, Makun. That was what the lower court held from the evidence, and I think with some justification, to affirm the finding of the trial court that Ogunkan the father of Oresolu migrated from Ile-Ife to Agbele bringing the Olisa chieftaincy title with him.

Other criticisms by appellants' counsel of the judgment of the lower court were based broadly on the argument that the appellants' case was more credible than that of the respondents. The marshalling of the argument may have been painstaking but I do not consider the criticisms to be sufficient to fault the concurrent findings of fact of the two courts below having regard to the evidence. The trial court was faced with two conflicting versions of evidence adduced by both sides. It considered different aspects of the evidence and preferred the case of the plaintiffs/respondents. I cannot find that those findings are perverse. I think and am satisfied that the lower court acted within principle not to interfere with those findings:

See Omoregie v. Edo (1971) All NLR 282; Ebba v. Ogodo (1984) 1 SCNLR 372; Chukwueke v. Nwankwo (1985) 2 NWLR (pt. 6) 195; Ajuwa v. Odili (1985) 2 NWLR (pt. 9) 710; Fatuade v. Onwoamanam (1990) 2 NWLR (pt. 132) 322. **Where there have been concurrent findings of the two lower courts, this court makes it a policy not to disturb them unless special circumstances exist to warrant interference. Such special circumstances include perverse findings, error in procedural or substantive law occasioning a miscarriage of justice: see Chinwendu v. Mbamali (1980) 3-4 S.C 31; Onwuka v. Ediala (1989) 1 NWLR (pt. 96) 182; Adebayo v. Ighodalo (1996) 5 NWLR (pt. 450) 507; Ivienagbor v. Bazuaye (1999) 9 NWLR (pt. 620) 552.**

I find no merit in this appeal and accordingly I dismiss it. I award costs of N10,000.00 in favour of the respondents against the 1st and 2nd appellants.

UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother Uwaifo, JSC. I entirely agree that the appeal lacks merit.

I accordingly dismiss the appeal with N10,000.00 costs to the respondents.

BELGORE JSC

I agree that this appeal has no merit. The wording of section 236(1) is clear and read with section 10 High Court Law of Ogun State (Cap. 44 Volume III), the High Court of Ogun State has unfettered jurisdiction to try this matter. Succession to chieftaincy title based on family rights simply connotes the person to succeed to a family title must belong to the family concerned. Status in that family relates to the hierarchy or right to succeed to the seat in that family. Therefore as it is clear on the findings of the lower courts that the appellant does not belong to a ruling house, Olisa, he has not acquired the status of contesting for Olisa

title and he is not a member of Olisa Makun family.

I therefore agree with the fuller reasons of my learned brother, Uwaifo, JSC., whereby he concluded that there is no merit in this appeal. I also dismiss the appeal with N10,000.00 costs against the appellants in
B favour of the respondents.

KUTIGI JSC

I read in advance the judgment just rendered by my learned
C brother Uwaifo, J.S.C. He has thoroughly dealt with the issues raised in the appeal and I agree with his reasoning and conclusions. The Court of Appeal was right to have followed the decision of this court in ADEYEMI V. OPEYERI (1976) 9-10 SC. 31 which the learned counsel for the de-
D fendants/appellants has been unable to show why we should overrule it. I will also dismiss the appeal with costs as assessed.

OGUNDARE JSC

E I have read in advance the judgment of my learned brother Uwaifo JSC just delivered. I agree with him that this appeal is lacking in merit. I too have no hesitation in dismissing it. I wish however, to add a few
F words of my own.

The facts have been fully set out in the judgment of my learned brother Uwaifo JSC, I do not need to go over them again. Three questions have been placed before us; they are

G *"1. Whether the court below was not in error when it held that the claim of the plaintiffs/respondents was not in the main and in substance one for the determination of an issue of family status.*

*2. Whether the court below was not in error when it held that in the circumstances of this case, the High Court has original jurisdiction to
H entertain the suit.*

3. Whether the court below was not in error when it held in effect that the judgment of the trial court was not unreasonable having regard to the evidence led in the case."

As question 2 raises the issue of jurisdiction I think it is the one to be considered first as it goes to the root of the proceedings in the trial Court.

The contention of the Appellants is to the effect that section 10 (1) of the High Court Law of Ogun State prohibits the High Court of Ogun State from exercising original jurisdiction in matters pertaining to family status and that the matter on hand being one of family status, the trial High Court would have no original jurisdiction and that, therefore, the proceedings before that Court were a nullity. B

For the Respondents it is submitted that the proviso to section 10(1) which ousts the original jurisdiction of the High Court is inconsistent with section 236 (1) of the Constitution of the Federal Republic of Nigeria 1979 and that, therefore, that proviso is void. C

I will begin by observing that the action leading to this appeal was commenced in Ogun State High Court in February 1981 and that the law determining the jurisdiction of a State High Court at the time was the Constitution of the Federal Republic of Nigeria 1979. Before I go further, let me set out at this stage the provisions of the Constitution and the High Court Law relevant to the determination of the question now under consideration: D E

"Section 1(3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void." F

"Section 4(8) Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law; and accordingly, the National Assembly or a House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law." G

"Section 236(1) Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim H

is in issue or to hear and determine any criminal proceedings involving or relation to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person."

and Section (10)(1) of the High Court Law: "To the extent that such jurisdiction may be conferred by the state Legislature, the jurisdiction by this Law Vested in the High Court shall include all the civil jurisdiction which at the commencement of this Law was, or at any time afterwards may be exercisable in Ogun State for the judicial hearing and determination of matters in difference, or for the administration or control of property and persons, and also all the criminal jurisdiction which at the commencement of this Law was, or at any time afterwards may be there exercisable for the repression or punishment of crimes or offences or for the maintenance of order; and all such jurisdiction shall be exercised under and according to the provisions of this Law and not otherwise:

Provided that, except in so far as the Governor may by Order in Council otherwise direct and except in suits relating to the administration of intestate estates, transferred to the High Court under the provisions of section 30 of the Customary Courts Law, the High Court shall not exercise original jurisdiction in any matter which is subject to the jurisdiction of a customary court relating to marriage, family status, guardianship of children and inheritance or disposition of property on death."

No doubt the proviso to section 10(1) ousts the original jurisdiction of the High Court of Ogun State from entertaining the matters therein mentioned including one relating to family status. Section 236(1) gave the High Court of a state, subject to the provisions of the Constitution, unlimited jurisdiction to hear and determine any civil proceedings. What the proviso to section 10(1) of the High Court Law of Ogun State purports to do is to derogate from the jurisdiction conferred on the High Court of Ogun State by section 236(1) of the 1979 Constitution. Being a State Law, that it cannot do. The proviso is clearly inconsistent with the clear provisions of section 236(1) and to the extent of the inconsistency, it is void - see section 1 (3) of the 1979 Constitution set out above. The High Court Law of Ogun State is, by virtue of section 274(1) of the 1979

Constitution an existing law deemed made by the House of Assembly of Ogun State. By virtue of section 4 (8), the House of Assembly of a State had no power to enact any Law that ousted or purported to oust the jurisdiction of a Court of law. The conclusion I reach, therefore, is that the proviso to section 10(1) of the High Court Law of Ogun State is null and void. Being void, therefore, the contention of the Appellants that the trial High Court had no original jurisdiction in this matter is untenable and I reject it. That Court properly exercised the jurisdiction vested in it by section 236(1) of the 1979 Constitution.

In view of the conclusion I have now reached, the question whether the matter on hand raises a question of family status which is the question posed in Question (1) no longer, in my respectful view, arises for determination in this appeal. I say this because the proviso to section 10(1) of the High Court Law being a nullity, this Court, or any Court for that matter, cannot be seen to be construing it or defining words and phrases therein contained. It would amount to a mere academic exercise which this Court, or any other Court, would not, and should not, indulge in. In my respectful view, the purpose of adjudication cannot be justified on anyone's academic satisfaction. True enough, this Court has been invited by the Appellants to overrule its decision in Sam Adeyemi & Ors. v. Emmanuel Opeyori (1976) 9-10 SC. 31 and this call necessitated the impaneling a Full Court to hear the appeal, this is no reason, in my humble view, why the Court should proceed with the determination of Question (1) in the light of the decision that the proviso to section 10(1) of the High Court Law (the main issue in the case) is unconstitutional, null and void. A court (particularly the final court) does not embark on an academic exercise for the sake of it. Once it is apparent that an issue placed before it is no longer necessary for the proper determination of the case, that issue is left for another day when it may properly arise for determination. In Adeyemi v. Opeyori (supra) the definition of the phrase "family status" was a live issue and this Court dealt with it. In the instant appeal the definition of that phrase, is no longer a live issue in that the proviso in which it occurs has been found to be unconstitutional, null and void; it has become otiose.

In respect of Question 3 the concurrent findings of fact made by the two Courts below are, in my view, adequately supported by the credible evidence on record. The Appellants have failed to satisfy me that these findings are perverse. I can see no justification for interfering with the conclusions reached by the courts below. The criticism of the method of writing judgment by the trial Judge is, to me, untenable. The method adopted has not, in my view, resulted in a miscarriage of justice. I find no substance in the criticism.

Finally I too dismiss the appeal with N10,000.00 costs to the Respondents against the 1st and 2nd Appellants.

MOHAMMED JSC

I agree with the opinion of my learned brother, Uwaifo JSC. in the judgment just read that this appeal has failed. It is plain, going through the totality of the evidence adduced before the trial court that the claim of the respondents is one of family membership simpliciter. Their argument is that only members of Oresolu family are entitled to become the Olisa of Makun.

"Family Status" means social and legal position of an individual to the rest of the members of the family. Thus one has to be a member of a family before acquiring a status within the family. The decisions of this court in Adeyemi v. Opeyori (1976) 9 - 10 SC. 31 and Arnold Nwafia v. Nwanakwulo Ububa (1966) N.M.L.R. 219 are still firm decisions.

The application urging this court to review or depart from its earlier decision must be supported by a very convincing reason showing that some other ground has been established justifying the reversal of the earlier decision. The appellants have failed to establish such a ground.

The appellants have also failed to impeach the concurrent findings of the two lower courts on the evaluation of the evidence. The court will not interfere in such circumstances unless it has been shown that the concurrent findings have occasioned a miscarriage of justice or that such findings are perverse and cannot be supported having regard to the evidence. David Dawodu Lukoyi & Ors. v. Emmanuel Babalola Olojo

(1983) All NLR 461.

This appeal has failed and it is dismissed. I affirm the decision of the court below. I award N10,000.00 costs in favour of the respondents.

B

EJIWUNMI JSC

I have had the privilege of reading before now, the judgment just delivered by my learned brother, Uwaifo, JSC, dismissing this appeal. I also agree that the appeal lacks merit and would dismiss it also. However, I wish to say a few words of my own.

C

At the Ijebu Ode High Court presided over by Delano J, (as he then was), the Respondents sought for the following reliefs against the 1st and 2nd appellants:-

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"(i) A declaration that they or any member of their respective families are not entitled to be nominated, approved and/or appointed to the Chieftaincy post of Olisa of Makun, Sagamu, as they are not members of Oresolu family.

E

(ii) A declaration that the 3rd, 4th and 5th defendants/appellants perpetual injunction restraining them from ever recognizing, approving, appointing and/or gazetting either of the 1st and 2nd defendants or anyone from their families, as the Olisa of Makun, Sagamu."

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Following the exchange of pleadings the parties called evidence in support of their respective positions in the matter. The learned trial Judge after hearing the addresses of counsel appearing for the parties delivered a reserved judgment. By that judgment, the learned trial Judge upheld the claim of the plaintiffs with the following declaration:-

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"It is hereby declared that Efuwape Okulate and Olanrewaju Ogundipe or any member of their respective families are not entitled to be considered for the Chieftaincy stool of the Olisa of Makun, Shagamu as they are not members of Oresolu Olisa family. It is also ordered that the Governor, Ogun State of Nigeria and the Ijebu Remo Local Government or any other person acting through them be restrained from considering the said Efuwape, Okulate and Olanrewaju Ogundipe or any mem-

H

ber of their respective families for the vacant stool of Makun, Shagamu."

As the defendants/Appellants were dissatisfied with the judgment of the trial Court, they appealed to the Court of Appeal and their appeal was unsuccessful. In the court below, Sulu Gambari, JCA, in the course of his judgment, dismissing the issue raised as to whether the trial court had jurisdiction vis-a-vis, section 10(1) of the Ogun State High Court Law and Section 236(1) of the 1979 constitution to hear and determine the claim before it, said, inter alia, thus:-

"..... Being a provision of the Constitution any law particularly law of a State which is in conflict with it becomes null and void and that the provision of section 10(1) of the Ogun State High Court Law to the extent that it seeks to limit the jurisdiction of the High Court as provided by section 236(1) of the 1979 Constitution is of no effect; and that the High Court had jurisdiction to determine the case as it did."

His Lordship also held himself bound by the decision of this court in Adeyemi v. Opeyori (1976) 9/10 SC. 31 when he said thus:-

"It is my view that the question as to whether a person belonged to a particular family has nothing to do with 'family Status'. An example of issue of family status is where it is to be determined whether a person is the Mogaji or head of a family and it is clear that when an action is brought to determine whether a defendant is a member of a particular family or not, it is not a question of family status. The Supreme Court in the case of Adeyemi v. Opeyori (1976) 9/10 SC. 31 has settled the matter of what amounts to issue of family status. In that case, the supreme court endorsed the view expressed in the dissenting judgment of Akinkugbe, JCA (As he then was) which reads as follows:-

"In my view on a broad general view as observed in Delesolu's case (i.e. Delesolu v. Latunde CAW/85/71) whenever the question of family status arises it presupposes the fact that the person whose status is called in question has been accepted as a member of that family'."

As the appellants were not satisfied with the judgment of the Court below, they have appealed to this Court. Pursuant thereto, seven grounds of appeal were filed. Based upon them three issues were set down in the appellants' brief for the determination of the appeal. They

read thus:-

"(1) Whether the Court below was not in error when it held that the claim of the plaintiffs/respondents was not in the main and in substance one for the determination of an issue of family status;

(2) Whether the Court below was not in error when it held that in the circumstances of this case, the High Court has original jurisdiction to entertain the suit;

(3) Whether the Court below was not in error when it held in effect that the judgment of the trial court was not unreasonable having regard to the evidence led in the case."

I do not consider it necessary to relate the facts in this judgment, as they have been fully reviewed in the lead judgment of my learned brother Uwaifo, JSC. At the hearing before us, and in their brief, learned counsel for the appellants has invited this Court to over-rule the judgment of this Court in Adeyemi v. Opeyori (supra).

The appellants in this appeal are seeking the intervention of this Court on account of the decision of the Court of appeal that the respondents' claims against the appellants did not raise the issue of family status. In the view of the Court below the question raised in the appeal was whether the appellants are members of the Oresolu family or not. In that regard, Sulu Gambari, JCA, considered as binding the decision in Adeyemi Opeyori (supra) and to which I have already adverted to above.

It is manifest that the thrust of the submission of learned counsel for the appellants before us and in their Brief of Argument appears to be that if the Court is persuaded that the claim raised an issue of 'family status', then the High Court had no jurisdiction to hear the matter by virtue of the provisions of Section 10(1) of the High Court Law of Ogun State. The said provisions read inter alia thus:-

"Section 10(1) of the High Court Law: To the extent that such jurisdiction may be conferred by the State Legislature, the jurisdiction by this Law vested in the High Court shall include all the civil Jurisdiction which at commencement of this law was, or at any time afterwards may be exercisable in Ogun State for the Judicial hearing and determination of matters in difference, or for the administration or control of property

and person, and also all the criminal jurisdiction which at the commencement of this law was, or at any time afterwards may be there exercisable for the repression or punishment of crimes or offences or for the maintenance of Order; and all such jurisdiction shall be exercised under and
 B *according to the provisions of this law and not otherwise;*

Provided that, except in so far as the Governor may by Order in Council otherwise direct and except in suits relating to the administration of intestate estates, transferred to the High Court under the provisions of
 C *section 30 of the Customary Courts Law, the High Court shall not exercise original jurisdiction in any matter which is subject to the jurisdiction of a Customary court relating to marriage, family status, guardianship of children and inheritance or disposition of property on death."*

In order to sustain that contention, their learned counsel, Mrs.
 D J.B. Aremu, advanced before this Court the argument that the High Court of Ogun State, by virtue of the provisions of s. 10(1) of the Ogun state High Court Law is precluded from hearing the claim. Though learned
 E counsel for the appellants conceded it that the intendment of the Constitution is that the High Court has unlimited jurisdiction to hear and determine any civil proceedings, yet, it is argued for the appellants by their
 F learned counsel that the said unlimited jurisdiction is subject to such other limitations as may have been imposed by the constitution. One of such
 limitations, in the view of learned counsel, is where a Court is created by
 a State to exercise jurisdiction in local matters, as for example, in customary and personal matters provided such exercise is subordinate to
 that of the High Court.

It is further argued for the appellants that the phrase "subject to
 G the provisions of this Constitution" is inserted at the beginning of section 236 (1) of the Constitution of 1979 to ensure that the High Court does not claim jurisdiction to the exclusion of the other Courts created by the
 Constitution, such as the Sharia Court of Appeal and the Customary Court
 H of Appeal. It is therefore submitted for the appellants that if the interpretation put on the provision of section 236(1) of the Constitution by the Court below were held to be correct, then such Courts as the Customary Courts, the Area Courts, the Customary Court of Appeal and the Sharia

Court of Appeal would be denied the right to adjudicate over matters for which they were created.

The learned counsel for the respondents, B. O. Benson, Esq, SAN, both in the brief filed for the respondents and at the hearing of this appeal has argued that the contention made for the appellants be rejected. B It is his submission that the interpretation placed on the provisions of section 236(1) of the Constitution of 1979 by the Court below be upheld as the correct position of the jurisdiction vested in the High Court by the Constitution of 1979.

The provisions of Section 10(1) of the Ogun State High Court C which the Court construed in relation to the provisions of Section 236 (1) of the Constitution of 1979, have already been set out. But I need to set out the provisions of Section 236(1) (supra) and other pertinent observations of the Constitution which in my view go to show that the D Court below was undoubtedly right in its view on the unlimited jurisdiction of the High Court of Ogun State.

"Section 1 (3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other E law shall to the extent of the inconsistency be void."

Section 4(8) Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to jurisdiction of Courts of Law and of Judicial tribunals established by law; and accordingly, the National Assembly or a House of Assembly shall not enact any law that ousts or purports F to oust the jurisdiction of a Court of law or of a judicial tribunal established by law."

Section 236(1) Subject to the provisions of this Constitution and G in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall determine any civil proceedings in which the existence or extent of a legal right, power duty liability, privilege, interest, obligation or claim is in issue or to hear and determine any H criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of and offence committed by any person."

There is no doubt that it is settled law that when interpreting the provisions of the Constitution, all its provisions must be read together. See Abraham Adesanya v President of the Federal Republic of Nigeria & Anor (1981) 2 NCLR 358 at 374. Applying that principle to the case in hand, I cannot, and with due respect to the learned counsel for the appellants, agree with his view that the provisions of Section 10(1) of the Ogun State High Court Law have the effect of curtailing the clear provisions of section 236(1) of the Constitution which vested unlimited jurisdiction in the High Courts of a State. The argument that if the conclusion reached by the Court below as to the unlimited jurisdiction vested in the High Courts is upheld, then such a decision would affect the jurisdiction of such Courts as the Sharia Court of Appeal, the Customary Court of Appeal is with due respect misconceived. These courts being creations of the Constitution, cannot be so affected. The phrase in the provisions of Section 236(1) which says "Subject to the provisions of the Constitution" was inserted in the section to emphasize that only the provisions in the Constitution can affect the unlimited jurisdiction of the High Courts. It cannot be argued that the said provisions of Order 10(1) of the Ogun State High Court Law is any where a part of the Constitution of 1979. The fact that the Constitution created the High Courts of a State does not in my humble view empower any of the States of the Federation to make any law that conflicts with the provisions of the Constitution. The tail cannot be seen to be wagging the dog. It follows from what I have said above that the court below was right to have held that the High Court is entitled to take, hear and determine any issue brought for determination by a litigant in exercise of his legal right.

And in the instant case, the claim that was before the Court was inter alia, a declaration that the appellants' family or any member of their respective families are not entitled to be nominated, approved and/or appointed to the Chieftaincy post of the Olisa of Makun, Sagamu as they are not members of Oresolu family. The learned judge after due consideration of the evidence led at the trial made the declaration in favour of the respondents. That finding was affirmed by the Court below. It is my view that the Court below was right to have upheld that judgment of the

trial court. In my humble view, the argument advanced for the appellants by their learned counsel, though attractive, has not persuaded me to the contrary. It is also my humble view from what I have said above, that the trial court had the necessary competence to hear and determine the claim. In this regard it must be borne in mind that it is settled law that it is the claim before the court that has to be looked at or examined to ascertain whether or not a Court is possessed with the jurisdiction to hear and determine a matter before it. See Izenkwe v. Nnadozie 14 WACA 362 at 363; Adeyemi & Ors. v. Opeyori (1976) 9-10 SC 31 at 51; Tukur v. Government of Gongola State (1989) 4 NWLR (pt. 117) 517 (1989) ALL NLR 579 at 599; and Egbuonu v. B.R.T.C. (1997) 12 NWLR (pt. 531) 21 at 43.

I will therefore also dismiss this appeal for the above reasons and the fuller reasons given in the leading judgment of my brother Uwaifo, JSC. I also award costs of N10,000.00 in favour of the respondents.

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