

SUPREME COURT OF NIGERIA
15TH DECEMBER, 2000. SC. 126/1997
CORAM:- S. M. A. BELGORE, I. L. KUTIGI,
U. MOHAMMED, O. ACHIKE, E. O. AYoola, JJSC.

EZE LAMBERT OKOYE AKUNEZIRI APPELLANT
AND
1. CHIEF P. D. C. OKENWA
2. THE MILITARY GOVERNOR OF
IMO STATE
3. THE ATTORNEY-GENERAL, RESPONDENTS
IMO STATE
4. COMMISSIONER FOR LOCAL
GOVERNMENT IMO STATE

***APPEALS** - Grounds of appeal - Impeachment of grounds of facts or mixed law and facts - Must be specifically pointed out by counsel - The court has no duty to pick and choose which grounds to impeach.*

***APPEALS** - Separate appeals - Withdrawal of one appeal - Does not terminate second appeal - Once appellant is affected by the decision.*

***APPEALS** - Withdrawal - That is deemed dismissed - Is not a judgment on the merit.*

***CHIEFTAINCY MATTERS** - Appointment and Recognition of Chiefs - Are matters for community and State Governor respectively.*

***CHIEFTAINCY MATTERS** - Removal of chief - The authority to remove a traditional ruler is the governor.*

***CHIEFTAINCY MATTERS** - Traditional ruler - Withdrawal of recognition - Can be exercised by the governor - Without the Commissioner's advice.*

CHIEFTAINCY MATTERS - *Withdrawal of recognition - Was rightly exercised by governor under s.9 of the law.*

CHIEFTAINCY MATTERS - *Recognition - Withdrawn by governor after due consideration - Is appropriate.*

INJUNCTIONS - *Failure of - Appeals - Injunction will fail if ancillary declaration on which it is based is set aside on appeal.*

FACTS

The 1st respondent was selected by the Ihitenansa Autonomous Community in 1978 as their Traditional Ruler and was subsequently issued with a certificate of recognition by the Imo state Government as stipulated by law. Following various acts of breach of the chieftaincy constitution of Ihitenansa Autonomous community, a vote of no confidence was passed on the 1st respondent and he was removed by the community who selected the appellant as their new traditional leader and presented him to the government for recognition.

The Imo State government in reaction set up a panel - the justice Ojiako Chieftaincy/Autonomous community panel of inquiry to look into disputes relating to chieftaincy/Autonomous communities in the state. The commission investigated the allegations against the 1st respondent and submitted its report to the government. On the basis of the report the government withdrew its recognition of the 1st respondent in 1981. The 1st respondent therein filed a suit at the High Court of Imo state seeking amongst other things that he is still the recognized traditional ruler of the community, his removal being unlawful, null and void, and an injunction restraining the appellant from holding himself out as traditional ruler of the community. The trial judge dismissed the claims and the 1st respondent appealed to the court of appeal who gave judgment in his favour and granted him the reliefs sought. The appellant has consequently appealed to the supreme court raising the following issues for determination.

ISSUES FOR DETERMINATION

"1. Whether the Government had power under the Imo State Chieftaincy Law to withdraw recognition from the plaintiff as traditional ruler of Ihitenensa.

2. If the answer to question 1 is in the affirmative, under which particular provisions of the Imo State chieftaincy Law No. 22 of 1978 can the decision of the Governor to withdraw or to grant recognition be supported.

3. Was the court below correct in making the declaration that "the removal of the plaintiff/respondent as the traditional ruler of Ihitenensa autonomous community and the withdrawal of his recognition as such by the Imo State Government is contrary to the Imo State Chieftaincy law No. 22 1978 and the said withdrawal is therefore null and void and of no effect whatsoever.

4. Whether the court below was correct in making order for injunction against the 4th respondent.

5. Whether the court below was correct in law in its criticism of the constitution or contents of the Ojiako panel".

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

Separate appeals

1. With respect to the submission of learned counsel for the 1st respondent on this issue it must be observed that there were two separate appeals filed against the decision of the court of appeal. If one appellant withdraws his appeal and it is dismissed, the second appellant has the constitutional right to prosecute his appeal. It is axiomatic that the appellant would be affected by the decision of the court of appeal. A party to an appeal must be a person exercising the right of appeal to the Court of Appeal who is named in the record or a person having "an interest" in the proceedings which term would include a person affected or likely to be affected, or aggrieved or likely to be aggrieved by the proceedings. See Akande V. General Electric Ltd. (1979) 3 - 4 S. C. 115. The appellant is indeed aggrieved by the decision of the court of appeal. He has exer-

cised his right in filing this appeal because he is the central figure in the dispute leading to this appeal. (p. 3342 G)

Appeals - Withdrawal

B 2. Where there is a withdrawal of the appeal, as the 2nd 3rd and 4th appellants had done, it can safely be said that the resultant position is as if there was never an appeal filed by the appellant. Under order 8 rule 5 of Supreme Court Rules 1985, as amended, an appeal which has been withdrawn shall be deemed to have been dismissed. The judgment dismissing the appeal withdrawn is not a judgment on the merits. Thus, the withdrawal of the appeal filed by the 2nd, 3rd, and 4th respondents, in this case and the consequential dismissal of the appeal by this court has no bearing whatsoever on the appellant's appeal. The withdrawal of the D appeal can only be regarded as if the 2nd, 3rd and 4th respondents had never filed an appeal against the decision of the court of appeal, in this case. See Nkanu V. The State (1980) 3 - 4 S. C. (p. 3343 B)

Appeals - Grounds of appeal

3. Learned counsel for the 1st respondent, Mr. Amaechina, has not advanced any reason to show which of the three grounds is a ground of facts and which is of mixed law and facts. I am not to pick and choose F for the learned counsel. He must be specific and point to the ground of appeal which he wants to impeach. It is not for the court to do the exercise for him. However, having read through all the grounds I am quite satisfied that they are all grounds of law. The Preliminary objection has therefore failed and it is dismissed. (p. 3343 G) G

Appointment and recognition of chief

4. Chief Williams submitted, quite rightly, that under the Chieftaincy law the appointment or selection of the Chief is a matter for the community H whilst recognition is a matter for the State Governor. (p. 3346 D)

Removal of chief

5. I also agree with learned counsel for the 1st respondent that under

Imo State Chieftaincy law No. 22 of 1978 the authority to remove a traditional ruler is the Governor. He does so by withdrawal of the certificate of recognition issued to the traditional ruler which signified his appointment. See Ude V.Nwana (1993) 2 NWLR (Pt. 278) 638 and 644. (p. 3346 E)

B

Traditional ruler - Withdrawal of recognition

6. The court below wants to say that the Governor cannot exercise the power given to him by the statute to withdraw recognition of a traditional ruler until he receives an advice from the commissioner to do so. It is plain that section 9 did not provide for seeking such advice. It should be borne in mind that a commission of inquiry to wit, Justice Ojiako panel, had been set up by the Imo State Government to investigate the disputes relating to Chieftaincy and or autonomous communities in various parts of Imo State. It was after the commission had submitted its report on the dispute between the 1st respondent and Ihitenansa community that the Governor withdrew recognition from him. (p. 3347 G)

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Withdrawal of recognition - Was rightly exercised

7. I am therefore satisfied that the High Court is right that the Military Administrator acted within his powers as provided for under Section 9 of the Chief's Law of Imo State to withdraw the recognition from the 1st respondent as the Traditional Ruler of Ihitenansa Autonomous Community. For the reasons I have given above the court below is wrong to make the following declaration.

F

"A declaration that the removal of the plaintiff as the traditional ruler of Ihitenansa Autonomous Community and the withdrawal of his recognition as such by the Imo State Government is contrary to the Imo State Chieftaincy Law No. 22 of 1978 and the said withdrawal is therefore null and void and of no effect whatsoever." (p. 3349 F)

G

H

Injunctions - Failure of

8. The order for injunction which has been raised in issue (iv) was made sequel to the declaration that the procedure followed by the Gover-

nor in withdrawing recognition from the 1st respondent as the Eze of Ihitenensa was contrary to Chieftaincy law No. 22 of 1978 of Imo State. The order or injunction, being ancillary to the declaration made by the court below, must fail since the declaration made in favour of the 1st respondent has now been set aside by this judgment. (p. 3350 A)

Recognition - Withdrawn by governor

9. In conclusion, I hold that the Military Administrator (Governor) of Imo State has power under the Chieftaincy law No. 22 of 1978 of Imo State to withdraw recognition from Chief P.D.C. Okenwa as the Eze of Ihitenensa. The Governor relied on the complaints made by the communities of Ihitenensa and the report of Ojiako panel before he withdrew the said recognition. This appeal has therefore succeeded and it is allowed. The judgment of the court of appeal is hereby set aside. I restore the judgment of the high court which dismissed the claim of Chief P. D. C. Okenwa. (p. 3351 G)

NOTABLE POINTS OF INTEREST

MOHAMMED.JSC

1. It is wrong for counsel to change his case on appeal

The attorney-General of Imo State, D. C. Denwigwe, who appeared for the 2nd, 3rd and 4th respondents filed a brief and applied to address the court. We refused to grant him permission to do so because the 2nd, 3rd and 4th respondents defended the decision of the trial court at the court of appeal as respondents. When the court below allowed the appeal and set aside judgment of the trial court the 2nd and 4th respondents filed an appeal against the decision of the court of appeal. As I mentioned earlier in this judgment, they later withdrew the appeal and this court dismissed it. After their appeal was dismissed they somersaulted and joined Chief P. D. C. Okenwa to hold (a) that the withdrawal of the recognition of the 1st respondent was founded upon void grounds and as such void, (b) that the recognition of the appellant was founded upon fundamental breach of the applicable statute to the extent that he was put on the same throne while the 1st respondent was still on that throne, and (c) that the appeal

be dismissed. This is contrary to what they argued at the court below. This is wrong. (p. 3350 H)

KUTIGIJSJC

Recognition of chief - Governor's power of withdrawal under s. 9 B

2. I agree with Chief Williams that section 9 above should be construed as conferring power on the Governor to withdraw recognition from a traditional ruler if he is satisfied of the existence of any of the conditions stipulated under the section, while section 14 is confined to cases which arise whenever there are allegations of grave misconduct against a recognised Chief and the commissioner decides to exercise his discretionary power to inquire into such misconduct. I have no doubt at all that on a plain and natural meaning of section 9, the Governor does have power to withdraw recognition from the plaintiff herein. (p. 3354 G) D

AYOOLA JSC

3. *Withdrawal of a co-appeal should not affect the remaining appeal*

When a party exercises his undoubted and constitutional right of appeal, E that another and separate party to the proceedings in which the decision appealed against has been made, chose not to appeal from the decision, or having appealed, chose to withdraw his appeal should have no effect on the appeal of the party who has appealed and is determined to pursue F his appeal. As long as the party prosecuting the appeal has a standing to prosecute his appeal, his appeal is unaffected by the withdrawal of the appeal of a co-party. The preliminary objection had been argued as if the 1st set of defendants and the 4th defendant have been defending the G action and prosecuting the appeals in the same interest. That was not so. Where several parties to an action for declaratory judgment have, in their own several rights, contested the rights in respect of which declaration is sought each of them has a separate and independent right to challenge by way of appeal the grant of declaration. The 4th defendant who H has a right to insist on the validity of his appointment and right to remain in office to which he has been appointed until validly and lawfully removed from that office, has a right to contest the validity of the declara-

tions and injunction granted against him by the court below, even if the other defendants had accepted the decision. (p. 3361 C)

4. *A party is precluded from espousing a different case on appeal*

B By their brief these defendants sought to make a case on this appeal diametrically opposed to the case they strenuously espoused in the High Court and in the Court of Appeal. In my opinion that is odd and should not be permitted. I refer with approval to the statement made in English Supreme Court Practice, 1993, para. 59/10/6 that a party may be precluded, by his method of conducting his case, from raising a different case on appeal. Wilson V. United Counties Bank (1920) AC 120 was cited in support of the view.

D In the present case, the 1st set of defendants brazenly, had set out by their brief to challenge the position they have taken in the two lower courts, even on issues of fact. Such unexplained volte-face by the 1st set of defendants tends to make a farce of judicial process and is capable of undermining the credibility of the legal profession. It deserves, in my opinion, condemnation. I venture to think that the wise course for persons in the position of the 1st set of defendants who can appropriately be described as respondents, pro forma, should have been to be passive in the ensuing proceedings, instead of, embarrassingly, espousing a cause which they had all along strenuously opposed and challenged at the trial and in the Court of Appeal. (p. 3362 F)

5. *Statutory powers should not be arbitrarily limited if not provided for in the Statute*

G Where an enactment empowers a person to exercise certain powers when he is satisfied that such exercise of power is necessary, it is not right to impose limitations on the exercise of the power where such was not provided for in the empowering enactment. (p. 3365 H)

H

REPRESENTATION

Chief F.R.A. Williams, S.A.N. with T.E. Williams and Chief O.E. Aladum for the appellant.

Edwin Anikwem for the 1st respondent

D.C. Denwigwe, A-G Imo State, with I. Akujobi for the 2nd., 3rd. and 4th. respondents.

CASES REFERRED TO

Hill vs William Bill (Park Lane) Ltd (1949) A.C. 530 At 546-547

Ezomo v A.G Bendel [1986] 4 NWLR (Pt 36) 488, 462

Edozien v Edozien [1993] 1 NWLR (P 272) 678, 700

Majekodunmi v WAPCO [1920] 1 NWLR (Pt.219) 564, 577

Orunola v Adeoye [1995] 6 NWLR (Pt 401] 338

Wilson v United Counties Bank [1920] AC 120

Akaigbe v Idama [1964] 1 All NLR 323

STATUTE & RULES REFERRED TO

Supreme Court Rules 1985. Order 8 Rule 6.

Imo State Chieftaincy Law No 22 1978 ss. 3, 26 (1) 10, 9, 14, 15

LEAD JUDGMENT BY MOHAMMED JSC

Chief P.D.C. Okenwa, hereinafter referred to in this judgment as the 1st respondent, was the plaintiff in Suit No. HOW/200/84 at the High Court of Imo State, holden at Owerri. In the Suit, the 1st respondent claimed against Eze Lambert Okoye Akuneziri (the appellant, in this appeal) and 1st, 2nd and 3rd respondents (defendants at the High Court) for the following reliefs,-

(a) A declaration that the removal of the plaintiff as the traditional ruler of Ihitenensa Autonomous Community and the withdrawal of his recognition as such by Imo State Government is contrary to the Imo State Chieftaincy Law No. 22 of 1978 and the said withdrawal is therefore null and void and of effect whatsoever.

(b) A declaration that the plaintiff is still the Recognised Traditional ruler (EZE) of Ihitenensa Autonomous Community.

(c) A declaration that the subsequent recognition of Chief Lambert Okoye Akuneziri as the traditional ruler of Ihitenensa by the former

Government of Imo State is contrary to Imo State Chieftaincy Edict(LAW) of 1978 and Ihitenensa Chieftaincy Constitution and is therefore null and void and of effect whatsoever.

(d) A declaration that the withdrawal of recognition of the plaintiff based on Justice Ojiako panel's recommendation was misconceived, irregular, unjust and unwarranted.

(e) A perpetual injunction restraining the fourth defendant from continuing to hold himself out or from acting or parading himself as the Recognised Eze or Traditional Ruler of Ihitenensa Autonomous Community or from performing the function of a recognised Eze or traditional ruler set out in the Traditional Ruler of Ihitenensa Autonomous Community or from performing the function of a recognised Eze or traditional ruler set out in the Traditional Rulers and Autonomous Communities Law of 1981'

Pleadings were ordered and exchanged and issues joined went to trial before E.I.N. Nwogu J. At the conclusion of the trial, in which all the parties adduced evidence, the learned trial judge, in a considered judgment, held as follows:

" I have carefully read the cases referred to by Counsel in their respective addresses and with respect, say that they are of no much assistance to me in deciding the issues before me. In the final analysis, I hold that the destooling and the withdrawal of the recognition of the plaintiff as in Exhibit 'S' is constitutional and in accordance with the Chieftaincy Law No. 22 of 1979 of Imo State. The presentation and recognition of the 4th defendant is constitutional and proper. The reliefs claimed by the plaintiff in paragraph 30(a),(b),(c),(d) and (e) of the further amended Statement of Claim must fail and are hereby refused and each of them is accordingly dismissed".

Dissatisfied with the decision of the high Court P.D.C. Okenwa filed an appeal before the Court of Appeal, Port-Harcourt division. The court of appeal, after re-evaluating the evidence adduced before the learned trial judge, allowed the appeal, set aside the judgment of Nwogu J. and made the following declarations in favour of Chief P. D.C. Okenwa

"(a) A declaration that the removal of the appellant as the tradi-

tional ruler of Ihitenensa autonomous community and the withdrawal of his recognition as such by Imo State Government is contrary to the Imo State Chieftaincy law No. 22 1978 and the said withdrawal is therefore null and void and of no effect whatsoever.

(b) *A declaration that the subsequent recognition of Chief Lambert Okoye Akuneziri as the traditional ruler of Ihitenensa by the former Government of Imo State is contrary to Imo State Chieftaincy Edict (Law) of 1978 and Ihitenensa Chieftaincy constitution and is therefore null and void and of no effect.*

(c) *A declaration that the withdrawal of recognition of the appellant based on Justice Ojiako panel's recommendation was misconceived, irregular, unjust and unwarranted.*

(d) *A perpetual injunction restraining the fourth respondent from continuing to hold himself out or from acting or parading himself as the recognised EZE or traditional ruler of Ihitenensa autonomous community or from performing the function of a recognised Eze or traditional ruler of Ihitenensa autonomous community or from performing the function of a recognised Eze or traditional ruler set out in the Traditional Rulers and Autonomous Community Law of 1981*

Two separate appeals were filed against the decision of the court of appeal. On 29th July 1997 Eze Lambert Okoye Akuneziri filed his Notice and Grounds of appeal and on 21st August 1997 the 3rd and 4th respondents filed their Notice of Appeal. On 22nd October, 1998, the 2nd, 3rd and 4th respondents filed a Notice of Withdrawal of their appeal in this court. Following the said notice of withdrawal of the appeal, this court dismissed the appeal on 9th November. The only appeal pending is the one filed by Eze Lambert Okoye Akuneziri hereinafter called the appellant.

On 16th June, 1998, Chief F.R.A. Williams, S.A. N. learned counsel for the appellant, filed a motion on notice seeking for an leave to amend the Notice of Appeal originally filed by the appellant by substituting it with an Amended Notice of Appeal. The application was granted. Before the hearing of this appeal, learned counsel for the 1st respondent raised a preliminary objection on the competence of the appellant's appeal

based on the following grounds:.

(i) *from the reliefs sought in the 1st respondents Further Amended Statement of Claim (see pages 190-191 of the record) the 1st respondent's action complained against the wrongs of the Imo State Government*
 B *(2nd-4th respondents).*

(ii) *The 2nd, 3rd and 4th respondents have on 9th November, 1998 withdrawn their appeal against the decision of the court of appeal which appeal was dismissed on the 9th November, 1998 by the Supreme Court without any objection from the parties herein.*
 C

(iii) *The Supreme Court, by dismissing the said appeal has affirmed the aforesaid decision of the Court of Appeal being challenged.*

(iv) *The appellant cannot now pursue or prosecute this appeal in that doing so will amount to seeking a review of the decision of*
 D *the Supreme Court given on merits on 9th November, 1998 in this case, that is, the decision dismissing the 2nd to 4th respondents' appeal which constitutes an affirmation of the court of appeal's decision now being challenged".*

The argument of learned counsel for the 1st respondent in support of the preliminary objection is that since the appeal of Imo State Government, that is the 2nd, 3rd and 4th respondents, was withdrawn and this court had dismissed it, the dispute between the parties had been finally terminated. He referred to order 8 rule 6 of Supreme Court Rules
 F 1985, as amended and the cases of Ezomo V. A.G. Bendel State (1986) 4 NWLR (Pt. 36) 448 at 462, Edozien V. Edozien (1993) 1 NWLR (Pt. 272) 676 at 700 Majekodunmi V. Wapco Ltd. (1992) (Pt. 219) 564 at 577 and Orunlola V. Adeoye (1995) 6 NWLR (Pt. 401) 338 at 349.

With respect to the submission of learned counsel for the 1st respondent on this issue it must be observed that there were two separate appeals filed against the decision of the court of appeal. If one appellant withdraws his appeal and it is dismissed, the
 H **second appellant has the constitutional right to prosecute his appeal. It is axiomatic that the appellant would be affected by the decision of the court of appeal. A party to an appeal must be a person exercising the right of appeal to the Court of Appeal who is**

named in the record or a person having "an interest" in the proceedings which term would include a person affected or likely to be affected, or aggrieved or likely to be aggrieved by the proceedings. See Akande V. General Electric Ltd. (1979) 3 - 4 S. C. 115 and Maja and Ors V. Johnson (1951) 13 W.A.C.A. 194. The appellant is indeed B aggrieved by the decision of the court of appeal. He has exercised his right in filing this appeal because he is the central figure in the dispute leading to this appeal.

Where there is a withdrawal of the appeal, as the 2nd 3rd C and 4th appellants had done, it can safely be said that the resultant position is as if there was never an appeal filed by the appellant. Under order 8 rule 5 of Supreme Court Rules 1985, as amended, an appeal which has been withdrawn shall be deemed to have been D dismissed. The judgment dismissing the appeal withdrawn is not a judgment on the merits. A judgment on the merits is a decision that was rendered on the basis of the evidence and facts introduced. It must be a decision made after hearing argument and investigation and where it is determined which party is the right, as distinguished from a judgment E rendered upon some preliminary or formal or merely technical or procedural, or by default and without trial. Thus, the withdrawal of the appeal filed by the 2nd, 3rd, and 4th respondents, in this case and the consequential dismissal of the appeal by this court has no bearing F whatsoever on the appellant's appeal. The withdrawal of the appeal can only be regarded as if the 2nd, 3rd and 4th respondents had never filed an appeal against the decision of the court of appeal, in this case. See Nkanu V. The State (1980) 3 - 4 S. C.

I have looked into grounds (ii), (iii) and (iv) of the appellant's G amended notice of appeal which learned counsel for the 1st respondent argued that they were grounds of facts and mixed law and facts. However, learned counsel for the 1st respondent, Mr. Amaechina, has H not advanced any reason to show which of the three grounds is a ground of facts and which is of mixed law and facts. I am not to pick and choose for the learned counsel. He must be specific and point to the ground of appeal which he wants to impeach. It is not

for the court to do the exercise for him. However, having read through all the grounds I am quite satisfied that they are all grounds of law. The Preliminary objection has therefore failed and it is dismissed.

B I will now consider the issues identified by Chief Williams for the determination of this appeal. Learned counsel for the respondent adopted the same issues. The issues are as follows:

C *"1. Whether the Government had power under the Imo State Chieftaincy Law to withdraw recognition from the plaintiff as traditional ruler of Ihitenensa.*

D *2, If the answer to question 1 is in the affirmative, under which particular provisions of the Imo State chieftaincy Law No. 22 of 1978 can the decision of the Governor to withdraw or to grant recognition be supported.*

E *3. Was the court below correct in making the declaration that "the removal of the plaintiff/respondent as the traditional ruler of Ihitenensa autonomous community and the withdrawal of his recognition as such by the Imo State Government is contrary to the Imo State Chieftaincy law No. 22 1978 and the said withdrawal is therefore null and void and of no effect whatsoever.*

F *4. Whether the court below was correct in making order for injunction against the 4th respondent.*

5. Whether the court below was correct in law in its criticism of the constitution or contents of the Ojiako panel"

G The facts briefly show that the 1st respondent, Chief P.D.C. Okenwa, was in appreciation of his contribution to the welfare of the people of Ihitenensa, unanimously selected in 1978 by Ihitenensa autonomous community as their traditional ruler. At the time of the 1st respondent's selection, Ihitenensa had 18 ichies. These are the traditional rulers, advisers and sometimes referred to as kingmakers. The appellant H was one of the Ichies who selected the 1st respondent and presented him to the Government of Imo State for recognition as the traditional ruler for Ihitenensa autonomous community. The 1st respondent was subsequently issued with a certificate of recognition by the Imo State Govern-

ment as required by Chieftaincy Edict No. 22 of 1978.

Following various acts of breach of the Chieftaincy constitution of Ihitenensa autonomous community, which included the refusal of the 1st respondent to sign and signify his acceptance of the community's Constitution, the people passed a vote of no confidence in him. The 1st respondent was thereafter removed by the autonomous community as their traditional ruler. After the removal of the 1st respondent, the community selected the appellant as their new Eze/Traditional ruler and presented him to the Government for recognition. The Imo State Government recognised the new Eze on 31st December, 1980.

It is pertinent at this juncture to mention Justice Ojiako Chieftaincy/Autonomous community Panel of Inquiry which was set up by Imo State Government to look into disputes relating to Chieftaincy/Autonomous community in various parts of the State. The commission investigated the allegations of Ihitenensa Autonomous community against Eze P.D.C. Okenwa, the 1st respondent and submitted its report to the Government. The report formed the basis of withdrawal of recognition of the 1st respondent by the Government which was sent to the 1st respondent through a letter dated 15th January, 1981.

Considering the synopsis of the facts given above this appeal hinges on the law governing appointment and deposition of the traditional Chief of Ihitenensa Autonomous community. There is no dispute over the fact that Ihitenensa Autonomous community has been recognised by Imo State Government. See 26 (1) of Imo State chieftaincy law No. 22 of 1978 under section 3 of the Chieftaincy law it has been provided that each autonomous community shall select its Chief and present him to the Chief executive of the Local Government which has power over the autonomous community. The selected Chief will be forwarded to the Governor through the Commissioner in charge of Chieftaincy matters.

The main question for determination in this appeal is whether the Imo State Government's withdrawal of recognition of the 1st respondent as the traditional ruler of Ihitenensa Autonomous community is contrary to Imo State Chieftaincy law No. 22 of 1978. The Constitution of an Autonomous community is a factor to be considered in determining the

details about the custom of the community with respect to the appointment and deposition of their Chief.

Under section `10 of Imo state Chieftaincy law 1978 it has been provided as follows:

B ".....Every autonomous community whose Chief has been recognized by the Military Administrator shall where available forward to the Chief Executive of the Local Government of the area concerned a copy of the constitution of that community which shall contain-

C (a) The customary code of conduct to which the recognized Chief must subscribe.

(b) A detailed statement of the customary law of the community regulating the selection, appointment or identification, suspension, deposition, rights and privileges of the Chief of the community"

D It is therefore abundantly clear that it is the constitution of the autonomous community which regulates the selection, appointment or identification, suspension, deposition, rights and privilege of the Chief of the community. **Chief Williams submitted, quite rightly, that under**
 E **the Chieftaincy law the appointment or selection of the Chief is a matter for the community whilst recognition is a matter for the State Governor. I also agree with learned counsel for the 1st respondent that under Imo State Chieftaincy law No. 22 of 1978 the authority to remove a traditional ruler is the Governor. He does so**
 F **by withdrawal of the certificate of recognition issued to the traditional ruler which signified his appointment. See Ude V.Nwana (1993) 2 NWLR (Pt. 278) 638 and 644 and University of Nigeria Teaching Hospital Management Board V. Nnoli (1994) 8 NWLR (pt. 363) 376 at 401 where Onu JSC held.**
 G

"When a statute directs that certain procedure be followed before a person can be deprived of his right, whether in respect of his person, property or office, such procedure must be strictly followed"

H Now, which section of the chieftaincy law provides for the deposition or removal of a traditional ruler in Imo State?. The Court of Appeal referred to sections 9 and 14 of the Chiefs law in its judgment when it considered the law applicable for the withdrawal of recognition

of a recognised Chief in Imo State. Sections 9 and 14 provide"

" 9 *Notwithstanding the provision of section 8 of this Edict, the Military Administrator may suspend, or withdraw the recognition of a recognised Chief if the Military Administrator is satisfied that such suspension or withdrawal is:-*

(a) *Necessary having regard to persistent acts of violation of the code of conduct by the Chief as required by the customary law of the community he represents.*

(b) *Necessary in the interest of peace, order and good Government.*

14 (1) *Whenever there are allegations of grave misconduct against a recognised Chief, the Commissioner may cause an administrative enquiry to be held in respect of such allegations.*

(2) *Where the Commissioner, after such enquiry, is satisfied that such allegations are proved against the Chief, or that the Chief has ceased to enjoy the popular support of this community, the commissioner may advise the Military Administrator to withdraw the recognition of such a Chief".*

I do not see any difficulty or ambiguity in construing the meaning of sections 9 and 14 of the Chief's law. I have not seen from the wordings of the statute where the court below could support the following finding which it made in its judgment.

" *It must be stated again that by the clear provision of section 14 of the Chieftaincy law 1978, it is mandatory that the Governor of Imo State (sic) seek the advice of the commissioner for Chieftaincy matters before deciding to withdraw the recognition of a recognised Chief"*

The court below wants to say that the Governor cannot exercise the power given to him by the statute to withdraw recognition of a traditional ruler until he receives an advice from the commissioner to do so. It is plain that section 9 did not provide for seeking such advice. It should be borne in mind that a commission of inquiry to wit, Justice Ojiako panel, had been set up by the Imo State Government to investigate the disputes relating to Chieftaincy and or autonomous communities in various parts of Imo

State. It was after the commission had submitted its report on the dispute between the 1st respondent and Ihitenansa community that the Governor withdrew recognition from him. Chief Williams submitted that it was within the Governor's powers to withdraw recognition from any traditional ruler once he is satisfied that there are allegations of grave misconduct against a recognised Chief. The appellant (sic 1st respondent) appeared before Justice Ojiako panel and defended the allegations made against him and when the panel's report was considered the Government withdrew its recognition from him. This court once decided a similar case which involved withdrawal of recognition from a traditional ruler in Imo State. In Chief Boniface Nwauwa V. The Military Governor of Imo State (1997) 2 NWLR (Pt. 490) 675 at 710 this court held as follows:

"In the present case, the Imo State Government, following allegations of grave misconduct against the respondent, set up an administrative Board of inquiry which duly sat, investigated and submitted its recommendation, at the conclusion of which exercise the panel submitted its report to Government. It cannot be disputed, on the law, that the Military Governor under section 18 (4) of the said law No. 11 of 1981 is fully entitled to withdraw the recognition of the respondent, with or without white paper, if after an inquiry set up by him, he is satisfied that the natural ruler concerned has ceased to enjoy the popular support of his community. This is what happened in the present case and I am unable to fault this exercise of discretion by the Imo State Military Governor in the instant case"

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munity that the Governor withdrew recognition from him. Chief Williams submitted that it was within the Governor's powers to withdraw recognition from any traditional ruler once he is satisfied that there are allegations of grave misconduct against a recognised chief. The appellant appealed before Justice Ojiako Panel and defended the allegations B made against him and when the Panel's report was considered the government withdrew its recognition from him. This court once decided a similar case which involved withdrawal of recognition from a traditional ruler in Imo State. In Chief Boniface Nwauwa v The Military Governor of Imo State (1997) 2 NWLR (Part 490) 675 at 710 this court held as C follows:

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I am therefore satisfied that the High Court is right that the Military Administrator acted within his powers as provided for under Section 9 of the Chief's Law of Imo State to Withdraw the G recognition from the 1st respondent as the Traditional Ruler of Ihitenensa Autonomous Community. For the reasons I have given above the court below is wrong to make the following declaration.

"A declaration that the removal of the plaintiff as the traditional ruler of Ihitenansa Autonomous Community and the withdrawal H of his recognition as such by the Imo State Government is contrary to the Imo State Chieftaincy Law No. 22 of 1978 and the said withdrawal is therefore null and void and of no effect whatsoever."

This decision takes care of issues (i), (ii) and (iii). **The order for injunction which has been raised in issue (iv) was made sequel to the declaration that the procedure followed by the Governor in withdrawing recognition from the 1st respondent as the Eze of Ihitenensa was contrary to Chieftaincy law No. 22 of 1978 of Imo State. The order or injunction, being ancillary to the declaration made by the court below, must fail since the declaration made in favour of the 1st respondent has now been set aside by this judgment.**

The court below cannot be right to hold that it was improper to appoint Ojiako Panel under section 15 of the Chieftaincy Law 1978. Section 15 of the Chieftaincy Law provides as follows:

"15 (1) A Panel shall be set up at the State level by the Administrator to look into disputes or protests relating to:-

(a) Chieftaincy and/or (b) Autonomous Communities.
(2) The panel shall comprise of (a) Judge of the high court or a legal practitioner not less than 15 year post-call experience, who shall be Chairman of the panel.

(b) A senior official of the cabinet office who shall be secretary to the panel

(c) Two other members appointed by the Military Administrator.

(3) The members of the panel set out in paragraph (a) and (b) of subsection appointed by the Military Administrator on such terms and conditions as shall be stipulated in the instrument of appointment.

The argument of learned Justice Rowland, JCA, that section 15 reproduced above, is a general provision is flawed because the power given to the Military Administrator (Governor) to set up a panel to look into disputes relating to Chieftaincy and Autonomous communities can be exercised under the provisions of section 15 of the Chieftaincy law. It is clear from the instrument published as I.S.L.N. No. 33 of 1980 that the commission's appointment conformed with the provisions of that section.

The attorney-General of Imo State, D. C. Denwigwe, who appeared for the 2nd, 3rd and 4th respondents filed a brief and applied to address the court. We refused to grant him permission to do so because

the 2nd, 3rd and 4th respondents defended the decision of the trial court at the court of appeal as respondents. Wherein they urged that court inter alia to hold.

"(iii) That the withdrawal of recognition of the appellant was proper and the Governor was validly and constitutionally entitled to set up Ojiako panel of inquiry as he did. Any decision or action based on the report of Ojiako panel is valid.

(iv) That the Ojiako panel was set up according to law and its proceedings, were validly conducted and in accordance with law.

(v) That the learned trial judge properly evaluated the evidence of the appellant and rejected his story.

(vi) The court of appeal should therefore dismiss this appeal"

When the court below allowed the appeal and set aside judgment of the trial court the 2nd and 4th respondents filed an appeal against the decision of the court of appeal. As I mentioned earlier in this judgment, they later withdrew the appeal and this court dismissed it. After their appeal was dismissed they somersaulted and joined Chief P. D. C. Okenwa to hold (a) that the withdrawal of the recognition of the 1st respondent was founded upon void grounds and as such void, (b) that the recognition of the appellant was founded upon fundamental breach of the applicable statute to the extent that he was put on the same throne while the 1st respondent was still on that throne, and (c) that the appeal be dismissed. This is contrary to what they argued at the court below. This is wrong. Amazingly it was the Attorney General of Imo State who prepared the brief for the 2nd, 3rd and 4th respondent and who came before this court urging us to permit him to defend this deliberate twist in the stand of the Government of Imo State with respondent to the appointment of the appellant as the Traditional ruler of the Ihitenensa Autonomous Community.

In conclusion, I hold that the Military Administrator (Governor) of Imo State has power under the Chieftaincy law No. 22 of 1978 of Imo State to withdraw recognition from Chief P.D.C. Okenwa as the Eze of Ihitenensa. The Governor relied on the complaints made by the communities of Ihitenensa and the report of

Ojiako panel before he withdrew the said recognition. This appeal has therefore succeeded and it is allowed. The judgment of the court of appeal is hereby set aside. I restore the judgment of the high court which dismissed the claim of Chief P. D. C. Okenwa.

B The appellant is entitled to costs of this appeal which I assess at N10,000.00 and N3,000.00 at the court below.

BELGORE JSC

C The purport of S. 15 of the Chieftaincy law of Imo State (1.S.L.22 of 1978) is unambiguous. The Governor can set up an inquiry thereunder, and if satisfied that the particular Chief no longer enjoyed popular support of his community in the report of that inquiry he can withdraw
D recognition from him. Precisely this is the situation in this case. The high court of Imo State came to a right conclusion. I therefore, in line with fuller reason in the judgment of my learned brother, Mohammed JSC, allow this appeal, set aside decision of court appeal and restore the
E judgment of the high court. I award the 4th appellant N10,000.00 as cost in this court, and N5000.00 as cost in court of appeal all against the respondent.

F

KUTIGI JSC

This appeal emanated from the action filed by the plaintiff, the traditional ruler of Ihitenensa Autonomous Community at the Orlu High Court following the withdrawal of his recognition by the Imo State Government .

G The Plaintiff was sometime in 1978 duly and unanimously elected by the Ihitenensa Autonomous community as their traditional ruler (Eze). He was subsequently issued with a certificate of recognition by the Government of Imo State as required by the Chieftaincy Edict No 22 of 1978 (hereinafter simply referred to as the "Edict") the law applicable at all material times to this action. Following allegations made in petition written by certain individuals from the Ihitenensa Community, the Imo State

Government set up a panel of Enquiry called the "Ojiako panel", to amongst others inquire into the allegations. Based on the recommendation of the Ojiako panel, the recognition of the plaintiff was withdrawn by the Imo State Government. Meanwhile, the Ihitenensa Community went ahead and appointed or selected the 4th Defendant as a successor to the plaintiff. The 4th Defendant was then recognised by the Imo State Government as the new traditional ruler of Ihitenensa.

The plaintiff then took out a writ of summons against the Defendants claiming as follows:-

"(a) *A Declaration that the removal of the plaintiff as the traditional ruler of Ihitenensa Autonomous Community by the Imo State Government is contrary to the Imo State Chieftaincy law No. 22 of 1978 and the said withdrawal is therefore null and void and of no effect whatsoever.*

(b) *A Declaration that the plaintiff is still the recognised traditional ruler (Eze) of Ihitenensa Autonomous Community*

(c) *A Declaration that subsequent recognition of Chief Lambert Okehi Akuneziri as the traditional ruler of Ihitenensa by the former Government of Imo State is contrary to Imo State Chieftaincy Edict (LAW) of 1978 and Ihitenensa Chieftaincy Constitution and is therefore null and void and of no effect whatsoever.*

(d) *A Declaration that the withdrawal of recognition of the plaintiff based on Justice Ojiako panel's recommendation was misconceived, irregular, unjust and unwarranted.*

(c) *A perpetual injunction restraining the fourth defendant from continuing to hold himself as the recognised Eze or traditional ruler of Ihitenensa Autonomous Community or from performing the function of a recognised Eze or traditional ruler set out in the Traditional Rulers and Autonomous Communities Law of 1981."*

The learned trial judge dismissed the claims in their entirety. The plaintiff then appealed to the court of appeal. His appeal was allowed and the reliefs claimed were granted.

The 4th Defendant has now appealed to this court against the judgment of the Court of Appeal.

Chief Williams learned senior counsel for the 4th Defendant has submitted five issues in his brief for resolution in this appeal. I only wish to comment on the first three which all relate to the powers of the Governor to withdraw recognition of a recognised Chief. The relevant provisions are section 9 & 14 of the Edict which read:-

"9 Notwithstanding the provision of section 8 of this Edict, the Military Administrator may suspend, or withdraw the recognition of a recognised Chief if the military Administrator is satisfied that such suspension or withdrawal is:-

(a) Necessary having regard to persistent acts of violation of the code of conduct by the Chief as required by the customary law of the community he represents.

(b) Necessary in the interest of peace, order and good Government".

"14 (1) Whenever there are allegations of grave misconduct against a recognised Chief, the commissioner may cause an administrative enquiry to be held in respect of such allegations.

(2) Where the commissioner, after such enquiry, is satisfied that such allegations are proved against the Chief, or that the Chief has ceased to enjoy the popular support of this community, the commissioner may advise the Military Administrator to withdraw the recognition of such a Chief."

I think first of all it is of vital importance to note that under the Edict, the appointment or selection of a Chief is a matter left entirely in the hands of the community while recognition is a matter for the Governor. Now, can the recognition be withdrawn?. The answer is "yes" as provided under section 9 & 14 above. I agree with Chief Williams that section 9 above should be construed as conferring power on the Governor to withdraw recognition from a traditional ruler if he is satisfied of the existence of any of the conditions stipulated under the section, while section 14 is confined to cases which arise whenever there are allegations of grave misconduct against a recognised Chief and the commissioner decides to exercise his discretionary power to inquire into such misconduct. I have no doubt at all that on a plain and natural meaning of

section 9, the Governor does have power to withdraw recognition from the plaintiff herein. And that meaning is in no way modified by the provisions of section 14 (supra). The Court of Appeal therefore fell into serious error when it purported to have read section 9 & 14 together when what it in fact did was literally according to Chief Williams B to strike out section 9 from the entire Edict. That was wrong (see HILL VS WILLIAM BILL (PARK LANE) LTD. (1949) A.C. 530 AT 546-547. My conclusion therefore is that the plaintiff was properly de-recognised as a Chief and the 4th Defendant was duly selected and recognised as his successor. It is for the above reason and others ably set out in the lead judgment of my learned, brother Mohammed, J.S.C. which judgment I read before now that I also allow the appeal. The judgment of the court of appeal is set aside while that delivered by the learned trial judge dated 18th June, 1987 is restored. I endorse the orders made in the lead judgment. D

ACHIKE JSC

The facts of this appeal are fully set out in the leading judgment of my learned brother, Mohammed J.S.C. with which I am in full accord. E

The plaintiff's claim ran as follows:

"(a) A declaration that the removal of the plaintiff as the traditional ruler of Ihitenensa Autonomous Community and the withdrawal of his recognition as such by the Imo State Government is contrary to the Imo State Chieftaincy law No. 22 of 1978 and the said withdrawal is therefore null and void and of no effect whatsoever. F G

(b) A declaration that the plaintiff is still the recognised traditional ruler (Eze) of Ihitenensa Autonomous Community.

(c) A declaration that the subsequent recognition of Chief Lambert Okehi Akuneziri as the traditional ruler of Ihitenensa by the former H Government of Imo State is contrary to Imo State Chieftaincy Edict (LAW) of 1978 and Ihitenensa Chieftaincy Constitution and is therefore null and void and of no effect whatsoever.

(d) *A declaration that the withdrawal of recognition of the plaintiff based on Justice Ojiako panel's recommendation was misconceived, irregular, unjust and unwarranted.*

B (e) *A perpetual injunction retraining the fourth defendant from continuing to hold himself as the recognised Eze or traditional ruler of Ihitenansa Autonomous Community or from performing the function of a recognised Eze or traditional ruler set out in the Traditional Rulers and Autonomous Communities Law of 1981".*

C The learned judge dismissed the claim altogether. Plaintiff successfully appealed to the lower court and all his reliefs were granted.

The 4th Defendant then appealed to this court. In this appeal, his counsel Chief Williams S. A.N. postulated five issues for determination, to wit,

D "1. *Whether the Governor had power under the Imo State Chieftaincy Law to withdraw recognition from the plaintiff as traditional ruler of Ihitenansa.*

E 2. *If the answer to question 1 is in the affirmative, under which particular provisions of the Imo State Chieftaincy Law No. 22 of 1978 can the decision of the Governor to withdraw or to grant recognition be supported.*

F (3) *Was the court below correct in making the declaration that "the removal of the plaintiff/respondent as the traditional ruler of Ihitenansa autonomous community and the withdrawal of his recognition as such by the Imo State Government is contrary to the Imo State Chieftaincy Law No. 22 of 1978 and the said withdrawal is therefore null and void and of no effect whatsoever.*

G (4) *Whether the court below was correct in making order for injunction against the 4th respondent.*

(5) *Whether the court below was correct in law in its criticism of the constitution or contents of the Ojiako panel".*

H It is manifest that the serious bone of contention in this appeal is whether there was power in the Governor under the relevant law to withdraw recognition of the appellant as a traditional ruler of Ihitenansa. All other matters are either peripheral or such that would be inconsequential

to the determination of the appeal. To this extent therefore, this appeal will focus only on the first three issues postulated above.

The provisions of the prevailing Imo State law i.e. Chieftaincy Edict No. 22 of 1978 (which hereafter will referred to as the "Edict") appear to be relevant in this regard. These are sections 9 and 14 of the edict. They run as follows:

"9. Notwithstanding the provisions of section 8 of this Edict, the Military Administrator may suspend, or withdraw the recognition of a recognised Chief if the Military Administrator is satisfied that such suspension or withdrawal is:-

(a) necessary having regard to persistent acts of violation of the code of conduct by the Chief as required by the customary law of the community he represents.

(b) necessary in the interest of peace, order and good government.

14. (1) Whenever there are allegations of grave misconduct against a recognised Chief, the commissioner may cause an administrative enquiry to be held in respect of such allegations.

(2) Where the commissioner, after such enquiry, is satisfied that such allegations are proved against the Chief, or that the Chief has ceased to enjoy the popular support of this community, the commission may advise the Military Administrator to withdraw the recognition of such a Chief".

The resume of these two provisions is first that the Edict by the provisions of section 9 vest on the Military Administrator the power to suspend or withdraw recognition of a recognised Chief once he is satisfied that it is necessary so to do either because of persistent violation of the code of conduct by the Chief in relation to the customary law of his community or in the interest of peace, order and good government. And secondly where there are allegations of grave misconduct, an administrative enquiry may be set up to look into the allegations and where the allegations are established, the Commissioner for Chieftaincy affairs would advise the Military Administrator to withdraw the recognition of the Chief. It is manifest that section 9, as submitted by Chief Williams, confers

power on the Governor to suspend or withdraw recognition of a Chief having regard to being satisfied of the conditions either under 9(a) or (b), while section 14 confers similar power on the Governor operating through his Commissioner after fulfilling the conditions in section 14(1) and 14(2).

B The wordings of the provisions of section 9 and 14 do not admit of any ambiguity and should therefore be accorded their ordinary or literal meaning. There is no compelling reason for reading these two sections together when their ordinary meanings have not necessitated such communal reading. The lower court in reaching their decision have applied
C the harmonious reading of section 9 and 14 and reached the bizarre conclusion that section 14 (1) removed or neutralised the power of de-recognition vested in the Governor. I used the word bizarre advisedly because I find it extremely difficult to appreciate the necessity of invest-
D ing the Governor with certain express power under section 9, but therefore, under the same enactment neutralise or withdraw the very same power so conferred in its section 14 (1). As I had earlier stated, it has not been demonstrated that there is any ambiguity or conflict in reading
E sections 9 and 14 (1) disjointly which would have warranted such harmonious approach. It seems to me that the approach by the lower court, with due respect, was beclouded by its failure to recognise the circumstances for the Governor to wield his powers to withdraw recognition
F conferred on a Chief are dissimilar and separate under the aforesaid sections. This is very crucial in order to ensure that the exercise of power under either section 9 is unnecessarily circumscribed by the provisions of the other section.

G The sum total of what I have been saying is that the approach by the lower court in its harmonious construction of section 9 and 14(1) in the circumstances of this case is insupportable. The appeal therefore deserves to succeed. I would allow the appeal and abide by the consequential orders made by my learned brother, Mohammed J.S.C. in his
H leading judgment.

AYOOLA JSC

I have had the privilege of reading in advance the judgment delivered by my learned brother, Mohammed, JSC. I agree with him that this appeal should be allowed and with the reasons he gives for arriving at that conclusion. I add some comments of my own on aspects of the appeal. The facts have been fully and carefully set out in the judgment of Mohammed, JSC.

There were four defendants in the action commenced in the High Court of Imo State by Chief P.D.C. Okenwa who is the plaintiff/respondent in this appeal, but will be referred to as "the plaintiff" in this judgment. Eze Lambert Okoye Akuneziri, the appellant in this appeal, who was the 4th defendant at the trial, will be referred to as "4th defendant" in this judgment. The first three defendants were, respectively, the Military Governor of Imo State, the Attorney-General and Commissioner for Justice, and the Commissioner for Local Government of the State. For convenience those defendants who are now respondents in the appeal of the 4th defendant are referred to in this judgment as "the 1st set of defendants"

All the defendants strenuously defended the action. They filed their respective pleadings and called evidence. Their combined efforts resulted in the dismissal of the suit with costs to the defendants. On the plaintiff's appeal to the court of appeal from the decision of the high court, all the defendants, as respondents, defended the decision of the High Court and urged that the appeal be dismissed. The 1st set of defendants urged the court of appeal to dismiss the appeal for several reasons, which included the following.

(1) *"That the withdrawal of recognition of the appellant was proper and the Governor was validly and constitutionally entitled to set up Ojiako panel of enquiry as he did. Any decision or action based on the report of Ojiako panel is valid"*

(2) *"That the learned trial judge properly evaluated the evidence of the appellant and rejected his story".*

Upon the Court of Appeal allowing the appeal of the plaintiff, the 1st set of defendants and the 4th defendant filed notices of appeal whereby

they appealed to this court. However, the 1st set of defendants withdrew their appeal, which was then deemed to have been dismissed in terms of order 8 ruler 6(5) of the rules of the Supreme court (RSC) which provides that.

B *"An appeal which has been withdrawn under this rule, shall be deemed to have been dismissed"*

C The brief narration, of facts which are not related to the merits of the appeal, has been made because the plaintiff has raised a preliminary objection to the appeal of the 4th defendant on the ground that the issues in the case had been fully resolved by the dismissal of the appeal of the 1st set of defendants. Also, the 1st set of defendants, who now described themselves as "2nd set of respondents", but are better described, so to say, as respondents pro forma, filed a brief in which they D now urge: that this court should hold that the withdrawal of the recognition of the plaintiff was founded upon void grounds and was consequently void, that "the recognition of the appellant was founded upon his own fundamental breach of the applicable statute to the extent that he E was put on the same throne while the 1st respondent was still on the throne-a void situation". And that the appeal lacks merit and should be dismissed. I cannot pretend to understand what counsel for the 1st set of defendants meant by the second of the submissions quoted above.

F I now turn to the preliminary objection. Order 8 rule 6(1) permits an appellant at any time before the appeal is called on for hearing to serve on the parties to the appeal and file with the registrar a notice to the effect that he does not intend further to prosecute the appeal. By rule G 6(5) of the Order, an appeal, which has been withdrawn under rule 6, shall be deemed to have been dismissed. Learned counsel for the plaintiff now urges that the dismissal of the appeal of the 1st set of defendants "terminates the dispute between the parties finally". For his submission be he relied on Ezomo V. A.G. Bendel (1986) 4 NWLR (Pt. 36) 488, 462, H Edozien V. Edozien (1993) 1 NWLR (Pt. 272) 678, 700, Majekodunmi V. WAPCO (1920) 1 NWLR (Pt. 219) 564, 577, and Orunola V. Adeoye (1995) 6 NWLR (Pt 401) 338, 349. It was further argued that the dismissal of the appeal of the 1st set of defendants amounted to a

decision of the issues raised therein on merits and was confirmation of the decision of the court below which had granted all the reliefs sought by the plaintiff. It was submitted that the court "cannot now revisit the issues, which have been settled between the parties on 9/11/98".

The principle enunciated in the cases relied on by plaintiff's B counsel cannot be doubted. Those cases, however, as far they are relevant to the present case, do not go further than deciding that as between the parties concerned in the appeal, the appeal ceased to exist after it had been withdrawn. That does not lead to a further proposition that any C separate appeal brought by a party aggrieved by the decision of the lower court becomes terminated or, is, in effect, rendered nugatory or academic. When a party exercises his undoubted and constitutional right of appeal, that another and separate party to the proceedings in which the decision appealed against has been made, chose not to appeal from the D decision, or having appealed, chose to withdraw his appeal should have no effect on the appeal of the party who has appealed and is determined to pursue his appeal. As long as the party prosecuting the appeal has a standing to prosecute his appeal, his appeal is unaffected by the with- E drawal of the appeal of a co- party.

The preliminary objection had been argued as if the 1st set of defendants and the 4th defendant have been defending the action and prosecuting the appeals in the same interest. That was not so. The F description of the 4th defendant by the plaintiff's as 'a mere beneficiary of the wrong done by the Imo State Government' is not apt. The 4th defendant is the holder of the office of traditional ruler of Ihitenensa. As conceded by the plaintiff in his pleadings, he has been occupying that G office since 1981. Besides, the Court of Appeal imposed an injunction on him. The High Court will not make a declaration of right where the right is uncontested. Where several parties to an action for declaratory judgment have, in their own several rights, contested the rights in respect of which declaration is sought each of them has a separate and independent H right to challenge by way of appeal the grant of declaration. The 4th defendant who has a right to insist on the validity of his appointment and right to remain in office to which he has been appointed until validly and

lawfully removed from that office, has a right to contest the validity of the declarations and injunction granted against him by the court below, even if the other defendants had accepted the decision.

In my judgment, interesting and ingenious as the preliminary objection may appear to be, it lacks merit. There is no provision in the rules, as they now stand, enjoining a party who wishes to withdraw his appeal to seek leave of the court so to do. Where he withdraws the appeal without the consent of the other parties to the appeal, signified as provided in rule 6(2), the appeal shall remain on the list, as provided for in rule 6(4), merely for hearing of any issue as to costs or otherwise remaining outstanding between the parties, and for making an order as to the disposal of any sum lodged in court as security for the costs of the appeal. There is no provision in rule 6 for hearing any issue other than those specified. There appears, also, to be no provision in rule 6 which enables a party to the appeal to oppose the withdrawal of appeal. In these circumstance, it will not only be absurd, but also, unjust to hold that the decision of the party withdrawing his appeal has any adverse effect on the appeal of another party who had no say in the decision of the party withdrawing his appeal.

The next aspect of the appeal on which I now comment is also not related to the merits of the appeal, but is, nevertheless, deserving of comment. It is in regard to the nature of the participation of the 1st set of defendants in the 4th defendant's appeal. By their brief these defendants sought to make a case on this appeal diametrically opposed to the case they strenuously espoused in the High Court and in the Court of Appeal. In my opinion that is odd and should not be permitted. I refer with approval to the statement made in English Supreme Court Practice, 1993, para. 59/10/6 that a party may be precluded, by his method of conducting his case, from raising a different case on appeal. Wilson V. United Counties Bank (1920) AC 120 was cited in support of the view.

In the present case, the 1st set of defendants brazenly, had set out by their brief to challenge the position they have taken in the two lower courts, even on issues of fact. Such unexplained volte-face by the 1st set of defendants tends to make a farce of judicial process and is

capable of undermining the credibility of the legal profession. It deserves, in my opinion, condemnation. I venture to think that the wise course for persons in the position of the 1st set of defendants who can appropriately be described as respondents, pro forma, should have been to be passive in the ensuing proceedings, instead of, embarrassingly, espousing a cause which they had all along strenuously opposed and challenged at the trial and in the Court of Appeal. B

Notwithstanding what I have just said, I hasten to add that should there be anything in the brief of the 1st set of respondents that could be of assistance in the just resolution of the issues properly raised and arising on this appeal, such material should not be ignored. After all, courts do occasionally welcome the contribution of amici curiae when invited or permitted to contribute on questions of law. It transpired that the only contribution in the brief of the 1st set defendants of any relevance to the main issue in this appeal is the concession by counsel on behalf of the 1st set of defendants that the Government may act pursuant to section 9 without reference to section 14 "to determine the propriety or otherwise of the continued reign of a traditional ruler in Imo State. C D E

On the merits of appeal, it is evident that the main question is whether the Court of Appeal were right in the view they held that section 9 and 14 of the Chieftaincy law of Imo State (No. 22 of 1978) should be read together so as to qualify or modify the power granted to the Governor by section 9. Their Lordships of the Court of Appeal were unanimous in their view expressed by Rowland, JCA, as follows: F

"Based on a combined reading of sections 9 and 14 of the Chieftaincy Law No. 22 of 1978, it seems to me that there are two main conditions for a legal withdrawal of recognition. They are:- G

(a) There must be allegations of some misconduct.

(b) The commissioner for Chieftaincy Affairs must investigate such allegations and if satisfied that such allegations are proved against the Chief, or that the Chief had ceased to enjoy popular support of his communities he may advise the Governor to withdraw the recognition of the Chief. H

It is my view that any purported withdrawal of recognition of

the appellant as a Chief without the above conditions precedent having been met would be invalid, null and void and of no effect whatsoever".

The purport of the view of the Court of Appeal is that the Government could not act on his own initiative but must await the advice of the Commissioner before he could withdraw the recognition of a recognised Chief. The central question on this appeal is whether the court of appeal were right, or put another way, whether there is anything in sections 9 and 14 to justify that conclusion.

The Chieftaincy Law vests the power to withdraw the recognition of a recognised Chief in the Governor. By virtue of section 9 he could exercise such power when it is (a) necessary, having regard to the persistent acts of violation of the code of conduct by the Chief as required by the customary law of the community. (b) necessary in the interest of peace, order and good government. By virtue of section 14(1) he could exercise such power when advised by the Commissioner. It is the power of the Commissioner to advise the Governor that is circumscribed by conditions as follows: (i) There must be allegations of grave misconduct against the recognition Chief, (ii) There must be an enquiry into such allegation, (iii) The Commissioner must be satisfied upon such enquiry that the allegations are proved against the Chief or that the Chief has ceased to enjoy the popular support of his community. These are limitations on the power of the Commissioner to advise the Governor to exercise his power of withdrawal of recognition of a Chief and not a limitation on the power of the Governor.

A reading together of sections 9 and 14 can only produce three circumstances, and not one circumstance, in which the Governor can exercise his power of withdrawal of the recognition of a recognised Chief. These are the two circumstances specified in section 9 and the one specified in section 14(1) in which he can act on the advice of the Commissioner.

It seems to me erroneous to interpret section 14(1) as removing the power vested in the Governor by section 9. Were that to have been the intention of the legislature, section 9 would not have been enacted as part of the law in the first place.

Reliance on a passage in the judgment of Bairamian, JSC, in Akaigbe V. Idama (1964) 1 ALL NLR 323, 327 BY the Court of Appeal to justify reading sections 9 and 14 together was misconceived. Bairamian, JSC, had in that passage reiterated the well known guideline of interpretation, that the entire document or statute must be read as a whole and its part interpreted in that light and that an effort must be made to achieve harmony among its parts. That opinion cannot be faulted. However, it is not in every case in that a court has to have resort to this particular guideline. Where the words of a document or an enactment are clear and not ambiguous, they should be given effect to. Where there is no conflict in one part of an enactment and another and the provisions of the part which is relied on are plain and unambiguous, they should be given effect to. Where there is no conflict in one part of an enactment and another and the provisions of the part which is relied on are plain and unambiguous, those provisions should be applied without the need to call in aid other parts of the enactment.

In the present case, there is no conflict between section 9 and 14(1) and the provisions of those sections are plain and not at all ambiguous. That several sections of the Chieftaincy Law had spelt out the circumstances in which the Governor could exercise the power of removal of a recognised Chief does not lead to a reasonable conclusion that there was a conflict in those sections.

The conclusion reached by the Court of Appeal is flawed because they ignored the circumstances in which the Governor is empowered to exercise the power of withdrawal of recognition of a Chief under section 9 and elevated the additional circumstances mentioned in section 14(1) to the status of overriding and exclusive circumstances. The exercise of power in both sections are not the same. In section 9 it is for the Government to be satisfied that the withdrawal of the recognition of a Chief is necessary having regard to the stated circumstances. He does not need to await the advice of the Commissioner, or anyone for that matter before he is satisfied.

Where an enactment empowers a person to exercise certain powers when he is satisfied that such exercise of power is necessary, it is not

right to impose limitations on the exercise of the power where such was not provided for in the empowering enactment. In *Adegbenro V. Akintola and another* (1963) 3 ALL ER 544, the Governor of Western Nigeria who was vested with some power to dismiss the Premier, acting under the provision of section 33(10) of the constitution of Western Nigeria (contained in the Fourth Schedule to the Nigeria (Constitution) Order in Council, 1960 removed the Premier from office relying on a letter signed by 66 of the 124 members of the House of Assembly. Section 33(10) of the Constitution provided that the Governor shall not remove the premier from office unless it appears to him that the Premier no longer commands the support of a majority of the members of the House of Assembly. The removed Premier commenced an action against the Governor and the person appointed as Premier in his place, claiming that the Governor had no right to remove him from office in the absence of a prior resolution of the House of Assembly reached on the floor of the House. On a reference by the High Court to the Federal Supreme Court, that court held, by a majority, that the Governor could not validly exercise the power to remove the Premier from office under section 33(10) of the constitution of Western Nigeria except in consequence of proceedings on the floor of the House. On appeal to the Privy council by the person appointed Premier in place of the removed Premier, with the removed Premier, with the removed Premier as respondent and the Governor as respondent pro forma, their Lordships of the Privy Council reversed the decision of the Federal Supreme court. They held that there was nothing either in the scheme or provisions of the Constitution of Western Nigeria that legally precluded the Governor from forming his opinion on the basis of anything but votes formally given on the floor of the House. Viscount Radcliffe who delivered the judgment of their Lordships said in regard to the argument proffered on behalf of the removed Premier at p. 549

H *"The difficulty in limiting the statutory power of the Governor in the way is that the limitation, is not found in the words in which the makers of the constitution have decided to record their description of his powers. By the words they have employed in their formula, 'if it appears*

to him', the judgment as to the support enjoyed by a premier is left to the Governor's own assessment and there is no limitation as to the material on which he is to base his judgment or the contracts to which he may resort for the purpose. There would have been no difficulty at all in so limiting him if it had been intended to so."

B

The reasoning of that passage applies to this case. Had the makers of the law intended to limit the power of the Governor in such a way as the conclusion of the court of appeal suggested, they would not have enacted section 9 as part of the law.

C

It may well be noted that the power of withdrawing recognition from a Chief contained in section 9 is wider than that contained in section 14(1). A Chief does not have to have misconducted himself for the Governor to be satisfied that withdrawal of his recognition as a Chief is necessary in the interest of peace, order and good government pursuant to section 9(b).

D

The entire reasoning of the Court of Appeal ran contrary to the principle in Adegbenro V. Akintola (supra). That case was not cited to the Court of Appeal. Had their attention been called to it they may have been better guided. The approach of the court below is flawed by their erroneous interpretation, also flawed. Having regard to the plenitude of the powers vested in the Governor and under which he acted, the other issues discussed by the court below become inconsequential.

F

For the reasons, which I have stated, I too would allow the appeal. I adopt all the consequential orders and the order for costs made by my learned brother, Mohammed, JSC.

G

H