

COURT OF APPEAL  
ILORIN DIVISION  
28TH JUNE, 1999. CA/IL/36/99  
CORAM:- M. A. OKUNOLA, P. I. AMAIZU,  
W. S. N. ONNOGHEN, JJCA

1. JACOB A. JOLAYEMI

2. EZEKIEL E. AJAYI ..... APPELLANTS

3. OYEDELE AJIBOYE

(For themselves and other members of  
Imoji compound Arandun)

AND

1. ALHAJI LAJI OLAOYE ..... RESPONDENTS

2. OBA AMOS BABATUNDE

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**ACTIONS** - Contradictions - Allegation that plaintiffs' case is full of material contradictions - Is not substantiated.

**ACTIONS** - Reliefs - Counterclaim - Grant of reliefs without counter claim - Finding of trial court was based on the pleadings and evidence adduced - But the trial court's consequential order being superfluous is set aside.

**CHIEFTAINCY MATTERS** - Exclusive right - To the chieftaincy stool in dispute - Was not established by the plaintiffs.

**COURTS** - Pleadings - New case - Different from the one set up by plaintiffs - Was not formulated by the trial court - It merely considered the two sides of the case.

**EVIDENCE** - Documents - Public documents - Admissibility - Secondary evidence of a public document - Only certified true copy thereof is admissible - But exhibit D1 is a primary evidence.

**EVIDENCE** - Documents - Admissibility - Notice to produce - Where

*not filed - And the content of the document was not contested under cross examination - The trial court was not wrong is relying on the document.*

**EVIDENCE** - *Minutes of a meeting - The fact that it is headed "notes" - And not signed by the parties in attendance - Does not disqualify it - Since the recorder signed the minutes.*

### **FACTS**

\_\_\_\_\_ Before the Kwara State High Court, the plaintiffs/appellants filed an action against the defendants/respondents. The plaintiffs claimed that the family of the 1st defendant has no right to present any candidate to fill any vacancy in the chieftaincy stool in dispute. That the 1st defendant is not eligible or qualified to be selected to occupy the Ejemu Alaran chieftaincy stool of Arandun. They contested that they have exclusive right to the said chieftaincy, that the 3rd plaintiff having been selected and presented to the 2nd defendant is the rightfully person to occupy the vacancy in the chieftaincy stool. Plaintiffs relied on the fact that they have been exclusively occupying that chieftaincy position since 1931.

The defendants denied the claim of the plaintiffs and established that prior to 1931, before the resettlement of Arandun people, defendants family of Imode also produced candidates that held the chieftaincy office. The trial court after a thorough evaluation of the evidence presented by the parties found that the plaintiffs failed to prove exclusive entitlement to the chieftaincy. The plaintiffs' claim was dismissed but the court made an unnecessary superfluous consequential order in favour of the defendants. Being dissatisfied, the plaintiffs have now appealed to the Court of Appeal raising 3 issues.

### **ISSUES FOR DETERMINATION**

*1. Whether the learned trial judge did not misconstrue or set up a new case for the appellant as to the relevant time of settlement at Arandun necessary for the determination of the exclusive entitlements' or otherwise of the appellants' family to the Ejemu Alaran Chieftaincy and whether such misconstruing did not occasion a miscarriage of Justice on*

*the appellants in this case.*

*2. Whether the learned trial judge was not wrong to have placed heavy reliance on Exhibit D1 and to have proceeded to treat same as a legally recognized minute of meeting and to have read into it things which were not contained therein.*

*3. Whether the learned trial judge was not in error to have dismissed the appellants' claim when the appellants have made out a case entitling them to succeed in their claims before her and there were portions of the case of the respondents that supported the appellants' case.*

**HELD** (Unanimously dismissing the appeal per lead judgment of **ON-NOGHEN JCA**)

***Courts - Pleadings - New case***

1. The question is whether having regards to the state of the pleadings and the evidence adduced the learned trial judge was right in considering the pre 1931 history of Arandun. I am of the considered opinion that the learned trial Judge was very right in considering the pre 1931 history of Arandun people so as to arrive at a just resolution of the issues in controversy between the parties. Both parties having agreed that the Chieftaincy title of Ejemu-Alaran existed at Omu-Aran prior to their movement to Arandun but disagreed as to whether it was the exclusive preserve of the family of the Appellants, it is necessary for the court to find out the position of things before the movement to Arandun particularly since the Defendants are contending that they too have produced Ejemu Alaran prior to that movement to Arandun. I do not agree with the submissions of learned counsel for the Appellants that the trial court misconstrued the case of the Appellants nor that it went beyond the issues submitted to it for decision. From the pleadings and evidence, there is no doubt that while the plaintiffs limited their case to 1931 the Defendants case pre-dates 1931. For any court of law worth its name to decide the case between the parties, it has to consider the two sides and come to a conclusion as to which of the cases it prefers and why. It is my considered opinion that that is exactly what the learned trial Judge did in this case and that she is right in so doing. From the pleadings it was the duty of the plaintiffs to

have proved that the stool of Ejemu-Alaran as it existed at Omu-Aran was the exclusive preserve of Imoji family or compound; which they failed to prove. They were more concerned with what happened from 1931 when the people settled at Arandun. I do not agree that the learned trial Judge formulated a new case for the parties - she merely examined the tradition, custom and history of the Chieftaincy stool in its totality so as to see the probable version to believe between the case of the Plaintiffs and that of the Defendants. (p. 303 F/304 E)

***C Documents - Public documents***

2. The first reason is that since Exh. D1 is a public document it was not admissible ab initio since it was not certified as enjoined by the mandatory provisions of the law. I agree with learned counsel for the Appellants that it is the law that the only admissible secondary evidence of a public document is a certified true copy of that document. However, it is my considered view that Exh. D1 is not a copy of a public document but primary evidence. There is evidence that it was recorded and signed by DW1 who also tendered same in evidence - see Torti v. Ukpabi & Ors. (1984) 1 SCNLR 214; (184) 1 SC 370. (p. 305 C)

***Documents - Admissibility***

3. It is important to bear in mind the fact that Exh. D1 was pleaded by the Respondents - see paragraph 16 of the Amended Statement of Defence. In paragraph 12 of the Appellants' reply to Statement of Defence the Appellants denied the existence of Exh. D1 and also the fact that they participated at that meeting and alleged that Exh. D1 is a fabrication. They however did not avail themselves of the provisions of Order 32 rules 13-15 of the Kwara State High Court (Civil Procedure) Rules 1989 to give notice to produce and inspect the document. When the document was admitted, the Appellants again had the opportunity of establishing by cross examination the fact that none of those listed as having attended the meeting came from the family of the Appellants but failed and or neglected to utilize same. He did not touch that aspect at all in his cross examination. I am of the considered opinion that it is rather too late in the day to complain that the trial court is in error to have relied on that document for what it

says about the Chieftaincy stool in dispute. I therefore do not agree with the submission of learned counsel for the Appellants that the rights of the Appellants as contained in Section 22 of the 1963 Constitution of the Federal Republic of Nigeria was infringed neither do I agree that the learned trial Judge read into Exh. D1 what was not therein contained. (p. 305 G) B

***Evidence - Minutes of a meeting***

4. The fourth reason why Exh. D1 is said not to be proper minutes is that it is headed "Notes" not minutes. This obviously is a distinction without a difference. It is my considered opinion that a minute is a note or summary covering points to be remembered. See American Heritage Dictionary of the English Language (New Collage Edition at page 837, column 1). The fifth reason is that the document ought to have been signed by the members of the families of the Respondent and Appellants. I do not agree with this. The fact that the recorder signed the minute as being what transpired at the meeting including the decision reached therein is sufficient. (p. 306 H) C D

***Actions - Contradictions***

5. I have read the record over and over again and gone through the briefs of argument filed by both counsel. I do not agree with learned counsel for the Appellants that the case of the Respondents is full of material contradictions. It is trite law that for contradictions to be worthy of consideration, it must be material to the case of the party. It is also trite law that a party that claims declaration to any right such as title to chieftaincy as in this case has the duty to prove it by credible evidence. He is also to succeed on the strength of his case though he can take advantage of the inherent weakness in the case of his opponent. (p. 307 E) E F G

***Chieftaincy Matters - Exclusive right***

6. Equally true is the fact that the Respondents did protest when the appellants wanted to install the third Ejemu Alaran by installing a member of their own family. Both parties also agree that this dispute was later settled and a member of the family of the Appellants was installed. However, while the Appellants insist that they were able to succeed in 1972

because they have exclusive right to that stool the Respondents said that there was an agreement or understanding which stated that the next turn would be theirs. That agreement or understanding as evidenced in Exh. D1 is therefore very important in this case particularly as it offers a clear link between pre-1931 and post 1931 Ejemu-Alaran stool. It clearly confirms the contention by the Respondents that they had been producing Ejemu-Alaran prior to 1931, jointly with the Appellants. That apart, vital facts were elicited from the witnesses of the Plaintiffs to confirm some of the historical facts pleaded by the Defendants. The trial court was therefore faced with the case of the Defendants which talks of 1931 and subsequent and that of the Appellants. That court, in my considered opinion, did a good job by placing the two versions on its imaginary scale before coming to the conclusion that the Plaintiffs case does not weight as much as that of the Defendants. (p. 308 B)

D

**Actions - Reliefs - Counterclaim**

7. Finally, there is the complaint that the learned trial Judge granted reliefs to the Respondents when they did not counter claim at the trial. It is my considered view that the learned trial Judge was merely following the reliefs claimed by the Appellants in the case. It is my considered opinion that when the trial court stated inter alia at page 194 "I hold that it is now the turn of Imode compound to produce, elect and instal an Ejemu ....." she was making a finding of fact based on the pleadings and evidence adduced. This finding is very much supported by the evidence particularly Exh. D1. In any event, the effect of dismissing the case of the Plaintiffs is the same without the consequential orders following the vacation of the order of interlocutory injunction at page 195 of the record. That consequential order is clearly superfluous i.e." .... and the Defendants can now fill the vacancy in the Ejemu Alaran Chieftaincy as it is their turn to do so." In conclusion it is my considered opinion that this appeal lacks merit and is consequently dismissed. Judgment of the Lower Court in suit No. KWS/OM/1/96 is hereby affirmed subject to the consequential orders which is hereby set aside to satisfy all righteousness.

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(p. 309 G)

## NOTABLE POINT OF INTEREST

### ONNOGHEN JCA

*1. Minutes of a meeting - Must not be signed by the presiding officer*

The third and final reason given for the error of the learned trial Judge as regards Exh. D1 is that it is not a proper minutes of a meeting because it does not meet the minimum requirement of a valid minutes of meeting but learned counsel did not tell the court "the minimum requirements" he is talking about. Secondly that DW1 said that he was the Secretary of the Council at the relevant period but on Exh. D1 he was merely the recorder. I find it very difficult to understand the difference. Is learned counsel saying that a Secretary to a Council cannot be a recorder of minutes of a meeting? Does the fact that he is a Secretary change his status as the recorder of the minutes of that meeting? Learned Counsel also stated the Exh. D1 was not signed nor authenticated by the Sole Administrator who presided at the meeting but did not refer this court to any authority which states that this must be so neither have I come across any in that respect. (p. 306 E)

### REPRESENTATION

Yusuf O. Alli, SAN with S. U. Solagberu Esq. and A. R. Kareem (Miss) for the Appellants

Chief P. A. O. Olorunnisola SAN with P. G. Idowu Esq. for the Respondents

### CASES REFERRED TO

Torti v. Ukpabi (1984) 1 SCNLR 214; (184) 1 SC 370

Ogunlowo v. Ogundare (1993) 7 NWLR (pt. 307) 610

Anuforo v. Obilor (1997) 11 NWLR (pt. 530) 661 at 676

Gbajor v. Ogunburegui (1961) 1 All NLR 853

Oruobu v. Anekwe (1997) 5 NWLR (pt. 506) 618 at 636

Onubogu v. The State, (1974) 9 SC1 at 20

Ayanwale v. Atanda (1988) 1 NWLR (pt. 68) 22 at 23

Morakinyo v. Adesoyero (1995) 7 NWLR (pt. 409) 602 at 614

N.M.S.L v. Afolabi (1978) 2 SC 79 at 84

Elendu v. Ekwoaba (1995) 3 NWLR (pt. 386) 704 at 745

Ike v. Ugboaja (1993) 6 NWLR (pt. 301) 539 at 555

Akinola v. Oluwo (1962) 1 SCNLR 352 or (1962) 1 All NLR 224

Ojah v. Ogboni (1996) 6 NWLR (pt. 454) 272 at 290

Mallstrom v. Garner (1970) 2 All ER 9

B Enekwe v. IMB Ltd. (1997) 10 NWLR (pt. 526) 601 at 613

Torti v. Ukpabi (1984) 1 SCNLR 214, (1984) 1 SC 370

Gbajor v. Ogunburegui (1961) 1 All NLR 853

### **RULES REFERRED TO**

C Kwara State High Court (Civil Procedure) Rules 1989 0.32 rr. 13-15  
Nigerian Constitution 1963 s. 22.

### **LEAD JUDGMENT BY ONNOGHEN JCA**

D The appellants as Plaintiffs issued a Writ of Summons in which  
they claimed against the Respondents jointly and severally as follows:

"(i) Declaration that under the applicable Native law and Custom  
at Arandun, it is only the family compound of the plaintiff by name Imoji  
Compound that is entitled to present Candidate(s) to fill any vacancy in  
E the Ejemu Alaran Chieftaincy stool of Arandun.

(ii) Declaration that the family Compound of the 1st defendant  
that is, Imode Compound has no right to present any Candidate to fill any  
vacancy in the Ejemu Alaran Chieftaincy Stool.

F (iii) Declaration that the 1st defendant is ineligible and not  
qualified to be selected, appointed and installed as the Ejemu Alaran of  
Arandun nor to perform the functions of the Office or collect the perquisites  
attached thereto.

G (iv) Declaration that the 2nd defendant has no power under the  
applicable Arandun Native Law and Custom pertaining to the Ejemu  
Akan to approve the appointment of any person that is not from the  
Imoji Compound at Arandun.

H (v) Declaration that the 3rd Plaintiff having been chosen and  
selected by the Imoji Compound and presented traditionally to the 2nd  
defendant is the rightful person to occupy the vacant Ejemu Alaran Stool  
of Arandun.



(iv) *Order setting aside any purported selection nomination, appointment, approval and installation of the 1st Defendant or any other person from his Imode Compound/Family.*

(vii) *Perpetual injunction restraining the 1st Defendant from continuing henceforth to hold out or undergo any form of ceremony in pursuance of his purported ambition of becoming the ejemu Alaran and restraining the 2nd Defendant or any other person for the time being acting for him from recognizing the 1st Defendant as the Ejemu Alaran. Perpetual injunction restraining the Defendants jointly and severally from holding out presenting, parading or in any other manner put the 1st Defendant forward as the Ejemu Alaran.*

(viii) *Order directing the 2nd Defendant to appoint approve and install the 3rd plaintiff as the rightful Ejemu Alaran forthwith.*

(ix) *And for such further or other reliefs as the Court may be minded to grant."*

The facts of the case which are not disputed include the following:

That the present day Arandun town was founded about 1931 by Six families that moved from Omu Aran.

That the title Ejemu Alaran existed prior to the movement to Arandun.

That two of the six large families that settled at Arandun include Imoji-which is the family to which the appellant belong and Imode to which the 1st Defendant/Respondent belongs. Both parties agree that certain Stools are exclusive to the families but while the appellant state that Ejemu Alaran Stool is Exclusive to Imoji family, the Defendants contend that it is not.

That it belongs to both the family of Imoji and Imode.

However both parties agree that since 1931 three successive Ejemu Alaran have come from the Imoji family. Both parties also agree that there was a dispute over the stool between the two families in 1972.

However, it is the case of the Defendants that Imode family had occupied the Ejemu Alaran stool at a place called Ajo and that prior to their settlement at Arandun the people had settled in other places and had moved with their titles and stools to the various settlements including Arandun.

That there was a dispute over the stool of Ejemu Alaran resulting in an agreement in 1973-Exh. D1-stating that the next Ejemu Alaran would be produced by the Imode family.

B At the conclusion of trial and addresses of both counsel the learned trial judge, Hon. Justice O. Ajayi delivered judgment on 11th December, 1997 in which after considering the case of both parties dismissed the Plaintiffs/Appellants case with N1,500.00 cost in favour of the Defendants/ Respondents.

C The Appellants, being dissatisfied with the said judgment filed a Notice of Appeal incorporating 7 grounds of appeal on 22nd December, 1997. The Grounds of Appeal are at pages 196-200 of the record and are reproduced hereunder for ease of reference:

*"GROUNDS OF APPEAL*

D *1. The learned trial judge erred in law by holding that the appellants avoided the history of the pre-Arandun settlement period and that this was indicative of lack of proof of the appellants' case when this was wrong from the fact as pleaded and proved.*

*PARTICULARS*

E *(i) The whole case revolved around the Ejemu Chieftaincy title in Arandun not any other place.*

*(ii) The Appellants were and are concerned with the Ejemu title at present day Arandun.*

F *(iii) The history of the Ejemu in pre-1931 Arandun was irrelevant and out of place in the Appellants' case.*

*2. The learned trial judge misdirected herself when she held that:*

*"In order to examine accurately their historical background, I feel, one should go beyond 1931 settlement as it is essential to know the situation before then. This in my view is the crux of the whole matter."*

G *PARTICULARS*

*(i). The history of pre- 1931 Arandun was not called for nor necessary for determination of the claim of the appellants.*

*(ii) The Respondents did not counter claim nor set up a different claim.*

H *(iii) It is the claim of the appellants that will circumscribe and determine the facts of the case.*

3. *The learned trial judge erred in law in holding that the appellants were represented at the meeting evidenced by Exh. D1 and that the appellants agreed with the content of the Exhibit when this was not so from the face of the document.*

4. *The learned trial judge misdirected herself on the facts by holding that:* B

*I do not agree with Mr. Alli because the document had been admitted in evidence and I cannot allow oral evidence to vary the contents of the Exhibit already before the court. I do not believe that the Plaintiffs side was not represented at the meeting. The excuse or reasons given and even the fact that the plaintiffs tried to avoid evidence on the document is in my view an after thought. I hold that both parties agree on the contents of Exhibit D1'.* C

PARTICULARS D

(i) *On the face of Exhibit D1 those who attended the meeting were set out.*

(ii) *There was no single representative of the appellants family at the said meeting.* E

(iii) *The plaintiff could not have given evidence on Exh. D1 the existence of which they knew for the first time at the trial*

(iv) *The plaintiffs family never at anytime agree with the content of Exh. D1.*

(v) *The appellants challenged the genuineness of Exh. D1 in their reply and oral testimony.* F

5. *The learned trial judge erred in law by placing reliance on the content of Exh. D1 to found in favour of the respondents when the document has no probative value not been (sic) a minute of a meeting under the law and this led to a miscarriage of justice against the appellants.* G

PARTICULARS

(i) *Exh. D1 did not meet the requirement of a proper minutes of meeting* H

(ii) *The person that presided at the purported meeting did not sign nor endorse the minutes.*

(iii) *The document was made to meet the case of appellants.*

(iv) *The document was inadmissible as a minute of meeting.*

*The learned trial judge misdirected herself on the facts by holding as follows:*

*"Even though both learned Senior Advocates allege (sic) contradictions in the evidence of both the plaintiffs and defendants. I still prefer the evidence of the defendants. Their evidence traces their history and custom to a much deeper root than the plaintiffs who based their custom to 1931 when the new settlement was founded. I believe the evidence adduced by the defendants for the reasons given above and I hold that it is now the turn of Imode Compound to produce elect and instal (sic) an Ejemu as contained in the resolutions between the sole administrator for Igbomina Ekiti and the prominent Chief, the King makers and the Native Community of Arandun"*

**PARTICULARS**

*(i) The trial judge did not pin point any evidence led by the respondents that entitled here to prefer their case to that of the appellants.*

*(ii) The evidence of DW3 was against the respondents that called him but the trial court did not evaluate same.*

*(iii) There was no credible evidence of the Native Law and Custom on the Ejemu Stool pre- 1931 led by the respondents.*

*(iv) There was nothing on Exh. D1 to show that the entire Arandun Community took part at the meeting as found by the trial court.*

*(v) The holdings was speculative and without foundation.*

*7. The judgment is against the weight of evidence."*

Out of these seven grounds learned counsel for the appellants Yusuf O. Alli Esq. SAN, has formulated three issues for determination in his Brief of Arguments filed on 29/4/98 viz:

*1. Whether the learned trial judge did not misconstrue or set up a new case for the appellant as to the relevant time of settlement at Arandun necessary for the determination of the exclusive entitlements' or otherwise of the appellants' family to the Ejemu Alaran Chieftaincy and whether such misconstruing did not occasion a miscarriage of Justice on the appellants in this case.*

*2. Whether the learned trial judge was not wrong to have placed heavy reliance on Exhibit D1 and to have proceeded to treat same as a*

legally recognized minute of meeting and to have read into it things which were not contained therein.

3. Whether the learned trial judge was not in error to have dismissed the appellants' claim when the appellants have made out a case entitling them to succeed in their claims before her and there were portions of the case of the respondents that supported the appellants' case. B

On issue No. 1 learned SAN submitted that the sum total of the case of the appellants was that since the founding of Arandun in 1931 it was the exclusive right of their family under the relevant Native Law and Custom to fill any vacancy in the Ejemu Alaran Stool. That the learned trial judge did not limit her decision to this narrow point but widened the scope and set up a new case for the appellants by holding at page 192 of the records as follows: and I quote: C

*"In order to examine accurately their historical background I feel one should go beyond their 1931 settlement as it is essential to know the situation before then. This in my view is the crux of the whole matter."* D

That the court ought to have decided whether Arandun was found in 1931, if so which family had been producing the Ejemus since then; Whether there was any order of rotation for the Chieftaincy under the relevant Native Law and Custom of Arandun. Whether the 2nd Respondent could lawfully and validly appoint any person to fill the vacancy in the ejemu Stool from Outside the Appellants Imoji Compound, and whether the appellants family, Imoji enjoy exclusive right to the stool since 1931 under Native Law and Custom. E F

Learned Counsel further submitted that the Court is bound to limit its decision to the issue(s) properly submitted to it for decision and no other. That a trial court cannot make a case for the parties neither can it formulate wider issues than the one(s) submitted to it for adjudication. For this learned counsel cited the following authorities viz Ogunlowo v. Ogundare (1993) 7 NWLR (pt. 307) 610 and Ojo-Osagie v. Adonri (1994) 6 NWLR (pt. 349) 131 at 154. G H

That where a court misconstrues the case of a party like in this case, an appellant court will set aside the decision as having resulted in a miscarriage of justice for which he relied on the Court of Appeal decision in the case of Oyewale v. Oyesoro (1998) 2 NWLR (pt. 539) 663 at 679.

Learned Counsel further stated that there was no counter-claim filed by the respondents to have entitled the trial judge to rely on other matters not made the foundation of the appellants case. That if the Respondents had counter-claimed, it would have been legitimate for the trial judge to look at any other history of Native Law and Custom rather than the one pleaded by the appellants.

Learned SAN further submitted on this issue that the learned trial judge appeared to forget with respect, that Native Law and Custom is not static.

That it is a mirror of the society that changes with time. That even if it is true that in pre-Arandun period the Ejemu Stool was rotated between the appellants and 1st Respondent's family which he does not concede, could Custom not have been changed after settlement in Arandun - Learned counsel quarried. That if rotation was the order of the day at Omu-Aran from where the parties fore-fathers migrated to Arandun is there anything under Native Law and Custom which stipulates that the people cannot validly alter, modify or even abrogate such Native Law and Custom in Arandun especially as pertaining to the Ejemu Stool. He then answered the question in the negative and went on to emphasize that since the founding of Arandun in 1931 it was the Native Law and Custom that only members of the appellants family could be made the Ejemu if there was vacancy. He then urged us to resolve the issues in favour of the appellants.

On issue No. 2, the learned SAN referred to paragraph 16 of the Amended Statement of Defence at page 86 of the record where the respondents pleaded the minute of a meeting alleged to have been held by the families of the parties herein and others with the Sole Administrator of Igbomina Ekiti Division in 1973.

He then referred to paragraph 12 of the appellants reply where they denied the alleged meeting and minute. That DW1 gave evidence and tendered Exh. D1 which was admitted despite objection by learned counsel for the appellant. That the trial judge went ahead to rely heavily on Exh. D1 in coming to her decision in the case.

The learned SAN then submitted that the learned trial judge was in grave error to have relied on Exh. D1 to make the far reaching findings

in this case. He then gave three reasons for his submission to wit:

(1) That Exh. D1 being a Public Document was not admissible ab initio since it was not certified as enjoined by the mandatory provisions of the law. That the issue of admissibility of Exh. D1 goes to jurisdiction and can be raised on appeal and that this court can even take it suo muto. Referring to Section 109, 111 and 112 of the Evidence Act, learned counsel submitted that Exh. D1 not being a certified true copy of a public document, it is inadmissible and liable to be expunged on appeal. He cited and relied on the case of Anuforo v. Obilor (1997) 11 NWLR (pt. 530) 661 at 676. B

(2) That from the face of Exh. D1 there was no indication whatsoever that the family of the appellants was represented at the meeting of which the exhibit was purported to be minutes. That Exh. D1 sought to take away or abridge the exclusive right of the appellants yet they were not indicated as being present at the meeting. That by Section 22 of the 1963 constitution being the operative Constitution in 1973 when Exh. D1 was made, the appellants family was entitled to be heard before Exh. D1 purported to take away their vested right to the Stool. That the holding of the trial judge at page 194 of the record was against the content of the Exhibit. That the attendance column of Exh. D1 did not indicate nor did DW1 point out any member of the appellants family who was present at the meeting particularly as the appellants have denied this, in their paragraph 12 of the reply. That the trial court's holding that "I do not believe that the plaintiffs side was not represented at the meeting....." amounted to the trial judge reading into Exh. D1 what was not therein contained. That this amounts to speculation for which he cited and relied on Gbajor v. Ogunburegui (1961) 1 All NLR 853. Oruobu v. Anekwe (1997) 5 NWLR (pt. 506) 618 at 636. C D E F G

(3) That Exh. D1 is not a proper minutes of a meeting and that it cannot be relied upon in this case for the following reasons:

(i) The document does not meet the minimum requirement of a valid minutes of meeting H

(ii) DW 1 through whom it was tendered deposed that he was the Secretary of the council at the relevant period but on Exh. D1 he was merely the recorder.

(iii) The document was not signed nor authenticated by the Sole

Administrator who presided at the meeting.

(iv) The heading of Exh. D1 shows that it was not a minutes but "Notes"

B (v) The parties to be bound by the content of the exhibit that is the families of 1st Respondent and the appellants ought to have signed the document since it was said to be a resolution of the two families and others.

C (vi) It was obvious that the document was tailor made for this case.

The Exh. D1 was not a minute of a meeting properly so called and it is therefore irrelevant to the determination of this case. In the alternative, learned counsel submitted that in view of the earlier submission the appellants cannot and should not be bound by its contents. He then urged the court to resolve this issue in favour of the appellants.

D On the third and final issue learned counsel submitted that this is a proper case for the Court of Appeal to interfere with the findings of the trial judge.

E That before a party can succeed he must tender cogent, straight forward believable and credible evidence, oral or documentary to buttress his case.

F He urged the Court to accord the necessary weight to and believe the testimonies of the witnesses called by the appellants on the grounds that:

(i) Their testimonies satisfied all the criteria of belief.

(ii) The testimonies are consistent, straight forward and believable.

(iii) The testimonies are in substantial conformity with the pleading of the appellants and based thereon.

G (iv) All the witnesses except PW. 2 who is the 3rd plaintiff especially PW. 3 are independent people, that is they are not friends, or relations of the appellants rather they are people that will ordinarily tell the truth in a matter like this.

H (v) There are no contradictions or inconsistencies in the evidence of all the witnesses.

That the respondents counsel was unable to impugn or challenge the material aspects of the testimonies of the witnesses through Cross



Examination and that there was no reliable rebuttal evidence led by the Respondents. He urged the court to find in favour of the appellants.

Going further, learned counsel submitted that the trial court was wrong to have placed reliance on the testimonies of the DW1 and DW2 for the reasons that:

(i) DW 1 has an interest to serve. That he claimed to be the council secretary and assistant director personnel management to Irepodun Local Government. He claimed that he took the minutes of meeting held on 21/8/73 and he was the sole signatory of that minute which was admitted and marked Exh. D1, he was hedgy furtive, hesitant and slippery under cross examination. He contradicted himself unabashedly in order to hide the truth.

(ii) That DW2 is from the said Imode Compound as the Defendants. He is bound to take side with the Defendants.

(iii) The testimony of DW3 threw the evidence of DW2 into the waste basket. DW3 stated unequivocally that there is no Ejemu Aran in Arandun and that the purported appointment of the 1st Defendant was a rumour.

(iv) All the witnesses except PW. 2 who is the 3rd Plaintiff especially PW. 3 are independent people, that is they are not friends, or relations of the Appellants rather they are people that will ordinarily tell the truth in a matter like this.

(v) There are no contradictions or inconsistencies in the evidence of all like this.

(vi) From the demeanour of the DW1 and DW2 it was patently clear that they came to mislead the court. He went on to point out what he considers to be contradiction in the evidence of DW1 and DW3, and urged the court not to believe their story. Learned Counsel then cited and relied on the following cases: Onubogu v. The State, (1974) 9 SC1 at 20; Ayanwale v. Atanda (1988) 1 NWLR (pt. 68) 22 at 23 Morakinyo v. Adesoyero (1995) 7 NWLR (pt. 409) 602 at 614.

That the Respondents counsel was unable to impugn or challenge the material aspects of the testimonies of the witnesses through cross-examination and that there was no reliable rebuttal evidence led by

the Respondents. He urged the court to find in favour of the Appellants.

Learned Counsel then submitted that on the preponderance of evidence the Appellants ought to have been granted all the reliefs claimed by the trial court and therefore called on this Court to ascribe the correct probative value to the evidence on record. But in an obvious contradiction to some of his earlier submissions on this issue he submitted further that "the demeanour of the witnesses is not in issue" See page 20 paragraphs 6-93 of the Appellants' brief.

However Counsel went on to submit that having adduced sufficient evidence to succeed, the onus shifted to the Respondent who failed woefully to meet the Appellants' case. On shifting onus of proof in Civil Cases, Counsel referred to the case of N.M.S.L v. Afolabi (1978) 2 SC 79 at 84, Elendu v. Ekwoaba (1995) 3 NWLR (pt. 386) 704 at 745. Ike v. Ugboaja (1993) 6 NWLR (pt. 301) 539 at 555.

That where the Defendants case support Plaintiffs case as in this case, the Plaintiff can rely on those facts in the Defendants case that support his to establish or prove his case; for this he relied on Akinola v. Oluwo (1962) 1 SCNLR 352 or (1962) 1 All NLR 224; Edokpolo v. Asemota (1994) 7 NWLR (pt. 356) 314 at 327.

That even if the Respondents proved their averment that three families produced Ejemu at Omu-Aran (which is denied) since Omu-Aran is a distinct community from Arandun, the custom of Omu-Aran cannot be made applicable to Arandun. Each Community had the right to set up its own native law and custom on all matters affecting the community. That the onus of proving that what obtained at Omu-Aran on Ejemu Alaran Chieftaincy also obtains at Arandun falls squarely on the Respondents who asserted same but failed to discharge.

Finally Learned Counsel submitted that the Learned Trial Judge granted reliefs to the Respondents when they did not counter claim at the trial - he referred to pages 194 and 195 of the record where the trial judge stated thus:" .... I hold that it is now the turn of Imode Compound to produce elect and install an Ejemu ..... and the Defendants can now fill the vacancy as it is their turn to do so".

That in a declaratory action like the present one even if the trial

court rightly dismissed the case, it cannot order any relief in favour of the defendant except he counter-claims. He then referred the Court to the following cases Ojah v. Ogboni (1996) 6 NWLR (pt. 454) 272 at 290. Mallstrom v. Garner (1970) 2 All ER 9 and Enekwe v. IMB Ltd. (1997) 10 NWLR (pt. 526) 601 at 613.

Finally Learned Counsel urged the Court to set aside the judgment of the Lower Court and grant all the reliefs sought by the appellants.

The Respondents filed their brief on 3rd June, 1998 in which they formulated three issues for determination. The issues are very similar to those formulated by the appellants. They are as follows:

(1) Whether the trial court is right in examining the historical evidence as related to the Ejemu Chieftaincy rather than sticking to the 1931 date which the plaintiffs want the court to use.

(2) Whether the trial court rightly used Exhibit D1 in its finding in its judgment, and

(3) Whether the plaintiffs proved their case as pleaded.

On issue No. 1 Learned Counsel for the Respondents, Chief P.A.O. Olorunnisola SAN submitted that the Appellants are wrong in seeking to limit the chieftaincy issue to the period beginning 1931 when the title, Ejemu Alaran had existed at Orile, Omu-Aran Ajo and Omu-Aran again before the new Arandun.

That tradition and custom grow with the people concerned and move with them whenever they go.

That if, as pleaded in paragraph 4 of the Statement of Claim, Arandun was established in 1931 by people from Omu-Aran, then the traditions and customs which they had at Omu-Aran necessarily followed them.

That the Respondents did put the appellants on notice in paragraph 5 of the Statement of Defence that they are not limiting their case to 1931 but will go full hog to the history of the Stool and the people of Arandun. That the Plaintiffs denied the history of Arandun people as dating prior to 1931 in their paragraph 5 of the reply. That the appellants were made to admit the pre 1931 history of Arandun under cross examination. That the Court was right in examining the custom and tradition of a title which had existed prior to 1931 as old as the Alaran.

That the trial court did not formulate any new case for the parties. That the issue was about people, stool, tradition and custom, not about year. That the people did not suddenly come into being in 1931 nor did they come together in 1931 to form a community.

B He urged the court to dismiss grounds 1 and 2 upon which issue No. 1 is formulated.

C On issue No. 2 learned counsel submitted that exhibit D1 is relevant and pleaded in paragraphs 14 and 16 of the Amended Statement of Defence. That it is not the law to say that because the document is a public document it should have been certified. Relying on the case of Torti v. Ukpabi and 2 Ors (1984) 1 SCNLR 214, (1984) 1 SC 370 learned counsel submitted that Exhibit D1 which was signed and tendered by the witness DW 1 is a primary evidence. That the Appellants having not appealed against the admission of that exhibit cannot now raised the issue in the course of arguing other grounds.

D That the Appellants did not avail themselves of Order 32 rule 13-15 of the Kwara State High Court (Civil Procedure) Rules, 1989 to give notice to produce and inspect the document but made a general and blanket denial in their reply to Statement of Defence paragraph 12 thereof. That went the document was tendered and admitted learned counsel for the Appellants did not concern himself about who represented the parties at the meeting. That he had the opportunity to demonstrate that no chief or anybody on the list of Exhibit D1 represented their interest, but did not. That the trial court was right in taking the document for what it says about the Chieftaincy stool. That whether Exh. D1 is called note or minute is a matter of semantics. He referred to American Heritage dictionary of English language (New College Edition) page 837 column 1 to show that "minute" is defined inter alia as "A note or summary covering points to be remembered; memorandum."

G That the Appellants have failed to show that Exh. D1 was tailor made for this case or which law says the minutes must be signed by the sole Administrator as the chairman. He then urged the Court to dismiss grounds 3,4 and 5 on which issue No. 2 is formulated.

H On issue No. 3 learned counsel submitted that the Plaintiffs

failed to prove their case. That their root of title was not proved. That the Plaintiffs rather tried to cover up their history before 1931.

That the Plaintiffs and their witnesses gave evidence which were self contradictory, contradicted each other and supported and proved the pleadings and case of the Respondents.

That evidence was extracted from the plaintiffs and their witnesses in support of the case for the Defendants under cross examination. That such evidence is good evidence for which he referred to Adeyeye v. Aji-boye (1987) 3 NWLR (pt. 61) 432 at 444 or (1987) 7 SCN 528; Kimdey v. Gongola State Governor (1988) 2 NWLR (pt. 77) 445. (1988) 5 SCN 528. That the evidence of DW2 about previous Ejemus from Imode's family was not challenged nor destroyed. That PW2 PW3 admitted that Arandun people bury their chiefs at Orile near Odun. That PW3 at page 105 lines 7-8 confirmed that when Aran people left Omu-Aran in 1931 they left some people behind who are still appointing Ejemus there today; that an Ejemu has never been and cannot double as Ejemu and Baale Omirinrin to which counsel referred to the evidence of PW2 and PW3 and said that this is contrary to paragraph 6 of the statement of claim as contained at page 5 of the record, but confirms paragraph 6 of the Defence at page 53 thereof.

That it is not the duty of the court to reconcile the evidence of a party for the party and that since the evidence of the Plaintiffs and their witnesses contradicted themselves in vital particulars the court was right in not only discountenancing them but in dismissing their claims.

That the court did not grant anything outside the Plaintiff's claim. That what the Appellants are complaining about is unfounded particularly when they in their paragraph (iii) sought a "Declaration that the 1st Appellant is ineligible and not qualified to be selected, appointed and installed as the Ejemu Alaran of Arandun ....." That what the court stated is in direct answer to this relief.

Finally learned counsel submitted that since the Plaintiffs failed to prove their case, grounds 6 and 7 be dismissed. The Appellants did not file a reply brief.

It is important to note that the issues formulated by both learned

counsel are substantially the same and arise from the seven grounds of appeal filed. In dealing with this appeal I will adopt the issues as formulated by learned counsel for the Appellants so as to attempt to do substantial justice to the case presented by both parties.

B Now, issue 1, which for emphasis is reproduced hereunder, is as follows:-

(1) *"Whether the learned trial Judge did not misconstrue and or set up a new case for the appellants as to the relevant time of settlement at Arandun necessary for the determination of the exclusive entitlement or otherwise of the Appellants' family to the Ejemu Alaran Chieftaincy and whether such misconstruing did not occasion a miscarriage of justice on the Appellants in this case."*

In other words, whether the trial court is right in examining the 1931 historical evidence relating to Ejemu Alaran Chieftaincy.

D This issue is the most important or primary issue in this appeal. This point becomes very clear when we realize that both parties are agreed on very many important facts viz-

(i) That Arandun was established in about 1931 by people who E originally came from Omu-Aran.

(ii) That the six compounds or families that make up Arandun all came from Omu-Aran.

(iii) That the chieftaincy stool came along with the people from F Omu-Aran to Arandun.

(iv) That since the establishment of Arandun it is only the family of the Appellants - Imoji family - that had produced the three Ejemu-Alaran although there was a dispute between the two families involved in this case during the time of the filling of the vacancy for the third Ejemu-Alaran in 1972.

G However, the Plaintiffs pleaded and gave evidence in support of the fact that before leaving Omu-Aran the six families or compounds agreed that each family must move along with the Chieftaincy title or stool exclusive to it and that the Ejemu-Aran Chieftaincy stool is exclusive to Imoji family or compound to which the Plaintiffs/Appellants belong.

H This fact is strenuously denied by the Defendants people, who

pleaded and gave evidence to the effect that while the Ejemu Chieftaincy stool had existed and moved along with the people wherever they had sojourned and eventually settled with them at Arandun, it is never the exclusive preserve of the Plaintiffs/Appellants but belongs to the families of the Plaintiffs and Defendants in rotation even though since their settlement at Arandun the family of the Plaintiffs has produced the three Ejem-Alaran who had occupied that stool.

**The question is whether having regards to the state of the pleadings and the evidence adduced the learned trial judge was right in considering the pre 1931 history of Arandun. I am of the considered opinion that the learned trial Judge was very right in considering the pre- 1931 history of Arandun people so as to arrive at a just resolution of the issues in controversy between the parties.**

**Both parties having agreed that the Chieftaincy title of ejemu-Alaran existed at Omu-Aran prior to their movement to Arandun but disagreed as to whether it was the exclusive preserve of the family of the Appellants, it is necessary for the court to find out the position of things before the movement to Arandun particularly since the Defendants are contending that they too have produced Ejemu Alaran prior to that movement to Arandun. I do not agree with the submissions of learned counsel for the Appellants that the trial court misconstrued the case of the Appellants nor that it went beyond the issues submitted to it for decision.**

I find it difficult to agree with the submission that "it cannot be doubted that if the learned trial Judge had limited herself to the proper issues submitted to her for decision without looking for history outside of what the Appellants brought before her, the decision would have been different," particularly when one considers the fact that it takes two to make a quarrel and that when it come to telling how that quarrel came about both parties will always have different stories to tell. That it is the duty of the court that weigh the two stories on an imaginary scale to determine which one weights more than the other. By the submission of learned counsel quoted above he seems to be saying that the trial court ought not to have considered the case of the Defendants before arriving at a just decision because to do so would be "looking for other history outside of what the

Appellants brought before her ....." From the pleadings and evidence, there is no doubt that while the plaintiffs limited their case to 1931 the Defendants case pre-dates 1931. For any court of law worth its name to decide the case between the parties, it has to consider the two sides and come to a conclusion as to which of the cases it prefers and why. It is my considered opinion that that is exactly what the learned trial Judge did in this case and that she is right in so doing. From the pleadings it was the duty of the plaintiffs to have proved that the stool of Ejemu-Alaran as it existed at Omu-Aran was the exclusive preserve of Imoji family or compound; which they failed to prove. They were more concerned with what happened from 1931 when the people settled at Arandun.

I do not agree that the learned trial Judge formulated a new case for the parties - she merely examined the tradition, custom and history of the Chieftaincy stool in its totality so as to see the probable version to believe between the case of the Plaintiffs and that of the Defendants.

That being my considered view grounds 1 and 2 upon which issue E No. 1 is formulated must fail.

On issue No. 2, that is "whether the learned trial Judge was not wrong to have placed heavy reliance on Exhibit D1 and to have proceeded to treat same as a legally recognized minute of meeting and to have read into it things which were not contained therein."

Learned counsel for the Appellants gave three reasons why the learned trial judge was in grave error to have relied on the said Exh.D1. Exh. D1 is a minutes of a meeting alleged to have taken place sometime in 1973.

The first reason is that since Exh. D1 is a public document it was not admissible ab initio since it was not certified as enjoined by the mandatory provisions of the law. I agree with learned counsel for the Appellant that it is the law that the only admissible secondary evidence of a public document is a certified true copy of that document. However, it is my considered view that Exh. D1 is not a copy of a public document but primary evidence. There is evidence that it



was recorded and signed by DW1 who also tendered same in evidence - see Torti v. Ukpabi & Ors. (1984) 1 SCNLR 214; (184) 1 SC 370.

The second reason is that it is not indicated on Exh. D1 that the family of the Appellants was represented at the meeting. He went on to argue that since Exh. D1 purported to abridge the right of Appellants family without giving them opportunity to be heard it infringes on Section 22 of the 1963 Constitution being the applicable Constitution in 1973 when Exh. D1 was made.

It is important to bear in mind the fact that Exh. D1 was pleaded by the Respondents - see paragraph 16 of the Amended Statement of Defence. In paragraph 12 of the Appellants reply to Statement of Defence the Appellants denied the existence of Exh. D1 and also the fact that they participated at that meeting and alleged that Exh. D1 is a fabrication. They however did not avail themselves of the provisions of Order 32 rules 13-15 of the Kwara State High Court (Civil Procedure) Rules 1989 to give notice to produce and inspect the document.

When the document was admitted, the Appellants again had the opportunity of establishing by cross examination the fact that none of those listed as having attended the meeting came from the family of the Appellants but failed and or neglected to utilize same. He did not touch that aspect at all in his cross examination. I am of the considered opinion that it is rather too late in the day to complain that the trial court as in error to have relied on that document for what it says about the Chieftaincy stool in dispute. I therefore do not agree with the submission of learned counsel for the Appellants that the rights of the Appellants as contained in Section 22 of the 1963 Constitution of the Federal Republic of Nigeria was infringed neither do I agree that the learned trial Judge read into Exh. D1 what was not therein contained. That being the case, the authorities of Gbajor v. Ogunburegui (1961) 1 All NLR 853 and Oruobu v Anekwe (1997) 5 NWLR (pt. 506) 618 do not apply to this case.

The third and final reason given for the error of the learned trial Judge as regards Exh. D1 is that it is not a proper minutes of a meeting because it does not meet the minimum requirement of a valid minutes of meeting but learned counsel did not tell the court "the minimum re-

quirements" he is talking about. Secondly that DW1 said that he was the Secretary of the Council at the relevant period but on Exh. D1 he was merely the recorder. I find it very difficult to understand the difference. Is learned counsel saying that a Secretary to a Council cannot be a recorder of minutes of a meeting? Does the fact that he is a Secretary change his status as the recorder of the minutes of that meeting? Learned Counsel also stated the Exh. D1 was not signed nor authenticated by the Sole Administrator who presided at the meeting but did not refer this court to any authority which states that this must be so neither have I come across any in that respect.

**The fourth reason why Exh. D1 is said not be proper minutes is that it is headed "Notes" not minutes. This obviously is a distinction without a difference. It is my considered opinion that a minute is a note or summary covering points to be remembered. See American Heritage Dictionary of the English Language (New Collage Edition at page 837, column 1).**

**The fifth reason is that the document ought to have been signed by the members of the families of the Respondent and Appellants. I do not agree with this. The fact that the recorder signed the minute as being what transpired at the meeting including the decision reached therein is sufficient.**

The sixth and final reason is that the document was tailor made for this case. This is the most unfortunate 'reason' particularly as it tends to encourage the court to commit an act of irregularity by speculating on what is not before it. There is no scintilla of evidence on record in support of this a averment neither has learned counsel drawn our attention to any.

Having regards to the foregoing reasons issued No. 2 is resolved in favour of the Respondents. Consequently grounds 3, 4 and 5 of the grounds of appeal are hereby dismissed.

I now consider the third and final issue raised in this appeal which has to do with the evidence before the trial court. **I have read the record over and over again and gone through the briefs of argument filed by both counsel. I do not agree with learned counsel for the Appellants that the case of the Respondents is full of material contradictions. It is trite law that for contradictions to be worthy of consideration, it**

**must be material to the case of the party. It is also trite law that a party that claims declaration to any right such as title to chieftaincy as in this case has the duty to prove it by credible evidence. He is also to succeed on the strength of his case though he can take advantage of the inherent weakness in the case of his opponent.**

At stated earlier in this judgment the Defendants, by pleading the pre-1931 history of Ejemu Alaran Chieftaincy stool and the fact that they, as well as the Appellants, are jointly entitled to occupy that stool in rotation and that they (Respondents) had occupied same prior to 1931, puts in issue the excessiveness of that stool to the family of the Appellants as claimed. The hard facts in this case, as stated earlier, confirm that since 1931 the Imoji family of the Appellants have been producing the Ejemu Alaran of Arandun. That the said Imoji family has so far produced three Ejemu Alaran in succession. **Equally true is the fact that the Respondents did protest when the appellants wanted to install the third Ejemu Alaran by installing a member of their own family. Both parties also agree that this dispute was later settled and a member of the family of the Appellants was installed.**

However, while the Appellants insist that they were able to succeed in 1972 because they have exclusive right to that stool the Respondents said that there was an agreement or understanding which stated that the next turn would be theirs. That agreement or understanding as evidence in Exh. D1 is therefore very important in this case particularly as it offers a clear like between pre-1931 and post 1931 Ejemu-Alaran stool. It clearly confirms the contention by the Respondents that they had been producing Ejemu-Alaran prior to 1931, jointly with the Appellants. That apart, vital facts were elicited from the witnesses of the Plaintiffs to confirm some of the historical facts pleaded by the Defendants. The trial court was therefore faced with the case of the Defendants which talks of 1931 and subsequent and that of the Appellants. That court, in my considered opinion, did a good job by placing the two versions on its imaginary scale before coming to the conclusion that the Plaintiffs case does not weight as much as that of the Defendants.

The court rejected the Plaintiffs' case on the balance of probabil-

ities and it is my considered opinion that the trial court is right. I agree with the submission of learned counsel for the Appellants that the onus of proving that what obtains at Omu-Aran on Ejemu-Alaran Chieftaincy also obtains at Arandun falls squarely on the Respondents who asserted same, but I disagree that the Respondents failed to discharge that onus. If any thing at all Exh. D1 which talks of rotation of that Chieftaincy stool between the families of the Appellants and 1st Respondent clearly confirms this point.

There is the point made by learned counsel for the Appellants that the witnesses of the Respondents contradicted themselves particularly that DW1 said he became council secretary in 1969 at Omu-Aran etc. I have gone through the evidence of DW1. In his evidence in chief on 23/1/97 at page 107 DW1 said inter alia. " ..... I joined the Local Government on 1st May, 1969 ..... I worked under Igbomina Ekiti Division as a council secretary .....". The witness never said that at the time he joined the service of the Local Government, he was employed as the council secretary. He did not state the time he became the secretary of the council, nor that at the time he took down Exh. D1, he was the secretary of the council.

The second alleged contradiction between the evidence of DW1 and DW2 as to whether 1st Appellant is now the Ejemu alaran is equally not material having regards to the relief sought by the Appellants in paragraph (ii) to wit "Declaration that the 1st Defendant is ineligible and not qualified to be selected, appointed and installed as the Ejemu Alaran of Arandun nor to perform the functions of the office or collect the perquisites attached thereto." See also paragraph (vi) which seeks an "Order setting aside any purported selection, nomination of the 1st Defendant or any other person from his Imode compound/family". In any event, it is in my considered opinion that the contradictions, if any, do not materially affect the case of the Respondents so much as to tilt the scale in favour of the Appellants.

Learned counsel for the Appellants has submitted that DW1 has an interest to serve and ought not to have been relied upon by the trial court but failed to tell us the interest the witness has to serve in this case.

**Finally, there is the complaint that the learned trial Judge granted reliefs to the Respondents when they did not counter claim**

at the trial. It is my considered view that the learned trial Judge was merely following the reliefs claimed by the Appellants in the case. It is my considered opinion that when the trial court stated inter alia at page 194 "I hold that it now the turn of Imode compound to produce, elect and instal an Ejemu ....." she was making a finding of fact based on the pleadings and evidence adduced. This finding is very much supported by the evidence particularly Exh. D1. B

In any event, the effect of dismissing the case of the Plaintiffs is the same without the consequential orders following the vacation of the order of interlocutory injunction at page 195 of the record. That consequential order is clearly superfluous i.e. ".... and the Defendants can now fill the vacancy in the Ejemu Alaran Chieftaincy as it is their turn to do so." C

In conclusion it is my considered opinion that this appeal lacks merit and is consequently dismissed. Judgment of the Lower Court in suit No. KWS/OM/1/96 is hereby affirmed subject to the consequential orders which is hereby set aside to satisfy all righteousness. I assess and fix the cost of this appeal at N2000.00 against the Appellants. D E

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**OKUNOLA JCA**

I read before now a copy of the leading judgment of my learned brother Onnoghen, JCA. I agree with his reasoning and conclusion. F

I would also dismiss the appeal with N2,000.00 costs to the Respondents. G

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**AMAIZU JCA**

I have read in draft the judgment of my learned brother Onnoghen, JCA. I agree with his conclusion. H

Under section 7 of the Evidence Act -

*"Facts which, though not in issue, are so connected with a fact in*

*issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places."*

The evidence before the lower court is that the parties and their families migrated from Omu Aran to Arandu. In view of the above provision the learned trial Judge was right in my respectful view, to have observed in her judgment that -

*"In order to examine accurately their historical background, I feel, one should go beyond their 1931 settlement as it is essential to know the situation before then. This is my view is the crux of the whole matter."*

The other thorny point is the admissibility of Ex. D1. The document was pleaded by the Respondents in their Amended Statement of defence. It is relevant and was tendered by the maker. The learned trial Judge was right in admitting it in evidence and relying on it in her judgment. For the above reasons and other reasons ably advanced in the lead judgment, the appeal is dismissed. I abide by all consequential orders made in the lead judgment including the order on costs.

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