

SUPREME COURT OF NIGERIA

4TH FEBRUARY, 2000. SC. 148/1995

**CORAM:- A. G. KARIBI-WHYTE, E. O. OGWUEGBU,
A. I. KATSINA-ALU, O. ACHIKE, U. A. KALGO, JJSC.**

OBA AMOS BABATUNDE & ANOR. APPELLANTS
AND
MR. SIMON OLATUNJI & ANOR. RESPONDENTS

JUDGMENTS - Appellants - Necessity of having void judgment set aside on appeal - Is mandatory - Seeing that a judgment remains valid - Until it is set aside on appeal.

JUDGMENTS - Validity - Judgment of a Court of competent jurisdiction remains valid - Until it is set aside by a competent court.

JUDGMENTS - Void or irregular judgment - As may be believed by the affected party - Cannot be disobeyed by that party - Unless the judgment has been set aside.

FACTS

Before the Kwara State High Court, the plaintiffs/respondents filed an action against the defendants/appellants seeking some declaratory reliefs and injunctions against the defendants. They sought to establish that the family of the 2nd defendant is not entitled to ascend the stool of the chieftaincy post in dispute, so that his appointment and installation as the Odofoin of Arandun is irregular. Plaintiffs relied on a previous high court suit that was filed in 1967, in establishing their claim. Defendants are contesting that the said previous suit Exhibit 1, being null and void for violating s. 161 (3) of the 1963 Constitution should have been treated as non-existent.

The trial court found in favour of the plaintiffs. Defendants appealed to the Court of Appeal was dismissed. Being dissatisfied, defendants have further appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether a person against whom a judgment is given or an order made can disobey and ignore it on the ground that it is null and void.

HELD (Unanimously dismissing the appeal per lead judgment of **KATSINA-ALU JSC**)

Judgments - Validity

1. I think the option open to a person against whom an order was made or a judgment given is plain. He should apply to the court to discharge the order or appeal against the judgment that it might be set aside as the case may be. This is good sense, for as long as the order or judgment existed, it must not be disobeyed. A judgment of a court of competent jurisdiction remains valid and binding, even where the person affected by it believes that it is void, until it is set aside by a court of competent jurisdiction. (p. 369 C)

Void or irregular judgment

2. In a nutshell, the judgment of a court of competent jurisdiction subsists unless and until it is set aside even where the person affected by it believes it to be void or irregular. The procedure for setting it aside is simple. The party affected must appeal against the judgment. The position clearly therefore is this. That a person, who knows of a judgment, whether null or void given against him, by a court of competent jurisdiction cannot be permitted to disobey it. His unqualified obligation is to obey it unless and until that judgment has been set aside. See Rossek v. A.C.B. Ltd. (1993) 8 NWLR (part 312) 382; Hadkinson v. Hadkinson (1952) 2 ALL E.R. 567. It is settled practice that there is a presumption of correctness in favour of a court's judgment. Unless and until that presumption is rebutted and the judgment is set aside, it subsists and must be obeyed. It cannot for any reason under our law be ignored. (370 A)

Necessity of having void judgment set aside on appeal

3. The appellants have argued that it was not necessary to have the decision in Suit No. Z/11/67 set aside on appeal. In the light of the law on this

point which I have highlighted above, this argument is fallacious; it is badly flawed. The decision is valid and subsisting. And it is presumed correct. Until that presumption is rebutted on appeal and the decision is set aside, the person affected by it must obey it. (p. 370 H)

REPRESENTATION

Babatunde Oshilaja for appellants

Yusuf Olaolu Ali, Esq. SAN for respondent

CASES REFERRED TO

Rossek v. A.C.B. Ltd. (1993)8 NWLR (part 312) 382

Hadkinson v. Hadkinson (1952)2 ALL E.R.567

J.C. Ltd. v. Ezenwa (1996) 4 NWLR (pt. 443) 395 at 414-415

Chuk v. Cremer (1846)1 Coop. Temp. Cott. 342; 47 E.R. 884

Madukolu v. Nkemdilim (1962) 1 ALL N.W.L.R. 587

Macfoy v. U.A.C. Ltd (1961)3 ALL E.R. 1169 at 1172

Isaacs v. Robertson (1984)3 ALL E.R. 140 at 143

Aledegbelemi v Fasanmade (1988) 3 NWLR (pt 81) 129

Akinfolarin v Akinola (1994) 3 NWLR (pt.335) 659 at 676-677

LEAD JUDGMENT BY KATSINA-ALU JSC

The main question that arises for determination in this appeal is: Whether a person against whom a judgment is given or an order made can disobey and ignore it on the ground that it is null and void. This is informed by the fact that, in the appellants' view, the decision in the earlier case in suit No.Z/11/67 by the High Court of Kwara State was given without jurisdiction contrary to the provisions of Section 161(3) of the 1963 Constitution. The proceedings in that suit were admitted in evidence as Exhibit 1 in the present case. It was argued that the said proceedings were null and void and should have been treated as non-existent.

Section 161(3) of the 1963 Constitution reads:

"161(3) Notwithstanding anything in any other provision of this Constitution (including in particular sections 32 and 53 of this Constitu-

tion) but without prejudice to the proviso to subsection 4 of section 27 of this Constitution, no chieftaincy question shall be entertained by any court of Law in Nigeria, and a certificate which is executed by an authority authorized in that behalf by a law coming into force in a territory on or after the date of the commencement of this Constitution (including a law passed before that date) and which states:

(a) that a particular person is or was, by reference to that territory or a part of it, a chief of a specified grade at a specified time or during a specified period or.

(b) that the provisions of a law in force in that territory relating to the removal or exclusion of chiefs or former chiefs from areas within the territory have been complied with in the case of a particular person, shall be conclusive evidence as to the matters set out in that statement."

Exhibit 1 tendered at the trial as I have already indicated, is a certified true copy of the Writ of Summons, Statement of Claim, Statement of Defence, the trial proceedings and the judgment of the High Court of Justice. Ilorin in Suit No. Z/11/1967 between Olukotun Adeniyi and Anor v. Amos Babatunde Alaran & Anor. On the face of it, the subject matter in that case was a chieftaincy dispute. In that case, when in 1967 Adewoye Aromokeye from Ile Oba Ibuoye became the Odofin, the predecessors-in-title of the 2nd appellant herein took the 1st appellant Oba Amos Babatunde and the late Odofin Adewoye to court. That suit was dismissed. There was no appeal therefrom.

The facts of the present case are simple. In 1989, after the demise of Odofin Gabriel Adewoye from Ile Oba Ibuoye Ruling House, the respondents selected and presented one Chief Ajitoni Ibuoye to the 1st appellant to be appointed and installed as the Odofin of Arandun. The 1st appellant refused and rather accepted and approved the nomination of the 2nd appellant who was subsequently installed as Odofin Arandun on 8th June, 1989. In consequence of this, the respondents brought an action in the Kwara State High Court at Omu-Aran.

At the trial court, the respondents as plaintiffs sought the following reliefs in paragraph 16 of their statement of Claim:-

"DECLARATIONS:-

1. *That under the native law and custom of Arandun the families of the 2nd Defendant are not entitled to ascend the stool of Odofin of Arandun.*

2. *That the appointment, installation and recognition of the 2nd Defendant as Odofin of Arandun is irregular, null and void.* B

3. *That Chief Ajitoni Ibuoye being the rightful nominee of the Ile-Oba Ibuoye Ruling Family is the rightful person to become the Odofin of Arandun immediately after Gabriel Adewoye (deceased).*

4. ORDERS :

(i) *Setting aside the purported nomination, appointment and installation of Ayinla Arandun, 2nd defendant, as Odofin of Arandun.* C

(ii) *Perpetual injunction restraining the defendants, their servant privies or any person howsoever deriving authority, permission or order from any of them, from recognizing or continuing to recognize, deal with, address regard the 2nd defendant as the Odofin of Arandun.* D

(iii) *Perpetual injunction restraining the 2nd defendant from continuing henceforth from calling, introducing, parading, addressing or presenting himself either to defendants or any person(s) howsoever and at any occasion or place as Odofin of Arandun.* E

(iv) *Directing the defendants to appoint and instal Chief Ajitoni Ibuoye as Odofin of Arandun within 30 days from the date of judgment."*

The plaintiffs called 3 witnesses and tendered Exhibit 1. The defendants called 5 witnesses and tendered 8 Exhibits. The learned trial judge, after an evaluation and consideration of the evidence, oral and documentary, entered judgment for the plaintiffs. F

The defendants' appeal to the Court of Appeal was dismissed. They have further appealed to this court.' G

As I have already indicated the question to be resolved is whether a person against, or in respect of, whom an order is made or a judgment is given by a court of competent jurisdiction can disobey and ignore it on the ground that it was null and void. In the context of this case, it was submitted for the appellants that a judgment or order given or made without jurisdiction is a nullity; that lack of jurisdiction in the court deprives the judgment or order of any valid existence and or effect whether by H

estoppel or otherwise. For this submission learned counsel relied on the case of J.C. Ltd. v. Ezenwa (1996) 4 NWLR (pt. 443) 395 at 414-415. It follows from that submission that the action in Suit No.Z/11/67 exhibit did not lie when it was instituted because by virtue of section 161(3) of the Constitution of the Federation 1963 the pleadings, the entire proceedings and judgment in that suit (No.Z/11/67) are non existent and should not have been received in evidence. This is so because the provisions of Section 161(3) aforesaid, oust the jurisdiction of any court of Law in Nigeria in matters relating to chieftaincy question. Since Suit No. Z/11/67 (Exhibit 1) involved the determination of a chieftaincy question no court of law in this country had the jurisdiction to hear and determine such question. That being so, it was contended, there could be no judgment (Exhibit 1) in a case that by constitutional law could not be heard. Learned counsel for the appellants relied on the case of Governor of Oyo State v. Afolayan (1995)8 NWLR (pt. 413)292 at 321 and 329.

For his part, learned counsel for the respondents submitted that unless and until Exhibit 1 is set aside by a competent court, it remains valid and binding and cannot therefore be ignored. He relied on the case of Odofin v. Agu (1992)3 NWLR (pt.229) 350 at 371-372.

In order to appreciate the submissions of counsel on the issue under consideration, it is necessary to reproduce the salient paragraphs of The Statement of Claim and the Statement of Defence. The respondents as plaintiffs in paragraph 9-13 of their amended Statement of Claim pleaded thus:

"9. The Plaintiffs state that after the demise of Odofin Arandun, Odofin Awofaran from Ile Oba Ibuoye family, one Ajiboye Oyebanji from the family of the 2nd defendant in 1967 was wrongly nominated by Ilufemiloye family to ascend the throne, the 1st defendant who was the Alaran of Arandun on the throne at the time failed, refused and rejected the nomination, rather he in good conscience accepted the nomination and appointment of Odofin Gabriel Adewoye. He accordingly installed him and continued to recognize and accorded Odofin Adewoye respect until he died.

10. The plaintiffs aver that the said Ajiboye Oyebanji and one

Olukotun Adeniyi being dissatisfied with the appointment of Gabriel Adewoye filed a suit to challenge the appointment vide Suit No. Z/11/67, Olukotun Adeniyi, Ajiboye Oyebanji - vs - Amos Babatunde Alaran & Gabriel Adewoye Odofin.

11. *The Plaintiffs aver that the suit was dismissed; the plaintiffs B plead and will tender at the hearing, the certified true copy of Writ of Summons, the Statement of Claim, the Statement of Defence, the proceedings at trial and judgment of the Court.*

12. *The Plaintiffs aver that Alaran, Amos Babatunde being the C custodian of the people's custom and tradition in the Statement of Defence filed in the suit stated the position of Odofin Chieftaincy correctly. The Plaintiff will give evidence of families entitled to become Odofin Arandun, the history and names of previous holders of the office and their relationship with the Plaintiff. D*

13. *The Plaintiffs aver that on the demise of Odofin Gabriel Adewoye, the family or the Ruling House properly and validly entitled indeed nominated Chief Ajitomi Ibuoye to ascend the vacant stool Chief but the 1st defendant in violation of the custom and tradition of Arandun; E in contradiction of his avowed position in Suit No. Z/11/1967 stated above, nominated and installed the 2nd defendant as the Odofin of Arandun."*

On the other hand; the appellants as defendants joined issue on F the paragraphs of the amended Statement of Claim reproduced in paragraphs 12 and 18 of their Statement of Defence. They pleaded thus:

"12. Further to paragraphs 9,10,11 and 12 of the Statement of Claim, the defendant aver as follows:-

(i) *That the 1st defendant never gave evidence to support any G pleading in Suit No. Z/11/67 mentioned in paragraph 10 of the Statement of Claim:*

(ii) *That none of the defendants in the said case also gave any H evidence and that no body asserted in evidence in the said case that the 2nd defendants family is not entitled to ascend the stool of Odofin.*

18. *The defendants shall contend at the trial of this case that suit No.Z/11/67 vests no right or interest on the plaintiff's family to the*

exclusion of the 2nd defendant's family or any of the four ruling houses to ascend to or monopolize the stool of Odofin of Arandun and neither was any evidence led nor any pronouncement made to justify the stand they now take in this case."

B The learned trial judge in the course of his judgment observed at page 170 to 171 thus:

"The next point for consideration on the issue of the native law and custom of Arandun regarding the Odofin chieftaincy title is the effect of exhibit 1 which is the record of proceedings and judgment in the case between 2nd defendant's relatives on the hand and the 1st defendant with the late Odofin Gabriel Adewoye on the other hand. In exhibit 1 page 2 the plaintiffs therein claimed that there are 4 Odofin chieftaincy families at Arandun and that it was the turn of Oba Ilufemiloye family which has unanimously made its choice of the 2nd plaintiff therein and presented same to the 1st defendant (now the 1st defendant herein) for approval.

The 2 defendants therein averred at page 4 that there are only 2 Odofin chieftaincy families in Arandun rotating the title and they are:-

- (1) The house of Odun and*
- (2) The house of Odofin Alaran*

They went further Ile Oba Ilufemiloye is not an Odofin house. In its judgment which was not appealed against, the court at page 14 dismissed the plaintiff's action.

That specifically is a decision on the issue of the right of Ile Oba Ilufemiloye to ascend the Odofin stool. It is a valid subsisting and extant judgment by a competent court which has decided against the right of the unanimous choice of Ile Oba Ilufemiloye to ascend the Odofin stool. The 2nd defendant said that he was then aware of the litigation by his relatives.

The learned trial judge continued at page 172 as follows:

H *"Can the 1st and 2nd defendants resile from the position taken in exhibit 1? I think not, in exhibit 1 the 1st plaintiff who was the Olukotun and in that capacity chief of Ile Oba Ilufemiloye and the 2nd plaintiff who was the unanimous choice of the family for Odofin stool*

were in the circumstance fighting the battle of the entire family. This is clearly borne out by their pleadings. The battle line was drawn between Ile oba Ilufemiloye and the Alaran of Arandun from Ile odun and the then Odofin from Ile Oba Ibuoye. The issue centered on the right or otherwise of Odosare to fill the Odofin stool. The decision is unequivocal that it had no such right." B

The court below affirmed the decision of the court of trial. It agreed that the contents of exhibit 1 bind the appellants and that they could not resile from it.

I think the option open to a person against whom an order was made or a judgment given is plain. He should apply to the court to discharge the order or appeal against the judgment that it might be set aside as the case may be. This is good sense, for as long as the order or judgment existed, it must not be disobeyed. A judgment of a court of competent jurisdiction remains valid and binding, even where the person affected by it believes that it is void, until it is set aside by a court of competent jurisdiction. In Chuk v. Cremer (1846)1 Coop. Temp. Cott. 342; 47 E.R. 884 Lord Cottenham, L.C. said: C D E

"A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid - whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed." F G

This view was re-echoed by Romer LJ in Hadkinson v. Hadkinson (1952)2 All E.R.567 where he said:

"It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even

to cases where the person affected by an order believes it to be irregular or even void."

In a nutshell, the judgment of a court of competent jurisdiction subsists unless and until it is set aside even where the person affected by it believes it to be void or irregular. The procedure for setting it aside is simple. The party affected must appeal against the judgment.

The position clearly therefore is this. That a person, who knows of a judgment, whether null or void given against him, by a court of competent jurisdiction cannot be permitted to disobey it. His unqualified obligation is to obey it unless and until that judgment has been set aside. See Rossek v. A.C.B. Ltd. (1993)8 NWLR (part 312) 382; Hadkinson v. Hadkinson (1952)2 ALL E.R.567. It is settled practice that there is a presumption of correctness in favour of a court's judgment. Unless and until that presumption is rebutted and the judgment is set aside, it subsists and must be obeyed. It cannot for any reason under our law be ignored. In Oba Aladegbemi: v. Oba Fasanmade (1988) 6; NWLR (pt. 81) 129. Eso JSC held thus:

"..... for a court of competent jurisdiction, not necessarily of unlimited jurisdiction (and I will come to this anon) has jurisdiction to decide a matter rightly or wrongly. If that court never had jurisdiction in the matter, then its decision is, without jurisdiction, void, but then should a court of law not even decide the point? That is, the court without jurisdiction decided without jurisdiction? Should the decision just be ignored? Surely it would not make for peace and finality which a decision of a court seeks to attain. It would at least be against public policy for persons, without the backing of the court, to pronounce a court decision a nullity, act in breach of the decision whereas others may set out to obey it. In my respectful view it is not only desirable but necessary to have such decisions set aside first by another court before any act is built upon it despite the colourful diction of the law Lord in U.A.C. v. Macfoy (supra)."

The appellants have argued that it was not necessary to have the decision in Suit No. Z/11/67 set aside on appeal. In the

light of the law on this point which I have highlighted above, this argument is fallacious; it is badly flawed. The decision is valid and subsisting. And it is presumed correct. Until that presumption is rebutted on appeal and the decision is set aside, the person affected by it must obey it.

In the light of the foregoing, this appeal must fail. Accordingly I dismiss it and affirm the decision of the court below. The respondents are entitled to costs which I assess at N10,000.00

KARIBI-WHYTE JSC

I have read the judgment of my learned brother A. I. Katsina-Alu in this appeal. I agree entirely with him that the appeal be dismissed, and the judgment of the Court below affirmed. I also hereby dismiss the appeal of the Appellants herein and affirm the judgment of the Court of Appeal. I assess the costs to the Respondents at N10,000.00

OGWUEGBU JSC

I read in advance the judgment just delivered by my learned brother Katsina-Alu, J.S.C. and I agree with it. The bone of contention in this appeal turns on Exhibit 1 tendered by the plaintiffs at the trial court. It comprises the writ of summons, the pleadings, the proceedings and judgment in Suit No. Z/11/67 in the High Court of Kwara State, Ilorin judicial Division.

The parties in the present proceedings are privies to the parties in Exhibit 1 (Olukotun Adeniyi & or. v. Amos Babatunde Alaran & or). In the present proceedings, the defendants who are appellants herein set up in their pleadings a case different from the case canvassed by their predecessors in Exhibit 1. The learned trial judge held that they cannot approbate and reprobate and that the issue decided in Exhibit 1 is valid and binding on them especially, that Odosare or Ile Oba Ilufemiloye is not an Odofin chieftaincy family. Their appeal to the court below was dismissed. In dismissing the appeal, the court below held as follows:

"The subject matter in Exh. 1 which was the right or entitlement of the Ile Oba Ilufemiloye to the Odofin stool is the same as the present case. The judgment in Exh. 1 was made by a court of competent jurisdiction and there was no appeal therein Consequently, the contents of Exh.1 bind the appellants and now they cannot resile from it."

In their further appeal to this court the defendants for the first took the point that the purported decision in Exhibit 1 by the Kwara State High Court was a nullity and that all subsequent proceedings were void as that court had no jurisdiction to hear and determine the case in view of the provisions of section 161(3) of the Constitution of the Federation of Nigeria, 1963 which reads:

"161(3) Notwithstanding anything in any other provision of this Constitution (including in particular section 32 and 53 of this Constitution) but without prejudice to the proviso to section (1) of section 22 and subsection (4) of section 27 of this Constitution, no chieftaincy question shall be entertained by any court of law in Nigeria, and a certificate which is executed by an authority authorized in that behalf by a law coming into force in a territory on or after the date of the commencement of this Constitution (including a law passed before that date/and which states

(a) that a particular person is or was by reference to that territory or a part of it, a chief of a specified grade at a specified time or during a specified period or

(b) that the provisions of a law in force in that territory relating to the removal or exclusion of chiefs or former chiefs from areas within the territory have been complied with in the case of a particular person, shall be conclusive evidence as to the matters set out in the statement."

Relying on the above constitutional provision, it was submitted in the appellants' brief as follows:

"Respectfully invite the Supreme Court to examine Exhibit aforesaid upon which the judgment and order of the Court of Appeal is based and humbly submit that the provisions of section 161(3) of the Constitution of the Federation 1963 supra not having been repealed or rendered in-operative in 1967 when suit No. Z/11/67 was commenced, the action

in suit No.Z/11/67 does not lie when it was instituted and in contemplation of the constitutional law quoted above, the suit (No.Z/11/67), pleadings filed therein, the entire proceedings and the purported judgment thereof are non-existent and should never have been received in evidence and if wrongly admitted should have been discountenanced. Submit that the provisions of section 161(3) aforesaid, oust the jurisdiction of any Court of Law in Nigeria in matters relating to Chieftaincy question or nomination, selection, appointment and installation of a chief....."

The cases of Governor of Oyo State & Or. v. Afolayan (1995)8 N.W.L.R (pt.413) 292, J.C. Ltd. & Ors. v. Ezenwa (1996)4 N.W.L.R. (pt. 443)391 and Madukolu v. Nkemdilim (1962) 1 ALL N.W.L.R. 587 were cited and relied upon by the appellants.

Clearly, the High Court of Kwara State which sat over Suit No.Z/ 11/67 had no jurisdiction to entertain and decide upon the issues in that suit as no chieftaincy matter could be entertained by any court of law in Nigeria at that time by virtue of section 161(3) of the 1963 Constitution. The defendants against whom the judgment was given have shown by reference to section 161(3) of the 1963 Constitution the invalidity of the proceedings continued in Exhibit 1.

I agree that the judgment contained in Exhibit 1 was given without jurisdiction and therefore a nullity. But it is a decision of a court of unlimited jurisdiction which remains binding until set aside. The defendants made no attempt to get the court declare it a nullity. It was either they did not seek legal advice or they were advised that it was not necessary to do so relying on the dictum of Lord Denning, M.R. in Macfoy v. U.A.C. Ltd (1961)3 ALL E.R. 1169 at 1172 where he said

"If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so....."

The judicial Committee of the Privy Council had opportunity to correct the above dictum which is capable of misleading an unwary practitioner in the case of Isaacs v.Robertson (1984)3 ALL E.R. 140 at 143

where Lord Diplock observed as follows:

"Their Lordships would, however, take this opportunity to point out that in relation to orders of a court of unlimited jurisdiction it is misleading to seek to draw distinctions between orders that are "void" in the sense that they can be ignored with impunity by those persons to whom they are addressed, and orders that are "voidable" and may be enforced unless and until they are set aside. Dicta that refer to the possibility of their being such a distinction between orders to which the descriptions "void" and "voidable" respectively have been applied can be found in the opinions given by the judicial Committee of the privy Council in Marsh v. Marsh (1945) A.C. 271 at 284 and Macfoy v. United African Co. Ltd. (1961)3 ALL E.R. 1169; (1962) A.C. 152; but in neither of those appeals nor in any other case to which counsel has been able to refer their Lordships has any order of a court of unlimited jurisdiction been held to fall in a category of court orders that can simply be ignored because they are void ipso facto without there being any need for proceedings to have them set aside..... The contrasting legal concepts of voidness and voidability form part of the English Law of contract. They are inapplicable to orders made by a court of unlimited jurisdiction in the course of contentions litigation."

A similar view was expressed as far back as 1846 in the case of Chuks v Cremer 47 E.R.884 at 885 where it was held that a party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it. He should apply to the court to have it discharged and as long as it exists, it must not be disobeyed. See also Rossek & Ors. v. A.C.B. Ltd. & Ors. (1993)8 N.W.L.R. (Pt. 312) 382 at 434 - 435 and J.C., L.td. & Ors. v. Ezenwa supra at 414-415.

In the present proceedings, the Kwara state High Court which heard and determined suit No. Z/11/67 is a court of unlimited jurisdiction and it would be most dangerous to allow a party or his counsel to determine whether its order was null or valid, regular or irregular. They should come to the court and not to arrogate to themselves the power of determining the question. Until set aside, the proceedings and the judgment contained in Exhibit 1 subsist and bind the parties and their privies.

For the above reasons and the fuller reasons contained in the judgment of my learned brother Katsina-Alu, J.S.C., I too dismiss the appeal and affirm the decision of the court below. There will be costs of N10,000.00 in favour of the plaintiffs.

B

ACHIKE JSC

I have had a preview of the leading judgment delivered by my learned brother, Katsina-Alu, J.S.C. I entirely agree with him.

The material facts in this appeal have been lucidly set out in the leading judgment; I respectfully wish to adopt them as mine. In an earlier case, Suit No. Z/11/67, i.e. Olukotun & Adeniyi & anor v Amos Babatunde Alaran & anor, otherwise referred to, and its certified copy was admitted in evidence in the present case, as Exhibit 1, the appellants herein believed that the proceedings in Exhibit 1 were null and void. In that case, Exhibit 1, when Adewoye Aromokeye from Ile Oba Ibuoye Ruling House was the Odofin in 1967, the 2nd appellant's predecessors-in-title took action against 1st appellant Oba Amos Babatunde and the late Odofin Adewoye. The said suit was dismissed and was not appealed against. After the death of Odofin Adewoye, the respondent selected one Chief Ajitoni Ibuoye to the 1st appellant to be appointed as the Odofin of Arandun. The 1st appellant refused and preferred and approved the nomination of the 2nd appellant who was installed as Odofin of Arandun on 8th June, 1989. As a result, the respondents instituted an action the High Court at Omu-Aran, Kwara State and claimed three declarations and four orders. Judgment was entered in favour of the plaintiffs and the appeal to the lower court was dismissed. They now further appealed to this Court.

In the appeal, it was inter alia submitted on behalf of the appellants that the respondents were not entitled to rely on Exhibit 1 as the proceedings in respect thereof were incompetent and null. The issue that fell for determination herein is whether a person against whom an order is made or a judgment is given by a court of competent jurisdiction can disobey or ignore it on the ground that it was null and void.

I would only wish to add one word or so. Matters appertaining

to judicial orders or judgments, for that matter, are not generally treated with arrogance or levity. Speaking for myself, it is rather officious and treading on a perilous path for one to arrogate to oneself the right to choose and pick between court orders in terms of whether they are valid or null and void. In fact, since there is a strong presumption in favour of the validity of a court's order, it behoves everyone to keep faith with the order of the court. It makes no different that *ex facie* it appears that the court that made the order is without jurisdiction because at the end of the day an order of the court subsists and must be obeyed until set aside by a court of competent jurisdiction. To, therefore, disobey an order of the court on the fancied belief that the said order is null for any reason whatsoever even if it subsequently turns out that the order in fact is proved to be null- is a risky and inadvisable decision because until the said order is finally determined to be null and void by the court, the order subsists with the sting attaching to it unmitigated. Therefore, Sheer commonsense as well as prudence demands that every order of the court should be accorded due respect and no attempt made to flout the order on the flimsy reason that it is null and void. See Odofin v. Agu (1992) 3 NWLR (pt. 229) 350, at 371-372 and Chuk v. Cremer (1846) 47 E. R. 884. Accordingly, the submission made on behalf of the appellants that it was unnecessary to set aside the decision in Exhibit 1 was insupportable in the light of what we have stated above that the order of a court of competent jurisdiction subsists until set aside.

Consequently, the appeal fails and is dismissed with N10,000.00 costs in favour of the respondent.

G

KALGO JSC

I have had the privilege of reading in advance the judgement just delivered by my learned brother Katsina-Alu, JSC and I entirely agree with his reasoning and conclusion reached therein which I hereby adopt as mine.

The substance of this appeal must be resolved on whether the judgment in suit No. Z/11/67 Olukotun Adeniyi & Anor v Amos Babatunde

Alaran & Anor decided by the High Court of Ilorin and which was admitted at the trial of this case as Exhibit 1, was a valid and subsisting judgment. The contention of learned counsel for the appellant was that since the case was decided under the 1963 Federal Constitution and that the Ilorin High Court or indeed any court in Nigeria at that time, had no jurisdiction to try chieftaincy matters by virtue of the provisions of Section 161 (3) of the said Constitution, the decision of the Ilorin High Court in that case was null and void and of no effect. In response to that, the learned counsel for the respondent submitted that although the Ilorin High court did not have jurisdiction at the time the case was decided and judgment given, there was no appeal against that judgment and so it is still valid and subsisting since it was not set aside by any court. B C

There is no doubt that at the time Exhibit 1 was made, it was not a valid decision as no court in Nigeria could validly entertain any chieftaincy matter under Section 161 (3) of the 1963 constitution. But since that decision had not been set aside by any court of law in Nigeria, and the Ilorin High court being a court of unlimited jurisdiction, its judgment in Exhibit 1, is still valid and subsisting and should not be discounted, ignored or disobeyed. See Isaacs v Robertson (1984) All E.R. 140 at 143; Rossek v A.C.B Limited (1993) 8 NWLR (pt. 312) 382; Aledighbemi v Fasanmade (1988) 3 NWLR (pt 81) 129; Akinfolarin v Akinola (1994) 3 NWLR (pt.335) 659 at 676-677. D E F

In the circumstances, I agree with my learned brother Katsina-Alu, JSC that there is no merit in the appeal. I accordingly dismiss it with N10,000.00 costs in favour of the respondents. G H