

SUPREME COURT OF NIGERIA
5TH MAY, 2000. SC. 116/1994
CORAM:- S. M. A. BELGORE, S. U. ONU, A. I. KATSINA-ALU,
U. A. KALGO, E. O. AYOOLA, JJSC.

OBA LAWAL IFABIYI APPELLANT
AND
CHIEF SOLOMON ADENIYI & 2 ORS. RESPONDENTS

CUSTOMARY LAW - Evidence - Proof - Customary law is a question of fact which must be proved by evidence - If judicial notice is not available through decided cases of the superior courts

CHIEFTAINCY MATTERS - District head - Suo motu formulation of a case by the court - It is wrong for the learned trial judge to hold - That the Respondent in the instant case is the District head - When that was not the issue before him.

JUDGMENTS - Relief - Which was not claimed - A court has no jurisdiction to make an Order - Which was not pleaded or prayed for - Such order will be annulled on appeal

FACTS

In the High Court of Kwara State, the plaintiff/appellant claimed against the defendants/respondents, jointly and severally for a declaration that he is the head of the Ile-Ire district and that he is the rightful title holder to represent Ile-Ire district in the Ifelodun-Irepodun Traditional Council; and a perpetual injunction restraining the 1st defendant from parading himself or doing any act which may give false impression that he is the head of Ile-Ire district and prohibiting the 2nd and 3rd defendants, their servants and/or agents from so treating the defendant. The plaintiff claimed to be a descendant of Oba Ajiboye, the 1st Onire. The Oba Onire stool had existed for about 300 years. The plaintiff maintained that he was the head of Ile-Ire district by right of his office as Onire, further that he was

the proper person to represent Ile-Ire district at the meetings of the 2nd defendant. That the Obaship of Owa-Kajola was founded only in 1940 by some disgruntled elements of Owa-Onire. The first Oba of Owa-Kajola was Oba Ogunbiyi while the 1st defendant is the second along that line. The plaintiff further claimed that his settlement remained at its original location until 1948, when he and the remaining people of "Owa-nire" moved to a new location while still maintaining their old name "Owa-nire", that is, that the new settlement is an extension of the original "Owa-nire". For the defence, 1st defendant himself contended that his Owa Kajola was older than the new settlement of Owanire because the new settlement of Owanire took place after Owa Kajola was settled in 1940. The other defendants asserted that they had a prerogative to determine who would represent Ile-Ire district in the Ifelodun/Irepodun Traditional Council.

At the conclusion of the trial and in a reserved judgment the learned trial judge found for the plaintiff in part. The appointment of the 1st defendant as a representative of Ile-Ire district in the Ifelodun/Irepodun Traditional Council was found to be valid and proper, but the trial court declared the plaintiff as the district head of the Ile-Ire district. Aggrieved, the 1st defendant appealed to the Court of Appeal, Kaduna Division. The appeal was successful. The plaintiff has now appealed to the Supreme Court raising three issues.

ISSUES FOR DETERMINATION

"(i) Is it proper for a Court, the Court of Appeal, to formulate issues. (ground 2).

(ii) Did the lower Court, the Court of Appeal, properly understand the parties, case before adjudicating (Ground 3), and

(iii) Did the High Court award a different relief to the plaintiff from the one he claimed as falsely (sic) by the Court of Appeal (Ground 4)."

HELD (Unanimously dismissing the appeal per lead judgment of ONU, JSC)

Judgments - Relief

1. "A court has no jurisdiction to make an order which has not been pleaded or prayed for by a litigant such order is wrong and will be annulled on appeal. See Elumeze v. Elumeze (1969) 1 All NLR 311. A trial (sic) should not import in his judgment issues not properly or raised at the trial. Adebisi v. Oke (1967) NMLR 64. A trial Judge, in deciding a case, must not, even when the interest of justice so demands stray from the pleadings. See Dipcharima v. Alli (1974) 12 S.C. 45. The finding and the declaration that the Respondent "is the district head of Ile-Ire in Ifelodun Local Government of Kwara State" was made without any jurisdiction and must be annulled as it was not a matter which was prayed for nor a matter which was pleaded." I cannot agree more. This issue is accordingly resolved against the Appellant. (p. 1513 E)

Customary law - Evidence

2. Customary Law or Native Law and Custom, as rightly observed by the Court below, is a matter of evidence to be decided on the facts presented before the Court in each particular case. Indeed, Customary Law is a question of fact which must be proved by evidence if judicial notice is not available through decided cases of the superior courts. These propositions of law, he pointed out, being trite need no citation of authorities. As the only piece of evidence led in support of the claim put forward by the Respondent was only that of the lone witness where no evidence of custom was established, there was no credible evidence upon which to base the decision. (p. 1516 C)

Chieftaincy Matters - District head

3. "The learned trial Judge had found the appointment of the Appellant as a member of the Traditional Council to be valid and proper; it was wrong of him to hold that the Respondent was the district head and the paramount ruler of Ile-Ire district when that was not the issue before him. The issue before him was whether it was valid to appoint the Appellant to be a mem-

ber of the Council and not him." (p. 1516 H)

NOTABLE POINT OF INTEREST

KALGO JSC

B *1. When an appeal court may formulate issues*

It has also been settled that although an appeal court should be wary of formulating or introducing new issues for determination in an appeal before it, where the issues postulated by the parties are inappropriate or inadequate having regard to the grounds of appeal filed, the court should, without any hesitation, attempt to identify the appropriate issues in the circumstances of the case. Care must however be taken to ensure that the issue or issues formulated by the court does not or do not raise new issues not contemplated by the grounds of appeal and not canvassed by the parties unless it is an issue on jurisdiction. See N.P.A. v. Panalpina (1974) 1 NMLR 82 at 75, Oloriade v. Oyebi (1984) 1 SCNLR; (1984) 5 SC. 1; Oloba v. Akereja (1988) 3 NWLR (pt. 84) 508. In general, therefore an appeal court will rely on the issues for determination formulated by an appellant in deciding the appeal, but as can be seen from the above, the appeal court will not always be bound to do so. And the refusal by the Court of Appeal or Supreme Court to be bound by the issues for determination by the parties before it where it considers that such issues are wrong having regard to the grounds of appeal filed, cannot amount to any injustice, impartiality, bias or denial of fair hearing. See Kotoye v Saraki (1994) 7 NWLR (pt. 357) 414 at 456. I therefore answer issue 1 in the affirmative. (p. 1519 D)

G REPRESENTATION

Prince J.O. Ijaodola for the Appellant
Respondents absent. Not represented

H CASES REFERRED TO

Obioma v. Olomu (1973) 3 SC. 1 at 7
Elumeze v. Elumeze (1969 1 All NLR 311
Adebisi v. Oke (1967) NMLR 64

Dipcharima v. Alli (1974) 12 S.C. 45

Udofe v. Aquisisua (1973) 1 S.C. 119

Onyesoh v Nnebedun (1992) 3 NWLR (pt. 229) 315, 632

Olowosago v Adebajo (1988) 4 NWLR (pt. 88) 275

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LEAD JUDGMENT BY ONU JSC

This is an appeal from the decision of the Court of Appeal, Kaduna Division which on 30th April, 1992 unanimously reversed the decision of Orilonise, J. sitting at the High Court of Kwara State, Omuaran wherein the plaintiff, herein Appellant, claimed against the Defendants/Respon-

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dents, jointly and severally for a declaratory order:-
"(1) That the plaintiff is the head of the Ile-Ire district and that he is the rightful title holder to represent Ile-Ire district in the Ifelodun - Irepodun Traditional Council.

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(b) A perpetual injunction prohibiting the first Defendant from parading himself or doing any act which may give false impression that he is the head of Ile-Ire the 2nd and 3rd Defendants and their servants and or agents from so treating the 1st Defendant."

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After pleadings had been ordered, filed and exchanged by the parties, the Appellant called one witness in proof of his claim while the defence called two witnesses. Some documents were tendered following which at the conclusion of the trial, learned Counsel on either side copiously addressed the learned trial Judge (oriloise, J.) who in a reserved judgment dated October 28, 1988, found for the Appellant in part as follows:-

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"Now, on the issue of who is the district head of Ile-Ire district between the plaintiff and the first Defendant, I find from the evidence before me that the Oba Onire Stool had existed for about 300 years now. It has been in existence for a period of over 250 years before the emergence of the Baleship or Obaship of Owa-Kajola, an institution founded only in 1940. I accept and believe the evidence of the 1st Defendant that the first Oba of Owa Kajola was Oba Ogunbiyi while the present incumbent and 1st Defendant is the second Oba along that line. From the totality of the evidence adduced in this case, I find that the plaintiff as

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the present Oba Onire of Owa Onire is therefore a more senior traditional ruler than the 1st Defendant as the district head of Ire-Ile district. I therefore declare the plaintiff as the district head of Ire-Ile district. To decide otherwise would tantamount to super-imposing a part on a whole.

B *having earlier found that Owa Kajola is a breakaway faction of Oba Onire. xxxxxxx The evidence of the 1st Defendant (DW1) that he is the paramount Onile of Ire-Ile district recognised by the Kwara State government is a clear misapprehension of the contents of Exhibits 2 and 4*

C *which conveyed governmental approval that Ire-Ile district representative on the Ifelodun/Irepodun Traditional Council should be rotated between Owa Kajola and Owa Onire beginning with Owa Kajola. The appointment of the 1st Defendant as a representative of Ire-Ile district in the Ifelodun/Irepodun Traditional Council does not automatically con-*

D *fer on him the district headship of Ile - Ire district. Equally, I find from the evidence and having regards to S. 76 (2) (B) and 4 (c) of the Kwara State Local Government Law, 1976, that unless by order of the Military Governor establishing a Traditional Council, a traditional title holder*

E *does not automatically qualify to be a member of such a Council because he is district head. xxxxxxxx Having held that the plaintiff and not the 1st Defendant is the district head of Ire-Ile district, I order that the 2nd and 3rd Defendants be henceforth restrained from treating the 1st*

F *defendant as the district head of Ire-Ile district. By his appointment as a representative of Ire-Ile district in the Ifelodun/Irepodun Council either Defendant Under Section 76 (2) (b) the 1st defendant does not become the district head of Ire-Ile district and he is hereby restrained from parading himself as such." (Underlining is by me for comments later).*

G *The trial Court thereupon concluded by making the following orders:-*

"(i) That the plaintiff is hereby declared as the district head of the Ire-Ile district in Ifelodun/Irepodun Local Government.

(ii) The appointment of the 1st Defendant as a

H *representative of Ire-Ile district in the Ifelodun/Irepodun Traditional Council by the Military governor of Kwara as contained in Exhibit 2 and 4 does not entitle the 1st Defendant to parade himself as the head or district head of Ire-Ile district.*

(iii) *The 2nd and 3rd Defendants, their servants or agents are hereby perpetually restrained from treating the 1st Defendant as the head or district head of Ile-Ire district.*"

The 1st Defendant/Respondent (the 2nd and 3rd Respondents' being mere stakeholders remained passive) was unhappy with the said B decision and so appealed to the Court below where he won. The appellant appealed to this Court where, in accordance with the Rules of Court, he filed a written Brief of argument in which he identified three issues from his four grounds as arising for our determination as follows:-

"(i) *Is it proper for a Court, the court of Appeal, to formulate C issues. (ground 2).*

(ii) *Did the lower Court, the Court of Appeal, properly understand the parties, case before adjudicating (Ground 3), and*

(iii) *Did the High Court award a different relief to the plaintiff D from the one he claimed as falsely (sic) by the Court of Appeal (Ground 4)."*

Following the 1st Respondent's failure to file and proffer any argument upon a Brief, we allowed the Appellant's Counsel to argue his Brief on 7th E February, 2000, the date fixed for the hearing of this appeal.

Before embarking on the consideration of this appeal, however, I deem it pertinent for me to state the facts of this case, albeit briefly for a clearer appraisal thereof follows:-

The plaintiff (Appellant herein) who claimed to be a descendant F of Oba Ajiboye, the 1st Onire stated how about 300 years ago he came from Oyo and settled at the original location of Owa-Onire, thus founded the Ile-Ire district. He maintained that he was the head of Ile-Ire district G by right of his office as onire; further that he was the proper person to represent Ile-Ire district at the meetings of the 2nd Respondent while the 1st Respondent, then the Oba and head of Owa of Kajola, "which was founded about the year 1940 by some disgruntled element from Owa-onire." H The Appellant further claimed that his settlement remained at its original location until 1948, when he and the remaining people of "Owa-Onire" moved to a new location while still maintaining their old name "Owa-Onire" which means that the new settlement was/is an extension of the

original " Owa Onire". The other Respondents asserted that they had a prerogative to determine who would represent Ile-Ire district on their meetings of 2nd Respondent (the Ifelodun/Irepodun Traditional Council).

B One J. A. Bogunjoko, a native of Owa-Onire gave evidence for the Appellant in line with his pleading. His evidence also covered the Appellant's evidence in a nutshell to the effect that the Appellant's community (Owa Onire) was a continuation of the original settlement which began about 300 years ago and that the Appellant was therefore the head of Ile-Ire district.

C For the defence, the Respondent himself testified by contending that his Owa Kajola was older than the new settlement of Owa Onire because the new settlement of Owa Onire took place after Owa Kajola was settled in 1940.

D One P. F. Ikunaiye, testified for and in support of the 2nd and 3rd Respondents, following which in his reserved judgment, the learned trial Judge arrived at his conclusion, portions of which I had earlier set out above.

E I now wish to proceed to consider all three issues in their order of sequence thus:-

F Issue (1) questions whether the court below was right to formulate issues the short answer which could be better found in the leading judgment of Dahiru Musdapher, J.C.A. wherein the learned justice held, inter alia, as follows:-

G *"I have mentioned above the claims of the Respondent in the Lower Court and I had also reproduced in extenso the judgment of the learned (sic) trial Court and the orders he made. It is clear to me that the Respondent was unhappy in the government appointing the Appellant rather (sic) to the membership of the Traditional Council.*

H The question of the District Headship is hinged and interwoven on the issue of the appointment. There is no direct, clear and unambiguous averment in the statement of claim where the Respondent prayed for an order that he be declared as the district Head of Ile-Ire. All what he pleaded was in paragraphs 6 and 8 Statement of Claim aforesaid which are:-

Paragraph 6 read (sic):

"It is against the customs of Ile-Ire district for any Chief or other title holder to take precedence or compete with the Onire of Owa-Onire in Ile-Ire district."

I have produced paragraph 6 above and its import and purpose was only to challenge the appointment of the appellant as the member of the Traditional Council. The question of the District Headship or Headship of Ile-Ire was not a matter directly in issue for determination, it only arose indirectly on the assumption by the Respondent that he being the district Head of Ile-Ire he was the only qualified person to represent the district as a member of the Traditional Council. He pleaded in paragraph 6 as produced above; it is against the custom of Ile-Ire district for any Chief xxxxxxxxx to take precedence or compete with him. There was further evidence from PW1, the only witness called by Respondent that the Respondent was the District Head of the entire Ile-Ire.

In my view the question of who is the District Head of Ile-Ire as between the Appellant and the Respondent was not an issue raised for adjudication before the trial court. Accordingly, the trial court was in error to formulate a case for the Respondent." (Underlining above is for emphasis).

After citing the case of Obioma v. Olomu (1973) 3 SC. 1 at 7 to buttress the point, the learned justice continued by adding:-

"A court has no jurisdiction to make an order which has not been pleaded or prayed for by a litigant such order is wrong and will be annulled on appeal. See Elumeze v. Elumeze (1969) 1 All NLR 311. A trial (sic) should not import in his judgment issues not properly or raised at the trial. Adebisi v. Oke (1967) NMLR 64. A trial Judge, in deciding a case, must not, even when the interest of justice so demands stray from the pleadings. See Dipcharima v. Alli (1974) 12 S.C. 45. The finding and the declaration that the Respondent "is the district head of Ile-Ire in Ifelodun Local Government of Kwara State" was made without any jurisdiction and must be annulled as it was not a matter which was prayed for nor a matter which was pleaded."

I cannot agree more.

This issue is accordingly resolved against the Appellant.

Being closely inter-related and overlapping, I deem it pertinent to consider issues 2 and 3 together hereunder as follows:- Germane to these issues is paragraph 8 wherein the Appellant pleaded in his Statement of Claim as follows:-

B "8. Whereof the plaintiff claims from the Defendants both jointly and/or severally as follows:

(i) a declaration that the plaintiff is the head of Ile-Ire district and he is the rightful title-holder to represent the Ile-Ire district in the 2nd Defendant, and

C (ii) a perpetual injunction prohibiting the 1st Defendant from parading himself or doing any act which may give false impression that he is the head of Ile-Ire district prohibiting the 2nd and 3rd Defendants, their servants and/or agents from so treating the 1st Defendant."

D From the evidence led pursuant to the above piece of pleading, the learned trial Judge in his judgment held, inter alia, as follows:-

E "Now, on the issue of who is the district head of Ile-Ire district between the plaintiff and the 1st Defendant, I find from the evidence before me that the Oba Onire Stool had existed for about 300 years now. It has been in existence for a period of over 250 years before the emergence of the Baleship or Obaship of Owa-Kajola an institution founded only in 1940. I accept and believe the evidence of the 1st Defendant that the first Oba of Owa Kajola was Oba Ogunbiyi while the present incumbent and 1st Defendant is the second Oba along that line. From the totality of the evidence adduced in this case, I find that the plaintiff as the present Oba Onire of Owa Onire is therefore a more senior traditional ruler than the 1st Defendant in Ile-Ire district and is better suited than F the 1st Defendant as the district head of Ile-Ire district. I therefore declare the plaintiff as the district head of Ile-Ire district. To decide otherwise would tantamount to super-imposing a part on a whole body having earlier found that Owa Kajola is a breakaway faction of Owa-Onire....."

H The Court below to which an appeal lay upon a careful consideration of the above findings by the trial court would not allow same to stand on appeal. Consequently, it held, rightly in my view, as follows:-

".....There are arguments of the learned Counsel which in

my view as mentioned above are not relevant to the determination of the appeal and I need not mention them here."

On this (sic) part, the learned Counsel for the Respondent argued that it was the districtship under the Native Law and Custom. He submitted that the question before the Court was the paramountcy between the Appellant and the Respondent and that by virtue of the Customary Law, the Respondent is the paramount ruler. He further submitted that the learned trial Judge rightly awarded what the Respondent had claimed and he did not formulate a case for the Respondent.

I have mentioned above the claims of the Respondent in the Lower court and I had also reproduced in extenso the judgment of the learned trial Judge and the orders he made. It is clear to me that the Respondent was unhappy in the government appointing the Appellant rather (sic) him to the membership of the Traditional Council. The question of the District Headship is hinged and interwoven on the issue of the appointment. There is no direct, clear and unambiguous averment in the Statement of Claim where the Respondent prayed for an order that he be declared as the district Head of Ile-Ire. All that he pleaded was in paragraph (sic) 6 and 8 of the Statement of Claim (aforesaid) are:-.....The question of the District Headship or Headship of Ile-Ire was not a matter directly in issue for determination, it only arose indirectly on the assumption by the Respondent that he being the Head of Ile-Ire he was the only qualified person to represent the district as a member of the Traditional Council....."

Continuing, the court below further held that:-

"He pleaded in paragraph 6 as produced above, it is against the custom of Ile-Ire district for any Chief xxxx to take precedence or compete" with him. There was further evidence from PW1, the only witness called by Respondent that the Respondent was the District Head of the entire Ile-Ire.

In my view the question of who is the District Head of Ile-Ire as between the Appellant and the Respondent was not an issue raised for adjudication before the trial Court. Accordingly the trial Court was in error to formulate a case for the Respondent."

The Court below after buttressing its stance with a host of decided cases, observed that a trial Judge, in deciding a case, must keep strictly to the pleadings of the parties and must not, even when the interest of justice so demands, stray away from the pleadings, adding that the finding and declaration that the Respondent "is the district head of Ile-Ire in Ifelodun Local Government of Kwara State" was made without jurisdiction and must be annulled as it was not a matter which was prayed for nor a matter which was pleaded. I am in complete agreement with this view.

The learned trial Judge, as it transpired, found quite erroneously, in my view, that the Appellant was the District Head and paramount ruler of Ile-Ire district. The question, however, is from where did this piece of evidence emanate to support the finding?

Customary Law or Native Law and Custom, as rightly observed by the Court below, is a matter of evidence to be decided on the facts presented before the Court in each particular case. Indeed, Customary Law is a question of fact which must be proved by evidence if judicial notice is not available through decided cases of the superior courts. These propositions of law, he pointed out, being trite need no citation of authorities. As the only piece of evidence led in support of the claim put forward by the Respondent was only that of the lone witness where no evidence of custom was established, there was no credible evidence upon which to base the decision. As rightly found by the learned Justice of the Court below:-

"The only evidence led in support of the claim of the Respondent was the evidence of the only witness called by the Respondent. And he did not lead any evidence to prove the custom. Therefore, the finding of the learned trial Judge was not based on any credible evidence led before him. It is also trite that where an inferior court gives judgment which is not based upon any evidence it is a nullity. See Udofe v. Aquisisua (1973) 1 S.C. 119."

In the light of the foregoing, I cannot but uphold the conclusion arrived at by the court below when in allowing the appeal it held among other things that:-

"The learned trial Judge had found the appointment of the

Appellant as a member of the Traditional Council to be valid and proper; it was wrong of him to hold that the Respondent was the district head and the paramount ruler of Ile-Ire district when that was not the issue before him. The issue before him was whether it was valid to appoint the Appellant to be a member of the Council and not him."

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Issues 2 and 3 are also equally resolved against the Appellant. The result is that this appeal lacks substance and it is accordingly dismissed with N10,000.00 costs to the Respondents.

C

BELGORE JSC

I agree that this appeal lacks merit and for reasons set out in the judgment of my learned brother, Onu, JSC. I dismiss it with N10,000.00 costs to respondents.

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KATSINA-ALU JSC

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I have had the advantage of reading in draft the judgment of my learned brother Onu, JSC in this appeal. I agree with it and for the reasons he has given I would also dismiss the appeal with costs as ordered by him.

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KALGO JSC

I have read in draft the judgment of my learned brother Onu JSC just delivered and I found myself in full agreement with the reasoning and conclusions reached therein. I am also of the firm view that this appeal lacks merit and ought to be dismissed.

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The appellant who was the plaintiff at the trial sued the defendants now respondents for a declaration that he is the head of Ile-Ire district and a rightful title-holder as Owa-Onire to represent the Ile-Ire district in the traditional council of the 2nd respondent. He also asked for perpetual injunction restraining the 1st respondent from parading himself

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or taking any action as the head of Ile-Ire district and also restraining the 2nd and 3rd respondents their servants or agents from recognising or treating the 1st respondent as such head. The case went to trial and at the end thereof, the learned trial judge in his judgment delivered on 28/10/88 or-

B dered as follows:-

"(i) That the plaintiff is hereby declared as the district head of Ile-Ire district in Ifelodun Local Government of Kwara State;

C (ii) The appointment of the 1st defendant as a representative of Ile-Ire district in the Ifelodun/Irepodun Traditional Council by the Military Governor of Kwara State as contained in Exhibit 2 and 4 does not entitle the 1st defendant to parade himself as the head or district head of Ile-Ire district;

D (iii) The 2nd and 3rd defendants, their servants or agents are hereby perpetually restrained from treating the 1st defendant as the head or district head of Ile-Ire District." (Underlining mine).

The 2nd and 3rd respondent did not appear or take part at the trial and so only the 1st respondent appealed to the Court of Appeal against the E decision of the trial court. The Court of Appeal heard the appeal, allowed it and dismissed the case of the appellant at the trial. He now appealed to this court and I shall hereinafter refer to him as the appellant.

F It is pertinent to observe that only the appellant filed a brief in this appeal. The respondent did not file any brief at all and did not appear nor was he represented by any body at the hearing of the appeal. Mr. Ijaodola the learned counsel who appeared for the appellant adopted and relied upon his brief and urged the court to allow the appeal.

G The appellant formulated 3 issues for determination of the court to wit:-

"(i) Is it proper for a court to formulate issues?

(ii) Did the lower court, the Court of Appeal, properly understand the parties case before adjudicating ?

H (iii) Did the High Court award a different relief to the plaintiff from the one he claimed as falsely claimed by the Court of Appeal?

I intend to deal with the issues one by one but I shall be as brief as the appellant's brief itself.

On the 1st issue, the learned counsel for the appellant submitted in his brief that it was wrong for the Court of Appeal to formulate its own issues for determination in the appeal before it as that would show the court as descending to taking part in the arena between the parties. It is, he argued, also contrary to our adversary judicial system which enjoins the court to be an unbiased umpire and decide the issues in controversy between the parties justly and fairly. He finally submitted that an appellate court must consider and decide on issue formulated by the parties and should not formulate its own issues.

It is now well settled that all issues for determination formulated in any appeal must be related to the grounds of appeal and the judgment or decision appealed against. See Western Steel works v. Iron & Steel Workers (1987) 1 NWLR (pt. 49) 284 at 304; Onyesoh v Nnebedun (1992) 3 NWLR (pt. 229) 315, 632; Olowosago v Adebajo (1988) 4 NWLR (pt. 88) 275. The issues should not be wider than the grounds encompass see Egbe v Alhaji & Ors (1990) 1 NWLR (pt. 128) 546.

It has also been settled that although an appeal court should be wary of formulating or introducing new issues for determination in an appeal before it, where the issues postulated by the parties are inappropriate or inadequate having regard to the grounds of appeal filed, the court should, without any hesitation, attempt to identify the appropriate issues in the circumstances of the case. Care must however be taken to ensure that the issue or issues formulated by the court does not or do not raise new issues not contemplated by the grounds of appeal and not canvassed by the parties unless it is an issue on jurisdiction. See N.P.A. v. Panalpina (1974) 1 NMLR 82 at 75, Oloriade v. Oyebe (1984) 1 SCNLR; (1984) 5 SC. 1; Oloba v. Akereja (1988) 3 NWLR (pt. 84) 508.

In general, therefore an appeal court will rely on the issues for determination formulated by an appellant in deciding the appeal, but as can be seen from the above, the appeal court will not always be bound to do so. And the refusal by the Court of Appeal or Supreme Court to be bound by the issues for determination by the parties before it where it considers that such issues are wrong having regard to the grounds of appeal filed, cannot amount to any injustice, impartiality, bias or denial of

fair hearing. See Kotoye v Saraki (1994) 7 NWLR (pt. 357) 414 at 456. I therefore answer issue 1 in the affirmative.

On issue (ii) my straight reply is in the affirmative also. I have read the record of appeal in this matter particularly the pleadings of the parties, the judgments of the trial court and the Court of Appeal and I am satisfied that the Court of Appeal in its approach to the issues in its judgment seemed clearly to comprehend fully the questions in controversy between the parties. It therefore, in my view, decided the case with full appreciation of the facts and the evidence adduced at the trial. I also answer issue (ii) in the affirmative

I now come to issue (iii). In paragraph 8 of the statement of claim, the appellant as plaintiff, claims the following reliefs:-

"(i) a declaration that the plaintiff is the head of Ile-Ire and that he is the rightful title-holder to represent the Ile-Ire district in the 2nd defendant, and

(ii) a perpetual injunction prohibiting the 1st defendant from parading himself or doing any act which may give false impression that he is the head of Ile-Ire district and prohibiting the 2nd and 3rd defendants, their servants and/ or agents from so treating the defendant." (underlining mine)

From the above quoted extract, it is very clear that the appellant was praying for a declaration that he is the head of Ile-Ire district and the rightful person to represent the district in the Ifelodun/Irepodun Traditional Council. He asked for an injunction to restrain the respondent from parading himself as or doing any act which symbolises that he is head of Ile-Ire district and also to restrain the 2nd and 3rd respondents from treating him as such.

The Court of Appeal, in its judgment per Musdapher JCA quite properly observed thus:-

"Thus both the Appellant and the Respondent are Obas in their respective new places of abode. The grouse of the Respondent as can be gleaned from the statement of claim was to do with the appointment of the appellant rather than him to Ifelodun/Irepodun Traditional Council."

and in paragraph 6 of the statement of claim, the respondent

pleaded that:-

"It is against the customs of Ile-Ire district for any chief or other title holder to take precedence over or compete with Ile-Ire district."

The traditional title of the Appellant is Owo-Onire and that of the Respondent is Owa-Kajola P.W.1 gave evidence in support of paragraph 6 B of the statement of claim. This confirmed the observation of the Court of Appeal that the appellant was unhappy with the appointment of the 1st respondent to the Ifelodun/Irepodun Traditional Council, hence his action in the trial court. And according to the reliefs he asked for in the action, C he only wanted to be declared as the person entitled to be appointed to represent the Ile-Ire district in the Ifelodun/Irepodun Traditional Council. But at the end of the trial, and contrary to the request to be the representative of the district in the Council the learned trial judge declared him as the D "district head" of Ile-Ire district. That was not what he asked for or claimed in his writ of summons or statement of claim. The Court of Appeal therefore, quite properly in my view, held that since the question of district headship was not an issue between the parties at the trial, the trial court could not properly raise that issue and adjudicate on it in its judgment. I E entirely agree with the Court of Appeal that the trial court could not formulate a case different from what parties fought before it and adjudicate upon it. Also as the appellant did not claim to be declared the District Head of Ile-Ire district, he cannot be so declared and such declaration F must be nullified. See Adebanjo v. Brown (1990) 3 NWLR (pt. 141) 661 at 675; Ekponyong v Nyong (1975) 2 SC 71 at 80-81; N.H.D.S. v. Mumini (1977) 7 SC 57 at 81-82.

The learned counsel for the appellant submitted in his brief that there is no difference between "the head of Ile-Ire district" and "the district G head of Ile-Ire," and if there is any difference, it is a matter of semantics since they were co-terminus and interchangeable. He cited the case of Bello v. A. G. Oyo State (1986) 12 SC 1 in support.

With due respect to the learned appellant's counsel, there is a lot H of difference between a district head and a traditional head of a district simpliciter especially in the instant case. In this case, the appellant wanted to be declared a traditional head of Ile-Ire district. A district is an admin-

istrative entity and a District Head is an administrative Officer in-charge of a district. The claim of the appellant was that he, as the Owa-Onire, is the traditional and customary head of Ile-Ire district which was established by his ancestors, and that was why he believes he should be appointed to represent Ile-Ire district in the Traditional Council and not the 1st respondent. There was nothing to prove that the Kwara State Government has appointed him as the District Head of Ile-Ire district at any time. He did not say so either. Therefore the learned trial judge was to appoint or declare him as district head of that district and the case of Bello v A. G. Oyo State (supra) is not relevant to the point in issue.

The learned trial judge had earlier in his judgment found that the 1st respondent was properly appointed by the Kwara State Government to represent Ile-Ire district in the Ifelodun/Iropodun Council as per Exhibit 2 and 4, and the fact that the appellant is a traditional title holder does not automatically make him a member of the said Traditional Council. But instead of dismissing the appellant's claims, the learned trial judge turned round and declared him district head of Ile-Ire. This declaration, as I said earlier, cannot stand and so also the other 2 orders which were merely ancillary to the declaration.

For the above reasons and those contained in the leading judgment of my learned brother Onu JSC, this appeal fails and it is accordingly dismissed. I award N10,000.00 costs to the 1st respondent against the appellant.

AYOOLA JSC

I have had the privilege of reading in draft the judgment delivered by my learned brother, Onu, JSC. I agree that the appeal lacks substance and should be dismissed. For the reasons he gives, I too will dismiss the appeal with costs as ordered by him.