

SUPREME COURT OF NIGERIA
12TH MAY, 2000. SC 143/19994
CORAM:- A. B. WALI, M. E. OGUNDARE, S. U. ONU,
A. I. IGUH, S. O. UWAIFO, JJSC

TALIATU ADIO PLAINTIFF/RESPONDENT
AND
1. ATTORNEY-GENERAL OYO STATE
(Granted leave to withdraw on 6/5/92)
2. THE SECRETARY, IWO CENTRAL
LOCAL GOVERNMENT 2ND DEFENDANT/APPELLANT
3. PRINCE O. TADESE
4. ADIATU ADIGUN 3RD & 4TH DEFENDANTS/
(For himself and on behalf of all members APPELLANTS
of Tadese family)

LEGAL PRACTITIONERS - Duty - Authorities - Citing of - Counsel in a case has a duty not only to bring to the attention of the court authorities that support his case - But also those that decide otherwise

NATURAL JUSTICE - Bias - Real likelihood of bias - Principles that guide the courts - In considering whether there was real likelihood of bias

NATURAL JUSTICE - Bias - Real likelihood of bias - Test to be applied - A mere whimsical suspicion will not suffice - There must be a real likelihood of bias.

NATURAL JUSTICE - Bias - Real likelihood of bias - Right to object - Waiver - The right to impugn proceedings of any court which was tainted by the adjudicator being disqualified by likelihood of bias - May be lost by waiver of the right.

NATURAL JUSTICE - Bias - Real likelihood of bias - Inference from

circumstances - From the circumstances of the present case - A reasonable man cannot draw the inference that there was a real likelihood of bias on the part of the trial judge.

NATURAL JUSTICE - *Real likelihood of bias - Disqualification - to disqualify a person from acting in a judicial or quasi - judicial capacity upon the ground of interest - A real likelihood of bias must be shown*

WORDS & PHRASES - *"Real likelihood of bias" - What it means and the test to be applied*

WORDS & PHRASES - *"Chieftaincy declaration" - Its nature and purport*

FACTS

In the High Court of former Oyo State, the plaintiff/respondent sued the defendants/appellants claiming for a declaration that the instrument dated the 28th day of July, 1981 in so far as it purports to include Tadese family as a sub-section of the Adegunodo Ruling House of Oluwo of Iwo chieftaincy is wrong and accordingly illegal and void, and an injunction. The Oluwo of Iwo Chieftaincy was for some years the subject of Protracted commissions of inquiry and litigations. Eventually, a chieftaincy declaration was made by the Chieftaincy Committee of the Iwo Local Government approved by the Governor-in-Council of Oyo State on 28th July 1981 and registered on 29th July 1981 The Declaration (Exhibit C1) was signed by Chief Bola Ige, Oyo State Governor at that time. Following the making of the Declaration steps were commenced to fill the vacancy that had occurred in the Oluwo Chieftaincy. It was the turn of the Adegunodo Ruling House to Present candidate (s). In the course of the exercise to nominate candidate(s) a dispute arose as to the constitution of the said ruling House. This resulted in the Secretary to the Government writing a letter dated 30th July 1982 to the Secretary, Iwo Central Local Government Council (Exhibit P) paragraph 2 of which gave a breakdown of the families constituting each of the three ruling

houses in respect of the Oluwo of Iwo chieftaincy. The plaintiff aggrieved by the inclusion of Tadese Family as subsection of Adegunodo Ruling House instituted an action and claimed as aforesaid. The case proceeded to trial before Ige J. (as she then was) on 27/9/82. The actual hearing of the case commenced on 3/11/84, almost a year after chief Bola Ige had ceased to be the Executive Governor of the State. To the knowledge of the plaintiff that Ige J. is chief Bola Ige's wife, he allowed the case to proceed to conclusion. At the conclusion of the trial, the learned trial judge in a reserved judgment dismissed the claims of the plaintiff. Dissatisfied the plaintiff appealed to the Court of Appeal, Ibadan Division. The plaintiff for the first time in the Court of Appeal, complained that the learned trial judge ought to have disqualified herself from hearing or determining the case for the sole reason that she was at all material times the wife of the then Executive Governor of Oyo State. In a split decision of 2 to 1 the majority upheld the submission of bias allowed the appeal and ordered a fresh trial before another judge. The defendants have now appealed to the Supreme Court raising two issues.

ISSUES FOR DETERMINATION

"(1) Whether or not the learned Justices of the Court of Appeal in their majority decision were right in holding that the signing of Exhibit C1 by Chief Ige the Governor in his official constitutional capacity and without any interest whatsoever constitutes him the substantive 1st Defendant and is sufficient to lead a reasonable and right thinking person sitting in Court, in possession of full facts to think that justice has not been done merely because his wife later turned out to be the Judge who determined whether or not the inclusion of Tadese in Adegunodo Ruling family in the Chieftaincy Declaration, was proper?

(2) If there is appearance of bias, which is denied, whether or not the implied waiver or acquiescence on the part of the appellants by their failure to object to the learned trial Judge hearing the case when they had adequate opportunity to do so, had defeated the objection and precluded them from subsequently impugning the proceedings on that ground?

HELD (Unanimously allowing the appeal per lead judgment of OGUNDARE JSC)

Words & Phrases - Chieftaincy declaration

1. A chieftaincy declaration is, by virtue of the Chiefs Law of Oyo State B Cap. 21 Laws of Oyo State 1978, a statement declaratory of the customary law regulating the selection of a person to be the holder of a recognized chieftaincy. It is thus a subsidiary legislation in that it is made under the authority of the Chiefs Law. (p. 1652 A)

C **Real likelihood of bias - Principles that guide the Courts**

2. Reliance is placed both by Mr. Olujinmi, SAN and the Court below on Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon (supra) where Lord Denning M.R. said:

D "..... in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the Chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood E that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless, if right-minded persons would think that, in the circumstances, there was a real likeli- F hood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand: see R. v. Huggins (1875-99) ALL E.R. Rep. 914; (1895) Q.B. 563.; R. v. Sunderland Justices (1901) 2K.B. 357 at p. 373, per VAUGHAN WILLIAMS, L.J. Nevertheless, there must appear to be a real likelihood of bias. Surmise or conjecture is not enough: see R. v. G Camborne Justices, Ex p. Pearce (1954) 2 ALL E.R. 850 at pp. 8; (1955) 1 Q.B. 41 at pp. 48-51; R. v. Nailsworth Justices, Ex p. Bird (1953) 2 ALL E.R. 652. There must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman, as the case H may be, would, or did, favour one side unfairly at the expense of the other. The court will not enquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence; and confi-

dence is destroyed when right-minded people go away thinking: 'The judge was biased.'" (Underlining are mine)

I agree entirely with this dictum of lord Denning. (p. 1654 G)

Real likelihood of bias - Disqualification

B

3. In the present case Justice Ige was said to be disqualified from sitting because of her matrimonial relationship with Chief Bola Ige who acted in his official, rather than personal relationship.

In R. v. Camborne Justices (1955) 1 QB 41 at p. 51 Slade J. laid down the law in these words: C

"..... *that to disqualify a person from acting in a judicial or quasi-judicial capacity upon the ground of interest (other than pecuniary or proprietary) in the subject-matter of the proceedings, a real likelihood of bias must be shown. This court is further of opinion that a real likelihood of bias must be made to appear by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries.*" D

This dictum has received approval in a number of cases in this Country - E see for example, Obadara & Ors. v. The President West District Grade B Customary Court (1964) ANLR 331, 339. (p. 1656 F)

Words & Phrases - Real likelihood of bias

F

4. What then is a "real likelihood" of bias? It means, in my respectful view, a substantial possibility of bias and the test to be applied is based on the reasonable apprehension of a reasonable man who is in full knowledge of the facts or circumstances and not that of a capricious and unreasonable man. (p. 1658 C) G

Real likelihood of bias - Test to be applied

5. A mere whimsical suspicion will not suffice. There must be a real likelihood of bias, an inference which must be drawn from proved circumstances. This Court has never accepted the "suspicion" test. For in Oyelade v. Araoye & Anor. (1968) NMLR 41 at p. 46 Brett JSC delivering the judgment of this Court said: H

"In the rare cases where it could be proved that a decision had actually been affected by the bias of the person making it, that would no doubt be conclusive, but while suspicion is not enough the courts do not appear to have required that actual bias operated on the mind of the person making the decision In our view the correct test is that adopted by this Court in Obadara v. President, Ibadan West District Grade B Customary Court, following R. v. Camborne Justices, namely that "a real likelihood of bias must be shown" (p. 1659 G)

C Real likelihood of Bias - Right to object

6. The right to challenge or impugn proceedings of any court or tribunal which was tainted by the adjudicator being disqualified by interest or likelihood of bias may be lost by express or even by implied waiver of the right to object to the adjudicator at the first opportunity during the proceedings. There would however be no waiver or acquiescence unless the party entitled to take the objection was aware of the nature of the disqualification and had opportunity of so objecting." (p. 1662 A)

E Real likelihood of bias - Inference from circumstances

7. With respect, it would appear that their lordships of the Court below who constituted the majority overlooked the facts of the cases they relied on in coming to their conclusions that there was a real likelihood of bias shown in this case. Had they properly adverted their minds to these facts it would not have been difficult to see the difference in the circumstances in these cases and those of the instant case. From all I have been saying, I have come to the conclusion that Question (1) must be resolved in favour of the Appellants. I cannot imagine any reasonable man drawing the inference from the circumstances of this case that there was a real likelihood of bias on the part of Justice Atinuke Ige in presiding over this case at the High Court. (p. 1663 E)

H Legal Practitioners - Duty

8. Counsel in a case has a duty not only to bring to the attention of the Court authorities that support his case but also those that decide other-

wise and attempt either to distinguish such authorities or to advance arguments why they should not be followed. It will be a sorry day when counsel hide from the court authorities he is aware of and relevant to the case before the court simply because such authorities do not favour him. (p. 1664 E) B

NOTABLE POINTS OF INTEREST

ONU JSC

1. The requirement of Bias C

Since bias is a branch of the principle of Natural Justice and according to Tucker L.J. in Russel v. Duke of Norfolk (1949) 1 ALL E.R. 109 at 110:

"The requirement must depend on the circumstances of the case, the nature of the inquiry, the rule under which the Tribunal is acting the subject matter that is being dealt with and so forth." (p. 1672 C) D

2. Complaint of bias against a judge - How to establish it

I agree with the Appellant's submission to the effect that since the Respondent's complaint of BIAS is hinged on the marital relationship of the learned trial Judge to the Governor who signed the instrument into law and nothing else and since relationship, per se generally does not disqualify a judge, in order to succeed, the Respondent must prove that:-

(i) The personal relation is a party to the action F

(ii) The personal relation must have interest in the subject matter to be litigated upon.

(iii) The interest is not too remote or too indirect but capable of affecting the judicial mind of a Judge.

(iv) There is a departure from the standard of even handedness of justice or circumstances from which a reasonable man would think it likely or probable that justice has not been done in the case or the Chairman as the case may be, would or did favour one side unfairly at the expense of the other. See the cases of:- G

1. Re Cottle (1939) 2 ALL E.R. 535 at 537.

2. Metropolitan Properties Co. (F.G.C.) v. Lannon (supra).

3. Olaleke Obadara v. The President Ibadan West District Coun- H

3. *Where the interest relied upon is too remote to sustain an allegation of bias*

B The present case is unique and appears distinguishable because this is about the first time in the annals of our judicial and legal history that a High Court Judge is being accused of sitting to consider an instrument in which her husband was the Governor who signed it. To suggest that she must disqualify herself from sitting over the interpretation of Exhibit 'C1' is, to borrow the words of Kolawole, JCA "a totally unacceptable" proposition. Furthermore, I agree that the interest constituting an unacceptable proposition relied upon by the Respondent is too remote or too indirect and incapable of sustaining an allegation of bias because it could not have
C affected the mind of any reasonable tribunal. See Leeds Cort v. Ryder (1907) A.C. 20 H.L. (p. 1677 G)
D

4. *When waiver should be implied*

E As to whether waiver which is an act of abandonment or surrender by act or operation of law featured in this case, I agree with the Appellant's contention that waiver should be implied because the Respondent was entitled to object but acquiesced in something else which is inconsistent with that to which he is so entitled. He must therefore, in my firm view, be held by
F his acquiescence to be bound by his election. See R. v. Cheltenham Commissioners (1841) 1 K.B. 467; Ariori & Others v. Muraina Elemo and Others (1983) 1 S.C. 1 at 13; (1983) 1 S.C. NLR. 1 and R. v. Williams Ex-Parte Phillips (1914) 1 K.B. 608, the latter case in which a baker after
G conviction now complained that one of the justices was concerned in the business of a baker. Held: a party may by conduct preclude himself from taking objection after conviction. In the instant case, the Respondent was raising objection to the learned trial Judge's jurisdiction to try his case for
H the first time in the Court below. This was a belated act. Objection to adjudication ought therefore to be taken promptly. (p. 1679 A)

IGUH JSC

5. When a judge should disqualify himself

It is plain to me, and I agree with the minority judgment of the court below, that the serious misconception in the argument of learned counsel for the respondent is his inability to distinguish Chief Bola Ige in his personal capacity as a private citizen from his high office as the Governor of Oyo State. When Chief Ige assented to Exhibit C1, he was only performing a constitutional duty. If Chief Ige had been sued in his personal capacity or in respect of a matter over which he had a private, personal or family interest and such a dispute found its way into the court presided over by Ige, J., prudence, surely, would have demanded that she should disqualify herself from adjudicating on the matter. But where, as in the present case, the act being challenged is not that of chief Bola Ige in his personal capacity or as an interested party but that of the Government of Oyo State, I cannot see my way clear why it will become necessary for Ige, J. to disqualify herself from hearing the case for the simple reason that she is the wife of the Governor of the State. (p. 1682 A)

REPRESENTATION

Y. A. Agbaje SAN with E. A. Igwe & S. Olokeogu for 2nd appellant
E. Abiodun for 3rd and 4th appellants

CASES REFERRED TO

R. v. Camborne Justices (1955) 1 QB 41 at p. 51
Oyelade v. Araoye (1968) NMLR 41 at p. 46
Obadara v. The President West District Grade B Customary Court (1964) ANLR 331, 339
Russel v. Duke of Norfolk (1949) 1 ALL E.R. 109 at 110
R. v. Cheltenham Commissioners (1841) 1 K.B. 467
Ariori v. Elemo (1983) 1 S.C. 1 at 13; (1983) 1 S.C. NLR. 1
R. v. Williams Ex-Parte Phillips (1914) 1 K.B. 608
Leeds Cort v. Ryder (1907) A.C. 20 H.L.
Russel v. Duke of Norfolk (1949) 1 ALL E.R. 109 at 110
R. v. Huggins (1875-99) ALL E.R. Rep. 914; (1895) Q.B. 563

R. v. Sunderland Justices (1901) 2K.B. 357 at p. 373

BOOK REFERRED TO

Halsbury's Laws of England (4th edn) Vol. 1 para 69.

B

LEAD JUDGMENT BY OGUNDARE JSC

The plaintiff (now Respondent) had sued the Defendants claiming, as per the writ of summons:

C "(i) *A declaration that the instrument dated the 28th day of July, 1981 in so far as it purports to include Tadese family as a sub-section of the Adegunodo ruling House of Oluwo of Iwo Chieftaincy is wrong and accordingly illegal and void.*

D "(ii) *An injunction restraining all servants officers and functionaries of the Government of Oyo State and of Iwo Central Local Government from acting pursuant to or taken (sic) any steps to implement the aforesaid approved and amended registered declaration of 29th July, 1981 and any further steps in connection with the selection of nomination of candidate/candidates to fill the vacant stool of Oluwo of Iwo as directed by the Secretary of the Iwo Central Local Government.*"

E Pleadings were filed and exchanged and in the case of the plaintiff and 3rd and 4th defendants, amended by leave of court. The case proceeded to trial before Ige J. (as she then was) who at the conclusion of evidence and after addresses by learned counsel for the parties, in a reserved judgment, dismissed the claims of the plaintiff.

F Being dissatisfied with the judgment the plaintiff appealed to the Court of Appeal upon two original and five additional grounds of appeal numbered (1) - (7). Parties filed and exchanged their briefs of arguments in which issues for determination were formulated. At the oral hearing of the appeal, the plaintiff through his learned counsel withdrew grounds 1-5 leaving grounds 6 and 7 which read -

H "*6. The learned trial Judge erred in law in not disqualifying herself from trying this case on grounds of interest or bias or likelihood of bias as she is the lawful wife of Chief Bola Ige the then Chief Executive of Oyo State and the substantive 1st defendant in this case as more clearly*

seen in Exhibit 'CI'.

7. *The learned trial judge erred in law when she held as follows:-*

"They have done many things together like protesting against Aparas Report. Whether or not they presented joint or separate petitions. They have held out Tadeses family to the Government, as member of Adegunodo ruling House at one time or the other. They have also held meetings together in the past where they had a common cause. It is my view that it is too late in the day for Tadeses family to be excluded from Adegunodo ruling House - see exhibits K and O."

The issues for determination based on these grounds and on which the appeal was argued and determined read -

"(iv) Whether it was proper for the learned trial judge to preside and adjudicate over the case in view of the fact that the gravamen of the Appellant's complaints and allegations were made against a government which the learned trial judge's husband was the Chief Executive even at the time of trial.

(v) Whether the holding of the learned trial judge that Tadeses is a component part of Adegunodo ruling house is right having regard to S. 2 of the Chiefs Law of Oyo State, the claims of the appellant and the evidence before the court."

The Court of Appeal, in a split decision, allowed the appeal on the first of the two issues set out above and declared the decision of the trial High Court void. In his lead judgment with which Akpabio JCA agreed but Kolawole JCA dissented, Ogwuegbu JCA, as he then was, found:

1. *"It is my view that it was not wise for the learned trial judge to have sat over the case in those circumstances."*

2. *"Even though Chief Ige signed Exhibit 'CI' (the chieftaincy declaration in respect of the Oluwo of Iwo Chieftaincy) in his official capacity yet he was the substantive 1st defendant in the case sued in his official capacity. Viewing the matter objectively, to say that Chief Ige signed Exhibit 'CI' in his official capacity and was sued in his official capacity should not be stretched too far when the reviewing court is faced with Exhibit 'CI' which was being interpreted by the learned trial Judge*

who happened to be the wife of the Governor." (words in brackets mine)

3. This matter must be determined upon probabilities to be inferred from the circumstances in which the learned trial judge sat. There is no doubt in my mind that there were circumstances from which a reasonable man would come to the conclusion that the learned trial judge was biased or that there was a real likelihood of bias."

He finally adjudged as hereunder:

"In the present case, the appellant's right to a fair hearing by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality - See s. 33(1) of the Constitution of the Federal Republic of Nigeria, 1979 was breached.

From the foregoing, I hold therefore that Ige, J. ought not have sat over the case. The decision she reached in the case is void."

Akpabio, JCA appeared to have gone a little further than Ogwuegbu JCA. For in his own judgment he wrote:

"..... it was a breach of both the 'nemo judex' rule of natural justice as well as the provisions of s. 33(1) of the Nigerian Constitution 1979 on fair hearing, for the learned trial judge to have adjudicated over a civil case in which her husband's Government was a defendant, and he also signed the document which was being interpreted in the proceedings."

Later in his judgment, the learned Justice of the Court of Appeal asked:

"In the instant case if a wife does not consider herself too closely associated (by kindred) with her husband who was 1st defendant in the case through the Attorney-General, and who had personally signed a document sought to be declared 'illegal and void' in the proceedings, I do not know who else could be closer."

On whether Governor Ige was a nominal party in the case, Akpabio JCA observed -

"As regards the second defence, namely that Chief Bola Ige signed the document Exhibit C1 as part of his statutory functions as the State Chief Executive, and had no pecuniary or proprietary interest in the subject matter of the suit. I must say that this was not a case in which the Governor could be said to have been a merely 'nominal' party. The

argument might have been tenable in a criminal case in which the charge is usually 'The State v. The Accused'. In such a case the whole proceedings is to see whether the accused had committed a breach of any section of the Criminal Code. No allegation is made against the State or Governor in the case. So any Judge including a wife of the incumbent Governor could try such a case. But in any Civil Case where specific misdeeds were being alleged against the State Governor; or any act of the Government or Governor was being challenged, such as in the instant case, I do not think it would be proper for the wife of the incumbent Governor, who happens to be a judge, to try the case, considering the legal unity that is supposed to exist between a wife and her husband. If a husband signs a document in his executive or legislative capacity, and his wife later interpretes the same document in her judicial capacity, will it not be one and the same person that is doing both acts? In this connection, I think mention must be made of the case of Lawson v. Local Authority (1944) 10 W.A.C.A. 288 where it was held that a trial by a Magistrate who was also an Administrative Officer of the Local Authority at whose instance the proceedings were taken was vitiated by the fact that the same person was both prosecutor and Judge. Also in the instant case, it cannot be said that the State Governor had no interest in the case. In my view he certainly had an interest in enforcing the provisions of the Declaration Exh. C1 which he signed. People do not sign document at random. They do so only when they have interest in its validity or enforcement. However, the question whether the Governor had or did not have any 'pecuniary or proprietary interest' in the subject matter is irrelevant in this case, as no one quarrels with Chief Bola Ige for signing Exh. C1. The quarrels is that his wife should not have tried the case not because she had any 'pecuniary or proprietary interest' in the case, but so as to void any real likelihood of bias".

Concluding on the issue, the learned Justice said:

"On the totality of the foregoing, I have no hesitation in saying that it was a breach of the 'Nemo Judex' rule of natural justice for the learned trial Judge to have tried a case in which the validity of a document signed by her husband was being challenged. It did not matter in

what capacity her husband signed the document. Whether Chief Bola Ige was assenting to Government Bill or performing any other State duty at the time of signing Exhibit C1, made no difference, as he was merely earning his living like any other husband. I should also add here that a court presided over by the wife or a person who is a defendant in the case, and whose act was being challenged in the suit, cannot, in my view be said to have been 'constituted in such a manner as to ensure its independence and impartiality' as required by s. 33(1) of the Constitution of Nigeria, 1979. It is my considered view therefore that immediately the learned trial judge saw that the document. Exh. C1 was signed by her husband, she should have stopped further trial of the case, and referred the matter back to the State's Chief Judge for re-assignment either to himself or to another Judge. Not having done that, the whole trial must be declared a nullity and set aside for contravening a rule of natural justice."

With the conclusion the majority of the Court reached on that issue the Court found it unnecessary to consider the other issue placed before it and allowed the appeal.

The 3rd and 4th Defendants, being aggrieved with the majority decision of the Court below have now appealed to this court upon three grounds of appeal which, without their particulars, read:

"1. The Court of Appeal erred in law to have declared the judgment of Atinuke Ige J. a nullity.

2. The Court of Appeal erred in law when it held:

'In the present case, the appellant's right to a fair hearing by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality - see s.33(1) of the Constitution of the Federal Republic of Nigeria, 1979 - was breached.

3. The Court of Appeal erred in law when it held that Chief Bola Ige was the substantive 1st defendant in Suit No. HOS/64/82.

PARTICULARS OF ERROR

(a) Chief Bola Ige, as the Governor, cannot be the substantive 1st defendant since he was not sued in his official capacity as a party to the suit.

(b) Chief Bola Ige, as the Governor, did not become a defendant merely because he signed Exhibit C1 a subsidiary legislation which ought to be signed by him in accordance with Chiefs Law without being joined as a party to Suit No. HOS/64/82."

The 2nd Defendant also appealed and in his further amended notice of appeal raised four grounds of appeal, to wit:

"1. The Court of Appeal erred in law when after holding that Exhibit C1 was a subsidiary legislation which was made by the Governor-in Council went further to say that the subsidiary legislation is one with a difference and made pronouncements which are quite unrelated to issues before the Court of Appeal.

2. The Court of Appeal erred in law when it held as follows:-

'From the foregoing, I hold therefore that Ige J. ought not to have sat over the case. The decision she reached in the case is void.'

3. The Court of Appeal misdirected itself in law for its failure to distinguish between the constitutional role of Bola Ige as a Governor as opposed to his family role in his private capacity and thereby came to a wrong decision.

4(a). The Court of Appeal erred in law when it held

'This matter must be determined upon the probabilities to be inferred from the circumstance in which the learned trial Judge sat. There is no doubt in my mind that there were circumstances from which a reasonable man would come to the conclusion that the learned trial judge was biased or that there was likelihood of bias.'

4(b). The Court of Appeal erred in law in upholding the contention of the plaintiff/appellant that the learned trial judge should not have sat over the case after judgment had been given against the appellant." The particulars are omitted.

Pursuant to the rules of this Court the two sets of defendants/appellants filed and exchanged their respective written briefs of argument. The plaintiff/respondents did not file a brief. Rather, Mr. Olujinmi, SAN his learned counsel raised a number of preliminary objections to the grounds of appeal and to the appellants' brief filed, all of which were aimed at scuttling the appeals in limine. All these efforts failed. Seeing the futility

of his efforts learned Senior Advocate then asked for adjournment to enable him file a Respondent's brief. The application was considered to be without merit and was rejected. He subsequently asked for, and was granted, leave to proffer oral arguments in answer to the submissions of learned counsel for the defendants/appellants. Thus at the oral hearing of the appeal, learned counsel for all the parties addressed the Court.

Before I proceed further I think I must pause at this stage to give a resume of the facts in so far as they are relevant to this appeal. The Oluwo of Iwo Chieftaincy was for some years the subject of protracted commissions of inquiry and litigations. Eventually a chieftaincy declaration was made by the Chieftaincy Committee of the Iwo Local Government, approved by the Governor-in-Council of Oyo State on 28th July 1981 and registered on 29th July 1981. The Declaration - (Exhibit C1) was signed by BOLA IGE, the Governor of Oyo State at the time. Paragraphs 1 and 2 of the Declaration read:

"(1) Number of Ruling Houses: There are 3 (three ruling houses and the identity of the ruling houses is:

1. Alawusa 2. Adegunodo 3. Gbase

(2) Order of Rotation: The Order of Rotation shall be as follows:

(a) Alawusa (present Ruling House)

(b) Adegunodo

(c) Gbase"

Following the making of the Declaration steps commenced to fill the vacancy that had occurred in the Oluwo chieftaincy. It was the turn of the Adegunodo ruling House to present candidate(s). In the course of the exercise to nominate candidate(s) a dispute arose as to the Constitution of the said Ruling House. This resulted in the Secretary to the Government writing a letter dated 30th July 1982 to the Secretary, Iwo Central Local Government Council (Exhibit P) paragraph 2 of which reads:

"2. I am to inform you further that the breakdown of the families constituting each of the three ruling houses in respect of the Oluwo of Iwo Chieftaincy is as follows:

(i) Adegunodo ruling (including Tadese, Ifegoriade, Adeyemi,

Adetokun, etc);

(ii) Gbase Ruling House (including Molasan, Modunle, Mogurala, Adedapo, etc);

(iii) Alawusa Ruling House (including Ogunmakinde Ande, Lamuye, Mogbede, Memudu, Osunwo, Adegorioye, etc). B

It was this letter that led the Plaintiff to institute this action claiming as hereinbefore mentioned.

Now two questions are raised in the brief of the 2nd Defendant and these are:

"(1) Whether or not the learned Justices of the Court of Appeal C in their majority decision were right in holding that the signing of Exhibit C1 by Chief Ige the Governor in his official constitutional capacity and without any interest whatsoever constitutes him the substantive 1st Defendant and is sufficient to lead a reasonable and right thinking person sitting in Court, in possession of full facts to think that justice has not been done merely because his wife later turned out to be the Judge who determined whether or not the inclusion of Tadese in Adegunodo Ruling family in the Chieftaincy Declaration, was proper?" D E

(2) If there is appearance of bias, which is denied, whether or not the implied waiver or acquiescence on the part of the appellants by their failure to object to the learned trial Judge hearing the case when they had adequate opportunity to do so, had defeated the objection and precluded them from subsequently impugning the proceedings on that ground?" F

The 3rd and 4th Defendants in their joint brief, however, pose one question, that is to say:

"Whether or not this is a proper case in which the learned trial Judge ought to have disqualified herself on the known principles of law and or on the conduct of the plaintiff in this case considering the case as a whole?" G

Having regard to the grounds of appeal and the judgment appealed against H I think the two questions formulated by the 2nd Defendant are the questions requiring consideration and determination in the two appeals before us.

QUESTION (1)

This is the main question that calls for determination in this appeal. **A chieftaincy declaration is, by virtue of the Chiefs Law of Oyo State Cap. 21 Laws of Oyo State 1978, a statement declaratory of the customary law regulating the selection of a person to be the holder of a recognized chieftaincy. It is thus a subsidiary legislation in that it is made under the authority of the Chiefs Law.**

Now, Chief Bola Ige was the Governor of Oyo State from 1979 to 1983 and particularly at all time relevant to this appeal and it was he who by virtue of his office signed into law Exhibit C1 in the same way that he signed into law bills passed by the House of Assembly of Oyo State during the relevant period. The Honourable Justice Atinuke Ige was at the relevant time (and still is) wife to Chief Bola Ige. She presided over the trial of this case at the High Court of Oyo State. The question that then arises is: will this fact, without more, raise a presumption of real likelihood of bias on the part of the learned trial Judge?

Let me digress a little: In this case, it was perceived, though wrongly, that Exhibit C1 contained a statement to the effect that the Tadese family was a sub-section of the Adegunodo ruling House. And it was on this perception that it was sought to impugn the correctness of Exhibit C1. I say wrongly in that what was perceived is in fact not contained in Exhibit C1 which Chief Bola Ige signed into law on 28th July 1981. I have already set out paragraphs 1 and 2 of the Declaration, Exhibit C1; these paragraphs speak for themselves. An end could have been put to this case long ago if the Defendants had canvassed this point. But they did not do so for the reasons(s) I cannot fathom nor hazard a guess. I shall, therefore, say no more on it but proceed to deal with this appeal on the basis it was fought all along, that is, that Exhibit C1 contained the "alleged" statement relating to Tadese family.

I now go back to the question posed in the mediate paragraph above. As this question was never raised in the trial court, we do not have the views of the trial judge on it. It was in the Court of Appeal that it was raised for the first time. The Court, by majority decision, held the view that as Chief Bola Ige, the husband of the trial Judge, signed Exhibit C1

into law and was the main defendant (though in official capacity), there was established a real likelihood of bias on the part of the Honourable Justice Ige which vitiated the proceedings before her and rendered her judgment null and void. Kolawole JCA, who dissented, thought differently.

Alhaji Y. A. Agbaje, SAN learned counsel for the 2nd Defendant/appellant both in his brief and oral argument, argued that Chief Bola Ige was not a party in this action, either in his personal or official capacity. He argued that the joining of the Attorney-General was merely to have the government represented so as to be bound by the result of the action. It is learned Senior Advocate's contention that the substantive defendant was the Chieftaincy Committee of the Iwo Local Government Council who made Exhibit C1 whose correctness was being challenged. Learned Senior Advocate further contended that as Chief Bola Ige had no interest in the making of the Declaration, Exhibit C1, it would not be proper to find that his wife, Justice Ige, was a judge in her own cause. Alhaji Agbaje submitted that to succeed the plaintiff must show -

(i) that Chief Bola Ige was a party to the action;

(ii) that he must have an interest in the subject matter of the action;

(iii) the interest must not be too remote or too indirect but one capable of affecting the judicial mind of Justice Ige; and

(iv) there was a departure from the standard of evenhandedness of justice or circumstances from which a reasonable man would think it likely or probable that justice was not done in the case or that justice Ige would or did favour one side unfairly at the expense of the other.

Learned Senior Advocate argued that all the above ingredients had not been established. He submitted that the fact that Exhibit C1 was a subsidiary legislation would make no difference to it being a Law assented to after being passed by the House of Assembly. It is the Senior Advocate's contention that the circumstances arising in this case would not lead a reasonable man into thinking it likely or probable that justice had not been done in the case. Learned counsel drew attention to the fact that justice Ige is a judge of a superior court whose honesty and integrity should not

be questioned. Alhaji Agbaje finally submitted that there had been no breach of any principle of natural justice and urged the Court to allow the appeal, set aside the judgment of the Court of Appeal and restore the judgment of the trial High Court. Learned Senior Advocate cited many legal authorities which will be referred to later in this judgment.

Mr. Abiodun, learned counsel for the 3rd and 4th Defendants/appellants adopted and relied on arguments in his written brief and associated himself with the submissions of Alhaji Agbaje, SAN. He too urged the Court to allow the appeal and restore the judgment of the trial High Court.

Mr. Olujinmi, SAN, for the Plaintiff/respondent submitted, in oral argument, that there was a breach of the fair hearing rule by Justice Ige sitting to hear the matter when her husband, Chief Bola Ige signed into law the Chieftaincy Declaration, Exhibit C1. He relied on Metropolitan Properties Co. Ltd v. Lannon (1969) 1 QB 577, 599 and Bendel State Civil Service Commission v. Buzugbe (1984) 1 ANLR 372, 385-6. He urged the Court to dismiss the appeals.

I begin by observing that there was no allegation, or even suggestion of actual bias nor want of good faith against the learned trial Judge. It is not also suggested that the learned judge had any pecuniary or personal interest in the case. Plaintiffs case was based on a real likelihood of bias. According to him, the fact that Chief Bola Ige as Governor of Oyo State, signed into law the Oluwo of Iwo Chieftaincy Declaration (Exhibit C1) which was being challenged in the suit instituted by the Plaintiff and in which the Attorney-General of the State, among others, is a defendant. Justice Atinuke Ige, the Governor's wife should not have sat over the case but should have excused herself. These are the circumstances relied on by the Plaintiff from which he is urging us to draw the inference that by Justice Ige sitting over the case there was a real likelihood of bias against him. **Reliance is placed both by Mr. Olujinmi, SAN and the Court below on Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon (supra) where Lord Denning M.R. said:**

"..... in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the

mind of the Chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless, if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand: see R. v. Huggins (1875-99) ALL E.R. Rep. 914; (1895) Q.B. 563.: R. v. Sunderland Justices (1901) 2 K.B. 357 at p. 373, per VAUGHAN WILLIAMS, L.J. Nevertheless, there must appear to be a real likelihood of bias. Surmise or conjecture is not enough: see R. v. Camborne Justices, Ex p. Pearce (1954) 2 ALL E.R. 850 at pp. 8; (1955) 1 Q.B. 41 at pp. 48-51; R. v. Nailsworth Justices, Ex p. Bird (1953) 2 ALL E.R. 652. There must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman, as the case may be, would, or did, favour one side unfairly at the expense of the other. The court will not enquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: 'The judge was biased.'" (Underlinings are mine)

I agree entirely with this dictum of lord Denning. But applying the principles enunciated by lord Denning to the facts of the instant case, would one say that Justice Atinuke Ige was precluded from sitting? This is the question I now address myself to answering.

In the Metropolitan Properties Co. case, the Court of Appeal (England) held that on the facts of the case the Chairman of the Rent Assessment Committee ought not to have sat as Chairman of the committee. What are these facts? They are, as appearing in the head note to the report:

Three tenants in a block of flats in Oakwood Court, West Kensington, London, applied to the rent officer to register a fair rent for each of the flats under the Rent Act 1965, the landlords having proposed to increase the rents. The landlords objected to the rent officer's deter-

mination and applied to the rent assessment committee. The chairman of the committee was a solicitor; he lived with his father, who was a tenant at Regency Lodge, the landlord of which was an associate company belonging to the same group as the landlords of Oakwood Court. The chairman's firm had from time to time acted for other tenants in Regency Lodge who were in dispute with their landlord on matters similar to those of the present case, and the chairman had himself assisted in writing a letter to the rent officer making representations on behalf of his father. The committee fixed as the fair rent in respect of each flat an amount that was not only below the amounts put forward by the experts called at the hearing on behalf of the landlords and the tenants but also below those put forward by the rent officer and those offered by the tenants. In accordance with s. 12 of the Tribunals and Inquiries Act, 1958, the committee gave written reasons for their decision in which they omitted to give their reasons why they had not accepted any of the evidence given about what the rents should be and why, having accepted the determined fair rent of a flat in another block of flats in the exact same locality as a guide, they then fixed the rents at Oakwood Court at a lower figure.

The facts in the instant case are clearly far from being similar to the facts in the Metropolitan Properties Co. case. Thus apart from the principles of law enunciated by lord Denning M.R. in that case, it is not apposite to the case on hand. So also are the facts in Bendel State civil Service Commission & Anor. v. Buzugbe (supra) on which Mr. Olujinmi also relied. There the Head of Service who set the disciplinary action in motion sat as Chairman of the disciplinary committee. It was held, and rightly too, that he could not be a judge in his own cause. **In the present case Justice Ige was said to be disqualified from sitting because of her matrimonial relationship with Chief Bola Ige who acted in his official, rather than personal relationship.**

In R. v. Camborne Justices (1955) 1 QB 41 at p. 51 Slade J. laid down the law in these words:

"..... that to disqualify a person from acting in a judicial or quasi-judicial capacity upon the ground of interest (other than pecuniary or proprietary) in the subject-matter of the proceedings, a real like-

likelihood of bias must be shown. This court is further of opinion that a real likelihood of bias must be made to appear by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries."

This dictum has received approval in a number of cases in this Country - see for example, Obadara & Ors. v. The President West District Grade B Customary Court (1964) ANLR 331, 339. The law on the subject of likelihood of bias is ably set out in paragraph 69 of Vol. 1: Administrative Law of Halsbury's Laws of England (4th edition). There the following appears:

"Likelihood of bias. In a wide range of other situations the impression may be received that an adjudicator is likely to be biased. A person ought not to participate or appear to participate in an appeal against his own decision, or act or appear to act as both prosecutor and judge; the general rule is that in such circumstances the decision will be set aside. Normally it will also arise because an adjudicator has already indicated partisanship by expressing opinions antagonistic or favourable to the parties before him, or has made known his views about the merits of the very issue or issues of a similar nature in such a way as to suggest prejudgment because he is so actively associated with the institution or conduct of proceedings before him, either in his personal capacity or by virtue of his membership of an interested organization, as to make himself in substance, both judge and party, or because of his personal relationship with a party or for other reasons. It is not enough to show that the person adjudicating holds strong views on the general subject matter in respect of which he is adjudicating, or that he is a member of a trade union to which one of the parties belongs where the matter is not one in which a trade dispute is involved.

The fact that an administrator may incline towards deciding an issue before him one way rather than another, in the light of implementing a policy for which he is responsible, will not affect the validity of his decision, provided that he acts fairly and with a mind not closed to argument; and similar standards may be applied to other persons whose prior connection with the parties or the issues are liable to preclude them from

acting with total detachment.

It is unnecessary to establish the presence of actual bias, although the courts are not precluded from entertaining such an allegation. It is enough to establish a real likelihood that in the circumstances of the case an adjudicator will be biased. Alternatively, it may be sufficient to establish that a reasonable person acquainted with the outward appearance of the situation would have reasonable grounds for suspecting bias. In some situations a more exacting test will be adopted, and the court may set aside a determination if justice has not been manifestly seen to be done; such a test has been applied in cases where a clerk to a tribunal has retired with the tribunal, and given the impression of participating in its decision."

What then is a "real likelihood" of bias? It means, in my respectful view, a substantial possibility of bias and the test to be applied is based on the reasonable apprehension of a reasonable man who is in full knowledge of the facts or circumstances and not that of a capricious and unreasonable man. There are dicta which appear to make it more exacting for the courts. In Eckersley v. Mersey Docks and Harborne Board (1894) 2 QB 667 at 670-671, lord Esher M.R. stated thus:

"When the proposition sought to be established on behalf of the plaintiffs is examined, it comes to this, that the disputes ought not to be referred to the engineer because he might be suspected of being biassed, although in truth he would not be biassed. It is an attempt to apply the doctrine which is applied to judges, not merely of the Superior Courts, but to all judges - that, not only must they be not biassed, but that, even though it be demonstrated that they would not be biassed, they ought not to act as judges in a matter where the circumstances are such that people - not necessarily reasonable people, but many people - would suspect them of being biassed."

In R v. Justices of County Cork (1910) 2 I.R. 271 at 275 lord H O'Brien CJ criticized the dictum of lord Esher. He said:

"That, in my opinion, goes too far. It makes the mere suspicions of unreasonable persons a test of bias. I think that the judgment was not a considered one, and that lord Esher made use of some loose expres-

sions. We decline, on a consideration of the case, to go so far as that very eminent judge. There must, in the words of Blackburn J., be a 'real likelihood' of bias: Reg. v. Rand (L.R. 1 QB. 230, 233. In Rex (De Vesce) v. Justices of Queen's Co. (1908) 2 I. R. 285, 294, I expressed myself as follows: 'By 'bias' I understand a real likelihood of an operative prejudice, whether conscious or unconscious. There must, in my opinion, be reasonable evidence to satisfy us that there was a real likelihood of bias. I do not think that the mere vague suspicions of whimsical, capricious and unreasonable people should be made a standard to regulate our action here. It might be a different matter if suspicion rested on reasonable grounds - was reasonably generated - but certainly mere flimsy, elusive, morbid suspicions should not be permitted to form a ground of decision.'"

I am more inclined to the views of lord O'Brien above.

Again, in R v. Sussex Justices, Ex parte McCarthy (1924) 1 KB 256 at p. 259 lord Hewart CJ reiterated the "suspicion" test when he said:

"..... a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The question therefore is not whether in this case the deputy clerk made any observation or offered any criticism which he might not properly have made or offered; the question is whether he was so related to the case in its civil aspect as to be unfit to act as clerk to the justices in the criminal matter. The answer to that question depends not upon what actually was done but upon what might appear to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice."

With profound respect to their lordships who adopted the "suspicion" test, I think the stand of lord O' Brien is to be preferred. **A mere whimsical suspicion will not suffice. There must be a real likelihood of bias, an inference which must be drawn from proved circumstances.** In R. v. H Salford Assessment Committee, Ex. p. Ogden (1937) 2 ALL E.R. 98; (1937) 2 KB 1, Slessor L.J. and Luxmoore J applied the "reasonable likelihood" test. Similarly, in Cottle v. Cottle (1939) 2 ALL E.R. 541, Sir Boyd

Merriman P asked whether the party complaining

"..... might reasonably have formed the impression that Mr. Browning (the chairman of the bench) could not give this case an unbiased hearing."

B In that same case, Bucknill, J opined:

"The test which we have to apply is whether or not a reasonable man, in all the circumstances, might suppose that there was an improper interference with the course of justice if Mr. Browning sat as Chairman."

C **This Court has never accepted the "suspicion" test. For in Oyelade v. Araoye & Anor. (1968) NMLR 41 at p. 46 Brett JSC delivering the judgment of this Court said:**

"In the rare cases where it could be proved that a decision had actually been affected by the bias of the person making it, that would no doubt be conclusive, but while suspicion is not enough the courts do not appear to have required that actual bias operated on the mind of the person making the decision In our view the correct test is that adopted by this Court in Obadara v. President, Ibadan West District Grade B Customary Court, following R. v. Camborne Justices, namely that "a real likelihood of bias must be shown""

See also Yabugbe v. C.O.P (1992) 4 N.W.L.R. 152 at pages 173 - 174 per Akpata, J.S.C.; at p. 177, per Uwais, J.S.C. (as he then was) at p. 177.

F In the instant case, there is no suggestion of any impropriety against Justice Ige who sat and heard the case. It is equally accepted that Chief Bola Ige acted throughout in his official, as against his personal, capacity. It was submitted, and this found favour with the court below, that the Attorney-General being a defendant in the case, Chief Bola Ige was the substantive defendant. With profound respect, I think this submission is preposterous. The Attorney-General was brought in as a nominal defendant so that the Government of Oyo State might be bound by the result of the action. It is not the case of the plaintiff that Chief Bola H Ige had any pecuniary or proprietary interest or other personal interest in the Oluwo of Iwo Chieftaincy Declaration. All that he did was to sign Exhibit C1 (made by the Chieftaincy Committee of the Iwo Local Government Council) into law. I cannot reasonably infer from such circum-

stance, without more, that his spouse sitting as a judge over the instant case, a real likelihood of bias would arise. To hold otherwise would mean that Justice Ige was disqualified in any case where any legislation signed into law by her husband was in issue. And the same must obviously apply to any judge whose spouse had been in a similar position as Chief Bola Ige. I think this is carrying the principle of real likelihood of bias too far. Such a suggestion must be rejected and I do so reject it in this case. After all, the maxim is: De fide et officio non resipitur quaestio, sed de scientia sive error juris sive facti. (The honesty and integrity of a judge cannot be questioned, but his decision may be impugned for error, either of law or of fact) Bacon Max rep. 17).

One of the cases relied on by Ogwuegbu, J.C.A., is Olue & Ors. v. Enenwali & Ors. (1976) 2 S.C. 23 where the presiding judge was counsel to one of the parties at the early stages of the hearing. When the matter eventually came before him after he had been appointed to the bench he drew the attention of both parties to that fact. Counsel for the parties said they had no objection to his continuing with the case. The learned judge nevertheless adjourned to another date to enable counsel reconsider the point after consulting their clients. On the adjourned date both counsel again told the court that their clients agreed that the judge should continue with the case. At the conclusion of the case and after judgment had been entered, the losing party appealed to this Court and argued, through his counsel, that the whole trial was unconstitutional and void, citing in aid section 22 (1) of the 1963 Constitution which is in pari materia with section 33 (1) of the 1979 Constitution, applicable in the present proceedings and that the parties could not waive the disqualification in view of section 22 of the 1963 Constitution. This Court, per Nasir JSC, as he then was, held at pages 37-38, that:

"In the circumstances of the present case we cannot see how the independence or the impartiality of the learned trial judge could be impeached. The learned trial judge expressly drew the attention of counsel and their clients to the fact that he was counsel to one side at the early stages of the proceedings and offered to withdraw from continuing with the proceedings. Both counsel and clients expressly wanted the judge to

go on. We cannot see how section 22 can apply in this case. We also consider the argument of learned counsel for the respondent, that the parties have expressly waived their rights under section 22, as well founded.

The right to challenge or impugn proceedings of any court or tribunal which was tainted by the adjudicator being disqualified by interest or likelihood of bias may be lost by express or even by implied waiver of the right to object to the adjudicator at the first opportunity during the proceedings. There would however be no waiver or acquiescence unless the party entitled to take the objection was aware of the nature of the disqualification and had opportunity of so objecting."

It is interesting to note that in the course of the judgment Obadara & Ors. v. The President, Ibadan West District Grade B Customary Court (supra), R. v. Camborne Justices (supra); Metropolitan Properties Co. (FGC) Ltd. v. Lannon (supra) and Kujore & Ors. v. Ebun Otubanjo (1974) 10 SC 173 were referred to and considered.

The short remark I need make about the OLUE case is that the facts in the instant case are completely different from the facts in the case. It is not the case here that Justice Ige was at any time counsel to any of the parties in respect of the Oluwo chieftaincy.

Again, reliance was also placed on the case of Legal Practitioners Disciplinary Committee v. Gani Fawehinmi (1985) 2 NWLR 300. This case too is not apposite for in the case the Attorney-General who was the complainant sat as Chairman of the Committee to try the complaint. This Court rightly held that he could not be a judge in his own cause. I think the same observation applies to Lawson v. Local Authority (1944) 10 WACA 228 relied on by Akpabio JCA. In that case the appellant was charged at the instance of the Administrative Officer qua Local Authority (the Tax Collection Authority) for failure to pay income tax, and was tried by that officer qua Magistrate. He was convicted. On appeal to the West African Court of Appeal, it was held, and quite rightly too, that the proceedings were vitiated by the fact that the same person was both prosecutor and judge.

Akpabio JCA also referred to a case Alice Ibidun v. Isiah Adewumi Kujore & 3 ors. (1973) 3 WSCA 102 (I am not too sure if it is not the same

case as I. A. Kujore & Ors. v. Mrs. Ebun Otubanjo (1974) 10 SC 173 which found its way to this Court and where this Court set aside the judgment of the Western State Court of Appeal and restored that of the appellate High Court Ijebu-Ode. If it is the same case then the facts are clearly not apposite to the facts in the instant case. There, Fatayi-Williams JSC (as he then was), delivering the judgment of this Court said at pages 180-181:

"It is our view, depending of course on particular circumstances, that it is sufficient if materials are supplied which, in the opinion of an independent person, could be considered as suggesting a real likelihood of bias. Adverting once again to the present case, there is no doubt in our mind that, in the absence of an immediate retort from the learned President at the time the allegation, which he must have known to be true, was made, any reasonable person making such a factual complaint would conclude that the learned President, for some inexplicable reason, was bent on hearing the case in spite of the allegation. Such a person would undoubtedly also conclude that the President would not be impartial and would likely to be biased against him. We do not think that any further proof of likelihood of bias is necessary."

With respect, it would appear that their lordships of the Court below who constituted the majority overlooked the facts of the cases they relied on in coming to their conclusions that there was a real likelihood of bias shown in this case. Had they properly adverted their minds to these facts it would not have been difficult to see the difference in the circumstances in these cases and those of the instant case.

From all I have been saying, I have come to the conclusion that Question (1) must be resolved in favour of the Appellants. I cannot imagine any reasonable man drawing the inference from the circumstances of this case that there was a real likelihood of bias on the part of Justice Atinuke Ige in presiding over this case at the High Court.

In view of this conclusion, I do not consider it necessary to go into Issue (2). Suffice it to say that it appears that that issue has been resolved

by this Court in the OLUE case.

Before I end this judgment I like to comment briefly on a remark by Akpabio JCA in his judgment. He said:

"..... I must first make a preliminary observation, namely,
 B that I noticed that the case of Oyelade v. Araoye (1968) N.M.R.L. 41 was
 cited by both the learned counsel for the appellant and that for the 4th
 Respondent. As the same authority could not possibly support both sides
 of the same case at the same time, I took special interest to read it, and
 C found as a fact that that authority was more in support of the case of the
 appellant in the instant case than that of the 4th Respondent. In that
 case one of the questions for determination was whether it was proper
 for a certain Mr. Enahoro to conduct an Inquiry under the Inter-Tribunal
 Boundaries Settlement Law Cap. 52. Laws of Western Nigeria 1969 af-
 D ter he the said Mr. Enahoro had earlier signed the letter recommending
 it. It was held *inter alia* by the Supreme Court that

'A real likelihood of bias has been shown and the rights of the
 plaintiffs have not been determined by a tribunal constituted in such
 E manner as to ensure its independence and impartiality,'

*This is just an aside, but I should always refrain from attempting to
 mislead the court by citing authorities which do not support their cases."*

I think the counsel being rebuked in the above passage acted in the best
 F tradition of the profession as a worthy officer of the court. **Counsel in a
 case has a duty not only to bring to the attention of the Court au-
 thorities that support his case but also those that decide otherwise
 and attempt either to distinguish such authorities or to advance ar-
 guments why they should not be followed. It will be a sorry day when
 G counsel hide from the court authorities he is aware of and relevant to
 the case before the court simply because such authorities do not favour
 him.** I am sure if the learned Justice of the Court of Appeal was aware of
 this duty of counsel he would not have rebuked counsel in the manner he
 H did. What counsel did cannot in any sense be referred to as misleading the
 court.

Finally, this appeal succeeds and it is hereby allowed. I set aside
 the judgment of the Court below and restore that of the trial High Court.

I award N10,000.00 costs of this appeal to each set of Appellants against the Plaintiff/Respondent.

WALI JSC

B

I have read before now the lead judgment of my learned brother Ogundare JSC, and I agree with him that the appeal is meritorious and should therefore succeed.

The issue involved is one of bias or a likelihood of bias on the part of Atinuke Ige J (as she was then) as the learned trial judge. Hon. Justice A. Ige, is the wife of Chief Bola Ige who was at the material time, the Executive Governor of Oyo State (as it was then composed). Chief Bola Ige in that capacity, assented to the Iwo Chieftaincy Declaration produced by Iwo Local Government after it passed through the normal process. This was in July, 1981.

The plaintiffs aggrieved by the inclusion of Tadese Family as subsection of Adegunodo ruling House initiated an action before Atinuke Ige J (as she then was) on 27/9/82. The actual hearing of the case commenced on 3/11/84, almost a year after Chief Bola Ige had ceased to be the Executive Governor of that State. To the knowledge of the plaintiff that A. Ige J is Chief Bola Ige's wife, he allowed the case to proceed to conclusion. The Chieftaincy Declaration in dispute was tendered and admitted in evidence as Exhibit C1. The learned trial judge dismissed the plaintiff's case.

Dissatisfied with judgment of the trial court the plaintiff appealed against it to the Court of Appeal, Ibadan Division.

In the Court of Appeal, and in compliance with the rules of that court, briefs were filed and exchanged.

One of the issues raised and canvassed with the leave of the Court of Appeal was bias against the learned judge. In a split decision of 2 to 1 the majority upheld the submission of bias, allowed the appeal and ordered fresh trial before another judge. Hence the appeal to this court. Henceforth the plaintiff and the defendants in this case shall be referred to as the respondent and the appellants respectively.

As argued by learned counsel for the appellants in their respec-

tive brief. Chief Bola Ige was neither sued in his official or private capacity. The part played by him in this matter was to sign Exhibit C1 in his official capacity. Through out the proceedings there was no iota of evidence either directly or by necessary inference that Chief Bola Ige had any personal proprietary or financial interest in assenting to Exhibit C1, what he did was simply to discharge the function imposed on him by section 74 of the 1979 Constitution.

The fact that the learned trial judge was at the time she tried the case was [and she still is] the wife of Chief Bola Ige and who was at the time he assented to Exhibit C1 Executive Governor of Oyo State simpliciter is not enough to disqualify her in adjudicating the matter on ground of real bias or a likelihood of bias. The test to be applied in determining whether or not there is bias is, as adopted and re-stated by Brett, Ag. CJN in Obadara & Ors. v. The President, Ibadan West District Grade B Customary Court (1964) 1 ALL NLR 336-

"The principle that a judge must be impartial is accepted in the jurisprudence of any civilized country and there are no grounds for holding that in this respect the law of Nigeria differs from the law of England or for hesitating to follow the English decisions. The English decisions were reviewed by the Divisional Court in Regina v. Camborne Justices (1955) 1 Q.B. 41, and we would adopt the following passage from page 51 of the judgment as setting out the law to be applied in Nigeria -

"In the judgment of this court the right test is that presented by Blackburn J., namely, that to disqualify a person from acting in a judicial or quasi-judicial capacity upon the ground of interest (other than pecuniary or proprietary) in the subject matter of the proceeding, a real likelihood of bias must be shown. This court is further of opinion that a real likelihood of bias must be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries."

In considering the issue the court will always try to find out what would be the impression of a reasonable person when faced with the facts. There must be circumstances manifest in the facts that will give the

impression that justice would favour one side unforcibly at the expense of the other. See Rex v. Nailsworth Licensing Justices Ex parte Bird (1953) 2 ALL ER 652; R. v. Huggins (1895) 1 Q. B. 563 and R. v. Camborne Justices Ex Partie Pearce (1955) 1 Q. B. 41 Mere suspicion or conjecture is not enough. See Oyelade v. Araoye & Anor. (1968) B NMLR 41.

After a calm view and painstaking consideration of the facts in this case I cannot agree with the majority decision of the Court of Appeal that there was bias or likelihood of bias on the part of the learned trial judge on ground that her husband, Chief Bola Ige signed Exhibit C1 when he was Executive Governor of Oyo State. I agree with the well reasoned minority judgment of Kolawole JCA on this issue, particularly where he opined that -

"There is a serious misconception on the part of learned counsel's submission namely that he is unable to separate Chief Bola Ige as husband and father from his office as Governor. When chief Bola Ige assented to Exhibit C1 he was performing a constitutional duty. If Chief Bola Ige had been sued in his personal capacity over a private matter and the matter were to come before Tinuke Ige, J. Prudence demands that she should disqualify herself from adjudicating on the case. But a government is an abstract personality, it lives in perpetuity with or without a particular Governor, and the act which was challenge before Tinuke Ige J was not the act of Chief Bola Ige but that of Oyo State Government. I can therefore not see the relevance of the case of Metropolitan properties Company Limited v. Lannon (1969) 1 Q. B. 577 at 599. In that case Lord Denning M. R. said - 25.

"There must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman, as the case may be, would, or did, favour one side unfairly at the expense of the other."

In the present case, I cannot imagine that any reasonable man would confuse the action against the Government of Oyo State with an action against Chief Bola Ige which he did in his personal capacity. I venture to surmise in this particular case that a person who would think

it likely or probable that Tinuke Ige, J. would or did favour the government unfairly at the expense of the appellant would be an unreasonable man because the action of the Governor of Oyo State due for and unbehalf of the Government could not and should not be juxtaposed with the action of chief Bola Ige in his personal capacity as husband and father."

It is for this and the more detailed reasons given in the lead judgment of my learned brother Ogundare JSC that I also hereby allow the appeal, set aside the judgment of the court of Appeal and restore the judgment given by the trial court with N10,000.00 costs to each set of the appellants.

ONU JSC

Having had the privilege to read before now the judgment of my learned brother Ogundare, JSC just delivered, I am in entire agreement therewith that the appeal be allowed.

I only will like to make a few comments by way of emphasis to leave no one with any iota of doubt to concretise the main feature of the case as the pith of a tree that runs through its centre-bias - which has not been established, as follows:-

This is a Chieftaincy matter in which the Plaintiff, now Respondent was challenging the inclusion of Tadeso Family as a subsection of Adagunodo, Ruling House in the ever-nagging intra-family dispute of Iwo Chieftaincy Declaration made by Iwo Local Government of the former Oyo (but now Osun) State, dated 28th July, 1981. The said Declaration of 28th July, 1981 (Exhibit 'C1'), was made during the regime/governorship of Chief Bola Ige that spanned 1979 - 1983 and to which he duly assented as Governor.

The gravamen of the case as made before the learned trial Judge, Atinuke Ige, J., as she then was, is the identity of membership of families comprising Adagunodo ruling House - a question of family status. The procedure relating to the making of Chieftaincy Declaration under the Chiefs Laws of Oyo State as then constituted is as follows:-

(i) A Committee of a competent Council makes the Chieftaincy

Declaration.

(ii) The Chieftaincy Declaration made passes through the Local Government Inspector to the Commissioner for consideration before it comes before the Executive Council, which then approves, before it is registered and the Governor finally gives his assent. B

Now, the plaintiff's claim before Ige, J., as she then was, was initiated by due process of law on 27th September, 1982. The commencement of hearing before her as wife of ex-Governor Bola Ige who left office as Governor in December 1983 began on 7th November, 1984. Knowledge that Chief Bola Ige signed the Declaration became known on 3rd December, 1985 when it was tendered as Exhibit 'C1'. The plaintiff, it is common ground, had opened his case before her and with full knowledge that she was and still is the wife of ex-Governor Bola Ige who had, to all intents and purposes, signed Exhibit 'C1' while in office. He (plaintiff) D raised no objection to her continued trial of the case until she concluded it and dismissed his claim in its entirety on 28th November, 1986 - some two years after chief Ige vacated office as Governor.

The Plaintiff was dissatisfied with the said decision and appealed E to the Court of Appeal sitting in Ibadan on seven grounds of appeal from which the seven issues formulated for determination, all but issue (iv) were abandoned. One of the grounds which was being raised for the first time in the Court below complained as follows:-

"The learned Trial Judge ought to have disqualified herself from hearing the case as the husband of the trial Judge was the Governor who signed Exhibit 'C1' (the Declaration) into Law as the husband was the substantive 1st Defendant in the case." F

There was no question that Governor Ige who signed Exhibit 'C1' into G Law, had any interest whatsoever other than carrying out his official function pursuant to Section 74 of the Constitution of 1979 (hereinafter referred to as the Constitution) i.e. after approval by the Executive Council. There was also no allegation of any relationship of Governor Ige with H either Tadese Family or Adagunodo ruling House. Nor is there further still, any allegation that the said Governor Ige had any interest whatsoever in the inclusion or exclusion of Tadese Family as a Section of Adagunodo

House.

The Court below by a majority of 2 to 1 decided the appeal (Coram; Kolawole, JCA, Ogwuegbu, JCA as he then was, and Akpabio, JCA) on 15th October, 1990 on the issue of bias alone. They, in effect, B allowed the appeal and ordered a retrial. It is the appeal against this latter decision that is now before us wherein in their consideration of the question of bias, the learned Justices of the Court below came to the conclusion, firstly that:-

C *"There were circumstances from which a reasonable man would come to the conclusion that the learned trial Judge was biased or that there was a real likelihood of bias."*

Secondly, on the question of waiver they held as follows:-

D *"In the present case the Appellant's right to a fair hearing by a Court or other tribunal whatsoever established by law and constituted in such a manner as to secure its independence and impartiality - See Section 33(1) of the Constitution of the Federal Republic of Nigeria, 1979 was breached."*

E Thirdly, "the Court below as she (sic) then was per Ige, J., ought not to have sat over the case. The decision she reached in the case palpably is void."

Before I touch upon authorities on this all-important aspect or F branch of our law as interpreted by the Superior Courts of this country over the years, it is perhaps necessary to have a brief in-sight into what Kolawole, JCA, in dismissing the appeal and upholding the judgment of the trial Court in a minority judgment, and with which I entirely agree, had to say:-

G (i) *That Chief Bola Ige was Governor of Oyo State between 1st October, 1979 and 30th December, 1983.*

H (ii) *That the signing of Exhibit 'C1' was a constitutional function performed under Section 9A (3) of Chiefs Law and Section 94 of the 1979 Constitution (ibid).*

(iii) *That there is no allegation that Chief Bola Ige in his personal capacity had personal pecuniary or proprietary interest in the particular instrument (Exhibit 'C1').*

(iv) *That the function of a Judicial Officer such as the learned trial Judge (Atinuke Ige, J.) performed in relation to legislation is interpretative.*

(v) *That there is no evidence of any bias, interest or semblance of the likelihood of bias against her.*

(vi) *That Counsel for the Plaintiff's misconception definitely, in my view, arose from his failure to separate Chief Bola Ige as husband and father from his Office as Governor by not drawing a clear distinction between performing constitutional function and his being sued in his personal capacity over a private matter.*

(vii) *"The logical conclusion which must follow from the submissions of Mr. Olujimi is that Ige, J. must be disqualified from adjudication in respect of all legislations which became effective during the tenure of the governorship of Chief Bola Ige and indeed after the cessation of his office as Governor. That will be totally an unacceptable proposition", and he went on to conclude.*

"To say that a Judge cannot sit to interpret legislation assented to in the exercise of judgment is outrageous."

I cannot but agree with the dissenting voice of Kolawole, J.C.A.

The law is well settled that the test to be applied in determining what constitutes bias which can be imputed to a Court or any tribunal need not be actual bias but a likelihood of bias, Akpata, JSC in Yabugbe v. C.O.P. (1992) 4 NWLR (part 234) 152 at pages 173-174 paragraph 'E', while advertng to this Court's earlier decision in Deduwa v. Okorodudu (1976) 9-10 S.C. 329 at pages 348 - 349, cited with approval Lord Denning, M.R. in Metropolitan Properties Co. (F.G.C.) v. Lannon (1969) 1 Q.B. 577 as follows:-

"In considering whether there was a real likelihood of bias, the Court does not" look at the mind of the justice himself or at the mind of the Chairman of the tribunal or whoever it may be, who sits in a judicial capacity. It does not look to see if there was real likelihood that he would, or did, in fact favour one side at the expense of the other. The Court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless, if right-minded persons would

think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does sit his decision cannot stand Nevertheless, there must appear to be a real likelihood of bias. Surprise or conjecture is not enough There must be circumstances from which a reasonable man would think it likely or probable that the Justice or Chairman, as the case may be, would or did favour one side unfairly - suffice it that reasonable people think he did. The reason is plain enough. Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: "That Judge was biased"

Since bias is a branch of the principle of Natural Justice and according to Tucker L.J. in Russel v. Duke of Norfolk (1949) 1 ALL E.R. 109 at 110:
"The requirement must depend on the circumstances of the case, the nature of the inquiry, the rule under which the Tribunal is acting the subject matter that is being dealt with and so forth."

I am prompted to ask:-

What is the relationship of the parties in the case herein to Chief Bola Ige?

(a) To Appellant - None.

(b) To the Respondents

(i) 1st Respondent - The Attorney-General, who was joined to represent the Government in a nominal capacity and merely to get the Council or the Government bound by the judgment even though there was no wrong-doing alleged against the Government. He had before the hearing of this appeal on 6/5/92 been granted leave to withdraw - his stake in the matter, in my firm view, being next to nothing.

(ii) The Secretary to the Iwo Central Local Government, 2nd Respondent, is wrongly joined as it is not a legal entity and could not have been sued because the proper body or authority to be sued is Iwo Local Government Council. See Section 5 Volume 4 Local Government Council Law of Oyo State, Cap. 66.

THE POSITION OF CHIEF BOLA IGE:

(i) Clearly, Chief Bola Ige has not been sued either in his official or private capacity, He was neither made a party to this action by implica-

tion nor otherwise and no complaint has been made against him in his private personal capacity.

(ii) Chief Bola Ige as Executive Governor of Oyo State, was neither sued as the Government of Oyo State, in his personal capacity not in his official capacity. B

(iii) In his official capacity as Governor and when performing his constitutional function under Section 74 of the 1979 Constitution no judicial or quasi-judicial duty is imposed on him as Executive Governor in the discharge of his statutory duties which are purely administrative besides being satisfied that the requirements of the Chiefs Law have been complied with regard to the making of the Statutory Instrument (Exhibit 'C1'). C

It is pertinent to stress that the actual Defendant or the proper and substantive Defendant to the action which should have been sued and which has not been made a party, is the Iwo Local Government Council, whose Chieftaincy Committee (not the Secretary) made the registered Declaration (Exhibit 'C1') and to which Bola Ige assented. In essence, one should not lose sight of the fact that it is the act of the chieftaincy Committee that was being challenged and not that Governor Bola Ige had no right to assent to it, Nor further-still that by signing it, he did anything wrong. D

THE NATURE OF THE ENQUIRY BEFORE THE LEARNED TRIAL JUDGE: In the consideration of this appeal it is pertinent firstly to underscore the point that the issue before the Court is not whether or not chief Bola Ige in signing Exhibit 'C1' into law was right or wrong, since his role as Governor was not being called into question. E

Indeed, it is common ground that Chief Bola Ige's function as Executive Governor was administrative and constitutional. The query then is whether or not the Committee of the Iwo Local Government by including Tadese as Sub-section of Adagunodo ruling House acted properly in the sense that the inclusion is not in conformity with the Native Law and custom governing the composition of Adagunodo Ruling House. F

This question is a matter of proof of family status to be established by traditional evidence of the genealogy of Adagunodo Ruling House to see whether the inclusion of Tadese family therein as a subsection was G H

right.

This has nothing to do with Chief Bola Ige as Governor signing Exhibit 'C1' into law. Since it appears to me abundantly clear that Chief Bola Ige has not been shown to have any interest in the making of Exhibit 'C1' which could make him or his wife, a Judge sitting over her own cause, the allegation of bias should have been rejected.

COMPLAINT OF BIAS AGAINST A JUDGE:

I agree with the Appellant's submission to the effect that since the Respondent's complaint of BIAS is hinged on the marital relationship of the learned trial Judge to the Governor who signed the instrument into law and nothing else and since relationship, per se generally does not disqualify a judge, in order to succeed, the Respondent must prove that:-

(i) The personal relation is a party to the action

(ii) The personal relation must have interest in the subject matter to be litigated upon.

(iii) The interest is not too remote or too indirect but capable of affecting the judicial mind of a Judge.

(iv) There is a departure from the standard of even handedness of justice or circumstances from which a reasonable man would think it likely or probable that justice has not been done in the case or the Chairman as the case may be, would or did favour one side unfairly at the expense of the other. See the cases of:-

1. Re Cottle (1939) 2 ALL E.R. 535 at 537.

2. Metropolitan Properties Co. (F.G.C.) v. Lannon (supra).

3. Olaleke Obadara v. The President Ibadan West District Council Grade 'B' Customary Court (1965) NWLR 39.

4. Ibidumi v. Badejo (1971) 1 NMLR 243.

5. Regina v. Barnsley Licensing Justices (1960) 2 Q.B. 67 at 187.

6. State Civil Service Commission v. Buzugbe (1984) 7 S.C. 19 at 43.

7. Jeremiah Akoh & Ors. v. Ameh Abu (1988) 3 NWLR (part 85) 696.

I will discuss only two of the above cases briefly herein to exemplify what in law would constitute or would not constitute bias or a real likelihood of

bias.

In the Obadara & Ors. Case (supra), the Appellants were charged before a Customary Court with various offences, but before the case was heard, they obtained the leave of the High Court to apply for an order of prohibition to prohibit the Customary Court from further proceedings in the case, on the ground that the President of the Customary Court was biased, and a stay of proceedings in the Customary Court was ordered pending the determination of the application in the High Court. After other procedural skirmishes, the Court was later addressed by Counsel on both sides, following which in allowing the appeal and sending back the case to another High Court for retrial, this Court held inter alia:

"1. the principle that a Judge must be impartial is accepted in the jurisprudence of any civilized country, and there are no grounds for holding that in this respect that Law of Nigeria differs from the Law of England or for hesitating to follow English decisions.

2. approving a dictum of Blackburn J. in Regina v. Camborne Justices, Ex-Parte Pearce (1955) 1 Q.B. 42 at 51 the right test is that before disqualifying a person from acting in a judicial or quasi judicial capacity upon the ground of interest (other than pecuniary or proprietary) in the subject matter of the proceeding, a real likelihood of bias must be shown. A real likelihood of bias must be made to appear not only from the facts in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries."

The second case, Ibidumi v. Badejo (supra), which albeit a High Court decision, is instructive. In it, the Plaintiff/Appellant appealed to the High Court, Ijebu-Ode against the decision of the Ijebu Divisional Grade 'A' Customary Court whereby her claim for declaration of title, damages for trespass and injunction relating to a piece of land was dismissed. The only ground of appeal argued was that the trial President was biased in that at the time the trial commenced he was the Legal Adviser of the African Church, Ibadan Division, which the Defendant/Respondent's represented. The plaintiff/Appellant raised the issue of jurisdiction of the trial Court but the trial Court did not rule on the issue.

It was held, allowing the appeal, per Ayoola, J. as he then was, thus:-

"1. *The correct view of the Law in regard to bias is that where the interest is pecuniary or proprietary, bias is presumed but where the interest is not pecuniary or proprietary then it would not raise a ground of bias unless it is shown that the interest is substantial and of such a character that it gives rise to a real likelihood of bias.*

2. *In the present case the President of the trial Customary Court neither denied nor commented on the allegation made in Court before him that he was, up to the time the hearing was due to begin, the Legal Adviser to one of the parties to the suit.*

3. *On the principle that justice must not only be done, but must appear to be done, a judgment delivered by a Legal Adviser to one of the parties in favour of the person to whom he served as Legal Adviser should not in the interest of justice be allowed to stand."*

Applying the above principles to the facts of the case in hand, I agree with learned Counsel for the Appellant that all the points taken into consideration by the learned justices of the Court below will not sustain an allegation of BIAS because:-

(a) The fact that Exhibit 'C1' is a subsidiary legislation or different from regular laws is of little or no significance because the act of signing them into law is performed under the same law.

(b) The appearance of the signature of Chief Bola Ige boldly on Exhibit 'C1' should also be of no consequence to any Judge whether as in the case in hand, she is his wife or not and moreso, that the Respondent has conceded that the matter should not be stretched too far.

(c) The standard and sophistication and education of our Native Community and its comparison with that of advanced countries are also, in my humble view, not relevant since the standard of a reasonable man is what the law recognizes and should be applied.

(d) The evidence of 3rd Defendant, Prince Latunbosun Tadeso of his being a strong supporter of the ruling Party that brought Chief Bola Ige into power is equally of no consequence. Apart from being a surmise which is insufficient, reading through his evidence under cross-examination, no question was put to him to support the fact that Chief Bola Ige

signed Exhibit 'C1', because 3rd Defendant supported his (Chief Ige's) Government.

(e) The treatment of Chief Ige as the substantive 1st Defendant is erroneous. It is fatuous and I so hold.

(f) If the matter is to be determined upon the possibilities to be B
inferred from the circumstances in which the learned trial Judge sat, the Appellant's contention that no inference of bias can be drawn in the absence of evidence that:-

(i) Chief Ige is a party to the action;

(ii) has some interest of any kind in the subject matter to be liti- C
gated upon;

(iii) his interest in signing Exhibit 'C1' is in excess of the perfor-
mance of his constitutional duty which imposes an obligation upon him
other than seeing that the requirements of the Chiefs Law are complied D
with, with the making of Exhibit 'C1' or is not too remote or too indirect to
affect the judicial mind,

(iv) That he is related to any of the parties and/or he was a mem-
ber of the Chieftaincy Committee that made Exhibit 'C1' or that he at- E
tended and participated in any of the meetings that took the decision to
include the Tadesse family in Adagunodo Ruling House, and

(v) the learned trial Judge has been shown to have favoured one
side unfairly at the expense of the other.

From the foregoing, I entirely agree with the Appellant when he contended F
that there were no circumstances from which a reasonable man would
think it likely or probable that justice has not been done in the case and
that there was nothing in Exhibit 'C1' which could have put the learned
trial Judge on enquiry as to whether she should sit to hear the case as the G
mere signing of Exhibit 'C1' by her husband is something which indeed
would not engage the mind of a reasonable tribunal.

The present case is unique and appears distinguishable because
this is about the first time in the annals of our judicial and legal history that H
a High Court Judge is being accused of sitting to consider an instrument
in which her husband was the Governor who signed it. To suggest that
she must disqualify herself from sitting over the interpretation of Exhibit

'C1' is, to borrow the words of Kolawole, JCA "a totally unacceptable" proposition. Furthermore, I agree that the interest constituting an unacceptable proposition relied upon by the Respondent is too remote or too indirect and incapable of sustaining an allegation of bias because it could not have affected the mind of any reasonable tribunal. See Leeds Cort v. Ryder (1907) A.C. 20 H.L. See also R. v. Deal (Mayo & J.J.) Ex-Parte Curling (1881) 5 L.T. 439 (1) DIGEST 204 Case No. 1187, wherein it was held:-

"On the other hand, the alleged disqualifying interest must be made out to our satisfaction and we are dis-inclined to upset a formal decision merely on the allegation of an interest which we do not think could possibly affect the judicial mind of any tribunal"

It cannot be said that allegations of bias have been of common occurrence and frequency of recent in the Superior Courts of Record of this Country. This may be largely due to the strict proof required to establish what constitutes bias or a real likelihood of bias.

Illustrating these difficulties or why allegations of this nature ought not to be ridiculously stretched too far, in Yabugbe v. C. O. P. (supra), a case where bias was alleged against a Magistrate trying a case in which a Magistrate was involved, the Supreme Court per Uwais, J.S.C. as he then was, held, dismissing the appeal inter alia at page 177 of the Report:-

"If Courts are to go by spurious allegation of bias as in this case, then no Legal Practitioner can be tried by any Court because he belongs to the same profession as the Magistrate or High Court Judge that might try him. Similarly, Judicial Officers with shares in public Companies coming from a particular State of Nigeria cannot try or hear any case involving such Companies or any of the arms of the Government of that State. I think there is a limit to which the chase of such wild goose can go. Concrete evidence of bias must be shown before the allegation can succeed. In the present case I see no such evidence and I therefore, consider the allegation to be frivolous and unfair to the learned trial Magistrate."

In the same vein in the instant case, I hold that there is no evidence of bias or the likelihood of bias against the Respondent on the part of the Appel-

lant herein.

WAIVER:

As to whether waiver which is an act of abandonment or surrender by act or operation of law featured in this case, I agree with the Appellant's contention that waiver should be implied because the Respondent was entitled to object but acquiesced in something else which is inconsistent with that to which he is so entitled. He must therefore, in my firm view, be held by his acquiescence to be bound by his election. See R. v. Cheltenham Commissioners (1841) 1 K.B. 467; Ariori & Others v. Muraina Elemo and Others (1983) 1 S.C. 1 at 13; (1983) 1 S.C. NLR. 1 and R. v. Williams Ex-Parte Phillips (1914) 1 K.B. 608, the latter case in which a baker after conviction now complained that one of the justices was concerned in the business of a baker. Held: a party may by conduct preclude himself from taking objection after conviction.

In the instant case, the Respondent was raising objection to the learned trial Judge's jurisdiction to try his case for the first time in the Court below. This was a belated act. Objection to adjudication ought therefore to be taken promptly. In the case of Ikehi Olue v. Ezenwali & Ors. (1976) 10 NSCC. 63, a Judge was Counsel in a case and on realizing it he wanted to withdraw from it but both parties consented to his acting. One of them appealed and now raised the issue of bias against the Judge. This Court applying the principle enunciated by Lord Romilly M.R. in Vyvyan v. Vyvyan 30 BEAV. 65 at 70, which was cited with approval in Rex v. Essex Justices Ex-Parte Parking (1927) 2 K.B. 475 at 489, held that the act, which is unconscionable and fraudulent, is what the Court frowns upon and the fraudulent and unconscionable part in the attempt to go back on the earlier acquiescence or promise. In Crabb v. Arun District Council (1975) 3 ALL E.R. 865 at 877, Scarman L. J. said:-

"Fraud in these cases is not to be found in the transaction itself but in the subsequent attempt to go back on the basic assumption which underlay it."

This is why this Court in National Insurance Corporation of Nigeria v. Power & Industrial Eng. Co. Ltd. (1986) 1 NWLR (part 14) 1, per Aniagolu, JSC at page 29 D-H said:-

"Equity, as we all know inclines itself to conscience, reason and good faith and implies a system of law to a just regulation of mutual rights and duties of men, in a civilized society. It does not envisage sharp practices and undue advantage of a situation and a refusal to honour reciprocal liabilities arising therefrom. It will demand that a person will enter into a deal as a package enjoying the benefits thereof and enduring at the same time the liabilities therein Clearly in the instant case on appeal equity will impute an intention that the Appellant far from scuttling away from its valid obligation to the Respondent will fully honour its agreement."

In the instant case, the Appellant has conceded that it is not in every case where the issue of acquiescence is raised that he will be held to have waived his right - See R. v. Cambridgeshire J.J. Ex-P. Steeple Morden Overseers (1885) 25 LT. 103; 128 W.R. where 418, it was held that there was no waiver because of knowledge by applicant's attorney who did not object and Kujore v. Otubanjo (1974) 9 NSCC. 424, where a Judge was Counsel to one of the parties who set to try the case. It was held by this Court that there was no waiver, albeit that there was evidence from which a real likelihood of bias could be inferred. But in the instant case, I only need to reiterate and conclude that there is no evidence from which likelihood of bias could be inferred.

It is for the above reasons and those fully set out in the leading judgment of my learned brother Ogundare, JSC that I, too, allow this appeal and make similar consequential orders inclusive of costs contained therein.

G

IGUH JSC

My learned brother, Ogundare, J.S.C., in his leading judgment just delivered and which I had the privilege of reading in draft has dealt exhaustively with all the issues canvassed before this court in this appeal.

I agree entirely with the reasoning and conclusions therein.

The main contention of the appellants is that the Court of Appeal was in error by holding that the learned trial Judge, Ige, J., as she then

was, ought to have disqualified herself from hearing or determining the case for the sole reason that she was at all material times the wife of the then Executive Governor of Oyo State, Chief Bola Ige who signed the Instrument, Exhibit C1 into law. The submission is that being the spouse of the said chief Executive, she should not have accepted to try the case B on grounds of interest, bias or likelihood of bias.

It is common ground that Exhibit C1, the validity of which is in question before the trial court is a Chieftaincy Declaration, a subsidiary Legislation which was promulgated into law by the Government of Oyo C State. The Declaration was made by the Governor-in-Council pursuant to the provisions of Section 9A(3) of the Chiefs Law and Section 94 of the 1979 Constitution of the Federal Republic of Nigeria. Although the execution of the instrument was duly effected by the said Chief Bola Ige, this he did as a constitutional responsibility in the course of his official duties D both as the Governor of Oyo State and an assenting authority thereto.

There is no suggestion, no matter how remotely, that chief Ige in his private capacity had any personal, pecuniary or proprietary interest of whatever nature in the particular instrument in issue. It is also apparent E that chief Ige is neither a party to the proceedings nor was he alleged to have been personally involved in his private capacity with anything in connection with the Declaration Exhibit C1. To put it at its highest, it was the 1st defendant, the Attorney-General of Oyo State who was sued as F "the representative of the Oyo State Government" and no more.

On the other hand, it was also not suggested that Ige, J. herself, whether directly or indirectly, had any personal, pecuniary or proprietary interest in the subject matter of the action. There was no suggestion of any G scintilla of bias, interest or semblance of likelihood of bias against her in any manner whatsoever. All that the learned trial Judge was called upon to do in the exercise of her official judicial functions was strictly restricted to the interpretation of the subsidiary legislation, exhibit C1 and nothing H more. This duty, as far as I am concerned, is entirely legal and a matter of hard law, governed by the known canons of the interpretation of statutes and documents. With profound respect, therefore, I find it extremely difficult to appreciate the grounds or facts upon which the majority judgment

of the court below was able to declare that Ige, J. ought to have disqualified herself from hearing the case. I think this is a grave error of law on the part of the Court of Appeal.

It is plain to me, and I agree with the minority judgment of the court below, that the serious misconception in the argument of learned counsel for the respondent is his inability to distinguish Chief Bola Ige in his personal capacity as a private citizen from his high office as the Governor of Oyo State. When Chief Ige assented to Exhibit C1, he was only performing a constitutional duty. If Chief Ige had been sued in his personal capacity or in respect of a matter over which he had a private, personal or family interest and such a dispute found its way into the court presided over by Ige, J., prudence, surely, would have demanded that she should disqualify herself from adjudicating on the matter. But where, as in the present case, the act being challenged is not that of chief Bola Ige in his personal capacity or as an interested party but that of the Government of Oyo State, I cannot see my way clear why it will become necessary for Ige, J. to disqualify herself from hearing the case for the simple reason that she is the wife of the Governor of the State.

It is well settled that in considering whether or not there was a real likelihood of bias, the court does not look at the mind of the trial Judge himself to see if there was a real likelihood that he would or did in fact favour one side at the expense of the other. The court rather looks at the impression created in the minds of "reasonable people" who were sitting in court to observe the proceedings. If right thinking people sitting in court would think that in all the circumstances, there was a real likelihood of bias on his part, then his decision cannot be allowed to stand. But mere surmise or conjecture is clearly insufficient to establish real likelihood of bias. See Deduwa v. Emmanuel Okorodudu and others (1976) 1 N.M.L.R. 236 Metropolitan Properties Co. v. Lannon (1969) 1 Q. B. 577 at 599, State Civil Service Commission and Another v. Alexius Buzugbe (1984) 7 S.C. 19 at 43, Jeremiah Akoh and others v. Ameh Abuh (1988) 3 N.W.L.R. (part 85) 696 at 711. In the same vein, there must be reasonable evidence to satisfy the court that there was bias or real likelihood of bias against a trial Judge and mere vague suspicion of unreasonable people, conjecture

or surmise is clearly insufficient and should not be made a standard for the establishment of such grave issues. Accordingly the decision whether or not there was bias or real likelihood of bias must turn on the question of the particular facts and circumstances of each and every case. See R. v. Camborne Justices and Another, Ex Parte Pearce (1955) 1 Q.B. 41 B

In the present case, I can find no circumstances from which a right thinking person sitting in court to observe the proceedings would think it likely or probable that there was bias or a real likelihood of bias on the part of the learned trial Judge in her determination of the case. Nor have I been able to identify any reasonable evidence, no matter how infinitesimal, to satisfy any court that there was bias or real likelihood of bias against Ige, J. in her trial and determination of the suit. C

It is for the above and the more detailed reasons contained in the judgment of my learned brother, Ogundare, J.S.C, that I, too, allow this appeal. The judgment and orders of the court below are set aside and those of the trial High Court are hereby restored. I abide by the order as to costs made in the leading judgment. D

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UWAIFO JSC

I read in advance the judgment of my learned brother Ogundare JSC. I am entirely satisfied with the reasoning leading to the conclusions reached in the judgment. I respectfully adopt the judgment. I cannot conceive of a real likelihood of bias on the part of the Honourable Justice Ige in this matter when, as part of her official duty, she was merely to interpret a piece of subsidiary legislation which came into being in Oyo State when her husband was the Chief Executive of that State simply because of that marital relationship. I certainly will be unwilling to extend the test of real likelihood of bias beyond what is based on the reasonable apprehensions of a reasonable man fully apprised of the facts and circumstances of a matter. The standard of capricious and unreasonable people should not be allowed to determine and control the legal aphorism that justice must not only be done but must be manifestly seen to be done otherwise judicial or quasi-judicial functions would be almost impossible to perform. There is F
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nothing in the facts of this case which would have disqualified Ige, J. from sitting to adjudicate over it between the parties.

I too accordingly allow this appeal, set aside the majority judgment of the lower court and restore the judgment of the trial court. I
B abide by the costs awarded by Ogundare JSC in the leading judgment.

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