

SUPREME COURT OF NIGERIA
23RD JUNE, 2000. SC. 229/1994
CORAM:- A. G. KARIBI-WHYTE, A. B. WALI,
U. MOHAMMED, A. I. KATSINA-ALU,
A. O. EJIWUNMI, JJSC.

T. A. O. WILSON & ANOR. APPELLANTS
(For and on behalf of Adumori Ruling House
to the Elemure of Emure Ekiti)

AND

1. A. B. OSHIN
(For himself and the Abenimota family)
2. F. A. AKINMUYISIAN
(Secretary, Ekiti South Local Government) RESPONDENTS
3. CHIEF PAUL OKE
(For all the Kingmakers)
4. THE GOVERNOR OF ONDO STATE

***APPEALS** - Appellate Court - Function of - The appellate Court is concerned only with correcting the errors of law or fact - Alleged in the decision of the trial court.*

***APPEALS** - Concurrent findings of facts - Attitude of the Supreme Court to such findings*

***APPEALS** - Evidence - Evaluation - Miscarriage of justice - Failure to adequately evaluate evidence - Where the failure complained of is with respect to matters not affecting the determination of the case - There is no miscarriage of justice*

***CHIEFTAINCY MATTERS** - Chieftaincy declaration - Chieftaincy law of Ondo State - Section 10 (2) thereof - From that provision the Executive Council has the overriding Power - To approve or refuse to approve a registered declaration*

CHIEFTAINCY MATTERS - Chieftaincy Law of Ondo State - Section 10 and 25 thereof - The purposes and objects of both sections.

EVIDENCE - Evaluation of evidence - Duty of a trial Court - Is to adequately evaluate the evidence adduced in the case - And make appropriate findings of facts

EVIDENCE - Witnesses - Credibility of - The trial judge who saw, observed and heard the witnesses - Is the best judge of their credibility

FUNDAMENTAL RIGHTS - Fair hearing - Denial of - A denial of fair hearing connotes - A refusal to consider the pertinent and relevant issues in the case essential to its determination

ILLITERATES JURAT - Absence of jurat - In a document signed by an illiterate - Does not render the document null and void

JUDGMENTS - Fair hearing - Denial - It does not constitute a denial of fair hearing - Merely because a judge did not consider a particular issue - Sufficiently cogent for consideration in the determination of a case.

RULE OF LAW - Right - Vested right - An accrued right is vested - When it is completely settled in the beneficiary - Such rights cannot be deprived arbitrarily without injustice

RULE OF LAW - Rights - Vested and contingent rights - A right is vested when all the investitive facts have occurred - And contingent when only part of the investitive facts have occurred.

RULE OF LAW - Rights - Vested rights - Retrospective operation of - Where the rights have not vested - The provision of s. 6 of the Interpretation Act relating to the retrospective operation of vested rights - Cannot apply

FACTS

In the Ondo High Court the plaintiff/appellants claimed against the defendants/respondents, declarations inter alia that according to the Native Law and custom of Emure-Ekiti the Adumori Ruling House is the only Ruling House of Emure-Ekiti Chieftaincy, that there is no Abenimota Ruling House to the Elemure of Emure-Ekiti Chieftaincy. They also sought a declaration that the recommendation of the Morgan Chieftaincy Review commission that Abenimota be made a Ruling House to the Emure-Ekiti chieftaincy is against the history, native law and custom, and hence wrongful, null and void, and of no effect. They also sought for other orders and injunctive reliefs. The case of the Plaintiffs/appellants was that the first Elemure of Emure Ekiti was Adumori Ogunragaboja who lived between 1780-1845 or thereabout. Between 1780 and 1974 all Obas who reigned as Elemure of Emure Ekiti were from the Adumori family. The grandfather of other two plaintiffs was Oba Joseph Oganloye Wilson, alias Arosoye who reigned between 1924 and 1931 and was from the Adumori family. The name of Abenimota as a ruling House was first heard in 1956 when the 1958 Registered Declaration tendered as Exhibit 5 was made.

In 1965, as a result of protest from the Adumori family Exhibit 5 was nullified by the 1965 Registered Declaration tendered as Exhibit 6, whereby restoring the pre 1958 position with Adumori as the only ruling House. In 1981, the Morgan Chieftaincy Review Commission recommendation to the Governor of Ondo State that the Abenimota family be made a Ruling House was accepted. So that there would be two Ruling Houses in Emure-Ekiti; namely, the Abenimota and the Adumori. The Report of the Commission and the approval of the Governor were tendered as Exhibits 9 and 11 respectively. Subsequently the 2nd defendant made a call on the Abenimota Ruling House to produce a candidate for the Elemure title. Following which the 1st defendant from Abenimota Ruling House was appointed as the Elemure of Emure-Ekiti. The defendant/respondents' case was that there are two Ruling Houses to the Elemure of Emure Chieftaincy title; that is Abenimota and Adumori Ruling

Houses. Both Abenimota and Adumori are children of the same father by name Okutuagbon Koja, Abenimota being the elder brother, and Adumori, the younger. Abenimota was the Elemure who brought the Emure people to their present site from Igbo Ora. All princes in Emure have the name Oshin ascribed to them, this being the name of the original dynasty of the princes. Before the Declaration of 1958, all the Princes in Emure vied for the vacant stool of Elemure. The 1958 Declaration truly represented and still represents the tradition and custom of Emure relating to the ascension of an Elemure and accords with the popular wishes of the people. At the close of hearing, the learned trial judge dismissed the claims of the plaintiffs in their entirety. The Plaintiffs' appeal was dismissed by the Court of Appeal, Benin Division. The plaintiffs have appealed further to the Supreme Court raising three issues.

D ISSUES FOR DETERMINATION

1. *Whether the failure or omission of the Court of Appeal to consider and decide the right of the Appellants under Exhibit 6 i.e., the 1965 Elemure of Emure-Ekiti Chieftaincy Declaration is not a violation of the Appellants' right to fair hearing under section 33 (1) of the Constitution of the Federal Republic of Nigeria 1979. And if the answer is in the affirmative whether the Appellants are not entitled to succeed in their claims on the strength of the said Exhibit 6.*

2. *Whether the Court of Appeal was right in law in not holding that the Morgan Chieftaincy Review Commission which was appointed by the 4th Respondent to review inter alia, the Elemure of Emure-Ekiti Chieftaincy Declaration was not the appropriate authority designated by law to carry out such review and consequently that the recommendations of the Commission in so far as they relate to the Elemure of Emure Ekiti Chieftaincy Declaration were null and void.*

3. *Whether the Court of Appeal was right in law in affirming the judgment of the trial Court after holding that the latter did not adequately evaluate the issues which arose for determination in this case."*

HELD (Unanimously dismissing the appeal per lead judgment of **KARIBI-WHYTE JSC**)

Right - Vested right

1. An accrued right is vested when it is completely settled in the beneficiary B and cannot be defeated or cancelled by the act of any other private person, and which it is right and equitable for the government to recognise and protect as being lawful in themselves, and settled according to the current rules of law. The individual cannot be justly deprived of this right otherwise C than by the established methods of procedure and for the public welfare. Such rights cannot be deprived arbitrarily without injustice. Rights may be vested or contingent. (p. 2151 F)

Rights - Vested and contingent rights

2. It is an accepted jurisprudential concept that the satisfaction of a right D may be based on a contingency. Thus the person in whom right is vested and seeking to exercise it must show that the contingency has been satisfied. Herein the distinction between vested and contingent rights. E Every right arises from a title. A right can be said to be vested when all the investitive facts which are necessary to create it have occurred. It is said to be contingent when only part of the investitive facts have occurred, until the happening of the event on which the title depends. Where all the F investitive facts which are necessary to create the right have occurred, the right is vested in interest even though actual enjoyment may be postponed to a definite time in the future. In the instant case even if it is conceded that the Adumori Ruling House is the only Ruling House named G in Exhibit 6, the preconditions for the vesting of the right prescribed in section 15 (1) of the Chiefs Law, which are the investitive facts enabling the right to create the rights have not been satisfied. (p. 2151 H)

Vested rights - Retrospective operation of

3. The facts disclosed and agreed upon clearly demonstrate that what the Adumori family has is more than spes successionis. They had a contingent H right which will be effective on the satisfaction of the conditions

prescribed. I have no doubt in my mind that the right to produce the Elemure of Emure-Ekiti has not vested in the Adumori Ruling House. In the circumstances the provision of section 6 of the Interpretation Act relating to the retrospective operation of vested rights cannot apply. I therefore ignore the learned discussion on the submission. (p. 2152 H)

Fundamental Rights - Fair hearing

4. A denial of fair hearing connotes a refusal to consider the pertinent and relevant issues in the case essential to its determination. In such a situation a fair minded objective observer will come to the conclusion that the hearing of the case has not been fair to the person affected. The principle of adjudication fundamental to the administration of justice is that the court is bound to consider every material aspect of a party's case validly put before it. Hence where the issue placed before the Judge is one not relevant or crucial to the determination of the case before the Court, non-reference to it is not a denial of fair hearing. This is because having heard the Appellant present his case, the consideration of the relevance vel non of the point will be determined by the Judge deciding the case on the issues and facts before him. (p. 2153 H)

Judgments - Fair hearing

5. It is very well known and accepted that a judgment can be decided on more than one issue. The Judge hearing the case will decide on the law and facts before him the issues of fact and points of law he considers more in accord with the justice of the case before him. It does not therefore constitute a denial of fair hearing merely because a Judge did not consider a particular issue sufficiently cogent for consideration in the determination of a case. (p. 2154 E)

Chieftaincy matters - Chieftaincy declaration

6. It is clear from Section 10 (2) that the Executive Council has the overriding power to approve or refuse to approve a registered declaration, whether amended or a new declaration by a Chieftaincy Committee. (p. 2156 A)

Chieftaincy Matters - Chieftaincy law of Ondo State

7. The purposes and objects of sections 10 and 25 are distinct and different. Whereas section 10 speaks of amendments or replacement of defective or faulty registered declarations, section 25 which is wider, is concerned with the causing of the inquiries to be held in respect of Chieftaincies. The Executive Council is at liberty to resort to any of the enabling provisions which best serves its purpose. The Morgan Chieftaincy Review Commission was clearly within the powers of the Executive Council to set up. It was therefore validly created. The Executive Council was within its powers to accept its recommendations and act upon it. It is a clear misconception that the Morgan Chieftaincy Review Commission acted without jurisdiction. (p. 2157 C)

Evidence - Evaluation of evidence

8. It is common ground that the duty of a trial Court is to adequately evaluate the evidence adduced in the case and make appropriate finding of facts in respect of all issues arising in the case and material to the determination of the case. (p. 2158 C)

Appeals - Concurrent findings

9. There is sufficient evidence that the courts below adequately considered and resolved the issues material to the determination of this case. There is accordingly concurrent findings of facts of the two Courts below on these issues. Learned Counsel to the Appellants has not shown that these findings of facts are perverse or unreasonable, or that they are not consistent with the justice of the case. This court is bound to accept these findings of fact. - See Ebba v. Ogodo (1984) 1 NWLR (pt. 2) 360. (p. 2158 E/G)

Appeals - Evidence

10. There is no doubt that where material issues and facts relating to the case are not evaluated at all or adequately evaluated, it may lead to a miscarriage of justice. See Udeze v. Chidebe (1990) 1 NWLR. 141. But

where the omission or failure complained of is with respect to matters not affecting the determination of the case no miscarriage of justice would have occurred. (p. 2159 B)

B Appeals - Appellate Court

11. The function of an appellate Court is to determine the case on the grounds of error of law or of facts alleged, and whether the Court below has come to the right decision. It is not necessarily whether the trial Court was right in the manner the case was decided, but whether the reasons were right. The appellate court is concerned only with correcting the errors of law or fact alleged in the decision of the trial court. - See Ukejiana v. Uchendu 13 WACA. 43 at p. 46. (p. 2159 C)

D Illiterates jurat - Absence of jurat

12. I entirely agree that absence of jurat in a document signed by an illiterate does not render the document null and void. A jurat is for the protection of the illiterate and cannot be used against his interest. The weakness in the document Exh. 28 is the weight to be attached to it. The Abenimotas are not complaining that they have been shown to be members of the Royal family. Adumoris cannot now deny that the Abenimotas are also members of the Royal family and a Ruling House. (p. 2160 D)

F Evidence - Witnesses

13. It is important to observe that the trial Judge held that the witnesses who denied the existence of Abenimota Ruling House till the Declaration of 1958 were not credible witnesses. The trial Judge who saw, observed and heard the witnesses is the best judge of the credibility of witnesses. The evidence denying the fact that the Abenimota Ruling House has produced four Obas viz Kangan, Atadelonye Ati-Iku-Opolo, Ato Ibiloye, and Famutimi was rightly rejected by the trial Judge. The Court of Appeal has endorsed the finding. Appellants have not adduced convincing reasons why these concurrent findings of fact should not be accepted by this Court. (p. 2160 H)

REPRESENTATION

Omotayo Oyetibo for the Appellants

Chief O. Olanipekun, SAN, (with him, Miss O. Olanipekun and O. A. Adu) for the 1st Respondent.

B

CASES REFERRED TO

Ojo v. Governor of Oyo State (1989) 1 NWLR (Pt. 95) 1

Afolabi v. Governor of Oyo State (1985) 2 NWLR (Pt. 9) 734

Atanda v. Ajani (1989) 3 NWLR (Pt. 111) 511

Adigun v. A-G of Oyo State (1987) 1 NWLR (Pt. 53) 678

State v. Onagoruwa (1992) 2 NWLR (pt. 221) 33

Canfalia v. Chahin (1938) 5 WACA. 104

Adu v. Makanjuola 10 WACA. 168

African Petroleum Ltd. v. Owodunni (1991) 8 NWLR (Pt. 210) 391

Coker v. Ogunlola (1989) 2 NWLR (pt. 5) 87

Ariori v. Elemo (1983) 1 SC. 1

C

D

E

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1979; ss. 33 (i) and 213 (2) (a)

Interpretation Act; s. 6.

Chiefs Law Cap. 20, Laws of Ondo State; ss. 10. 15 and 25

F

LEAD JUDGMENT BY KARIBI-WHYTE JSC

On the 15th April, 1994, the Court Appeal, Benin Division, holden at Benin City (Coram Ogebe J. O., Ubazeonu, E. C. Ige, A. JJCA) G dismissed the appeal of the Appellants against the judgment of Awe J, of the Ondo High Court delivered on the 23rd February, 1990. In the suit in the Ondo High Court, Appellants as Plaintiffs in their writ of summons claimed against the Respondents as Defendants, declarations that H according to the Native law and custom of Emure-Ekiti, the Adumori Ruling house is the only House of Emure-Ekiti Chieftaincy, that there is no Abenimota Ruling House to the Elemure of Emure-Ekiti Chieftaincy.

They also sought a Declaration that the recommendation of the Morgan Chieftaincy Review commission that Abenimota be made a Ruling House to the Emure-Ekiti Chieftaincy is against the history, and native Law and custom, and hence wrongful, null and void; and of no effect.

B Accordingly, the acceptance of the said recommendation of the Morgan Chieftaincy Review Commission by the Ondo State Government is null and void and of no effect. The Plaintiffs also sought a declaration that the appointment of the 1st Defendant as the Elemure of Emure-Ekiti, is contrary to the custom and tradition regulating the Elemure of Emure
C Ekiti, and is therefore null and void.

Plaintiffs also sought a declaration that the Elemure of Emure Ekiti Chieftaincy Declaration made in 1958 is illegal null and void, being contrary to the Chiefs Law of Ondo State. Also sought was a declaration
D that the 2nd Defendant was Secretary to an incompetent and unconstitutional local government and incompetent to fulfil or perform the functions as Secretary of a Competent Council under the Chiefs law.

Plaintiffs sought an order restraining all members of the
E Abenimota family of Emure-Ekiti from claiming membership of any Ruling House to the Elemure of Emure-Ekiti Chieftaincy or claiming to be eligible to the said Chieftaincy. Also sought was an order nullifying the 1981 Elemure Chieftaincy Declaration, based on the recommendation of the Morgan Chieftaincy Review Commission, on the ground that it is illegal,
F null and void and also contrary to the history and tradition of Emure-Ekiti.

An order was sought to nullify the call made on 4th November, 1982 by the 2nd Defendant on the Abenimota Ruling House to produce a
G candidate for the Elemure title. Similarly sought to be nullified was the selection of a candidate by the Abenimota Ruling House.

Plaintiffs also sought an order nullifying the appointment of the 1st Defendant for the Elemure title made by the king makers of Elemure
H Ekiti in November or December, 1982. Also a sought was an order nullifying the 4th Defendant's approval of the appointment of the 1st Defendant as the Elemure of Emure Ekiti.

Plaintiffs sought an injunction restraining the 1st Defendant from

holding himself out or parading himself as the Elemure of Emure-Ekiti or acting or behaving as the traditional ruler or recognised chief or Oba of the Emure-Ekiti people.

Finally, an injunction was sought restraining all the defendants and all other public functionaries of Ondo State and their privies from performing the installation or from doing any act towards the installation of the 1st Defendant, to fill the vacant stool of Elemure of Emure-Ekiti Chieftaincy or from presenting a staff of office to the 1st Defendant. After pleadings were filed and exchanged, and a hearing of witnesses on both sides the learned trial Judge gave his considered judgment.

The claims of the Plaintiffs were dismissed in their entirety.

As can be discerned from the claim against the Defendants, here after the Respondents, the dispute between the parties is about the Elemure Emure-Ekiti Chieftaincy. It is essentially a dispute about the number of Ruling houses entitled to fill the stool of the Elemure of Emure Ekiti when vacant. The Plaintiff's contend that there is only one Ruling House namely, the Adumori Ruling House. The Defendants case is that there are two Ruling Houses, namely (a) The Adumori Ruling House, and (b) The Abenimota Ruling House. The Defendants belong to the latter.

Both sides relied on traditional evidence and the history of Emure-Ekiti people. The traditional history were in conflict. It was the case of the Plaintiff/Appellants that the first Elemure of Emure Ekiti was Adumori Ogunragaboja who lived between 1780- 1845 or thereabout. Between 1780 and 1974 all Obas who reigned as Elemure of Emure Ekiti were from the Adumori family. The grandfather of the two Plaintiffs was Oba Joseph Ogunloye Wilson, alias Arosoye who reigned between 1924 and 1931 and was from the Adumori family. That the name of Abenimota as a ruling House was first heard in 1956, When the 1958 Registered Declaration tendered as. Exh. 5 was made. In 1965 as a result of protests from the Adumori family, Exh. 5 was nullified by the 1965 Registered Declaration rendered as Exhibit 6; thereby restoring the pre-1958 position with Adumori as the only Ruling House.

In 1981 the Morgan Chieftaincy Review Commission recommendation to the Governor of Ondo State that the Abenimota family

be made a Ruling Houses was accepted. So that there would be two Ruling Houses in Emure-Ekiti; namely, the Abenimota and the Adumori. The Report of the Commission and the approval of the Governor were tendered as exhibits 9 and 11.

B The Defendants case is that there are two Ruling Houses to the
 Elemure of Emure Chieftaincy title; i.e. Abenimota and Adumori Ruling
 Houses. Both Abenimota and Adumori are children of the same father by
 name Okutuagbonkoja, Abenimota being the elder brother, and Adumori,
 the younger. Abenimota was the Elemure who brought the Emure people
 C to its present site from Igbo Ora. All princes in Emure have the name
 Oshin ascribed to them, this being the name of the original dynasty of the
 princes. Before the Declaration of 1958 all the princes in Emure vied for
 the vacant stool of Elemure. The Declaration truly represented and still
 D represents the tradition and custom of Emure relating to the ascension of
 an Elemure and accords with the popular wishes of the people.

Defendants state that descendants of Abenimota have reigned as
 Elemure of Emure-Ekiti, such as Kanga, Aladeleye, Atikuopolo, Atobiloye
 E and Odoba Famuti. Prince Ajiboye of the Abenimota Ruling House was
 in 1969 unanimously selected to succeed Oba Aminmin II, but the
 Government of the day replaced him with Oba Ogunleye II. Defendants
 also state that both princes and princesses of the Abenimota and the
 F Adumori families are members of the Ebi Omo Elemure, whose leadership
 rotates between the two houses. At the time of the litigation both heads
 of the male and female sections of the Egbe Omo Elemure are from the
 Abenimota house, and both of them were appointed by Oba Ogunleye II,
 a descendant of Adumori.

G Very summarily stated, the above are principal contentions of
 the parties on the issue of their claims to the Elemure or Emure-Ekiti
 stool. I have stated the history and identity to show the background of
 this litigation. Before argument in this appeal, the Court disposed of the
 H preliminary objection of learned counsel to the 1st Respondent seeking to
 strike out the appeal on the ground that the notice and grounds of appeal
 filed were incompetent. The contention was that since the grounds of
 appeal were at best those of mixed law and fact, leave was required

under section 213 (3) of the Constitution 1979 to appeal to this Court. Accordingly, leave having not been obtained the appeal was incompetent. During argument learned Counsel conceded that ground 5 was a ground of law but maintained that grounds 1, 2, 3 and 4 were at best grounds of mixed law and fact; and required leave. Mr. Oyetibo for the Appellants opposing the application contended that leave was not necessary since all the grounds of appeal were on grounds of law. He submitted that the appeal was competent. B

In a short summary ruling the court after argument held that ground 5 having been conceded by Chief Olanipekun, SAN as a ground of law, only ground 3 which raised the question of estoppel involving findings of fact was caught by the provisions of section 213 (3) of the Constitution 1979 and required leave of the Court. The requisite leave having not been obtained, ground 3 is incompetent and was struck out. Grounds 1, 2, 4 and 5 are clearly issues of law which did not require leave under S. 213 (1). The notice of appeal is therefore competent, and Appellant was free to argue grounds 1, 2, 4 and 5 as filed and discussed in the brief of argument. D E

Appellants have appealed to this Court on five grounds as follows

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"GROUND ONE

The Court of Appeal erred in law in failing or neglecting to consider and or decide on the second leg of the Appellants' case that Exhibit 6 which is the 1965 Elemure of Emure Ekiti Chieftaincy declaration conferred on the Appellants a vested right which cannot be sidetracted by the Defendant/Respondents. F

PARTICULARS OF ERROR G

(1) The case of the Appellants was predicated on two legs to wit:

(a) That the 1st Defendant/Respondent's family is not a Ruling House under the native law and custom regulating the appointment and selection of the Elemure of Emure Ekiti; and, H

(b) That Exhibit 6 which is the 1965 Elemure of Emure Ekiti Chieftaincy declaration conferred on the Appellants a vested right which

cannot be sidetracked by the appointment of the 1st Defendant as the Elemure of Emure-Ekiti.

(2) Whilst the Court of Appeal considered and decided on the first leg it failed or neglected completely to consider and or decide on the second leg of the Appellant's case.

(3) It is the duty of the Court of Appeal to consider and decide on every aspect of the case put forward by an appellant.

(4) The failure or neglect by the Court of Appeal to consider and or decide on the very important and crucial aspect of the Appellants' case is a serious violation of the Appellants' fundamental right to fair hearing as guaranteed by section 33 (1) of the 1979 Constitution.

(5) If the Court of Appeal had considered the said leg of the Appellant's case it would have been bound to follow the decision of the Supreme Court in OJO v. GOVERNOR OR OYO STATE (1989) 1 NWLR (pt. 95) page 1 at 22 and uphold the Appellants' claims.

GROUND TWO

The Court of Appeal erred in law when it held as follows (per UBABEZONU, J.C.A. on pages 26-27 of the Judgment):

"As rightly postulated by learned counsel for the appellants, the provisions of section 10 (of Chiefs Law Cap. 20 Laws of Ondo State 1978 can be said to be special but in the sense that certain conditions are as follows:

- (i)
- (i)
- (iii)

These are some of the conditions which must be present before the Executive Council may act,

The Executive Council may only act in particular way, section 23 of the Law is much wider. It provides:

- 25 (1)
- (2)

No Conditions need be fulfilled before the Executive Council can act under section 25 of the law Again, section 25 makes provision for entirely different matter from section 10, Section 25 provides for inquiries for the "purposes of parts 2 and 3" of the law. It will therefore

be wrong to import the provisions of section 10 to derogate from the provisions of section 25. The Executive council is at liberty to act under section 10 or section 25: Effect must be given whichever section it chooses to act upon even if the result may be the same. The beautiful exposition of learned counsel for the appellants on the maxim "Generalia Specialibus Non Derogant" or "Specialia Generalibus Derogant" does not apply in the instant case."

PARTICULARS OF ERROR

(1) Section 10 of the Chiefs Law Cap. 20 Laws of Ondo State 1978 deals specifically with the amendment or review of defective or faulty registered declarations while section 25 of the Law deals with general matters with respect to which an inquiry may be caused by the Executive Council or Commissioner to be held.

(2) Under section 10 of the Law only a Chieftaincy committee can be required by the Executive council to amend a registered declaration.

(3) It is settled law that special provisions contained in a statute do derogate from general provisions therein.

(4) Since the Court of Appeal has held that section 10 of the law deals with special matters it is bound in law to hold that the Morgan Chieftaincy Review Commission which was appointed by the 4th Respondent to review, inter alia, the Elemure of Emure Ekiti Chieftaincy Declaration was not the appropriate authority to carry out such review or amendment not being the Chieftaincy Committee which made the declaration.

(5) In the premises the Court of Appeal ought to have held that the recommendations of the Margan Chieftaincy Review commission that Abenimota be made a Ruling House in Emure Ekiti were made without jurisdiction.

GROUND THREE

The Court of Appeal erred in law when it held (per UBAEZONU, J.C.A. on pages 18-19 of the judgment) as follows:

"The learned trial Judge would not seem to have adequately evaluated every issue arising from the evidence led in this case by making a finding of fact in respect of every such issue but having elaborately

considered the evidence, he rightly in my view, rejected the evidence of the appellants and their witnesses and having regard to the facts of recent years he came to what I consider a correct judgment in the case. He relied on the various documentary evidence tendered in the Court. The Judge's method of evaluation of the evidence may not be said to be ideal, he nonetheless came to a correct conclusion. No miscarriage of justice was occasioned."

PARTICULARS OF ERROR

(1) It is the duty of the trial judge to adequately evaluate every issue arising from the evidence led by making a finding of fact in respect of every such issue.

(2) The right to fair hearing guaranteed by section 33 (1) of the constitution includes the right of the litigant to have the evidence adduced by him adequately evaluated by the trial judge.

(3) Since the Court of Appeal has held that the trial judge did not adequately evaluate the evidence led at the trial, it was bound to set aside the judgment of the trial judge.

(4) Once it is established that the trial judge did not adequately evaluate the evidence led by the appellants which amounts to a violation of the constitutional right to fair hearing under section 33 (1) of the constitution it is unnecessary to show any miscarriage of justice as the injury occasioned is inherent in the violation.

GROUND FOUR

The Court of Appeal erred in law in relying on Exhibits 20, 27 and 28 in affirming the judgment of the trial court.

PARTICULARS OF ERROR

(1) Exhibit 20 does not constitute estoppel in law.

(2) Exhibit 27 cannot operate against the appellants in view of the recital contained in Exhibit 5 the latter having been made pursuant to Exhibit 27.

(3) Exhibit 28 is a violation of the provisions of the illiterates protection Ordinance.

(4) None of the aforesaid Exhibits can in itself or in combination with another constitute in law estoppel against the Appellants.

GROUND FIVE

The Court of Appeal erred in law when it held that it could not see any relevant submission which was not considered by the trial judge which could lead to a reversal of the judgment of the trial judge.

PARTICULARS OF ERROR

(1) All the submissions on points of law made by the Appellant's counsel and contained on pages 254-262 of the Record were not considered and decided upon by the trial judge.

(2) It is the duty of the court to consider and decide on the submissions on points law made by counsel.

(3) The failure of the trial judge to consider and decide on the said points of law and the failure of the Court of Appeal to recongise this error both amount to a violation of the Appellants right to fair hearing as guaranteed by section 33 (1) of the 1979 Constitution."

Appellants and the 1st Respondent have filed their briefs of argument. Learned counsel to the Appellant also filed a reply brief. Learned Counsel to both parties formulated identical issues for determination from the grounds of appeal filed, though couched in different words. For case of reference I prefer to reproduce the issues for determination formulated hereunder as follows -

By the Appellants

"ISSUES FOR DETERMINATION

1. *Whether the failure or omission of the Court of Appeal to consider and decide the right of the Appellants under Exhibit 6 i.e., the 1965 Elemure of Emure-Ekiti Chieftaincy Declaration is not a violation of the Appellants' right to fair hearing under section 33 (1) of the Constitution of the Federal Republic of Nigeria 1979. And if the answer is in the affirmative whether the Appellants are not entitled to succeed in their claims on the strength of the said Exhibit 6.*

2. *Whether the Court of Appeal was right in law in not holding that the Morgan Chieftaincy Review Commission which was appointed by the 4th Respondent to review inter alia, the Elemure of Emure-Ekiti Chieftaincy Declaration was not the appropriate authority designated by law to carry out such review and consequently that the recommendations*

of the Commission in so far as they relate to the Elemure of Emure Ekiti Chieftaincy Declaration were null and void.

3. *Whether the Court of Appeal was right in law in affirming the judgment of the trial Court after holding that the latter did not adequately evaluate the issues which arose for determination in this case."*

By the Respondent

"ISSUES FOR DETERMINATION

From the five grounds of appeal filed by the appellants, the issues distilled therefrom by the respondent are as follows

i. Considering the detailed and painstaking judgment of the lower court, whether any injustice has been done to the appellants, particularly whether their right to fair hearing has been infringed or impaired - Ground 1.

ii. On a proper reading of the Chief's Law of Ondo State, whether the Morgan Chieftaincy Review Commission appointed by the 4th respondent to review all Chieftaincies in Ondo State and make appropriate recommendation on same was not competent to review the Elemure of Emure Chieftaincy and make appropriate recommendations to the Government. - Ground 2

iii. Considering the totality of the evidence on record, inclusive of the Exhibits tendered, whether the lower court was not right in dismissing the appellants case. - Grounds 3, 4 and 5"

Very simply put, the issues for determination set out above concern the rights of the Appellants under Exhibit 6, i.e. the Elemure of Emure Ekiti Chieftaincy Declaration 1965 and the Appellant's right to fair hearing under section 33 (1) of the constitution of the Federal Republic of Nigeria, 1979.

The second issue questions the decision of the Court in not holding that the Morgan Chieftaincy Review Commission was not the appropriate authority designated by law to carry out the review of the Elemure of Emure-Ekiti Chieftaincy Declaration. Consequently the recommendations in so far as they relate to the Elemure of Emure Ekiti, were null and void.

The third issue is concerned with the evaluation of the evidence by the learned trial judge which was affirmed by the Court below.

Reduced to its lowest common denominator, the issue before the learned trial Judge was whether the inclusion of the Abenimota family as a Ruling House of the Elemure of Emure-Ekiti Chieftaincy stool on the recommendation of the Morgan Chieftaincy Review Commission was not contrary to Emure Ekiti native law and custom and in violation of the vested rights of the Adumori family which have been the only Ruling House for the past 194 years. Whether the 1st Respondent is entitled to the stool of Elemure of Emure-Ekiti. As was clearly outlined in the judgment of the Court below, at pp.

"The complaint of the Appellants is therefore two - fold viz:-

(i) The recommendation of the 1st Respondent's Ruling House is an infraction of the Appellants' vested right and,

(ii) The 1st Respondent is not entitled to the Stool of Elemure"

I have observed the substantial similarity in substance and form in formulation of the issues for determination by the Appellants and the Respondents. It will therefore make no difference to the resolution of the issues which formulation was adopted. I will therefore for the sake of clarity consider the issues formulated by Appellant seriatim and in the manner presented in the briefs of argument filed by both parties.

The first issue relates to the rights of Appellants under Exhibit 6, the 1965 Elemure of Emure-Ekiti Chieftaincy Declaration. This was the declaration in force in 1974 on the demise of the last Elemure of Emure-Ekiti. The contention of Appellants was that by virtue of Exhibit 6, and its Declaration as the only Ruling House of the Elemure of Emure-Ekiti, the Adumori Ruling House to which they belong in accordance with Exhibit 6 which is a subsidiary legislation, had the vested right to produce the next Elemure of Emure-Ekiti in succession to the last incumbent who has died. It was accordingly submitted that the vested right of the Appellants cannot be ignored by the Defendants/Respondents. Learned Counsel cited and relied on Ojo v. Governor of Oyo State (1989) 1 NWLR (Pt. 95) 1, Afolabi v. Governor of Oyo State (1985) 2 NWLR (Pt. 9) 734 among several other cases.

It was also submitted relying on Atanda v. Ajani (1989) 3 NWLR (Pt. 111) 511 that failure of the Court, as in the instant case, to consider and determine the case of a party, i.e. to hear a party on points relating to the case is a denial of the right to fair hearing, and infringement of
 B *section 33 (1) of the 1979 constitution. - In this case Appellants relied on Exhibit 6, as vesting in them a right to produce the next Elemure of Emure-Ekiti as at 1974. The Court below did not decide this point regarded by Appellants crucial to their case. This amounts to a violation of the*
 C *right to fair hearing. The cases of Adigun v. A-G of Oyo State (1987) 1 NWLR (Pt.53) 678.*

It was submitted that the consequence of the violation of the right to fair hearing is that a fresh hearing by a new panel of the Court below ought to be ordered. This is because where there has been no
 D decision of the Court in the context of section 33 (1) of the Constitution 1979, because the Court below has not exercised its jurisdiction under section 213 (2) (a) of the 1979 Constitution, the appeal ought to be allowed - See State v. Onagoruwa (1992) 2 NWLR (pt. 221) 33.

E Learned Counsel referred to the provisions of Section 9 of the Chiefs Law of the former Western Region, the statute applicable to the facts of this case; and submitted that the meaning of the provision is that
 F where a vacancy occurs in respect of a recognised Chieftaincy the vacancy shall be filled in accordance with the provisions of the Registered Declaration in force in respect of such recognised Chieftaincy.

By the provisions of section 15 (1) (a) of the applicable Chiefs Law of the Western Region, the Secretary of the Competent Council responsible for Emure-Ekiti was bound by statute to announce the name
 G of the Ruling House entitled according to customary law to provide a candidate to fill the vacancy.

It was submitted that rather than effectuating the provisions of section 9 of the Chiefs Law, and Exhibit 6, by calling upon the Adumori
 H Ruling House to present a candidate to fill the vacancy, the Ondo State Government set up the Morgan Chieftaincy Review Commission in 1979 which recommended the inclusion of the Abenimota family as a Ruling House of the Elemure of Emure-Ekiti.

In his brief of argument, learned Counsel to the 1st Respondent traced the history of the Elemure of Emure-Ekiti Chieftaincy from 1958. He pointed out that the 1958 Declaration recognised both the Adumori and the Abenimota families as Ruling Houses of the Elemure of Emure-Ekiti Chieftaincy. Counsel submitted that Exhibit 6 relied upon by B Appellant was the result of a 1965 Declaration. Counsel referred to Exhibit 8, the report of the Judicial Commission of Inquiry set up by the Government of Western Region in 1975 into the Elemure of Emure-Ekiti Chieftaincy in 1975 " to investigate the circumstances leading to and C justification or otherwise of the 1965 amendment to the Elemure of Emure Chieftaincy Declaration registered on 22nd May, 1958, and submit a report."

The above-mentioned Commission recommended the repeal of D the purported amendment to the 1958 Declaration by the 1965 Declaration. It went on to recommend that there should be the two Ruling Houses of Abenimota and Adumori, and that the next Ruling House should be Abenimota.

It was submitted that the two lower courts considered the E antecedents of the Declaration before coming to their decisions. The Court of Appeal had Exhibit 6 in mind when it came to its decision. Learned Counsel therefore rejected the contention of Appellants that the Court below did not properly consider their case or did not properly F decide the issues placed before it, and that the arguments of Counsel were not given any consideration.

Learned Counsel to the 1st Respondent submitted that no right G was vested in the Appellants to produce the next Elemure of Emure-Ekiti in 1974 on the demise of Oba Ogunleye II. The submission was founded on the history of the Elemure of Emure-Ekiti Chieftaincy and the recommendation of the Justice Adenekan Ademola Judicial Commission of Inquiry on the Elemure of Emure-Ekiti Chieftaincy Exhibit 8, to contend H that the 1958 Declaration still stood. It was submitted that the amendment of the 1958 Declaration still stood. It was submitted that the amendment of the 1958 Declaration was politically motivated and therefore could not have altered the existing Declaration of 1958. The maxim ex turpi cansa

2150 Wilson v. Oshin (2000) 6 KLR Karibi-Whyte JSC
non oritur actio and Canfalia v. Chahin (1938) 5 WACA. 104 Adu v.
Makanjuola 10 WACA. 168; African Petroleum Ltd. v. Owodunni (1991)
8 NWLR (Pt. 210) 391.

The amendment of the 1958 Declaration was described as both
B immoral and illegal and against public policy, order and good conscience.

Respondents also argued that Appellants had waived any right
they had as a result of Exhibit 6 since the death of Oba Ogunleyell in
1974. They accepted all the actions and processes of all the Governments,
and had consented to the setting aside of Exhibit 6. They cited and relied
C upon Coker v. Ogunlola (1989) 2 NWLR (pt. 5) 87; Ariori v. Elemo
(1983) 1 SC. 1. It was submitted that the section 6 (2) of the interpretation
Act relied upon by Appellants was actually in support of the contention
of the Respondents.

D Learned Counsel to the Respondents distinguished the decisions
cited by Appellants, on the grounds that

(a) In none of the cases was a declaration made as in the instant
case that there were two Ruling Houses

E (b) None was an amendment made motivated or sponsored to
the existing declaration by political expediency.

(c) In none did Plaintiffs participate actively in all processes leading
to a new declaration.

F (d) These cases were not founded on the vested rights of the
Appellants tainted with fraud or immorality. The cases distinguished
were Osafire v. Odi (No. 1) 1990 3 NWLR. (Pt. 137) 130; Obodo v.
Olomu (1987) 3 NWLR (Pt. 59) 111; Ojo v. Governor of Oyo State
(1989) 1 NWLR (pt. 95) 1; Adigun v. Att Gen. Oyo State (1986) 1
G NWLR (pt. 53) 678; and Afolabi v. Gov. of Oyo State (1985) 2 NWLR
(pt. 9) 734.

Finally it was submitted Appellants were not denied fair hearing
because all the issues complained of were considered in the judgments:

H I have outlined in summary the arguments of the parties in support
of their contentions. The crux of Appellants case seems to be based on
the applicability of Exhibit 6 which altered the 1958 Declaration, and the
validity of the Morgan Judicial Commission of Inquiry which

recommended reversion to the 1968 Declaration and inclusion of the Abenimota Ruling House, to the Adumori. Ruling House for the Elemure of Emure-Ekiti Chieftaincy. The 1965 Declaration had named only the Adumori Ruling House, in that Declaration.

It was the contention of Appellants and rejected by the Respondents that Exhibit 6 conferred on Appellants a vested right to produce the next Elemure of Emure Ekiti, and that such vested right could not be side tracked. The contention is that the Declaration of 1981 which altered the 1965 Declaration could not affect the accrued and vested rights of the Appellants under Exhibit 6. Hence it was contended that the approval of the 4th Respondent of the 1st Respondent as the Elemure of Emure-Ekiti was illegal and void.

Learned Counsel to the Appellant has relied on the jurisprudential concept of the vesting of an accrued right and the nonretroactive operation of a subsequent legislation on such vested rights. Learned Counsel referred to several decided cases and dicta from such cases. It seems to me however, that the fundamental issue lies on a proper understanding of the nature of the right claimed and when the right is deemed to have vested. Learned Counsel correctly pointed that the right in issue is the right to present the candidate for the Elemure of Emure-Ekiti Chieftaincy. His further contention that the right founded in Exhibit 6 vested in 1974 on the death of the Elemure of Emure-Ekiti, does not seem to me to accord with the accepted principles for the vesting of accrued rights.

An accrued right is vested when it is completely settled in the beneficiary and cannot be defeated or cancelled by the act of any other private person, and which it is right and equitable for the government to recognise and protect as being lawful in themselves, and settled according to the current rules of law. The individual cannot be justly deprived of this right otherwise than by the established methods of procedure and for the public welfare. Such rights cannot be deprived arbitrarily without injustice. Rights may be vested or contingent.

It is an accepted jurisprudential concept that the satisfaction of a right may be based on a contingency. Thus the person in whom

right is vested and seeking to exercise it must show that the contingency has been satisfied. Herein the distinction between vested and contingent rights. Every right arises from a title. A right can be said to be vested when all the investitive facts which are necessary to create it have occurred. It is said to be contingent when only part of the investitive facts have, occurred, until the happening of the event on which the title depends. Where all the investitive facts which are necessary to create the right have occurred, the right is vested in interest even though actual enjoyment may be postponed to a definite time in the future.

In the instant case even if it is conceded that the Adumori Ruling House is the only Ruling House named in Exhibit 6, the preconditions for the vesting of the right prescribed in section 15 (1) of the Chiefs Law, which are the investitive facts enabling the right to create the rights have not been satisfied. Thus for the right to be vested in the Adumori Ruling House, the following conditions must be satisfied.

(a) the Secretary of the competent Council shall announce the name of the Ruling House entitled according to customary law to provide a candidate or candidates as the case may be, to fill the vacancy.

(b) not later than fourteen days after the announcement by the Secretary, the members of the Ruling House acting in accordance with the declaration shall submit the name of the candidate to the Kingmakers.

x x x x x x

(d) within not more than seven days after the submission of the name of the candidate the Kingmakers shall proceed to select the person to fill the vacancy in accordance with the law.

These are the investitive facts the satisfaction of which will make the right vested.

Learned Counsel to the Appellants admitted that the Appellants were not called upon to present their candidate for the Elemure of Emure-Ekiti Chieftaincy in accordance with the provisions of section 9 of the Chiefs Law to fill the vacant position.

The facts disclosed and agreed upon clearly demonstrate

that what the Adumori family has is more than spes successionis. They had a contingent right which will be effective on the satisfaction of the conditions prescribed. I have no doubt in my mind that the right to produce the Elemure of Emure-Ekiti has not vested in the Adumori Ruling House. In the circumstances the provision of section 6 of the Interpretation Act relating to the retrospective operation of vested rights cannot apply. I therefore ignore the learned discussion on the submission,

Appellants' Counsel had based his argument of the infringement of their right to fair hearing on the ground that the Court below did not consider his submission of Exhibit 6 which gave appellant the right to produce the next Elemure of Emure-Ekiti as at 1974 when the then Elemure died.

Learned Counsel has not taken the time to study the judgment of the Court below being criticised. The learned Justice of the Court of Appeal outlined the order in which he was to consider the issues for determination formulated by the Appellant. The Issues 2, 3 and 6 considered together contain the issue 3 which was on the question of fair hearing. The issue No. 3 on fair hearing was considered at pages 577 & 578 of the judgment. This same criticism was made of the Judgment of the trial judge, and was answered convincingly in the judgment of the Court below.

The variant of the criticism of the judgment of the trial Court that most of the submissions on point of law made by Plaintiff's Counsel, is that the Court below has failed to consider Appellants' arguments on the effect of Exhibit 6 as giving Appellants vested rights to produce the next Elemure of Emure-Ekiti. In effect Appellant is saying that by the failure to consider the particular submission he has been denied fair hearing. I do not think that is a sound proposition of law. Section 33 (1) of the Constitution cannot be so extended. I have already held that Appellants had no such right vested in them.

In the first place not considering one of the many contentions of a party in a case cannot by itself constitute a denial of fair hearing. **A denial of fair hearing connotes a refusal to consider the pertinent**

and relevant issues in the case essential to its determination. In such a situation a fair minded objective observer will come to the conclusion that the hearing of the case has not been fair to the person affected. The principle of adjudication fundamental to the administration of justice is that the court is bound to consider every material aspect of a party's case validly put before it. Hence where the issue placed before the Judge is one not relevant or crucial to the determination of the case before the Court, non-reference to it is not a denial of fair hearing. This is because having heard the Appellant present his case, the consideration of the relevance vel non of the point will be determined by the Judge deciding the case on the issues and facts before him. Counsel has argued that the failure to decide the point which he considers is very crucial to the Appellants' case is a violation of the right to fair hearing. I do not think this is correct. Where the issue is fundamental and critical to the determination of the case the contention of Appellants will be justified. It is not so in the case before us.

Learned Counsel to the Appellant has overstated and over rated the force and legal cogency of law he has relied upon. **It is very well known and accepted that a judgment can be decided on more than one issue. The Judge hearing the case will decide on the law and facts before him the issues of fact and points of law he considers more in accord with the justice of the case before him. It does not therefore constitute a denial of fair hearing merely because a Judge did not consider a particular issue sufficiently cogent for consideration in the determination of a case.**

I do not agree with the submission of learned counsel to the Appellant that a failure of this nature involves the audi alteram partem rule. In the instant case there has been consummate hearing of the case, with viva voce evidence and tendering of documents. The question does not arise.

The Issue No. 2 relates to the validity of the Morgan Chieftaincy Review Commission. Learned Counsel to the Appellants contention is that the Commission was invalid, not being the appropriate authority to

amend a Chieftaincy Declaration under the Chiefs Law of Ondo State. The appropriate authority is the Chieftaincy Committee of the Local Government Council for the Community to which the Chieftaincy belongs - Section 10 (1) and (2) Chiefs Law Cap. 20 Laws of Ondo State. It was submitted that the Commission is not a Chieftaincy Committee within the meaning of the Chiefs law. B

I have found the briefs of argument of Counsel quite helpful. But it seems to me learned Counsel to the Appellants appears to be under a misapprehension about the amplitude of the powers of the Executive Council under the Chieftaincy Law Cap 20: Section 10 (1) (2) provides as follows - C

"10 (2) Where the Executive Council is satisfied that a registered declaration -

(a) does not contain a true or sufficiently clear statement of the customary law which regulates the selection of a person to be the holder of a recognised chieftaincy or D

(b) does not contain a sufficient description of the method of selection of the holder of such a chieftaincy; or E

(c) contains any error whether as to its form or substance; or

(d) is otherwise defective, faulty or objectionable, having regard to the provisions of this law.

the Executive Council may require Chieftaincy committee which made the declaration to amend such declaration in any respect that it may specify, or to make a new declaration, according as it may consider necessary or desirable in each case. F

(2) The Executive Counsel may approve or refuse to approve a registered declaration amended or a new declaration made by a chieftaincy committee under sub-section (i) of the section." G

It is clear from the above provisions of the law that certain conditions are prescribed before it can operate. These namely are that Executive Council must be satisfied that H

(a) there is a defect, error or fault in a particular registered declaration

(b) the executive Council may require the Chieftaincy Committee

which made the declaration to amend the declaration, or to make a new declaration, according as it may consider necessary or desirable in each case.

It is clear from Section 10 (2) that the Executive Council has the overriding power to approve or refuse to approve a registered declaration, whether amended or a new declaration by a Chieftaincy Committee.

In furtherance of his argument Appellants' Counsel has submitted that the general powers vested in the Executive under Section 25 (1) (2) of the Chieftaincy Law, Cap. 20 cannot extend to include the exercise of the specific powers vested in the Local Chieftaincy Committees under section 10 (1)

Section 25 (1) summarily stated, provides that

(a) The Executive Council or the Commissioner has power to cause an inquiry to be held with a view to amending an existing registered Chieftaincy Declaration or,

(b) The Executive Council or the Commissioner can only cause an inquiry to be held for the purposes of parts 2 and 3 of this law.

Relying on the maxim generalalia specialibus non derogant, and Bamgboye v. Administrator-General 14 WACA. 616, Learned Appellants Counsel argued that the general powers under section 25 (1) can only be exercised to cause an inquiry to be held for the purposes of parts 2 and 3, where specific provision has been made for that purpose by those parts. Many decided cases, and dicta from the cases both foreign and local have been cited in support of the submission.

It was submitted relying on Section 7 (1) (2) that section 25 (1) envisages the situation where there is no registered declaration in existence thereby enabling the Commissioner to cause an inquiry to be held in respect of the Chieftaincy affected before the Committee of the Competent Council.

It is clear from the ipsissima verba of Section 25 (1), that the section applied to both parts 2 and 3 of the law which relates to Recognised and Minor Chiefs. It is a general provision relating to inquiries. The suggestion of learned counsel to the Appellants is that after the legislature had made provisions for cases in which there are as registered Declarations

in existence that it proceeded under section 10 of the law to specifically make provision for cases where there are registered Declarations in existence as in this case but the Executive Council is of the opinion that the existing Declaration does not contain a true or sufficiently clear statement of the relevant customary law in which case the Executive Council is specifically empowered to require the Chieftaincy Committees which made the declaration to amend such declaration as opposed to cases in which an inquiry could be held under section 25. B

With due respect to learned Counsel's argument, the wide powers of section 25 (1) cannot be so restrictively construed. **The purposes and objects of sections 10 and 25 are distinct and different. Whereas section 10 speaks of amendments or replacement of defective or faulty registered declarations, section 25 which is wider, is concerned with the causing of the inquiries to be held in respect of Chieftaincies. The Executive Council is at liberty to resort to any of the enabling provisions which best serves its purpose. The Morgan Chieftaincy Review Commission was clearly within the powers of the Executive Council to set up. It was therefore validly created. The Executive Council was within its powers to accept its recommendations and act upon it. It is a clear misconception that the Morgan Chieftaincy Review Commission acted without jurisdiction.** D E

The second issue is also resolved against the Appellants. I now turn to the third issue which is whether the Court of Appeal was right to have affirmed the judgment of the trial Judge after its finding that the trial Judge did not adequately evaluate the issues which arose for determination before him. This third issue is a criticism of the judgment of the Court of Appeal for not setting aside the judgment of the trial Court which was held not to have adequately evaluated the issues before it. The passage in the judgment of the Court of Appeal complained of reads - F G

"Now, the claim before the lower Court consists of 14 reliefs. Of the 14 reliefs, 7 of them are declaratory reliefs. Of the remaining 7 H reliefs, 4 are nullification orders arising out of the declaratory reliefs. The remaining 3 reliefs are injunctions also arising from the declaratory reliefs. A declaratory order is made at the discretion of the Court. The

discretion must however be exercised judiciously and judicially based on the facts as led in evidence before the Court. The evidence must be properly evaluated and appropriate findings of fact made. The question raised by the combined issues under consideration is whether the evidence under consideration is whether the evidence led in this case has been properly evaluated. The trial Judge would not seem to have adequately evaluated every issue arising from the evidence led in this case by making a finding of fact in respect of every such issue but having elaborately considered the evidence, he rightly in my view, rejected the evidence of the Appellants and their witnesses and having regard to the facts of recent years he came to what I consider a correct judgment in the case."

It is common ground that the duty of a trial Court is to adequately evaluate the evidence adduced in the case and make appropriate finding of facts in respect of all issues arising in the case and material to the determination of the case.

Learned Counsel to the Appellants submitted that there were facts in the instant case which required specific findings. In view of the evidence before him the learned trial Judge should have made specific findings of fact as to how the number of Ruling Houses increased from one to two before coming to the conclusion that the Abenimota family was a Ruling House.

I do not think this criticism is justified. **There is sufficient evidence that the courts below adequately considered and resolved the issues material to the determination of this case.** There were findings that both the Adumori family and the Abenimota family are descendants of a common ancestor. There is also the finding that Abenimota is a Ruling House, having produced Elemure of Emure-Ekiti many years ago. These findings were supported by oral and documentary evidence. The Court of Appeal has supported these findings of fact. **There is accordingly concurrent findings of facts of the two Courts below on these issues. Learned Counsel to the Appellants has not shown that these findings of facts are perverse or unreasonable, or that they are not consistent with the justice of the case. This court is bound to accept these findings of fact. - See Ebba v. Ogodo (1984)**

1 NWLR (pt. 2) 360, Ike v. Ugboaja (1993) 6 NWLR (pt.301) 589.

Appellants' Counsel has complained about the holding of the Court of Appeal that no miscarriage of justice had been occasioned to the Appellants by the inadequate evaluation of the evidence by the trial Judge. It was argued it is a constitutional right to fair hearing to have the evidence before the Court adequately evaluated by the trial Judge. **There is no doubt that where material issues and facts relating to the case are not evaluated at all or adequately evaluated, it may lead to a miscarriage of justice. See Udeze v. Chidebe (1990) 1 NWLR. 141. But where the omission or failure complained of is with respect to matters not affecting the determination of the case no miscarriage of justice would have occurred.**

The function of an appellate Court is to determine the case on the grounds of error of law or of facts alleged, and whether the Court below has come to the right decision. It is not necessarily whether the trial Court was right in the manner the case was decided, but whether the reasons were right. The appellate court is concerned only with correcting the errors of law or fact alleged in the decision of the trial court. - See Ukejiana v. Uchendu 13 WACA. 43 at p. 46.

The passage of the judgment of the Court of Appeal reproduced in this judgment clearly shows that although the trial judge might not have been right in the manner the case was decided, but the reasons he gave were right. The Court below also considered Exhibits 20, 27 and 28 as constituting estoppel against the Appellants. The question is whether these three exhibits or any of them constitute estoppel against Appellants and whether the trial judge relied for his decision on the ground that Appellants were thus estopped. It was the contention of Appellants that exhibit 20 did not show that they acknowledged the existence of the Abenimota family as a Ruling House.

The document exhibit 20 speaks for itself and is self-explanatory. It was jointly signed by the representatives of both Ruling Houses. Thus by conduct and express approval the status of the Abenimota family as a Ruling House was recognised. The contention of Appellants that exhibit

20 was tendered through the defence witness and that Appellants were not confronted with it was rightly rejected by the Court below. It was not contended that it was inadmissible as evidence. Exhibit 20 was pleaded in paragraph 28 (c) of the further amended statement of defence.

B In Exhibit 27, a document dated 25/2/97, the Elemure Adminmini II admitted and declared that there were two Ruling Houses, viz, the Abenimota Ruling House, and the Adumori Ruling House to which he belonged.

C Exhibit 28 is another document where the issue of the two Ruling Houses was recognised. Appellants Contend that Exhibit 28 did not recognise the existence of the Abenimota family as a Ruling House, it was tendered to show the membership of the Royal family, and that the name of the father of the 1st Defendant appears number two. It was also
D contended that some of the signatories thumb printed. There was no jurat.

This contention has been conclusively answered in the judgment of the court below. **I entirely agree that absence of jurat in a document signed by an illiterate does not render the document null and void. A jurat is for the protection of the illiterate and cannot be used against his interest. The weakness in the document Exh. 28 is the weight to be attached to it. The Abenimotas are not complaining that they have been shown to be members of the Royal family. Adumoris cannot now deny that the Abenimotas are also members of the Royal family and a Ruling House.**

Exhibit 30 shows the number of Obas who have reigned in Emure-Ekiti from both the Abenimota and the Adumori families. It has
G been submitted by Appellants that Exhibit 30 was prepared by 1st Respondent's family, and that the trial Judge did not consider the evidence of 8th PW who testified that Adumori Ruling House was the only Ruling House in respect of the Elemure of Emure-Ekiti Chiefaincy. And that he
H had never heard of the Abenimota Ruling House in Emure at all. There was no such Ruling House.

It is important to observe that the trial Judge held that the witnesses who denied the existence of Abenimota Ruling House till

the Declaration of 1958 were not credible witnesses. The trial Judge who saw, observed and heard the witnesses is the best judge of the credibility of witnesses. The evidence denying the fact that the Abenimota Ruling House has produced four Obas viz Kangan, Atadelonye Ati-Iku-Opolo, Ato Ibiloye, and Famutimi was rightly rejected by the trial Judge. The Court of Appeal has endorsed the finding. Appellants have not adduced convincing reasons why these concurrent findings of fact should not be accepted by this Court. Besides this finding there was evidence that in recent years a member of the Abenimota family had always contested the Elemure of Emure-Ekiti Chieftaincy. There is no doubt that the Chieftaincy is restricted to members of the Royal family.

Considering the above facts it is difficult to fault the finding of the Courts below that Appellants are estopped from denying that the Abenimota family is a Ruling House of the Emure-Ekiti Royal family. The third issue is also resolved against the Appellants. I have not considered it necessary to discuss the issue of a retrial, Appellants having failed to establish the issue on fair hearing. All the three issues having been resolved against the Appellants, the appeal fails and is hereby dismissed.

Appellants shall pay N10,000 as costs to the 1st Respondent.

WALI JSC

I have read before now, the lead judgment of my learned brother Karibi-Whyte, JSC, and I agree with his reasoning and conclusion for dismissing the appeal.

Having nothing more useful to contribute, I also hereby dismiss the appeal with N10,000.00 costs to the 1st Respondent.

MOHAMMED JSC

I entirely agree with the opinion of my learned brother, Karibi-Whyte, J.S.C. in the judgment just delivered and I venture to express my full concurrence with the views set forth in that judgment. My Lord has

considered all the issues in this appeal and has left considered all the salient issues canvassed in this appeal and has left nothing useful for me to add. I agree that the appellants have failed to establish any cogent reason which would necessitate the reversal of the concurrent findings of the two courts below.

Consequently, I dismiss the appeal and award N10,000.00 costs in favour of the 1st respondent.

C KATSINA-ALU JSC

I have had the advantage of reading in advance the judgment of my learned brother Karibi-Whyte, JSC in this appeal. I agree with it. For the reasons he has given, I would also dismiss the appeal with N10,000.00 costs to the 1st Respondent.

EJIWUNMI JSC

I have had the privilege of reading the draft of the judgment just delivered by my learned brother Karibi Whyte JSC. In that judgment, having reviewed in adequate detail the facts leading to this appeal and the issues raised thereon he concluded that the appeal lacks merit. As I agree entirely with the reasons for dismissing the appeal, it is also dismissed by me. And I abide with all the consequential orders made in the said judgment of my brother Karibi-Whyte JSC.

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