

SUPREME COURT OF NIGERIA

14TH JULY, 2000. SC. 107/1996

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

ALHAJI MUSA NAGOGO IBRAHIM APPELLANT
AND
ALHAJI MOHAMMED SARKI ALIYU RESPONDENT

***APPEALS** - Legal authority - Judgment that is not supported by any legal authority - Cannot be allowed to stand.*

***CHIEFTAINCY MATTERS** - Evidence - Kingmakers - Challenge against their eligibility to vote - Was not successfully done.*

***CHIEFTAINCY MATTERS** - Election - Validity of - Quorum stipulated by law - Where sustained - Participation by some disputed kingmakers simpliciter - Cannot invalidate the election.*

***CHIEFTAINCY MATTERS** - Election - Party that secures valid majority votes - Is properly and validly selected.*

***CHIEFTAINCY MATTERS** - Election - Validity of - Election conducted in substantial compliance - With the relevant statute - Is valid.*

***EVIDENCE** - Witnesses - Review and acceptance of their evidence - Is proper - As there is no apparent contradiction in their testimonies - Court of Appeal erred in holding otherwise.*

FACTS

This case is a chieftaincy dispute in respect of the stool of the Oriye Rindre of Wamba in the defunct Plateau State of Nigeria, but now Nassarawa State. Following the death of the last incumbent of the said traditional stool, an election was conducted to fill the vacancy created.

The defendant/appellant and plaintiff/respondent were the only candidates that contested for the office. The appellant secured 7 votes while the respondent had 3 votes. The appointment of the appellant as the new Oriye Rindre was subsequently approved by the Plateau State Council of Chiefs and the Military Governor of Plateau State.

The respondent being dissatisfied with the election filed an action against the appellant. Plateau State Council of Chiefs and the Military Governor of Plateau State were 2nd and 3rd defendants respectively. Some 3 people that voted were challenged as not being the proper king makers while some other 3 qualified king makers did not vote at all. The respondent claimed inter alia, that the selection and approval of the appellant be set aside on ground of violation of the applicable law. The trial court dismissed the respondent's action. His appeal to the Court of Appeal was allowed. Being aggrieved, appellant has now appealed to the Supreme Court raising 3 issues.

ISSUES FOR DETERMINATION

"1. Whether the Court of Appeal was right to have refrained from substituting their own views on a material set of facts after having rejected the findings of the trial judge on same.

2. Whether the Court of Appeal was right in refusing to consider some issues raised by the parties before them.

3. Whether on a preponderance of evidence, the Court of Appeal was right to have set aside the judgment of the trial court."

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

Witnesses - Review and acceptance of their evidence

1. Therefore having accepted the evidence of DWs 1, 3 and 4 that they were allowed to participate in the present election as king-makers having regard to their traditional status, there was no evidence to prove that they were not such king-makers. That was why the learned trial judge concluded on page 154 of the record that:-

"In my view the plaintiff failed to prove that they were not the proper king-makers for the exercise".

This is supported by the evidence as explained earlier and I am clearly of the view that the Court of Appeal, with respect, did not fully appreciate the meaning of the evidence and the findings of the learned trial judge in respect of the testimony of PW. 4 as against those of DWs 1, 3 and 4, when it held on page 270 of the record thus:-

"It is evidence (sic) that the evidence of P.W. 4 to the effect that Ibrahim Umaru (DW. 4) and Mohammadu Lamu (DW .3) were not the recognized king-makers which the learned trial judge accepted is irreconcilably in conflict with the evidence of DW 1, DW 3, and DW 4 in support that they were recognized king-makers which the learned trial judge similarly accepted."

It is my respectful view, that the evidence is reconcilable as discussed above and there is no conflict or contradiction which will bring into play the application of the case of Omolohon v. C.O.P (supra) relied upon by the Court of Appeal. (p. 2540 G)

Appeals - Legal authority

2. But the Court of Appeal went on to say:-

"As the pattern of their votes cannot be determined if they had been allowed to vote, I agree with Mr. James that the election is null and void. On this score alone this appeal succeeds."

The Court of Appeal did not quote any legal authority for making this point or finding, nor did it refer to any provision of the relevant law or regulation concerning the election itself. Since the failure of the 3 king-makers to vote could not determine the pattern of voting at the election, what made the election exercise null and void? I disagree with the Court of Appeal on this and I think that court was wrong in so holding. (p. 2541 H)

Chieftaincy Matters - Evidence - King makers

3. From the evidence presented at the trial, and accepted by the learned trial judge all went well at the election except that 3 king-makers DWs 1, 3, and 4 who actually voted at the election were challenged as not being king-makers, or qualified to vote. The learned trial judge found that the 3

king-makers were not successfully challenged and I agreed with him as explained earlier in this judgment. (p. 2542 F)

Quorum stipulated by law

B 4. I also do not agree with the Court of Appeal that the mere participation of these 3 disputed king-makers simpliciter would invalidate the whole election. See Na-Gambo v. N.E.C. (1993) 1 NWLR (pt. 267) 94. And the failure of the 3 qualified king-makers to vote, for any reason, could not invalidate the election because the stipulated quorum at the election was sustained.¹ There was evidence that out of the 11 king-makers stipulated in paragraph 3 of Exhibit 6, 10 king-makers including the disputed ones were present at the elections. There was undisputed and unchallenged evidence that at the end of the voting, the result was that 7 persons voted for the appellant and 3 for the respondent. According to paragraph 6 (3) of Exhibit 6, the stipulated quorum at the election was 7. This in effect means that even if the 3 disputed king-makers were ignored or disregarded there was the required quorum of 7 selectors at the election. Again even if the votes of the 3 king-makers were disregarded out of the 7 votes cast for the appellant, he would still end up with 4 valid votes as against only 3 of the respondent. (p. 2542 H)

F

1 This statement should be understood properly. If it is taken out of the context of the present case, it may be misunderstood. We do not think that the Supreme Court is saying that failure of qualified voters to vote in all cases will not affect the validity of elections merely because the stipulated quorum was sustained. Evidence that such failure was as result of a fraudulent act by the winning party may certainly invalidate the election. Why the holding here is justified would be for the reason that the plaintiff participated fully in the election, did not raise any issue of fraud or intimidation. He was only looking for a technical justice which the courts have long abandoned. A look at p. 2540 G shows that the fact that those 3 king makers did not give evidence is a good ground for the justification of the present holding.

Valid majority votes

5. The words "selectors present" in this paragraph emphasize the requirement of the quorum which in this case is 7 and the "largest number of votes" means valid majority votes. In this case, the appellant with 4 valid votes has majority over the respondent with only 3 valid votes. B Therefore the appellant was in my judgment, properly and validly selected the Oriye Rindre of Wamba and I so find. (p. 2543 E)

Election - In substantial compliance - With the statute

6. I also find that the election was conducted in substantial compliance C which with the provisions of Exhibit 6. See Kaugama v. N.E.C. (1993) 3 NWLR (pt. 284) 681. It is my respectful view that in an election such as in this case where the applicable law provides for a quorum of an electoral college, and the quorum was obtained when the votes were D cast, such election cannot be invalidated merely because the absent members of the electoral college did not vote at the election. (p. 2543 G)

REPRESENTATION

Val B. Ashi Esq. for the appellant
O. B. James Esq. for the respondent

CASES REFERRED TO

Omolohon v. C.O.P (1961) ALL NLR (pt. 4) 594
Na-Gambo v. N.E.C. (1993) 1 NWLR (pt. 267) 94
Kaugama v. N.E.C. (1993) 3 NWLR (pt. 284) 681
Nwobodo v. Onoh (1984) N.S.C.C 1

STATUTE REFERRED TO

The Appointment And Deposition of Chiefs (Appointment of Oriye Rindre)
Order 1990

LEAD JUDGMENT BY KALGO JSC

This is a chieftaincy dispute in respect of the stool of the Oriye Rindre of Wamba in the Wamba Local Government Area of Nassarawa

State. In February 1991, when the action was filed in the Plateau State High Court, Wamba was under Akwanga Local Government Area of Plateau State.

The last incumbent of the traditional office of Oriye Rindre Al-haji Sulaimanu Muhammadu Kore, who has since died, was installed as a 2nd class chief on the 23rd of April, 1983. After his death, the then Plateau State Government promulgated a law titled "The Appointment And Deposition of Chiefs (Appointment of Oriye Rindre) Order 1990" which laid down the procedure to be followed in the selection of election of a new Oriye Rindre in the event of any vacancy. In pursuance of the said law, an election was conducted on the 12th of February 1991, to fill the vacancy created by the death of Alhaji Sulaimanu Muhammadu Kore. In that election, the only candidates were the appellant and the respondent. At the election, the appellant polled 7 votes and the respondent polled only 3 votes and so the former was declared the winner and the new Oriye Rindre. Following the election, the appointment of the appellant as the Oriye Rindre was approved by the Plateau State Council of Chiefs and the Military Governor of Plateau State, on the 18th of April, 1991. The respondent was dissatisfied with the said election and immediately commenced proceedings in the Plateau State High Court challenging the same. In the action, the Plateau State Council of Chiefs and the Military Governor of Plateau State were the 2nd and 3rd respondents (sic, defendants) respectively.

By paragraph 19 of the statement of claim the respondent, as plaintiff, sought for the following reliefs:-

"(a) A declaration that the 2nd and 3rd defendants by themselves, agents or servants violated orders 3,4, and 6 (1) of the (Appointment and the Deposition of Chiefs) the appointment of the Oriye Rindre Order 1990.

(b) A declaration that the first defendant not being a member of any of the three ruling houses of Wamba listed in Order 3 aforementioned is not qualified to contest for the office of the Oriye Rindre.

(c) A declaration that:

(i) the votes of Ibrahim Umaru, Mohammed Lamu and Mallam

Sambo Bichi and

ii) the votes of the other selectors who voted for first defendant are null and void for being in violation of orders 3,4 and 6 of the Oriye Rindre order of 1990 respectively, and the native law and custom of the Rindre people.

B

(d) An order setting aside the selection and approval of the first defendant as Oriye Rindre.

(e) A declaration that the plaintiff being the only lawful candidate is the winner of the said selection in accordance with the Oriye Rindre order of 1990.

C

(f) A perpetual injunction restraining first defendant from parading or holding himself out as the Oriye Rindre and from performing any rites or duties attached to the office.

(g) A perpetual injunction restraining the second and third defendants their agents, servants, or privies from installing, recognizing or dealing with the first defendant as the Oriye Rindre of Wamba."

D

In the amended statement of Defence, the appellant, as 1st defendant, filed a counter-claim in which he also sought for the following reliefs:-

E

"1. Whereof the 1st Defendant hereby prays the Court for the following reliefs in view of the averments in the Statement of Defence of the 1st Defendant.

a) A DECLARATION that the Plaintiff's participations as a candidate for selection to the traditional stool of the Oriye Rindre which took place on the 12/2/91 was null and void as he is a member of the Mawu Lube family which is not one of the Ruling Houses of Wamba and which has no relationship with any of them whatsoever.

F

b) PERPETUAL INJUNCTION restraining the plaintiff, his ascendants how high soever and his descendants how low soever from parading themselves or their agents as members of Mawu Misa Ruling House and participating as candidates for selection to the office of the Oriye Rindre of Wamba.

G

H

(c) A DECLARATION that the 3 votes cast for the Plaintiff on 12/2/91 in the selection of the Oriye Rindre were null and void having been cast for an incompetent candidate by Rindre Native Law Custom.

(d) A DECLARATION that the 1st Defendant being the only candidate put forward by any of the three Ruling Houses and the only competent candidate that was nominated for the stool of the Oriye Rindre on 12/2/91, was selected as the Oriye Rindre with no opposition.

B 2. A DECLARATION that 1st Defendant being a candidate put forward by the Mawu Misa Ruing Houses of Wamba and the competent candidate that was validly nominated for the stool of the Oriye Rindre in the selection that took place on 12/2/91 was duly selected with no opposition, and that his selection was in conformity with Order 7 (4) of the
C Plateau State Legal Notice No. 2 of 1990 - Appointment and Deposition of Chiefs (Appointment of Oriye Rindre) order 1990".

After filing and exchanging all the necessary pleadings and completing all the preliminaries, the actual trial commenced on the 25th of
D September 1991 before Azaki J. of blessed memory. The respondent called 5 witnesses and gave evidence himself. The appellant did not give evidence in his defence but called 6 witnesses in support. Thereafter counsel for the parties addressed the trial court at length and the case
E was adjourned for judgment. On the 23rd of June, 1993, the learned trial judge, in a considered judgment, made the following findings and conclusions.

"The totality of the evidence before me is such that the plaintiff
F did not prove his case against the defendants. He is not entitled to any of the above reliefs. I hereby dismiss the action."

The 1st defendant filed a counter-claimed (sic) against the plaintiff. It was not seriously pursued by way of evidence. In the course of
G submission it was abandoned. It is hereby struck out."

This means that the respondent's action was totally dismissed and the appellant's counter-claim was struck out. The respondent was not happy with this and he appealed to the Court of Appeal which allowed his appeal and ordered as follows:-

H "1. It is declared that the election conducted on 12th February, 1991 to fill the vacant stool of Oriye Rindre is null and void.

2. The purported election and approval of the 1st defendant/respondent as the Oriye Rindre is null and void and of no effect.

3. *Parties are to bear their costs."*

The appellant was dissatisfied with this he appealed to this court. In this court, parties filed and exchanged their respective briefs.

The appellant in his briefs, identified 3 issues for the determination of this court and they are:-

"1. Whether the Court of Appeal was right to have refrained from substituting their own views on a material set of facts after having rejected the findings of the trial judge on same.

2. Whether the Court of Appeal was right in refusing to consider some issues raised by the parties before them.

3. Whether on a preponderance of evidence, the Court of Appeal was right to have set aside the judgment of the trial court."

The respondent in his brief formulated only 2 issues for determination thus:-

"a. Having considered and determined the respondent's (Appellant at the lower court) appeal based only on one issue, was the Court of Appeal right in refusing to embark on the resolution of the other issues for determination.

b. Having held that "the finding by the learned trial judge that the Respondent has not proved that the disputed three king-makers were not the recognized king-makers cannot stand", was the Court of Appeal right in setting aside the judgment of the learned trial judge on that ground."

I have considered the grounds of appeal contained in the amended notice of appeal filed by the appellant and come to the conclusion that the 3 issues raised by him for the determination of this court in the appeal are apt and proper in the circumstances. I shall therefore adopt them for the purpose of this appeal.

Before I go into the issues, I wish to state clearly that the question of fair hearing or the eligibility of either of the parties to the appeal to contest the stool of Oriye Rindre has not been raised in this appeal. I therefore say nothing about these in the determination of this appeal.

It appears to me that this appeal will substantially be determined on facts. Accordingly I will take issues 1 and 3 together. There issues

would appear to have stemmed from grounds of appeal (b) and (c) in the amended notice of appeal, which read:-

B b") *The Court of Appeal erred in law when it failed to substitute its own findings of fact by way of re-evaluation of evidence after rejecting the findings of the learned trial judge on a set of material facts and the said failure led to a miscarriage of justice.*

PARTICULARS

C i) *Their Lordships of the Court of Appeal came to a conclusion (at pages 244-246 of the records) that the learned trial judge made wrong evaluation of the testimony of P.W. 4 on the disputed participation of three king makers and consequently rejected the said evaluation.*

ii) *Their Lordships failed to substitute therefor what are their own views of the probative value of the said testimony.*

D c) *The decisions of the Court of Appeal in its totality is against the weight of evidence".*

E The whole scenario on these grounds revolved around the evidence of P.W. 4, and DWs 1, 3 and 4 and how the learned trial judge treated them as viewed by the Court of Appeal. The Court of Appeal found that the learned trial judge accepted the evidence of P.W. 4 to the effect DW 3 (Ibrahim Umaru) and DW 4 (Muhammadu Lamu) whose photographs appeared in Exhibit 4 were not the recognized king-makers for their respective families. It also found that the learned trial judge had earlier F accepted the evidence of DW 1, DW 3 and DW 4 that they were the recognized king-makers. This, the Court of Appeal said, was irreconcilable and on the authority of Omolohon v. C.O.P (1961) ALL NLR (pt. 4) 594, must be disregarded.

G I will now consider whether the Court of Appeal was right in coming to this conclusion. P. W. 4 Alhaji Muhammadu Ibrahim is the senior brother of the late immediate past Oriye Rindre, Chief of Wamba Alhaji Muhammadu Sulaiman Kore. He assisted in performing the functions of the late Oriye Rindre when he was sick up to the time he died. H P.W. 4 testified that in February 1983, when the post of the Chief of Wamba was up-graded to 2nd Class Chief, he was asked to collect the photographs of all king-makers of that Chieftaincy for use in the installa-

tion ceremony. He said he collected the photographs and wrote their respective names on the photographs but, he added, not all the persons he collected their photographs are king-makers by tradition. In respect of D.W. 3 and D. W. 4, he said (page 75 of the record):-

"Ibrahim Umaru belong to the family of Mai-ungo. He is not the head of that family. Muhammadu Lamu is from Man saje family. He is not the head of the family. The heads of the family at the material time were Mai-ungo, the village head of Ungo and Ayuba. Bot of the heads were already dead. May be they had representatives but at the material time their positions were vacant. I did not consult with their families while collecting the pictures for the programme."

From the above quoted excerpt of this witness's evidence, especially the area underlined, it is very clear that at the time P.W. 4 collected the photographs of DW 3 and DW 4, the actual king-makers from their respective families were dead. This, according to him was in February 1983, and according to Exhibit 4, the installation took place on 23rd of April, 1983. P. W. 4 testified that at that material time, DW 3 and DW 4 were not king-makers as the actual king-markers were then dead and they were not appointed to replace them by the members of their respective families. The evidence of DW 1 was to the effect that he was the head of Mawu Mesa family, held the position of adviser to the Oriye Rindre and is the senior brother of the appellant. This evidence stood unchallenged and uncontradicted. DW 3 testified that he had seceded his uncle Ayuba Magaji as the Mawu Sagye for 28 years and since then had been the head of their family. He did not say categorically that he is a king-maker but said that by virtue of his position as Mawu Sagye he was allowed to participate in the present election exercise. His evidence was not challenged. DW 4, also testified that he was a mere ward head of Angwan Sabo, in Wamba and that he was not the head of Mawu Ngo family, who is king-maker. But, as the holder of the title of Moyi which he inherited from his father, and the father was a king-maker, he automatically is a king-maker. That was why he was allowed to participate in the present exercise. The evidence was also not contradicted.

The learned trial judge reviewed the evidence of both DWs 1, 3

and 4, as can be seen on page 152 of the record, and accepted their evidence. There is in my view no apparent contradiction between the evidence of PW 4 and that of DWs 1, 3 and 4. What the P.W. 4 was saying as in the above quoted passage of his evidence was that as at the material time of the installation arrangements when he collected the pictures of DWs 3 and 4, they were not king-makers. And DWs 1, 3 and 4 did not categorically say that they were king-makers but that they were allowed to participate in the election exercise because of the traditional positions they held at that time. That was why the learned trial judge in reviewing the evidence of P.W. 4 on page 152 of the record said:-

"Although PW 4 testified that he erroneously provided captions for the photographs of DW 3 and DW 4 as King-makers at pages 14 and 16 of Exhibit 4 he did not testify that as at the time of this selection exercise they had not been so appointed". (Underlining mine)

What the learned judge was saying here was that although P.W. 4 testified that he wrongly caused the photographs of DW 3 and DW 4 to be put in Exhibit 4 as king-makers at the material time of the installation (in February 1983) he did not testify that as at the time of the present exercise (12th February 1991) DWs 3 and 4 had not been appointed king-makers. It is significant to observe that 7 years have elapsed between the time Exhibit 4 was made, and the time of the present election, when anything could have happened. The learned trial judge therefore accepted the evidence of P.W. 4 that he was wrong in taking the photographs of DW 3 and DW 4 as king-makers as at February 1983 for the installation of Oriye Rindre as 2nd class Chief. P.W. 4 made no mention of the position of DWs 3 and DW 4 at the time of present election between the parties in February 1991. **Therefore having accepted the evidence of DWs 1, 3 and 4 that they were allowed to participate in the present election as king-makers having regard to their traditional status, there was no evidence to prove that they were not such king-makers. That was why the learned trial judge concluded on page 154 of the record that:-**

"In my view the plaintiff failed to prove that they were not the proper king-makers for the exercise".

This is supported by the evidence as explained earlier and I am clearly of the view that the Court of Appeal, with respect, did not fully appreciate the meaning of the evidence and the findings of the learned trial judge in respect of the testimony of PW. 4 as against those of DWs 1, 3 and 4, when it held on page 270 of the record thus:-

"It is evidence (sic) that the evidence of P.W. 4 to the effect that Ibrahim Umaru (DW. 4) and Mohammadu Lamu (DW .3) were not the recognized king-makers which the learned trial judge accepted is irreconcilably in conflict with the evidence of DW 1, DW 3, and DW 4 in support that they were recognized king-makers which the learned trial judge similarly accepted."

It is my respectful view, that the evidence is reconcilable as discussed above and there is no conflict or contradiction which will bring into play the application of the case of Omolohon v. C.O.P (supra) relied upon by the Court of Appeal.

There was evidence that 2 allegedly qualified king-makers (Umaru Bici and Adamu Lanze) were refused entry to the election hall during the election exercise. The third person in this category was one Ibrahim Isa who was only mentioned in the pleadings but not mentioned at all in the evidence. And what is more, none of these 3 persons gave evidence at the trial.

But despite this anomaly, the Court of Appeal in its judgment on page 272 of the record held that:-

"If the three persons the appellant claimed to be the rightful king-makers had voted in place of the 3 king-makers whose participation in the election was questioned the fortunes of the parties, that is, the appellant and the 1st respondent would have been adversely or favourably affected depending on the side to which their votes were cast."

I agree that this observation may be correct in the circumstances. But the Court of Appeal went on to say:-

"As the pattern of their votes cannot be determined if they had been allowed to vote, I agree with Mr. James that the election is null and void. On this score alone this appeal succeeds."

The Court of Appeal did not quote any legal authority for making this point or finding, nor did it refer to any provision of the relevant law or regulation concerning the election itself. Since the failure of the 3 king-makers to vote could not determine the pattern of voting at the election, what made the election exercise null and void? I disagree with the Court of Appeal on this and I think that court was wrong in so holding.

The learned counsel for the appellant submitted in his brief that having regard to the findings of fact made by the learned trial judge on the evidence before him which were not erroneous or perverse, indicating that there was substantial compliance with Exhibit 6, the Court of Appeal was wrong to have set aside the decision of the trial court.

Exhibit 6 is the Appointment and Deposition of Chief (Appointment of Oriye Rindre) Order, 1990, published in the Plateau State of Nigeria Gazette No. 9, Vol. 15 of 21st June, 1990. The Order sets out in detail, the procedure to be following in the election or selection and appointment of the Oriye Rindre of Wamba. Paragraph 3 sets out the 3 ruling houses from which the candidates must come and paragraph 4 sets out the offices of the traditional selections constituting the electoral college for the selection or election. There are 11 selectors. The order also provides in paragraphs 5, 6, and 7 respectively for the appointment of a presiding officer for the election, the meeting of the selectors as electoral college for the election exercise and the nomination of candidates thereof. Paragraph 8 provides for the manner in which the election is to be conducted and the announcement of the result.

From the evidence presented at the trial, and accepted by the learned trial judge all went well at the election except that 3 king-makers DWs 1, 3, and 4 who actually voted at the election were challenged as not being king-makers, or qualified to vote. The learned trial judge found that the 3 king-makers were not successfully challenged and I agreed with him as explained earlier in this judgment. I also do not agree with the Court of Appeal that the mere participation of these 3 disputed king-makers simpliciter would invalidate the whole election. See Na-Gambo v. N.E.C. (1993)

1 NWLR (pt. 267) 94. And the failure of the 3 qualified king-makers to vote, for any reason, could not invalidate the election because the stipulated quorum at the election was sustained.

There was evidence that out of the 11 king-makers stipulated in paragraph 3 of Exhibit 6, 10 king-makers including the disputed ones were present at the elections. There was undisputed and unchallenged evidence that at the end of the voting, the result was that 7 persons voted for the appellant and 3 for the respondent. According to paragraph 6 (3) of Exhibit 6, the stipulated quorum at the election was 7. This in effect means that even if the 3 disputed king-makers were ignored or disregarded there was the required quorum of 7 selectors at the election. Again even if the votes of the 3 king-makers were disregarded out of the 7 votes cast for the appellant, he would still end up with 4 valid votes as against only 3 of the respondent. And paragraph 8 (1) of Exhibit 6, provides inter alia that:-

"..... all traditional selectors present at the meeting shall be entitled to vote. and the candidate who receives the largest number of votes shall be deemed to be selected the Oriye Rindre". (Underlining mine)

The words "selectors present" in this paragraph emphasize the requirement of the quorum which in this case is 7 and the "largest number of votes" means valid majority votes. In this case, the appellant with 4 valid votes has majority over the respondent with only 3 valid votes. Therefore the appellant was in my judgment, properly and validly selected the Oriye Rindre of Wamba and I so find. I also find that the election was conducted in substantial compliance which with the provisions of Exhibit 6. See Kaugama v. N.E.C. (1993) 3 NWLR (pt. 284) 681.

It is my respectful view that in an election such as in this case where the applicable law provides for a quorum of an electoral college, and the quorum was obtained when the votes were cast, such election cannot be invalidated merely because the absent members of the electoral college did not vote at the election.

I have said earlier in this judgment that this appeal will be determined on issues of fact only and having done so already, it appears to me clearly to have disposed of all the substantial issues in the appeal. I do not think that any useful purpose will be served in considering issue 2 in the circumstances.

Accordingly, this appeal succeeds and it is allowed. The decision and orders of the Court of Appeal in this case are hereby set aside and the decisions of the trial court restored. I award N10,000.00 costs to the appellant.

KARIBI-WHYTE JSC

I have read the judgment of my learned brother Umaru Atu Kalgo, JSC in this appeal. I agree with his reasoning, and conclusion that this appeal be allowed.

The appeal hangs on a very narrow point, namely whether Appellant was properly and validly selected the Oriye Rindre of Wamba. The point can be resolved on a proper construction of Exhibit 6, that is Appointment and Deposition of Chiefs (Appointment of Oriye Rindre) Order 1990 which sets out the procedure to be followed in the election or selection and appointment of the Oriye Rindre of Wamba. The relevant part of Exhibits 6, inter alia Which is paragraph 8 (1) provides -

"....all traditional selectors present at the meeting shall be entitled to vote, and the candidate who receives the largest number of votes shall be deemed to be selected the Oriye Rindre"

The evidence was that 10 king-makers including the 3 disputed ones were present, out of the 11 King-makers prescribed in the Order, Exhibit 6. According to paragraph 6 (3) of Exhibit 6, the quorum prescribed for an election was 7. There was accepted and undisputed evidence that at the end of the voting 7 persons voted for the Appellant against 3 for the Respondent.

Respondent is disputing the candidature of three king- makers. A careful analysis of the voting pattern discloses that even if the three disputed king-makers are disregarded, it merely reduces the number by 3

and still leaves the king-makers present and voting at 7. 7 members is the prescribed quorum

Again, even if the votes of the three disputed king-makers out of the seven were disregarded, it still leaves the Appellant with four votes as against three for the Respondent.

A simple grammatical construction of the expression, "the selectors present" and "Largest number of votes" in Exhibit 6 reproduced above would mean the requirement of the quorum of seven and the valid majority of votes respectively. In the instant case, the Appellant with 4 votes still has a majority over the Respondent with only 3 votes. There can be no doubt that the Appellant was properly and validly selected the Oriye Rindre of Wamba. The election, on the facts found was conducted in substantial compliance with the provision of Exhibit 6.

In addition to the fuller reasons given in the leading judgment of Kalgo, JSC in this appeal, this appeal succeeds and it is hereby allowed. The decision and orders of the court below are hereby set aside. The judgment of the trial Court is restored. Respondent shall pay N10,000 as costs to Appellant.

OGWUEGBU JSC

I had the privilege of reading in draft the judgment of my learned brother Kalgo, J.S.C. in this appeal. I agree entirely with his reasoning and conclusions.

The subject matter of the proceedings leading to this appeal is the succession to the traditional chieftaincy title of Oriye Rindre in Wamba within Akwanga Local Government Area of Plateau State. The plaintiff who is the respondent in this court commenced the action challenging the selection and appointment of the appellant who was the 1st defendant in the High Court of Plateau State holden at Jos.

The plaintiff sought for orders to set aside the selection and appointment of the 1st defendant as the Oriye Rindre for reasons that he was not a member of any of the ruling houses and that three persons, Ibrahim Umaru, Mohammed Lamu and Mallam Sambo Bici were wrong-

fully allowed to participate in the election exercise as king makers. He also prayed the court for various injunctive orders.

His entire claim was dismissed by the trial court and his appeal to the Court of Appeal, Jos Division succeeded. It is the 1st defendant B who has appealed to this court.

The procedure for the selection and appointment of a candidate to occupy the stool when vacant as was the case in 1990 when the last occupant Alhaji Suleiman Mohammed Kure died is contained in the Plateau State Legal Notice No. 2 of 1990 titled: "The Appointment And C Deposition of Chiefs (Appointment of Oriye Rindre) Order, 1990" Which was tendered in evidence as Exhibit "6". The main provisions relevant to this appeal are Paragraphs 3, 4 and 6 of the Order. They are as follows:

"3. The ORIYE RINDRE shall continue to be selected by the D traditional selectors from amongst the adult male descendants from each of the three ruling houses of:-

- (a) MUSA;
- (b) SUWA, and;
- E (c) PESA.

4. The traditional Selectors, which shall constitute the Electoral College for the purpose of the selection of the ORIYE RINDRE shall be persons holding the following officers:-

- F (i) Head of Mawu Pesa
- (ii) Head of Mawu Misa
- (iii) Head of Mawu Suwa
- (iv) Head of Mawu Sagye
- G (v) Head of Mawu Lulu
- (vi) Head of Mawu Ungo
- (vii) Sarkin Nakere
- (viii) Sarkin Wayo
- (ix) Sarkin Gitta
- H (x) Sarkin Jida
- (xi) Sarkin Konya

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6. (1) The Presiding Officer shall summon a meeting, within the

Local Government Area of the traditional selectors after giving a notice of not less than seven days of his intention to summon such a meeting.

(2) The Secretary and a representative of the Local Government Council appointed by the Military Governor shall be in attendance as observers.

(3) Seven traditional selectors shall constitute a quorum for such meeting."

The only serious question to be determined in this appeal is the competence of Ibrahim Umaru, Mohammed Lamu and Mallam Sambo Bici to participate in the selection exercise as traditional selectors or king-makers that constitute the Electoral College for the selection of Oriye Rindre in Paragraph . The learned trial judge was not unmindful of the leadership claim of the three men which were being challenged in a court action pending at the time he was delivering the judgment in this case. He held that the alone was no evidence of their incompetence or disqualification. He further held as follows:

"It is for the same reason that I disregard Exhibit 8, for whatever it is worth, as the justification for the capacity of each of these persons to participate in the selection exercise.

In my view the plaintiff failed to prove that they were not the proper king-makers for the exercise. I may be wrong in arriving at this conclusion."

He then considered Paragraph 6 (3) of Exhibits 6 thus:

"The plaintiff's complaint is on 3 out of 10 kingmakers that participated in the exercise. If this number is taken away from the 10 kingmakers there would be seven other kingmakers whose qualification were not questioned. Thus despite the complaint there was a quorum for the exercise. I shall proceeded (sic) further to deduct 3 votes those kingmakers on the assumption that they were invalid. The plaintiff admitted in the cross-examination that the votes credited to him were from P.W. 2, P.W. 5 and Auta Shammah. I therefore take it that the votes from

Paragraph 4 of Exhibit 6 named eleven village or ward heads that constitute the Electoral College for the selection. Ten out of eleven traditional selectors attended and participated in the exercise. The

eligibility of three out of the ten were disputed by the plaintiff during the election. The three were however allowed to participate in the exercise. There was no allegation that the 1st defendant prevented the three "lawful" selectors from attending and voting. I have carefully gone through the evidence and I am satisfied that the plaintiff/respondent did not prove by evidence that Ibrahim Umaru, Mohammed Lamu and Mallam Sambo Bici were not qualified kingmakers who should take part in the exercise. The learned trial judge was therefore right in the view he took.

Assuming without deciding that the three men whose qualifications were disputed were in fact not qualified to take part in the exercise, what effect had their voting on the selection and appointment of the 1st defendant? Paragraph 6 (3) of the Order stipulates that seven traditional selectors shall constitute a quorum for such exercise. Seven out of the ten selectors who took part in the exercise were qualified. There was therefore a quorum since Paragraph 6 (3) did not provide that all the traditional selectors must be present at any exercise for the selection of a candidate for the stool of Oriye Rindre. Deducting the votes of the three "interlopers", the plaintiff scored three votes out of seven and the 1st defendant scored four votes and would still have been rightfully declared the successful candidate.

In my view, the selection exercise despite the participation of the three men, was conducted substantially in accordance with the principle of the Appointment to And Deposition of Chiefs (Appointment of Oriye Rindre order, 1990. See *Nwobodo v. Onoh & Ors.* (1984) N.S.C.C 1. The learned trial judge gave equal treatment to both candidates when he deducted the votes D.W. 1, D.W. 3 and D.W. 4 were credited to the 1st defendant. After their votes are deducted from the total votes of 7 polled by the 1st defendant he would be left with 4 votes as against 4 votes (sic) polled by the plaintiff. It follows that the 1st defendant would still have been right fully declared the successful candidate for the throne had the presiding officer refused those kingmakers participation in the exercise on the plaintiff's complaint.

The plaintiff did not prove his complaint on the 3 kingmakers.

Even if he did it was without effect on the entire proceedings of the selection exercise."

The court below disagreed with the above findings and conclusions of the learned trial judge. That court held as follows:-

"With profound respect it seems to me that the learned trial judge has taken a simplistic view of the matter. Had he adverted to the effect of the invalidity of the votes of the disputed 3 king-makers but glossed over the possible effect that would have resulted if those they prevented from voting had been allowed to participate in the election exercise. If the three persons the appellant claimed to be rightful kingmakers had voted in place of the 3 king makers whose participation in the election was questioned the fortunes of the parties, that is, the appellant and the 1st respondent would have been adversely or favourably affected depending on the side to which their votes were cast. The cardinal or crucial issue for determination in the appeal is the validity of the election exercise."

The court below in the end allowed the appeal of the plaintiff and declared the election conducted on 12-2-91 between the plaintiff and the 1st defendant null and void of the three disputed selectors and the result showed that the 1st defendant won having regard to the stipulated quorum of seven. The intrusion of the three voters assuming that they were not qualified could not have materially affected the result. The result might have been different if the vote of any of the disputed selectors gave the 1st defendant majority of votes. In any case, the 1st defendant did not benefit from any irregularity if one existed.

The language of Exhibit 6 is very clear as to quorum and there was no fundamental failure to comply with its provisions. The learned trial judge was right in holding that there was substantial compliance with Exhibit 6 and therefore refused to nullify the election. It was the court below that took a very narrow view of the exhibit and failed to give effect to the clear and unambiguous words of the Order. Their Lordships of that court surprisingly strayed into the realm of imagination as to what the outcome would have been if the three rightful selectors had voted. This reasoning showed their complete lack of appreciation of the evi-

dence adduced and the provisions of Exhibit "6".

In the circumstance, the appeal succeeds and I hereby allow it. The judgment of the Court of Appeal, Jos Division is set aside while the judgment of the learned trial judge is restored. I make the same orders as
B contained in the lead judgment of my learned brother Kalgo, J.S.C. including the order as to costs.

IGUH JSC

C I have had the privilege of reading in draft the judgment just delivered by my learned brother, Kalgo J.S.C. and I agree entirely with the reasoning and conclusions therein.

Accordingly, I, too allow this appeal and make the same orders
D including those as to costs as are contained in the said judgment.

KATSINA-ALU JSC

E I had read before now in draft the judgment of my learned brother Kalgo JSC in this appeal. I agree entirely agree with it.

The election to fill the vacant stool of the Oriye Rindre of Wamba took place on 12 February 1991. That election was governed by the
F Appointment And Deposition of Chiefs (Appointment of Oriye Rindre) Order 1990 which was received in evidence as Exhibits '6' in these proceedings. The quorum for such an election as provided by Exhibit '6' was 7 kingmakers. 10 kingmakers were present and voted. At the election the Appellant polled 7 votes while the Respondent took the remaining
G 3 votes. The Plaintiff's claim was that 3 of the selectors by Kingmakers were not recognize Kingmakers and that their participation rendered the whole exercise void.

It was also claimed by the plaintiff that 3 recognized kingmakers
H were denied access into the venue of the meeting. The Plaintiff however failed to prove this allegation. None of the alleged three kingmakers was called to testify to that effect. In its approach, the court below wandered into area of speculation as to what might or might not have happened.

The Court of Appeal finally declared the election conducted on 12 February, 1991 null.

Was the Court of Appeal right to do so? I think not. As I indicated earlier on Exhibit '6' provided for a quorum of 7 Kingmakers. 10 Kingmakers met and took part in the selection exercise. The result was that the Appellant got 7 votes to 3 votes by the Respondent. It was contended that the 3 unqualified kingmakers cast their votes for the Appellant. So now even if the 3 votes were cancelled, the result would be Appellant 4 and Respondent 3. This would be in conformity with exhibit '6' since the kingmakers formed a quorum. Appellant would still have won. C

The nullification of the selection exercise by the court below, presupposes that all the 10 kingmakers as stipulated in Exhibit '6' must be present at the meeting. With all due respect, I disagree. It is an accepted fact of life that in such situations, it is not always possible that every member would attend. If that were so, the law would not provide for a quorum. It is not the business of anyone, the court inclusive, to begin to speculate on how the absent members would have voted. What is relevant always is what the members present and forming a quorum have done at such meetings. The reaction of the court below was not borne out by good law and good sense. D E

For this reason and the fuller reasons given by my lord Kalgo, F JSC, I also would allow the appeal with N10,000.00 costs to the Appellant. F

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