

SUPREME COURT OF NIGERIA
14TH JULY, 2000. SC. 43/1993
CORAM:- S. M. A. BELGORE, M. E. OGUNDARE,
U. MOHAMMED, A. I. KATSINA-ALU,
O. A. EJIWUNMI, JJSC

ALHAJA MUNIRAT ODUNTAN & 4 ORS. PLAINTIFFS/
(For themselves and on behalf of the ELETU-IWASE RESPONDENTS
CHIEFTAINCY FAMILY)

AND

ALHAJI ABUDU W. AKIBU & 2 ORS. DEFENDANTS/
(For themselves and on behalf of the APPELLANTS
Dosunmu family)

4. LAGOS ISLAND LOCAL DEFENDANTS/
GOVERNMENT COUNCIL RESPONDENTS
5. THE ATTORNEY-GENERAL LAGOS STATE)

***APPEALS** - Concurrent findings of fact - Attitude of the Supreme Court to such findings - Onus is on the appellant to establish that injustice has been done to him by such findings.*

***APPEALS** - Issues - Court of Appeal - Failure to consider all the issues placed before it - Is erroneous.*

***APPEALS** - Judgment - Finding - Which is supported by overwhelming evidence adduced at the trial - Would be affirmed*

***ARBITRATION** - Customary arbitration proceedings - Document purporting to represent - Probative value of - Where the document was executed by only one of the parties - It has no probative value.*

***CHIEFTAINCY MATTERS** - Chieftaincy title - Appointment - Oba and Chiefs of Lagos Edict No. 2 of 1975 - By virtue of the provisions of s. 5 - Where a non-member of a chieftaincy family was appointed - Such*

appointment is void ab initio.

CONSTITUTIONAL LAW - Existing law - Validity of - An existing law could only have effect with such modifications as would be necessary - To bring it into conformity with the Constitution.

EVIDENCE - Traditional evidence - Conflict in traditional evidence - Judgments in previous suits - Were rightly used to resolve such conflict.

JUDGMENTS - Appeal - Finding - Interference with - Where there is no evidence of exceptional circumstance - To justify an appellate court disturbing the finding - It will be affirmed.

JURISDICTION - Actions - Law applicable to an action - Is the law existing at the time the cause of action arose.

SUPREME COURT - Appeal - Power - The Court would only entertain an appeal against a decision of the Court of Appeal - And not directly against that of the High Court.

WORDS & PHRASES - Cause of action - How defined.

FACTS

In the High Court of Lagos State, the plaintiffs/respondents for themselves and on behalf of the Eletu-Iwase chieftaincy family instituted an action suit No. LD/231/81 against the 1st to 3rd defendants/appellants in a representative capacity for themselves and on behalf of the Dosunmu family. Other defendants are Lagos Island Local Government and the Attorney-General of Lagos State and their claims as endorsed on the writ of summons are inter alia for: a declaration that the Ogabi, Kusimi and Kumoku families are the only existing branches of the Eletu-Iwase chieftaincy family; a declaration that the Dosunmu family of which the 1st - 3rd defendants are members, is not a branch of the Eletu-Iwase chieftaincy family. During the pendency of the action, the Lagos State

Executive Council approved the appointment of the 3rd defendant, Badmos Agoro as the new Eletu-Iwase of Lagos with effect from 19th March, 1981, which led to filing of another action by the plaintiffs. The two actions were consolidated and tried together. A Tribunal of Inquiry was set up by the Lagos State Government to look into this chieftaincy dispute.

The case of the plaintiffs is that the defendants are members of the Ojon family and not of the Eletu-Iwase family. And to disprove defendant's claim to the Eletu Iwase chieftaincy the plaintiffs pleaded and tendered in evidence exhibits p7, p8 and p9 which are judgments in previous suits between the ancestors of the plaintiffs and that of the defendants. The exhibits were admitted in evidence without objection. At the conclusion of hearing the learned trial judge found in favour of the plaintiffs. He declared that the chieftaincy declaration made by the 4th defendant and approved by the 5th defendant is null and void and he granted an injunction restraining the defendants and or their agents from giving effect in any manner to the said declaration. Dissatisfied, the 1st - 3rd defendants appealed to the Court of Appeal. The plaintiffs also cross-appealed against that part of the judgment of the trial High Court wherein it relied on Exhibit D3 and refused to declare null and void the appointment of the 3rd defendant by the Executive Council. The 4th - 5th defendants did not appeal. The Court of Appeal (Lagos Division) in a unanimous decision dismissed both the main appeal and the cross-appeal. The 1st - 3rd defendants have now further appealed to the Supreme Court. The plaintiffs have also cross-appealed.

ISSUES FOR DETERMINATION

"1. 1a. Whether the Court of appeal was right in failing to declare that the High Court had no jurisdiction to nullify the number of 5 ruling houses recommended by the tribunal.

1b. Whether they were right in failing to declare that the High Court had no jurisdiction to nullify the Declaration, its registration, the appointment of the 3rd defendant. Etc, see p. 2564

HELD (Unanimously dismissing the appeal and allowing the cross-appeal per lead judgment of **OGUNDARE JSC**)

Supreme Court - Appeal

1. This Court would only entertain an appeal against a decision of the Court of Appeal and not directly against that of the High Court.
(p. 2569 B)

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Jurisdiction - Action

2. The law applicable to an action is the law existing at the time the cause of action arose and not the law existing when the jurisdiction of the court is invoked - Mustapha v. Governor of Lagos State (supra). (p. 2572 B)
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Words & Phrases - Cause of action

3. The term "cause of action" is defined in Black's Law Dictionary as meaning:
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"The fact or facts which give a person a right to judicial redress or relief against another. The legal effect of an occurrence. A situation or state of facts which would entitle party to sustain action and give him right to seek a judicial remedy in his behalf."

E In Cooke v. Gill (1872-73) 8LRCP 107, Brett, J defined the term thus:

"Cause of action' has been held from the earliest time to mean every fact which is material to be proved to entitle the plaintiff to succeed, - every fact which the defendant would have a right to traverse."

F (p. 2572 C)

Constitutional Law - Existing Law

4. True enough the Oba and Chiefs of Lagos Edict, became on the coming into force of the 1979 Constitution on 1st October 1979, an existing law
G but could only have effect with such modifications as would be necessary to bring it into conformity with the Constitution-see section 274 (1) of the Constitution. Section 14(c) of the Edict is patently inconsistent with section 4(8) above and by virtue of section 274 (3) (d) of the Constitution
H I hereby declare it invalid. 3rd Defendant's appointment as the Eletu-Iwase of Lagos was approved by the Executive Council on 19th March, 1981- see Exhibit D12 and D20. That is the date a cause of action arose in respect of any challenge to that appointment. And it was a time the

court had acquired jurisdiction by virtue of the Constitution to entertain any suit challenging that appointment. The conclusion I, Therefore, reach is that the trial High Court had jurisdiction to entertain, as it did, the two suits filed by the plaintiffs. (p. 2575 C)

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Evidence - Traditional evidence

5. Defendants have not denied that Yesufu Agoro and Sule Agoro were their ancestors. In fact, they recognised the prominence of Yesufu Agoro in their family history. It is my humble view that Exhibits P7 -P9, though do not constitute res judicata, are however relevant to the issues arising in this case and were rightly used by the learned trial judge to resolve the conflict in the traditional evidence of the parties. I see no substance in the complaints of the Defendants and I resolve their issue 3 against them. (p. 2584 A)

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Appeal - Concurrent Findings

6. The attitude of this Court to concurrent finds of fact of the two Courts below has always been that this Court will not disturb such findings unless they are shown to be perverse - Sobakin v. The State (1981) 5SC. 75 or there is a substantial error apparent on the record of proceedings.- Ibodo v. Enarofia (1980) 5-7 SC. 42 or there is some miscarriage of justice - Enang v. Adu (1981) 11-12 SC. 25. Where there is sufficient evidence supporting such concurrent findings, this Court will not interfere with them - Njoku v. Eme (1973) 5SC.293. The onus is on the appellant to establish that injustice has been done to him by such findings if he expects this Court to interfere with those findings. (p. 2584 D)

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Finding - Interference with

7. I think the learned trial judge was right to have rejected the Defendants' traditional history and to have accepted plaintiffs' history. And according to the latter history, Dosunmu, son of kupa died young and without an issue. The Dosunmu of the Defendants was not related to the Eletu-Iwase chieftaincy family. The defendants, as appellants, have failed to satisfy me that that finding is perverse or that there are any exceptional

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circumstance to justify this Court disturbing the finding. I unhesitatingly affirm it too. (p. 2586 C)

Judgment - Finding which is supported by evidence

B 8. The Defendants, attempt to link themselves with the Eletu-Iwase Chieftaincy family was also rejected by the two Courts below who found that their family title is OJON of Lagos. I think this finding, too is supported by overwhelming evidence - both oral and documentary - adduced at the trial. I have no difficulty in affirming that finding also.
C (p. 2586 F)

Appeals - Issues

D 9. On the first issue, the Court below was clearly in error to have failed to consider, and pronounce on, all the issues placed before it in respect of the cross-appeal. This Court has in a number of cases drawn the attention of the Courts below to the undesirability of doing so.(p.2592 F)

E ***Arbitration - Customary arbitration***

F 10. In view of the obvious lapses in Exhibit D3, it is difficult to regard it as representing arbitration proceedings. There is no evidence that the Eletu-Iwase family or the head of family knew what was going on and agreed to participate. The Courts below recognised three branches of that family. There is no evidence that those who participated at the so called arbitration proceedings were representing or appointed to represent these branches. It was clear that a "section" that allegedly participated refused or failed to sign Exhibit D3.

G If the two Courts below had adverted their minds to these salient points they could not have found that the document had any weight or that the Eletu-Iwase family recognised the Defendants as part of the Chieftaincy family. The gimmicks of the Dosunmu-Agoro family that
H Commenced with Yesufu Agoro- See Exhibits P7, P8 and P9 appear to continue even to this day. (p. 2592 H)

Chieftaincy Matters - Chieftaincy title

11. I cannot see how the 3rd Defendant could be eligible for appointment as the Eletu-Iwase. Only members of that family could validly be appointed to the office. The provision of section 5 of the Oba and Chiefs of Lagos Edict No.2 of 1975 (see now section 16 of the Obas and Chiefs of Lagos State law, 1981, now Cap. 138 Laws of Lagos State 1994) only empowered the Executive Council to approve the appointment of a qualified person. Where a non-member of a Chieftaincy family was appointed such appointment is void ab initio and the approval of the Executive Council would not, and could not, confer validity on such appointment; the approval itself is equally void. Section 44 of the Law would only save any valid, but not void, appointment made under the 1975 Edict for anything based on a void act "bad and incurably bad"- per Lord Denning in Macfoy v. U.A.C. (1962) AC 152 at 160. See also Skenconsult v. Ukey (1981) 1SC, 6; Agbetoba v. Lagos State Executive Council (1991) 4NWLR 664, 684F, 691G-H. The invalidity of the appointment, and approval of appointment, of the 3rd Defendant has nothing to do with whether the approval was given by the Executive Council rather than the Governor but because of his non-membership of the Eletu-Iwase chieftaincy family. (p. 2594 A)

REPRESENTATION

Chief H. J. Agoro, A. Agoro, with Mrs. O. Oshodi for the Appellants/
Cross - Respondents

M. D. Belgore, for the Respondents/Cross - Appellants

CASES REFERRED TO

Savage v. Uwaechia (1972) 3SC 225, 232, (1972) ANLR 255

Fadare v. Attorney - General, Oyo State (1982) 4SC. 1

Kusada v. Sokoto N. A. (1968) ANLR 366

Mirmansk State Steamship Line v. The kano Oil Millers Ltd (1974) 12 H
SC1

Adigun Attorney-General Oyo State (1987) 1 NWLR 678.

Macfoy v. U.A.C. (1962) AC 152 at 160

Cooke v. Gill (1872-73) 8LRCP 107

Read v. Brown (1888) 22 QBD 128 at 131

Skenconsult v. Ukey (1981) 1SC, 6

Agbetoba v. Lagos State Executive Council (1991) 4NWLR 664

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STATUTES REFERRED TO

Oba and Chiefs of Lagos Edict No. 2 of 1975 now cap. 138 of Laws of Lagos State 1994); ss. 1, 2, 3, 5 and 14 (c)

C Constitution of the Federal Republic of Nigeria, 1979, ss. 4(8), 6(6) (d) and 274

Constitution of the Federal Republic of Nigeria, 1963, s. 161 (3)

Constitution (Basic Provisions) Decree No. 32 of 1975; s.4

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LEAD JUDGMENT BY OGUNDARE JSC

This appeal relates to the long drawn tussle in the ELETU-IWASE Chieftaincy title of Lagos. The last ELETU-IWASE, Bakare Gbajumo died on the 27th day of July, 1971. Since then the issue of succession to the office has become a matter of acrimony in the Chieftaincy family. In consequence the Lagos State Government set up a Tribunal of Enquiry to determine the number of Ruling houses entitled to present candidates for the Chieftaincy. The tribunal at the end of its assignment in a report submitted by it recommended five Ruling houses namely: KUMOKU, KUSIMI, SAJOBI, DOSUNMU and ERUFA. It was further recommended that the next Ruling house to present a candidate would be Dosunmu Ruling house. Pursuant to section 1 of the Oba and Chiefs of Lagos Edict 1975 No. 2 of 1975, the Chieftaincy committee of the Lagos Island Local Government made a declaration prescribing five Ruling houses as named above and the next Ruling house to present a candidate being Dosunmu Ruling houses. The declaration was made on the 20th August, 1979 and forwarded to the Executive Council for approval and registration. The Executive Council of Lagos State did not approve the chieftaincy declaration until the 7th day of August 1980. It is not clear when the declaration was eventually registered but it would be presumed for the purpose of the action that the declaration was registered on the day it

was approved by the Executive Council, that is, 7th August 1980.

The members of the ELETU-IWASE Chieftaincy Family were not happy with the declaration and in February 1981 instituted an action Suit No. LD/231/81 in the High Court of Lagos State. The action was instituted by Alhaja Munirat Oduntan the head of the ELETU-IWASE B Chieftaincy family and a member of Kusimi branch of the family; Rafiu Yesufu Agunbiade, the general secretary of the family and a member of the Ogabi branch of the family; Mushafiu Saka Oluwa, the treasurer of the family and a member of the Kusimi branch; Ganiyu Giwa, a member C of the Kumoku branch of the family; Lasisi Oduntan, another member of the Kusimi branch and Oluyole Dabiri a member of the ogabi branch of the family. The six plaintiffs instituted the action for themselves and on behalf of the entire members of the ELETU-IWASE Chieftaincy family. Joined as defendants to the action are Alhaji Abudu W. Akibu, Alhaji D Salisu Agoro and Badmos Agoro, all three were sued in a representative capacity, that is, for themselves and on behalf of the Dosunmu family. Other defendants are Lagos Island Local Government and the Attorney-General of Lagos State and their claims as endorsed on the writs of E summons, are:

(1) *A declaration that the Ogabi, Kusimi and Kumoku families are the only existing branches of the Eletu-Iwase Chieftaincy family,*

(2) *A declaration that the Dosunmu family, of which the 1st to F 3rd defendants are members, is not a branch of the Eletu-Iwase Chieftaincy family.*

(3) *A declaration that consequently, Ogabi, Kusimi and Kumoku branches of the Eletu-Iwase Chieftaincy family are the only branches of G the Eletu-Iwase Chieftaincy family entitled to nominate candidates for the Eletu-Iwase Chieftaincy title.*

(4) *A declaration that the 3rd defendant or any other member of the Dosunmu and / or installed the Eletu-Iwase of Lagos.*

(5) *A declaration that the declaration made on the 20th day of H August 1979 by the 4th defendant is null and void and of no effect whatsoever.*

(6) *A declaration that the approval given on the 7th day of*

August 1980 by the executive council of the Lagos State Government, of the declaration made by the 4th defendant on the 20th day of August 1979 is null and void and of no effect whatsoever.

B (7) A declaration that the registration of the said declaration that the registration of the said whatsoever.

(8) A declaration that the 4th defendant's letter to the Dosunmu family dated the 14th of October, 1980, directing that they nominate one of their members as the Eletu-Iwase elect is null and void and of no effect whatsoever.

C (9) A declaration that the nomination of the 3rd defendant by other members of the Dosunmu family as the Eletu-Iwaseelect is null and Void and of no effect whatsoever
and

D (10) A perpetual injunction restraining the defendants , their servants and/or agents from giving effect in any manner to the declaration dated the 20th of August, 1979."

E During the pendency of the action the Lagos State Executive Council approved the appointment of the 3rd defendant Badmos Agoro as the new ELETU-Iwase of Lagos with effect from 19th march, 1981. In consequence, plaintiffs in suit No. LD/ 231/81 institutes against the defendants in that action yet another action LD/545/81 claiming:

F 1. A declaration that the purported appointment of the 3rd Defendant Badmos Agoro as the Eletu-Iwase of Lagos and the purported approval of the appointment contained in the letter Ref. No. 001600C/ vol.2/293 date 25th March, 1981 issued under the hand of the Council Manager of the 4th Defendant to the Head of the Eletu-Iwase Chieftaincy
G family are null and void and of no effect.

2. A declaration that the 3rd Defendant is not the Eletu-Iwase of Lagos.

H 3. An injunction restraining the 3rd Defendant from holding himself out as the Eletu-Iwase of Lagos and /or performing any of the traditional functions of the Eletu-Iwase or enjoying any of the traditional rights and privileges of the Eletu-Iwase .

4. N5, 000,00 damages for trespass to the Iga (palace) of the

Eletu-Iwase of Lagos: and

5. Perpetual injunction restraining the Defendants, their servants, agents and privies from trespassing and/or continuing to trespass on the Iga (palace) of the Eletu- Iwase of Lagos."

On the application of the plaintiffs the two actions were on 8/2/81 consolidated and tried together. B

Pleadings were ordered, filed and exchanged and were by leave of Court amended. The case proceeded to trial on the plaintiffs' amended lied statement of claim, filed on 1/2/83, the further amended statement of defence of the 1st to 3rd defendants filed on 14/11/83, the statement of defence of the 4th defendant filed on 10/9/81, the statement of defence of the 5th defendant filed on 2/10/81 and the plaintiffs' reply filed on 10/3/83. Evidence was led at the trial and in a considered judgment delivered on 15/7/86, the learned trial judge J. O. Williams J. found: C

1. that there are only three ruling houses in respect of Eletu-Iwase Chieftaincy and not five and that these three are Ogabi, Kusimi and Kumoku; D

2. that Sajobi being a son of Ogabi, there could have been no Sajobi ruling houses. E

3. that the property at 136 Great Bridge Street Lagos is the property of Chief Eletu-Iwase and not that of Chief Ojon;

4. that the Dosunmu family of which the 1st - 3rd defendants are members is not a branch of the Eletu-Chieftaincy family F

5. that only Ogabi , Kusimi and Kumoku branches of the Eletu-Iwase family are the only branches of the Eletu-Iwase family entitled to nominate candidates for the Chieftaincy title.

On these findings, he declared that the chieftaincy declaration made by G the 4th defendant and approved by the 5th defendant is null and void and he granted an injunction restraining the defendants and or their agent from giving effect in any manner to the said declaration. In sum total he granted reliefs 1,2,3,5,6,7,8,9, and 10 claimed by the plaintiffs in suit H No. LD/231/81. He declined to make a declaration prayed for in relief (4). In respect of the plaintiffs' reliefs 1&2 in suit No. LD/545/81 the learned judge found it unnecessary to make the declaration sought therein.

He, however, granted the injunction prayed for in relief (3) of that suit. In respect of relief (4) he awarded a sum of N500,00 as damages for trespass against the 3rd defendant and also ordered a perpetual injunction restraining all the defendants, their servants etc. from trespassing on the

B Iga of Eletu-Iwase.

Being dissatisfied with this judgment, the 1st to 3rd defendants appealed to the Court of Appeal. The plaintiffs also cross- appealed against that part of the judgment of the trial High Court wherein it relied on Exhibit D3 and refused to declare null and void the appointment of the 3rd defendant by the Executive Council. The 4th-5th defendants did not appeal. The Court of Appeal (Lagos Division) in a unanimous decision dismissed both the main appeal of the 1st - 3rd defendants and the cross-appeal of the plaintiffs. The 1st-3rd defendants have now further appealed D to this Court. The plaintiffs have also cross-appealed.

In respect of the main appeal of the defendants, the following four questions are formulated by them in their brief as calling for determination in this appeal to wit:

E "1. 1a. Whether the Court of appeal was right in failing to declare that the High Court had no jurisdiction to nullify the number of 5 ruling houses recommended by the tribunal.

F 1b. Whether they were right in failing to declare that the High Court had no jurisdiction to nullify the Declaration, its registration, the appointment of the 3rd defendant.

G 2. Whether the declaration, its registration and appointment of the 3rd defendant were validly made and the approval of the Declaration and the approval of the appointment of 3rd defendant were competently given.

3. Whether the judgments in Exhibits P7, P8 and P9 can bind the 1st -3rd defendants/appellants thereby nullifying:

H in p2. (a) The findings of the Tribunal which was made into declaration

(b) Approval and registration of the declaration.

(c) Appointment and approval of the appointment of 3rd defendant as gazetted in Exhibit D13.

4. *Whether upon the evidence before the Court, the Court of Appeal was right in dismissing the main appeal.*"

The plaintiffs for their part submitted the following three questions for our consideration:

"1. *Whether the Court Appeal was correct in failing to hold that the learned trial court had no jurisdiction to grant the reliefs sought?*" B

2. *Whether the Court of Appeal was right in failing to set aside the decision of the trial court nullifying exhibit P2?*

3. *Whether the Court of Appeal failed to consider exhibits P7, P8 and P9 and if so whether their failure ought to occasion a reversal of their judgment?"* C

I think the Defendants' Issues are to be preferred. As regards plaintiffs' cross-appeal, the following two questions are set down in the cross-appellants' brief as calling for determination: D

"1. *Whether the Court of Appeal ought to have entertained all the issues formulated by the plaintiffs in their appeal before them on the merits.*

2. If the answer to issue one is in the affirmative:- E

(a) *Whether the Court of Appeal ought to have held that exhibit D3 had no probative value; and*

(b) *Whether the Court of Appeal ought to have held that the Executive Council was not Competent to approve the appointment of the 3rd Defendant as Eletu-Iwase."* F

The defendants formulate the following two issues as calling for determination in the cross-appeal:

"1. *Whether Exhibit D3 had any weight or probative value.*

2. *Whether the approvals given to the declaration and to the appointment of the 3rd defendant were competently given within the ambit of 1979 Constitution."* G

I need mention at this stage that the defendants also filed a Reply brief in respect of the main appeal. H

The plaintiffs filed Notice of preliminary objection to grounds 5,7,9 and 10 of the grounds of appeal filed by the defendants.

I think this is a convenient stage to dispose of the plaintiffs'

preliminary objection. Grounds 5,7, 9 and 10 objected to read as follows:

"5. The learned justices of the Court of Appeal erred in law when they held that an executive action (i.e. the making approval and registration of the declaration and approval of appointment of 3rd defendant) was taken outside the provisions of the Enabling Law thereby making such act null and void.

PARTICULARS OF ERROR

(1) The justices of the Court of Appeal failed to see that the making of the Declaration, its approval and registration and approval of appointment of 3rd Defendant were within the ambit of Enabling Law and certain sections of the 1979 Constitution i. e. S. 5(2), S. 6 6 (d) S. 171 (5), S. 174 (1), S.274 4b and S. 274 4(c)."

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7. The learned Justices of the Court of Appeal erred in law when they declared Exhibit P2- the Declaration null and void in view of saving and transitional Provisions of S. 274 of the 1979 Constitution and S. 43 of Oba & Chiefs Law of Lagos State, 1981.

PARTICULARS OF ERRORS

(1) Failure to declare that Exhibit P2 is an existing law within the meaning of S.274 4b of 1979 Constitution.

(2) The Justices of the Court of Appeal failed to realise that Exhibit P2 complied with Exhibit D12 the enabling edict and the law applicable at the time Exhibit P2 was registered.

(3) Failure to consider the saving and transitional provisions of s. 274 (1) and S.274 4c of the 1979 Constitution and S.43 of Oba & Chiefs Law of Lagos repealed Edict of 1975."

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(9) The Justices of the Court of Appeal erred in law and in fact when they held that the trial Judge's perception on Exhibit D3 was correct when in fact and in law the conclusions were manifestly erroneous, contradictory and perverse and it substantially affects decision appealed against.

PARTICULARS OF ERRORS

(1) The Justices of the Court of Appeal did not direct their minds

to the material contradiction of the trial Judge on Exhibit D3, where he said: 'I find it difficult to accept the contents of that document in its entirety as being correct but I find that the inclusion of those persons mentioned in it show that they were members of the family or had been accepted as such there being no evidence that the document Exhibit was spurious.' B

(2) This statement goes to show the importance and weight the trial Judge ought to attach to Exhibit D3.

(3) There was no evidence that the Respondents destroyed or diminished the weight. C

(4) The learned Justices' of the Court of Appeal failure to reverse the conclusion or decision amounts to substantial miscarriage of Justice."

10. That the judgment of the Court of Appeal is against the weight of evidence." D

It is the submission of the plaintiffs that grounds 5 and 7 do not relate to any decision of the Court of Appeal. And as grounds of appeal must relate to a decision appealed against, the two grounds are incompetent. The Defendants, in reply, submit that the "plaintiffs' complaint on Ground 5 of our appeal cannot hold because at pages 782- 783 of the record Honourable Justice of the Court of Appeal came to a conclusion that if an executive action is taken outside the provisions of the enabling law, the action is taken outside jurisdiction and a court of law is entitled to pronounce such an act null and void." F

Now, what did the Court below, per Tobi JCA, say on pages 782-783? The learned Justice of Appeal said:

"Let me take the laws cited by counsel in turn. Subject to the proviso to section 52 (b) section 52 of Cap. 25 ousted the jurisdiction of the courts in Chieftaincy matters. Section 14 of the Obas and Chiefs Law, No.2 of 1975 ousted the jurisdiction of the courts in Chieftaincy disputes. Learned counsel did not specifically make reference to the section or sections he relied upon in Act No.32 of 1975. I am therefore in some confusion. From the general tenor and intendment of his submission, he is likely to be dealing with section 4 which provides that 'no question as to the validity of this or any other Decree or of any Edict shall be G

entertained by any court of law in Nigeria'.

It is not my understanding that the respondents, by their action, questioned the validity of any existing law made on or after 15th January, 1966 as to the competence of any authority or person to make any such law. On the contrary, they seem to question the validity of executive action. In my humble view, there is a big wall demarcating the two. There is also a big world of difference between the two. A law which is validly promulgated or enacted could be wrongfully, unlawfully or illegally executed. While the law remains sacrosanct, its sacrosanctity cannot cure a wrongful or illegal executive action outside the provision of an enabling law, then the action is taken without jurisdiction, and a court of law is entitled to pronounce such an act null and void. That, in my opinion, is quite different from the court questioning the competence of any authority or person to make any law. I therefore, hold that section 6 (6) (d) of the Constitution does not assist the appellants." (underlinings are mine)

The first underlined portion of the passage above appears to be the learned Justices' understanding of the submission of learned counsel for the Defendants. The second underlined portion is a statement of law while the third portion is a decision. On reading ground 5, it would appear that the Defendants' complaint relates to the second portion. The complain is not that the statement of law therein is erroneous but that Court below decided that " the making, approval and registration of the declaration and approval of appointment of 3rd Defendant was taken outside the provisions of the Enabling Law". With respect to learned leading Counsel for the Defendants the Court below, per Tobi JCA, made no such decision in the above passage. Consequently, I must uphold the plaintiffs' objection to Ground 5 which is accordingly hereby struck out, as relating to no decision of the Court below that could be appealed against.

On ground 7, it is the contention of the plaintiffs that the Court below did not declare the Chieftaincy declaration, Exhibit p2 invalid. Rather it was the trial Court that did so. Hence the urged us to declare ground 7 incompetent. In reply, Defendants, in their brief, argue that "the plaintiff in claim 5 claimed that exhibit P2 the declaration be declared null and void at the High Court but the Court of Appeal in its judgment affirmed the

decision of the High Court in respect of claim 5. It is our submission that the totality of the judgment of the Court of Appeal was to render exhibit P2 null, void or invalid."

I think the plaintiffs are again on a strong wicket. It was the trial High Court that declared Exhibit P2 invalid. All that the court below did to affirm that finding of the trial High Court. The Court below could only have erred in affirming that decision of the trial High Court. The ground 7 as worded is obviously incompetent. **This Court would only entertain an appeal against a decision of the Court of Appeal and not directly against that of the High Court.** Ground 7 is accordingly struck out.

In formulating the issues for determination the Defendants predicated their issue 2 on Grounds 5, 6 and 7. With the striking out of grounds 5 and, 7, Issue 2 can only stand if it can be supported by Ground 6 alone, Ground 6 reads:

"6. The learned Justices of the Court of Appeal erred in law when they failed to give effect to Exhibit D12- The Oba and Chiefs of Lagos Edict No. 2 of 1975 with necessary modification in order to bring Exhibit D12 in conformity with the provisions of the 1979 Constitution.

PARTICULARS OF ERRORS

(1) Failure of the Justices of the Court of Appeal to realise that they are under obligation to bring Exhibit D12 in conformity with provisions of the 1979 Constitution.

(2) Failure of the Justices of the Court of Appeal to follow the decisions of Supreme Court in cases of

(i) Adigun v. A. G. Oyo State (1987) 1 N.W. L. R. 53 678.

(ii) Agbetoba v. Lagos State Executive Council (1991) 4 N.W. L. R. (pt. 188) Page 664.

(3) Failure to realise that S. 274 4 (1) and 274 4 (c) are saving and transition provision to be invoked in a situation of this nature."

For ease of reference Defendants' Issue 2 reads:

"Whether the declaration, its registration and appointment of the 3rd defendant were validly made and the approval of the declaration and the approval of the appointment of 3rd defendants were competently given."

Surely, this issue cannot be sustained on ground 6 alone which only complains of effect no been given to the Oba and Chiefs of Lagos Edict No.2 of 1975. Defendants' Issue 2 is accordingly struck out as well. And as ground 6 appears not to have any issue raised on it, it is deemed abandoned and is accordingly struck out.

Ground 9 complains about the perception given by the Court below to Exhibit D3. No issue is predicated on this ground which, too, is deemed abandoned and is accordingly struck out.

The objection to ground 10 is to the effect (1) that the ground is not one of the original nor additional grounds of appeal in respect of which the Defendants sought and obtained leave of this Court to argue and (2) that no issue is predicated on it.

It cannot be correct to say that ground 10 is not included in the original grounds of appeal contained in the Defendants' notice of appeal. It is ground 10 in that notice. And on 29th April 1992 leave was sought by the Defendants, and obtained, from the Court below to appeal to this Court on the grounds filed other than of law. I, therefore, see no substance in the first leg of the objection to this ground.

The second leg appears, also, to be misconceived. Issue 4 appears to be covered by ground 10 of the grounds of appeal. The objection to ground 10 is accordingly struck out.

In sum, grounds 5,6, 7, and 9 are struck out. Issue 2 is also struck out as it is not covered by any ground (s) of appeal. Having thus disposed of the preliminary objection of the plaintiffs, I now turn to a consideration of the issues properly arising for consideration in this appeal and they are as formulated as Issues 1 (a) & (b), 3 and 4 in the Defendants' brief.

JURISDICTION:

A considerable length of the brief of the Defendants and of the Oral argument of their learned leading counsel is devoted to this issue. The sum total of the submissions boils down to this, and that is, that trial High Court lacked jurisdiction to entertain the suits before it by virtue of sub-section (6) (d) of section 6 of the 1979 Constitution, section 4 of Decree 32 of 1975, section 161 (3) of the 1963 Constitution of the Federal

Republic of Nigeria and section 14 (c) of Edict No.2 of 1975. Sub-section (6) (d) of section 6 of the 19779 provided:

"(6) The judicial powers vested in accordance with the foregoing provisions of this section-

(d) Shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January 1966, for determining any issue or question as to the competence of any authority or person to make any such law."

Section 4 of Decree No. 32 of 1975 titled Constitution (Basic provision) Decree 1975 read:

"No question as to the validity of this or any other Decree or of any Edict shall be entertained by any Court of law in Nigeria."

Section 161 (3) of the 1963 Constitution ousted the jurisdiction of the court in chieftaincy matters. And section 14 (c) of Edict No.2 of 1975 of Lagos State titled Oba and Chiefs of Lagos Edict provided:

"14. Notwithstanding anything in any written law whereby or where-under jurisdiction is conferred upon any court, whether such jurisdiction is original, appellate or by way of transfer, no court shall have jurisdiction, whether by way of prerogative order or otherwise, to entertain any civil cause or matter instituted for-

(c) calling in question anything done in the execution of any of the provisions of this Edict or the repealed Act or in respect of any neglect or default in the execution of any such provisions by the Executive Council, the State Commissioner, the committee, or a chieftaincy family."

The plaintiffs both in their brief and in oral arguments of their learned counsel, have argued to the contrary. They contend that as the cause of action arose after 1st October 1979 when the 1979 Constitution came into force, the court's jurisdiction is not ousted.

There is no doubt that the claims of the plaintiffs in the two actions instituted by them relate to the chieftaincy of the Eletu-Iwase of Lagos and that they seek to declare invalid (1) the chieftaincy declaration (Exhibit p2) relating thereto on the ground that it is inconsistent with the customary law relating to the chieftaincy and (2) the appointment of the 3rd Defendant as Eletu-Iwase made thereunder. By the combined effect

of section 161 (3) of the 1963 Constitution and section 14 (c) of the Oba and Chiefs of Lagos Edict 1975, the court would have no jurisdiction to entertain a suit relating to that chieftaincy if the cause of action arose before 1st October 1979 when the 1979 Constitution came into force-
 B Mustapha v. Governor of Lagos State & Ors. (1987) (pt. 1) NSCC 632. It follows that the first question I have to answer is: when did the cause of action arise in this case?

This is a determining question in this case. For the law applicable
 C to an action is the law existing at the time the cause of action arose and not the law existing when the jurisdiction of the court is invoked - Mustapha v. Governor of Lagos State (supra). The term "cause of action" is defined in Black's Law Dictionary as meaning:

*"The fact or facts which give a person a right to judicial redress
 D or relief against another. The legal effect of an occurrence. A situation or state of facts which would entitle party to sustain action and give him right to seek a judicial remedy in his behalf."*

In Cooke v. Gill (1872-73) 8LRCP 107, Brett, J defined the term
 E thus:

"Cause of action' has been held from the earliest time to mean every fact which is material to be proved to entitle the plaintiff to succeed, - every fact which the defendant would have a right to traverse."

This definition was cited, with approval, by Lord Esher, M.R. in Read v. Brown (1888) 22 QBD 128 at 131. Fatayi-William JSC, (as he then was), delivering the judgment of the Court in Savage v. Uwaechia (1972) 3SC 225, 232, (1972) ANLR 255, approved of this definition when he said:

*"A cause of action is defined in Stroud's Judicial Dictionary as
 G the entire set of circumstances giving rise to an enforceable claim. To our mind, it is, in effect, the fact or combination of facts which give rise to a right to sue and it consists of two elements the wrongful act of the defendant which gives the plaintiff his cause of complain and the
 H consequent damage. As Lord Esther said in Cooke v. Gill (18873) L.R. 8 C. P. 107 and later in Read v. Brown (1888) 22 Q. B. D. 128 (C. A), it is every fact that it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. (See*

also Kusada v. Sokoto Native Authority, S.C. 131/68 delivered on 13th December, 1968, where the definition in Read v. Brown (*supra*) was referred to with approval). See also Fadare v. Attorney-General, Oyo State (1982) 4SC.1; Kusada v. Sokoto N. A. (1968) ANLR 366; Mirmansk State Steamship Line v. The Kano Oil Millers Ltd. (1974) 12 SC1.

Anyone wanting to challenge the correctness or validity of a chieftaincy declaration made under the Oba and Chiefs of Lagos Edict, when does the cause of action arise? It is the contention of the Defendants that the cause of action, in this case arose when Exhibit p2 was made by the Chieftaincy Committee of the Lagos Island Local Government on 20th August 1979. It is further contended that as at that date the court's jurisdiction over Chieftaincy question was ousted, the trial High Court had no jurisdiction to entertain plaintiffs' claims. It is contended for the plaintiffs, on the other hand, that the Executive Council of Lagos State and registered and this, according to learned counsel for the plaintiffs, was not earlier than 7th August 1980. Counsel submitted that by then the 1979 Constitution had come into force and the 1963 Constitution and Constitution (Basic provisions) Decree No. 32 of 1975 had ceased to have effect. He referred to sections 4 (8) and 274 of the 1979 Constitution and submitted that the combined effect of these provisions was to render invalid section 14 (c) of the Oba and Chiefs of Lagos Edict No.2 of 1975. He concluded that the trial High Court had jurisdiction to entertain plaintiffs' suits.

The Oba and Chiefs of Lagos Edict provides for the making of a Chieftaincy declaration. For our purpose, the relevant sections are 1& 2 which read:

"1.- (1) Subject to the provisions of this Edict, a committee of Chiefs for the selection of Oba and traditional chiefs of Lagos (hereafter referred to as 'the committee') constituted in accordance with provisions of Schedule 1 hereto -

(a) may, or

(b) shall, if so required by the Military Governor, make a declaration in writing Stating the customary law which regulates the selection of a person to be the Oba or a traditional Chief of Lagos.

(2) *The declaration of the committee shall include a statement of the customary law relating to the following matters:*

(a) *the number of ruling houses and the identity of each such ruling houses;*

B (b) *Where there is more than one ruling house, the order of rotation in which the respective ruling houses are entitled to provide candidates to fill successive vacancies in the chieftaincy: and*

(c) *the method of selection by each ruling house.*

C (3) *Where a declaration does not contain a sufficiently clear statement of the customary law relating to any of the matters set out in subsection (2) above the Executive Council may within a specified period refer the declaration back for further consideration by the committee, as it may in any case deem appropriate.*

D (4) *Subject to the provisions of this section, the Executive Council, if it thinks fit, may make, vary or revoke the standing orders respecting the proceedings of the committee or the time or the form in which any declaration shall be made.*

E 2.- (1) *Every declaration made by the committee and approved by the Executive Council shall be registered and retained in safe custody by the Ministry of Local Government and Chieftaincy Affairs.*

F (2) *Where a declaration is registered under the provisions of this section, the matters therein stated shall be deemed to be the customary law regulating the selection of a person to be the holder of the Obaship or chieftaincy to the exclusion of any other customary usage or rule.*

(3) *No declaration shall come into effect until it is registered in accordance with this Edict."*

G Section I provides that the Chieftaincy Committee shall make a declaration in writing stating (1) the customary law regulating the selection of a person to be the Oba or a traditional chief of Lagos and (2) what the customary law shall contain. Section 2 empowers the Executive Council
H to approve a declaration made pursuant to section 1 and to register, after approval, the declaration. After registration, the declaration is deemed to be the customary law, to the exclusion of any other customary usage or rule, regulating the selection of a person to be the holder of the obaship or

chieftaincy. Section 2 also provides that a declaration shall not come into effect until is registered in accordance with the Edict.

Turning now to the case on hand, the undisputed facts are that the chieftaincy committee of the Lagos Island Local Government made Exhibit P2 (the chieftaincy declaration in respect of the Eletu-Iwase title) B on 20th August 1979. The declaration was not approved by the Executive Council until 7th August 1980 and registered. It is only after the latter date that Exhibit P2 came into effect, that is, that it assumed force of law. In my respectful view it is only after that date that anyone aggrieved C by Exhibit P2 has a cause of action to challenge it. With respect, learned leading counsel for the Defendant is in error to say that the cause of action arose on 20th August 1979.

True enough the Oba and Chiefs of Lagos Edict, became on the coming into force of the 1979 Constitution on 1st October 1979, D an existing law but could only have effect with such modifications as would be necessary to bring it into conformity with the Constitution-see section 274 (1) of the Constitution. Now section 4(8) of the Constitution provided: E

"4(8) Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law; and accordingly, the National Assembly or a House F of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court of law and of a judicial tribunal established by law."

Section 14(c) of the Edict is patently inconsistent with section 4(8) above G and by virtue of section 274 (3) (d) of the Constitution I hereby declare it invalid. 3rd Defendant's appointment as the Eletu-Iwase of Lagos was approved by the Executive Council on 19th March, 1981- see Exhibit D12 and D20. That is the date a cause of action arose in respect of any challenge to that appointment. And it was a time the court had acquired H jurisdiction by virtue of the Constitution to entertain any suit challenging that appointment. The conclusion I, Therefore, reach is that the trial High Court had jurisdiction to entertain, as it did, the two suits filed by

the plaintiffs.

This is not the end of the Defendants' challenge to the jurisdiction of the trial High Court. First, it is contended that the court would have no jurisdiction to nullify, how-be- it indirectly, the recommendations of the tribunal appointed in 1979 to look into the Eletu-Iwase chieftaincy. I think this contention is misconceived. There is no claim seeking to nullify the recommendations of the tribunal. Furthermore, and more importantly, there is no evidence that in making the declaration (Exhibit P2) the chieftaincy committee made use of the report of the tribunal. In any event, at best, the report of the tribunal would only be a step in the making of the declaration. And if there is jurisdiction to entertain a challenge to the Exhibit P2, it would not matter that the process of its making commenced in 1976. What matters is when the cause of action arose, that is when then process of its making ended.

It is also contended that the court has no jurisdiction to make a declaration and that, therefore, it would not have original jurisdiction to determine the number of ruling houses in respect of any chieftaincy but only a supervisory jurisdiction over the tribunal set up to look into the chieftaincy. Reliance for this Submission is placed on Adigun v. Attorney-General Oyo State (1987) 1 NWLR 678. I think this submission, too, is misconceived. The learned trial Judge, on the evidence before him, made a finding that there are three ruling houses, and not five, in respect of the Eletu-Iwase chieftaincy. The result of this finding is that Exhibit P2 is faulty as regards the number of ruling houses. It is for the Executive Council pursuant to section 3 of the Oba and Chiefs of Lagos Edict to have Exhibit P2 amended to reflect the correct situation. Section 3 reads-

"3.-(1) 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 the Obaship of Lagos or a traditional chieftaincy;

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

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

(d) is otherwise defective, faulty or objectionable having regard to the provisions of this Edict, the Executive Council may require the committee to amend such declaration in any respect that it may specify, or to make a new declaration, accordingly as it may consider necessary or desirable in each case.

B

(2) The Executive Council may approve or refuse to approve a registered declaration amended or a new declaration made by the committee under subsection (1) of this section.

(3) Where the committee fails to amend a registered declaration in the respects specified by the Executive Council, or to make a new declaration, within a reasonable period of its being required to do so, in accordance with subsection (1) of this section, the Executive Council may amend the registered declaration in accordance with the powers conferred on the committee under this Edict.

C

D

(4) Any registered declaration amended or a new declaration made by the committee, and approved by the Executive Council and any registered declaration amended or new declaration made by the Executive Council under subsection (3) of this section shall be re-registered or registered, as the case may be, and retained by the ministry of Local Government and Chieftaincy Affairs.

E

(5) A registered declaration amended or new declaration made under subsection (1) of this section shall not come into effect until it has re-registered or registered, as the case may be, and upon being so re-registered or registered, such declaration shall be deemed to contain the customary law regulating the selection of a person to be the holder of the Obaship or chieftaincy to which it relates, to the exclusion of any other customary usage or rule or any other declaration that may have been made or registered under any written law."

F

G

I do not see the Lagos State Government disregarding the judgment of a court. It is expected, therefore, that if that finding of the trial Court is finally affirmed by this Court, the Lagos State Government will set in motion steps as laid down in section 3 or any succeeding statute, to amend Exhibit p2 accordingly.

From all I have said above, I resolve the issue of jurisdiction

raised in this appeal against the Defendants.

EXHIBITS P7 P8 and P9

B Exhibit P7 is the judgment of Sir Donald Kingdom, Chief Justice of Nigeria sitting in the Supreme Court of Nigeria (as the High Court was then known) given on 19th October 1935 in suit No: 420/1934 YESUFU AGORO v. ABUDU SALAMI ODUNTAN. The first 4 paragraphs of the judgment which set out the respective claims of the parties read:

C *"In this case plaintiff claims to be head of the Eletuwase Family and in that capacity he claims against the defendant recovery of possession of rooms occupied by the defendant at 44 Ojo Street, Lagos, which is part of the Eletuwase Family property.*

D *He contends that Defendant is not a member of the Eletuwase family but is only allowed to live on the property, and that he has forfeited his right to continue to live there by letting out rooms without permission of the plaintiff and other members of the family.*

The Defendant contends that plaintiff is not the head of the family and therefore not entitled to bring this action at all.

E *He also contends that he himself is a member of the family and as such is in occupation of the property in dispute and is entitled to remain in occupation.*

The learned Chief Justice made the following findings of fact:

F 1. *"To succeed in this action the first thing the plaintiff has got to prove is that he is the head of the Eletuwase family and he has failed to do this to my satisfaction. This is not the first litigation in which he has sought to establish his contention."*

G 2. *"I find as a fact that Defendant is a member of the Eletuwase family and I accept his account that he is a direct descendant, viz great-great grandson of kupa, the first Eletuwase, as such he is entitled to live on the Eletuwase family land and I accept his contention that the property in dispute, on part of which he lives and part of which he has let out, is H that part of the Eletu was family land which has been allotted to his branch of the family, and the use and occupation of which has been controlled by that branch for a very considerable time."*
plaintiff's case was dismissed.

Exhibit P7 was pleaded in paragraph 2 of the plaintiffs' Reply to paragraph 14(c) of the Defendants' statement of defence. Now paragraph 14(c) reads:

"(c) "After the death of Idowu Ogan, Yesufu Agoro became the Head of the Eletu Iwase Chieftaincy Family, a position which he held until after the installation of Bakare Ajoose as the 6th Eletu Iwase of Lagos; and the 1st, 2nd and 3rd Defendants will rely at the trial of this suit on the Deeds of Mortgage dated 1st November 1920 and registered as No. 68 at page 261 in Volume 143 Lagos and another dated 27th June 1924 and registered as No. 81 at page 338 in Volume 179 Lagos, caution Notice dated 1st September 1936, and Letter of Authority dated 1st February, 1935."

plaintiffs' reply reads:

"with regard to paragraph 14(c) of the Statement of Defence of the 1st - 3rd and 4th Defendants, the plaintiffs aver that Yesufu Agoro was never head of the Eletu-Iwase Chieftaincy Family, but a pretender to the headship of the said family, and will rely on the judgment in Suit No. 420/1934 delivered on 16/10/35."

Exhibit P8 is the judgment of Cecil Williams Victor Carey, J. sitting in the supreme Court of Nigeria given on 15th march 1937 in suit No. 342/1936 -BAKARE AJOSE - Chief Eletu Iwase v. Yesufu Iluobi Osuro. The opening paragraphs of this judgment disclose what the suit was all about and they read:

"The plaintiff's claim against the defendant is for recovery of possession of all premises wrongful occupied by the said defendant and his people in the Iga of the Eletu-Iwase situate and being at No. 14 Eletu Iwase Street, Lagos."

The plaintiff claims as the Head of the Eletu Iwase Family regularly elected and installed by Virtue of which the Iga is vested in him and he controls the use thereof.

It is admitted that the premises No. 14 Eletu Iwase Street, H constitute the Iga (palace) of Chief Eletu Iwase and it is proved without dispute that only those persons whom he invites or permits are entitled to reside there.

The whole question therefore turns on whether the defendants is the properly elected Chief Eletu Iwase."

The verdict of the Court read:

The defendant and his followers have no right to occupy any part of the Iga Eletu Iwase. The plaintiff is entitled to recover possession of the premises there which the defendant and his followers unlawfully occupy, and such recovery of possession forthwith is hereby ordered and the plaintiff is allowed the costs of this action, assessed at forty guineas."

The judgment Portrayed Yesufu Agoro as

"an ambitious and forceful personality, formerly a pretender to the Headship of the family. His pretensions to the Headship of the family. His pretensions to the Headship were finally disposed of by a suit in this Court No. 420 of 1934 - Yesufu Agoro Versus Abudu Salami Oduntan; and, probably because of the claims of Yesufu Agoro, the Eletu Iwase family become alive to the desirability of resurrecting the chieftaincy, which had lain in abeyance for about 40 years since the death of Akanbi, the former Chief Eletu Iwase."

The judgment recognised the defendant in the case as a member of the Eletu-Iwase family but found him to be a puppet of Yesufu Agoro. PWI Rafiu Yesufu Agunbiade also agreed in his evidence in the present suit that Yesufu Iluobi Osuro was a member of the Eletu-Iwase family of the Ogabi branch.

Exhibit P9 is the copy of the proceedings and judgment in suit No: 44/46; Chief BAKARE AJOSE V. YESUFU AGORO & SULE AGORO in the Supreme Court of Nigeria before Francis Baker, Ag. Chief justice. Sule Agoro, the second defendant in the action was the Chief Ojon of Lagos. The claims were:

"(a) an account of all rents and mesne profits collected or received by the defendant or his agent in respect of the Eletu Iwase Chieftaincy property situate at and known as No. 136, Great Bridge Street, Lagos in the Colony of Nigeria, from the year 1938 up to date and

(b) the payment over to the plaintiff of whatever is found due, and

(c) possession of the said premises."

The plaintiff pleaded, inter alia, as follows:

"3. *The said property is owned by the said Eletu Iwase Chieftaincy Family from time immemorial and is covered by a registered Crown Grant bearing date the 1st day of September, 1870.*

4. *While the stool of Eletu-Iwase Chieftaincy was 'vacant', the defendant took upon himself the management of the real and personal properties of the said family including the property in dispute, and after the installation of the plaintiff rendered to him, sometime in 1938, account of rents collected and expenses alleged to have been incurred by him on the management of the said Family property.*

5. *Sometime in 1936 the defendant, contrary to 'native law and custom, created one Yesufu Iluobi Osuro as a rival Chief to the plaintiff and later placed him in the said property.*

6. *The plaintiff instituted an action against the said Yesufu Iluobi Osuro in Suit No. 318 of 1938 and obtained judgment for possession of the said property.*

7. *The defendant, notwithstanding the said property, let some portion to tenants and collects rents &c (sic) for his own use and benefit without account to the plaintiff.*

8. *In spite of several and repeated demands, the defendant has refused or neglected and still refuses or neglects to deliver the possession of the said property to the plaintiff and to render an account to him."*

The 2nd defendant pleaded, in reply, thus:

"2. *This defendant denies paragraph 3 of the Statement of Claim and says that although the Crown Grant covering the property in dispute bears the name Eletu- Iwase, plaintiff's ancestor, yet in truth and in fact the said property belongs from time immemorial to the Ojon Chieftaincy and has always been know as the Iga Ojon.*

3. *The defendant further says that Dosunmu, the 1st Chief Ojon was the eldest son of Ogabi the then Chief Eletu Iwase, who acquired the land for his son to build his own Iga (palace).*

4. *After the death of Dosunmu, the 1st Chief Ojon, there was an interregnum in the Ojon Chieftaincy for a good many years, and it was during that period that the Crown Grant was made out in the name of*

Eletuwase'.

6. This defendant denies paragraphs 4&5 of the Statement of Claim.

7. With regards to paragraph 6, this defendant says that the plaintiff was acting in the capacity of trustee of the Ojon Chieftaincy as at the time of the said action the stool of Ojon Chieftaincy was vacant. The said action was instituted by the plaintiff with the Knowledge and consent of the leading members and head of the Ojon Chieftaincy Family.

8. This defendant says he was duly elected and capped Chief Ojon on the 31st March 1946, and as such he is the only one entitled to possession of the property in dispute and that he is rightly in possession." The learned trial acting Chief justice, in his judgment found-

"Now this Court has in two previous suits 342 of 1936 and 318 of 1938 decided that the premises the subject matter of this action belong to the Eletu Iwashe Family yet despite these judgments the Ojon Family of which the defendant is the Chief still persist in trying to Obtain possession of the premises, apart however from these two before mentioned decisions I am satisfied from the evidence I have heard that the premises are and always have been the property of the Eletu Iwase family and I do not believe the land was ever given to one Docemo a one time Chief Ojon accordingly possession the premises is given to plaintiff as Chief Eletu Iwase, and first defendant is ordered to render an account of all rents he has collected from the tenants of the said premises since the year 1938."

Both exhibits P8 and P9 were pleaded in paragraph 56 of the plaintiffs' amended statement of claim.

The case for the plaintiffs is that the Defendants are members of the Ojon family and not of the Eletu Iwase family. And to disprove Defendants' claim to the Eletu Iwase chieftaincy it has become necessary for them to tender exhibits P7, P9 which were admitted in evidence without objection.

It is now contended by the Defendants that those judgments do not bind them or create estoppel against them. I think the Defendants misconceived the purpose for which the judgments were tendered in

evidence. The purpose, of course, was to debunk the averments in their pleadings, particularly paragraph 14 (c) thereof and to establish plaintiffs' case as averred in paragraph 57 of their pleadings. These judgments constitute acts in recent times from which a court could decide which version of the traditional history was probable. The learned trial judge B considered these exhibits and found-

"Having read the proceedings and judgments in Exhibit P7, Exhibit P8 and Exhibit P9 very carefully, I find that the purpose of those cases was to establish the ownership of the Eletu-Iwase Chieftaincy family in all its properties and to free them from interference which might have occurred. I have on doubt at all in my mind that the properties of the Eletu-Iwase Chieftaincy family were different from those of Chief Ojon's properties." C

I think he was right in this finding. The Defendants had pleaded the mortgages granted by Yesufu Agoro over the properties of Eletu-Iwase family. Exhibits P7, P8 and P9 show that he was not the head of the Eletu Iwase family he claimed to be in the mortgage deeds Defendants pleaded. The learned trial judge also relied on these judgments in resolving the conflicts in the traditional evidence of the two parties. I think he was in order in the use he made of these judgments and other documents tendered evidence. The learned judge observed: D

"Learned counsel for 1st to 3rd defendants urged strenuously that the judgments Exhibit P7, Exhibit P8 and Exhibit P9 should be rejected because they had no relationship with this case. I have read these judgments carefully and as I said above they bind the present parties. It is true that they decided matters relating to family properties but it must be emphasized that it was only through the actions and dealings by some persons with these properties that one could gain an insight other affairs of the family. It must be remembered also that the causes of the disputes in the family were the return of Dosunmu and his descendants to Lagos and their claim to certain properties of the Family. As can be gathered from the evidence, it was never their intention to vie for the Chieftaincy title." F G H

After setting out Exhibits P10 and P11, the learned Judge went on to say:

"The letters Exhibit P10 and Exhibit P11 are of recent dates and they enable one to ascertain the probability of each of the traditional histories of the parties."

Defendants have not denied that Yesufu Agoro and Sule Agoro were their ancestors. In fact, they recognised the prominence of Yesufu Agoro in their family history. It is my humble view that Exhibits P7 -P9, though do not constitute res judicata, are however relevant to the issues arising in this case and were rightly used by the learned trial judge to resolve the conflict in the traditional evidence of the parties. I see no substance in the complaints of the Defendants and I resolve their issue 3 against them.

ISSUE 4

This issue relates to findings of fact made by the learned trial Judge and affirmed by the Court below. The attitude of this Court to concurrent finds of fact of the two Courts below has always been that this Court will not disturb such findings unless they are shown to be perverse - Sobakin v. The State (1981) 5SC. 75 or there is a substantial error apparent on the record of proceedings.- Ibodo v. Enarofia (1980) 5-7 SC. 42 or there is some miscarriage of justice - Enang v. Adu (1981) 11-12 SC. 25. Where there is sufficient evidence supporting such concurrent findings, this Court will not interfere with them - Njoku v. Eme (1973) 5SC.293. The onus is on the appellant to establish that injustice has been done to him by such findings if he expects this Court to interfere with those findings.

In the case on hand it is not in dispute that Kupa came from Benin to establish the chieftaincy title of Eletu- Iwase in Lagos and that he was succeeded in the office by his children, Ogabi, Kusimi, and Kumoku in that order. Other holders of the office were Akanbi (son of Kusimi), Bakare Ajose of the Kusimi line and Bakare Gbajumo of the Ogabi line. The establishment of the three ruling houses of Ogabi, Kusimi and Kumoku is borne out by the overwhelming evidence on record. The Defendants claimed that Ogabi begat Akanbi, Orisajobi (or Sajobi), Dosunmu and Erufa (a female). According to them, Akanbi died without issue. They now claim that there five ruling houses for the Eletu- Iwase

chieftaincy, that is to say, Kusimi, Kumoku, Sajobi, Dosunmu and Erufa, the last three were, according to them, children of Ogabi. In effect they have split the Ogabi branch into three. If Ogabi, Kusimi and Kumoku were children of Kupa the founder of the title and these three succeeded him in the order of their age seniority, one would think that these three children would constitute the three ruling houses for the chieftaincy. It is, therefore, not surprising that the two courts below had no hesitation in rejecting Defendants' claim of five ruling houses. To make their case worse, the founder of one of their five ruling houses was a woman (Erufa). They have not pleaded nor led evidence, to show that a woman ever held, or could hold, the title of Eletu Iwase of Lagos. How then could Erufa found a ruling house? It is significant that Dw6, Sumonu Tijani Gbajumo spoke of "three branches of the family."

I think the two Courts below came to the right decision that there are three branches constituting the Eletu-Iwase chieftaincy family, namely Ogabi, Kusimi and Kumoku. The attempt to obliterate Ogabi and substitute him with Sajobi, Dosunmu and Erufa, none of whom ever held the title was rightly rejected by the two Courts below. Defendants pleaded in paragraph 4 and 5 of their final pleadings thus:

"4(a) Kupa was accompanied from Benin to Lagos by his then only son, Ogabi, who became the 2nd Eletu Iwase of Lagos after the death of his father Kupa.

(b) That beside Ogabi, Kupa had two other children, namely: Kusimi and Kumoku.

5. That Ogabi had four children, namely: Akanbi (alias Ogundairo), Orisajobi (shortly called 'Sajobi'), Dosunmu and Erufa."

In his evidence, however, DW1, Olatunji Agoro, the star witness for the defence on traditional history, deposed:

"I am the great, great, great, great grandson of Kupa, the 1st Eletu-Iwase of Lagos.....

I know something about Eletu-Iwase Family. The Family came from Benin in Bendel State. Kupa was the ancestor of Eletu-Iwase Family. He came with some other people.

Ashipa was the first king of Lagos. Kupa came to Lagos with

Bajulaiye, Ashogbon and Eletu Odibo. Kupa became the Eletu-Iwase of Lagos.

Ogabi became the Eletu-Iwase after death of his father Kupa. Ogabi is dead now. He had six children. The children are Kusimi, Kumoku, Akanbi, Sajobi, Dosunmu and Erufa."

Further in his evidence, he claimed:

"Kupa had only one child."

The evidence of this witness is clearly inconsistent with the traditional history pleaded by the defendants in a very material way and contradicts that of DW6 Sunmonu Tijani Gbajumo who testified that Kupa begat Ogabi, Kusimi and Kumoku and 3rd Defendant who testified that Kupa had three children, namely: Ogabi, kumoku and kusimi. This should have been the end of the Defendants' case. **I think the learned trial judge was right to have rejected the Defendants' traditional history and to have accepted plaintiffs' history. And according to the latter history, Dosunmu, son of kupa died young and without an issue. The Dosunmu of the Defendants was not related to the Eletu-Iwase chieftaincy family. The defendants, as appellants, have failed to satisfy me that that finding is perverse or that there are any exceptional circumstance to justify this Court disturbing the finding. I unhesitatingly affirm it too.**

The Defendants, attempt to link themselves with the Eletu-Iwase Chieftaincy family was also rejected the two Courts below who found that their family title is OJON of Lagos. I think this finding, too is supported by overwhelming evidence - both oral and documentary - adduced at the trial. I have no difficulty in affirming that finding also.

With these two findings judgment was rightly entered in plaintiffs' favour. The 4th Issue is resolved against the Defendants. Consequently, the appeal of the Defendants fails and it is hereby dismissed by me.

H THE CROSS - APPEAL

The cross-appeal centers in part around Exhibit D3 and the use made of it by the two courts below. Exhibit D3 is the report of an arbitration committee aid to have been set up by the Oba Adele and Chiefs

of Lagos in 1955 to look into the filling of the vacancy in the Eletu-Iwase Chieftaincy at the time. The Agoro family, who are Defendants in the present proceedings, took part in the arbitration proceedings.

The Defendants pleaded in paragraph 23 of their final pleadings as follows:

"23(a) In all the documents in which Yesufu Agoro was declared Head of Eletu Iwase Chieftaincy Family or member of the Eletu Iwase Chieftaincy Family, none of the plaintiffs denied Yesufu Agoro's right to membership of the Eletu Iwase Chieftaincy family.

(b) The right of the Agoros to membership of the Eletu Iwase Chieftaincy Family was not disputed by any member of the Eletu Iwase Chieftaincy Family when the Arbitration Committee was set up in 1955."

Thus the purpose for which Exhibit D3 was tendered was to prove the averment in paragraph 23(b) above. The document was tendered in evidence by Dw6, Sunmonu Tijani Gbajumo, who testified thus:

"I remember the year 1955. I also remember the late Oba Musendiku Adele II. In that year he intervened in one dispute in our family. A new chief was to be installed. There was a dispute. The children of kusimi, Agoro and us the children of Gbajumo wanted the title. Oba Adele called us and told us that we should select 6 persons from each branch to meet.

We heeded the advice. We appointed the Committee (sic) was Abdul Baki Agoro. The head of the Eletu Iwase Family was Chief Ogunoimo who was Chief Oloto.

The proceedings of the Committee were recorded. The three branches of the family were present at the meetings of the Committee. The original of the Report of the Committee should be at the Ministry of Local Government and Chieftaincy Matters. We instructed our lawyer to obtain a certified true copy of the proceedings. This is the certified true copy of the proceedings of the Arbitration Committee tendered, no objection Sofunde, Yesuff, Mrs. Aderemi admitted and marked Exhibit D3.

The persons put up for candidates are in Exhibit D3. Bakare Ajose was selected as the Chief Eletu -Iwase. The Agoro family was

present before the committee."

DW7, Alhaji Lasisi Bakare identified the signature of Jas Ogundimu on Exhibit D3.

In his final address at the trial, Mr. Sofunde learned counsel for the plaintiffs, argued that the Defendants failed to prove the due execution of Exhibit D3. He submitted:

"I now move to Exhibit D3. It contains arbitration proceedings. The certified true copy was tendered without objection. The contents or portions of Exhibit D3 tend to contradict the plaintiffs' story but it is my submission that Exhibit D3 had no value. Exhibit D3 being a certified true copy is only proof of its original or proof of the contents of the document in custody of the ministry of local Government. I refer to sections 111, 112(j) and 113 of the Evidence Act.

I submit that when a certified true copy is tendered that copy cannot prove the truth of its own contents. There is a presumption that it is genuine and that if it is compared with the original it will be found to be genuine; the presumption is only as to the genuineness. Evidence must be led apart from all these prove the built (sic) of the document. That evidence must be other than mere production of the certified copy. That is why where certified true copies of conveyance are produced, parties call other evidence to prove execution and so on. I refer to Cardoso v. St Matthew Daniel & Anor. (1966) 1 All NLR 25 at 27-29. The law only allows a copy to be produced as evidence of original not as proof of the truth of the contents. Party relying on such a document must prove the truth of the document. Section 99 of the Evidence Act about handwriting. Also Sec. 100 which provides the mode of proof. Original should have been produced in this case.

DW 7 Purports to have proved the due execution of Exhibit D3. I however submit that his testimony cannot amount to due execution. His basis of being able to recognise Jas Ogundimu's signature on Exhibit D3 is that after the death of Jas Ogundimu, he took over as Secretary Oloto family and during this period, he saw documents purported to have been signed by Jas Ogundimu. It was on this basis that he identified the signature of Jas Ogundimu. His evidence is hearsay having been given

after Ogundimu's death. Anybody can identify any person's signature after his death. The proper person to give that evidence was the person who was there when he signed Exhibit D3 or a person who had dealings with him during his lifetime and was familiar with the handwriting. I submit, therefore, that the oral evidence of DW1 is inadmissible by virtue of Sec. 75 and 131 of the Evidence Act. The cue execution of Exhibit D3 should have been proved." (underlining is mine)

On Exhibit D3, the learned trial Judge observed:

"One would have come to the conclusion that these letters and the judgment in Exhibit P9 should have decided all disputes between the ancestors of the 1st to 3rd defendants and those of the plaintiffs, but as it would happen again, it became necessary to appoint another Eletu- Iwase to replace Bakare Ajoye who had died. An Arbitration Committee was appointed by the then Oba of Lagos to select one candidate to fill the Vacancy see Exhibit D3. The Chairman of the meeting was Imam Baki Agoro, brother of Yesufu Agoro, who was rebuked in the judgment Exhibit P9 for giving prejudiced evidence. There was no objection by anyone to his appointment and to the presence of five other members who described themselves as being members of the Agoro 'section'. According to the document (Exhibit D3) it was recommended that 'a son of Ogabi' be appointed the next Eletu-Iwase." (underling is mine)

Commenting on the submission of Mr. Sofunde the learned Judge said:

"It was the submission of learned counsel for the plaintiffs that Exhibit D3 should be rejected because it could not be regarded as a genuine document, it being a copy of the original which was not produced. The short answer to this is that there was no objection to its admissibility when it was produced from the custody of the ministry of Local Government and Community Affairs. It must be pointed out that it was the signature of only one signatory that was identified and that was of Mr. Jas Ogundimu by DW7."

He then ruled on the weight he attached to the document in these words:

"It is also apparent from the document Exhibit D3 that only two of the three sections said to have been summoned were present. The two 'sections' present were the Agoro 'section' and another 'section' containing

persons whose connection with the Eletu-Iwase Family was not strictly proves except that of Jas Ogundimu. Those who were in that Committee were not persons who could easily be fitted in to the Ruling Houses as have been found above. The Committee did not even nominate any particular person. I find it difficult to accept the contents of the document in its entirety as being correct but I find that the inclusion of those persons mentioned in it show that they were members of the Family or had been accepted as such, there being no evidence that the document Exhibit D3 was spurious."

The plaintiffs did not like the weight placed on Exhibit D3 by the learned trial Judge and appealed to the Court of Appeal on it upon one ground of appeal, to wit:

(1) The learned trial judge erred in law when he held as follows:-
 'It was the submission of learned counsel for the plaintiffs that Ex. D3 should be rejected because it could not be regarded as a genuine document, it being a copy of the original which was not produced. The short answer to this is that there was no objection to its admissibility when it was produced from the custody of the Ministry of Local Government and Community Affairs. It must be pointed out that the signature of only one signatory was identified and that was of Mr. Jas Ogundimu by DW.7

Particulars of Error

(a) The pith and substance of the submission of learned counsel was not that Exhibit D3 is inadmissible, but that it is of no probative value.

(b) No objection could validly have been taken to its admissibility because it was a legally admissible document.

(c) Having regard however to the fact that no one who had personal knowledge of the contents of the document testified, and the signatures on the original were not proved the learned trial judge ought to have treated Exited D3 as a document admissible in law but having no weight."

The notice of cross-appeal contained a second ground of appeal which concerned another aspect of the judgment of the trial court. Ground 2 read:

(2) The learned trial judge erred in law when he held as follows:-

'I think that this is a convenient stage to make reference to the alternative submission of learned counsel for the plaintiffs with regard to the nullity of the action of the Executive Council in approving the appointment of the 3rd defendant with effect from 19th March 1981 by L. S. L. No. 38 1981. It must be said that by the Obas and Chiefs Law No.6 of 1981 which repealed the Chiefs Law Cap. 25 of Lagos State all actions of the Executive Council were saved by section 44 of the said law No.6 of 1981"

Particulars of Error

(a) Section 44 above referred to is only a saving provision saving an otherwise valid act notwithstanding the repeal of the enactment under which it was done.

(b) The said section can not in any event cure any irregularity in so far as the complaint is that the section of the Chiefs Law empowering the Executive Council to act is void having regard to the provisions of the 1979 Constitution."

The Court of Appeal, per Tobi JCA, dealt with the issue arising out of Ground 1 above but, with profound respect to him, he completely misconceived the submissions of Mr. Sofunde SAN on it as a result of which he arrived at in my humble view, an erroneous conclusion when he opined that Mr. Sofunde raised the issue of admissibility of Exhibit 3 rather than the weight to attach to it and that this was raising a new point on appeal. I think their Lordships of the Court below, with respect to them, are wrong. Mr. Sofunde did not raise any point on appeal different to that raised by him in his address at the trial. And that is, that due execution of Exhibit D3 not having been proved no weight should be attached to it.

In fairness to the Court below, the above wrong conclusion notwithstanding, the Court still considered the value of the document and observed, per Tobi JCA:

"Having said that, I now come to the point whether this is proper case for this court to take for the first time. I would rather think so. There is enough evidence at the trial court for me to deal with the matter.

It is a matter of documentary evidence. I have once more read the findings of the learned trial judge as quoted above and I am satisfied that he is correct in his perception and analysis of Exhibit D3."

The Court proceeded to dismiss the cross- appeal without
B Considering the other two issues placed before it and predicated on Ground
2. These issues are:

"2. Whether the Executive Council was Competent to approve the appointment of the 3rd defendant as Eletu-Iwase; and

3. If the answer to question 2 is in the negative, whether the
C *incompetence was cured by the Section 44 of the Oba and Chiefs law No. 6 of 1981."*

The plaintiffs have now appealed against the decision on their complaint on Exhibit D3 and the non- consideration of their issues 2 and
D 3 before the Court below. And two issues have been placed before us for the determination of the cross-appeal. For ease of reference, these are:

"1. Whether the Court of Appeal ought to have entertained all the issues formulated by the plaintiffs in their appeal before them on the
E *merits,*

2. If the answer to issue one is in the affirmative:-

(a) Whether the Court of Appeal ought to have held that exhibit D3 had no probative value; and

(b) Whether the Court of Appeal ought to have held that the
F *executive council was not competent to approve the appointment of the 3rd Defendant as Eletu-Iwase."*

On the first issue, the Court below was clearly in error to have failed to consider, and pronounce on, all the issue placed before
G **it in respect of the cross-appeal. This Court has in a number of cases drawn the attention of the Courts below to the undesirability of doing so.** So, Issue (1) does not present much difficulty to resolve.

ISSUE 2

H I have considered the submissions of learned counsel for the parties. **In view of the obvious lapses in Exhibit D3, it is difficult to regard it as representing arbitration proceedings.** The learned trial Judge found (and this is obvious on the face of the document) that:

"It is also apparent from the document Exhibit D3 that only two of the three sections said to have been summoned were present. The two 'sections' present were the Agoro 'section' and another 'section' containing persons whose connection with the Eletu-Iwase Family was not strictly proved except that of Jas Ogundimu. Those who were in that Committee were not persons who could easily be fitted into the Ruling Houses as have been found above. The Committee did not even nominate any particular person. I find it difficult to accept the contents of that document in its entirety as being correct....."

How then, in the face of the above, could the learned Judge and their Lordships of the Court below place any weight on such a document? **There is no evidence that the Eletu-Iwase family or the head of family knew what was going on and agreed to participate. The Courts below recognised three branches of that family. There is no evidence that those who participated at the so called arbitration proceedings were representing or appointed to represent these branches. It was clear that a "section" that allegedly participated refused or failed to sign Exhibit D3.**

If the two Courts below had adverted their minds to these salient points they could not have found that the document had any weight or that the Eletu-Iwase family recognised the Defendants as part of the Chieftaincy family. The gimmicks of the Dosunmu-Agoro family that Commenced with Yesufu Agoro- See Exhibits P7, P8 and P9 appear to continue even to this day.

ISSUE 3

The learned trial Judge found that-

"there could not have been a Dosunmu branch of the Family. I find that the Ogabi, Kusimi and Kumoku branches are the only existing branches of the Eletu-Iwase Chieftaincy family; that the Dosunmu family of which the 1st to 3rd defendants are members is not a branch of the Eletu-Iwase Chieftaincy family which should be recognised and that Ogabi, Kusimi and Kumoku branches of the Family are the only branches of the Eletu-Iwase Chieftaincy Family entitled to nominate candidates for the Chieftaincy title."

With this finding, which subsists, **I cannot see how the 3rd Defendant could be eligible for appointment as the Eletu-Iwase. Only members of that family could validly be appointed to the office. The provision of section 5 of the Oba and Chiefs of Lagos Edict No.2 of 1975 (see now section 16 of the Obas and Chiefs of Lagos State law, 1981, now Cap. 138 Laws of Lagos State 1994) only empowered the Executive Council to approve the appointment of a qualified person. Where a non-member of a Chieftaincy family was appointed such appointment is void ab initio and the approval of the Executive Council would not, and could not, confer validity on such appointment; the approval itself is equally void. Section 44 of the Law would only save any valid, but not void, appointment made under the 1975 Edict for anything based on a void act is "bad and incurably bad"- per Lord Denning in Macfoy v. U.A.C. (1962) AC 152 at 160. See also Skenconsult v. Ukey (1981) 1SC, 6; Agbetoba v. Lagos State Executive Council (1991) 4NWLR 664, 684F, 691G-H. The invalidity of the appointment, and approval of appointment, of the 3rd Defendant has nothing to do with whether the approval was given by the Executive Council rather than the Governor but because of his non-membership of the Eletu-Iwase chieftaincy family.**

The Defendants have argued that the Court lacks jurisdiction to grant plaintiffs' claim 4 in suit No. LD/231/81 which is the relief plaintiffs are seeking from this Court in their cross-appeal. Their reason is that Dosunmu family had been declared a ruling house by the tribunal of enquiry and Exhibit D3 had confirmed that the family was entitled to the Eletu-Iwase chieftaincy. Having, in this judgment, debunked the premise on which they based this reasoning I need say no more on the submission.

Finally, I think the learned trial Judge was in error not to have granted plaintiffs' claim 4. The reason he gave for refusing to grant the declaration sought in claim 4 is just not tenable. The learned Judge said:

"It will be seen that the claim in (4) that the 3rd defendant and his relations be declared not entitled to the Chieftaincy title has been refused. This refusal is made in order to make it possible for the declaration of Ruling Houses to be revised in order to bring them in conformity with

the findings made in this judgment."

I cannot see the logic in the reason given above having regard to the findings made by the learned Judge and the reliefs granted by him. In the light of his findings and the reliefs he granted, one would think that the grant of claim 4 is a necessary follow-up. The Court below, too, was in error when it dismissed the plaintiffs' cross-appeal. The cross-appeal to this Court succeeds and it is hereby allowed. I grant unto the plaintiffs a declaration that the 3rd Defendant or any other member of the Dosunmu family is not entitled to be nominated and/or installed the Eletu-Iwase of Lagos.

The plaintiffs, having succeeded on both appeals, are entitled to the costs of this appeal which I fix at N10,000.00 and the costs of the appeal in the Court below which I fix N2,500.00

BELGORE JSC

The cause of action in this matter is the approval given by Lagos State Executive Council on 13th March 1981 whereby third defendant, Badoms Agoro, was appointed Eletu-Iwase of Lagos. The Lagos State Oba and Chiefs Edict of 1975 allows for declaration to be made on chieftaincy matters after an inquiry. The same edict ousted the jurisdiction of any court or tribunal in respect of anything done under the edict. Had the Lagos State Executive Council approved the declaration before 1st October 1979 when the Constitution of the Federal Republic of Nigeria 1979 came into force perhaps the approval would have been saved. By the time Executive Council purported to approve the declaration on 13th March 1981 it could no longer hide under the ouster provision of the edict which ran counter to the Constitution of 1979. MUSTAPHA V. GOVERNOR OF LAGOS STATE & ORS. (1987) (Pt 1) NSCC 632 would have been of some help but that case came squarely within the ambit of 1963 Constitution, far from the 1979 Constitution. The appointment of third defendant as Eletu-Iwase is therefore null and void. Learned trial Judge, Williams J, took great care to see out clearly the facts upon which he based his findings and Court of Appeal was to a certain extent right, subject to the reservations in the judgment of the learned brother, Ogundare

JSC with which I am in full agreement. Upon the findings in previous cases the occupation of Eletu-Iwase's Iga by the 3rd defendant is a clear trespass which ought to be sanctioned with damages in the ordinary course of events. I therefore find that the Dosunmu family of the third B defendant are not entitled to be Eletu-Iwase and the declaration and approval allowing them to nominate and be appointed as Eletu-Iwase is null and void. The cross-appeal to this Court logically therefore succeeds and it is allowed. I make the same orders as to costs as in the judgment C of Ogundare JSC.

MOHAMMED JSC

I have had the advantage of reading the judgment of my learned brother, Ogundare, JSC., in draft and I agree with him that the defendants' D appeal has failed and the plaintiffs' cross- appeal has succeeded. My learned brother has covered all the salient issues canvassed in the two appeals and I have nothing more to add. I abide by all the consequential orders made in the lead judgment including the assessment of costs. E

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother Ogundare JSC in this appeal. I agree entirely with it. F There is nothing that I can usefully add.

EJIWUNMI JSC

I have read the leading judgment of my learned brother Ogundare JSC, in this appeal, entering judgment for the Respondents in respect of G the main appeal, and also in the cross-appeal. As I agree fully with the reasons given by my learned brother, for reaching the above conclusion in his judgment, I adopt the judgment as my own. I also award costs in the sum of N10,000.00 for this appeal, and N2, 500 as costs in the court H below in favour of the plaintiffs.