

SUPREME COURT OF NIGERIA
32RD FEBRUARY, 2001. SC. 118/1995
**CORAM:- M. L. UWAIS CJN, A. B. WALI, E. O. OGWUE-
GBU, U. MOHAMMED, A. O. EJIWUNMI, JJSC**

NURUDEEN ADEBISI ADEYE & 8 ORS. APPELLANTS
AND
CHIEF SANNI AGBATOGUN ADESANYA
& 2 OTHERS RESPONDENTS
(FOR THEMSELVES AND ON BEHALF
OF OSHOKEJI ATESIMARA ROYAL
FAMILY OF KETU)

APPEALS - *Concurrent findings of facts - If supported by sufficient evidence - Should not be disturbed - By appellate court.*

CLAIMS - *Reliefs not claimed - Where gratuitously made are incompetent and will be set aside - But will not affect courts judgment - As it is consequential to the judgment.*

PLEADINGS - *Admitted facts - Cannot be retracted - And does not need further proof by evidence - But it is binding and can be acted upon by the court.*

FACTS

The plaintiffs who are the respondents in this action instituted the action " *for themselves and on behalf of Asokeji Atesimara Royal family of Ketu.*" They claimed against the defendants jointly and severally for a declaration that the chieftaincy declaration made by its District council recognizing certain families as Ruling Houses in Ketu be set aside as being made in fraud of their Royal family. This was because it was contrary to an earlier written agreement between their Royal family and the then ruling chief and was made without the approval of the said Royal family. They also claimed inter alia, for a declaration that the selection of

the 1st defendant/Appellant as candidate for the office of the Alaketu of Ketu was irregular, invalid, null and void and of no effect.

Based on the cases of the parties, the trial court in a reserved judgment declared the District Council's declaration null and void and of no effect and granted all the reliefs claimed by the plaintiffs as well as two other reliefs not claimed by them. The defendants/Appellants dissatisfied with the judgment appealed to the Court of Appeal but their appeal was dismissed and they have further appealed to the Supreme Court with two issues for determination.

ISSUES FOR DETERMINATION

“ 1 Whether or not the lower Courts properly evaluated the evidence before them when they found that Osokeji Atesimara is the only Ruling House in Ketu?

2 Whether or not it was therefore proper for the lower Courts to have ordered that Epe Local Government Council, should within three months from the day of the judgment, take necessary action to make and register a Chieftaincy Declaration for Alaketu of Ketu Chieftaincy reflecting Osokeji Atesimara as the only ruling House when in fact, the Respondents did not even ask for this relief at all?”

HELD:(Unanimously dismissing the appeal per lead judgment of **OGWUEGBU JSC**)

Admitted facts - Cannot be retracted

1. The defendants cannot now retract their admission of a specific fact pleaded by the plaintiffs. As that fact was admitted by the defendants, no further proof of its truth was required and they are bound by it and the trial court was justified in acting on it. This court will not also countenance any argument of the defendants to the effect that the trial court or the court below did not evaluate the evidence relating to such admitted fact. See Okparaeké v. Egbuonu & Ors. 7 W.A.C.A. 53 at 55, National Investment & Properties Co. Ltd. V. The Thompson Organisation Ltd & Ors. (1969) 1 All NLR 138 at 142 and Ajuwon v. Akanni & Ors. (1993) 9 N.W.L.R. (Pt. 316) 182 at 204. From the state of the pleadings it cannot be correct as canvassed by the defendants that the lower courts

did not properly evaluate the evidence before them when they found that Osikeji Atesimara is the only Ruling House in Ketu. (p. 603 B)

Concurrent findings of fact

2. The task of the defendants in this appeal is made more difficult by the fact that there are before us concurrent findings of fact by both trial court and the court below. It is settled law that such concurrent findings, where there is sufficient evidence to support them should not be disturbed. (p. 603 E)

Claims - Reliefs not claimed

3. Coming to the second question submitted by the defendants, I agree that the learned trial judge went beyond the reliefs sought by the plaintiffs when he ordered the Epe Local Government Council to make and register Chieftaincy Declaration for Alaketu of Ketu Chieftaincy reflecting Osokeji Atesimara as the only Ruling House within three months from its judgment and prescribing the time within which the vacancy should be filled. As these reliefs were not before him, he was not competent to grant them. They were gratuitously made and are hereby set aside. The said orders are consequential and do not affect the judgment of the learned trial judge. (p. 603 G)

REPRESENTATION

Adekunle Oyesanya Esq. for the Appellants

T.K. Agbesanwa Esq. for the Respondents.

CASES REFERRED TO

Okparaeké v. Egbuonu & Ors. 7 W.A.C.A. 53 at 55

National Investment & Properties Co. Ltd V. The Thompson Organisation Ltd & Ors. (1969) 1 ALL NLR 138 at 142

Ajuwon v. Akanni & Ors. (1993)9 N.W.L.R. (pt. 316) 182 at 204.

Njoku & Ors. V. Eme & Ors. (1973) 5 S.C. 293 at 306

Kale v. Coker (1982) 12 S.C.252 at 271.

ABINABINA V. ENYIMADU 12 WACA 171

ENANGU V. ADU (1981) 11-12 SC 25;

OJOMU V. AJAO (1983) 9 SC 22

FATOYINBO V. WILLIAMS (1956) SCNLR 274; (1956) 1 FSC 87

Mogo Chinwendu V. Nwanegbo Mbamali and Anor. (1980) 3-4 S.C. 31

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STATUTE REFERRED TO

Chiefs Law cap. 19, Laws of Western Region of Nigeria, 1959.

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LEAD JUDGMENT BY OGWUEGBU JSC

This is an appeal against the judgment of the Court of Appeal, Lagos Division dismissing the appeal of the defendants against the judgment of Hotonu, J. sitting in the Lagos Judicial Division of the High Court of Lagos State. The trial court granted all but one of the reliefs sought by the plaintiffs and even granted some reliefs not claimed. It is against this judgment of the court below that the defendants have now appealed to this court.

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The plaintiffs who are respondents both in this court and the court below instituted the action “*for themselves and on behalf of Asokeji Atesimara Royal Family of Ketu.*” They claimed against the defendants jointly and severally as follows:

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“1. A Declaration that the Alaketu of Ketu Chieftaincy Declaration made by Ejirinrin District Council on 23rd September, 1970, and approved by Secretary to Military Government on 17th December, 1971 and registered on 29th January 1972, be set aside as being made in fraud of the Osokeji Atesimara Royal Family by the inclusion of Odele Ruling House therein contrary to the Agreement reached by the then Alaketu Oba Karimu/Kackson Adisa Olanubi Oluwo with the Osokeji Atesimara Royal Family pursuant to an Agreement dated 6th August, 1955, and without obtaining the approval of the said Family or disclosing same to the said Family who only recently became aware of the fact when an Alaketu is now to be selected.

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2. A Declaration that the selection of Nurudeen Adebisi Adeye as a candidate for the office of Alaketu of Ketu is irregular, invalid, null and void and of no legal effect as being contrary to traditional law and

custom of Ketu in that he was no member of Odele Family nor of Osokeji Atesimara Ruling House nor is he a native of Ketu and was not selected by lawful or legitimate members of Odele House nor by any one belonging to Osokeji Ruling House.

3. A Declaration that the only lawful and competent Candidate B offered for the Office of Alaketu of Ketu in succession to Oba Alaketu of Ketu Karimu/Kackson Adisa Olanubi Oluwo is Prince Adeyemi Adefowora and that he is entitled to be presented by 8th and 9th Defendants and other Kingmakers and/or all otherwise qualified persons to 11th Defendant for C recognition and other ceremonies to perfect his succession to the throne of his aforesaid predecessor Oba Alaketu of Ketu

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5.....
6.....” D

The last three reliefs sought by the plaintiffs are for injunctive orders.

By a Chieftaincy Declaration made on 23rd September, 1970 by Ejinrin District Council, approved on 17th December, 1871 and registered on 29th January, 1972 pursuant to the Chiefs Law Cap 19, Laws of E Western Region of Nigeria, 1959 which was then applicable, (Exhibit “D”) it was declared that there are three Ruling Houses in Ketu, namely:

(i) Odele Ruling House, (ii) Ralu Ruling House and (iii) Osokeji Ruling House.

When the stool became vacant, the Epe Local Government by a F Public Notice dated 7th April, 1985, invited members of the Odele Ruling House to present a candidate to fill the vacancy. This invitation was pursuant to Exhibit “D” – the Registered Declaration. It would seem that Odele family presented the 1st defendant, Nurudeen Adebisi Adeyeye as G the candidate. Following the presentation, the plaintiffs commenced the action which led to this appeal.

The case of the plaintiffs as contained in their amended statement of claim and evidence may be summarised thus. That the Osokeji family H is by tradition and custom the only Ruling Family at Ketu, that the former Alaketu of Ketu conceded that fact and gave a written undertaking to that effect but later joined in the making of Exhibit “D” which went contrary

to his written undertaking. They contended that Exhibit “D” was not valid because it did not represent their custom relating to the Chieftaincy and was made without consultation with their family as their interests were affected by the extension of Chieftaincy to other families. They further
B contended that Exhibit “D” was fraudulently procured.

The 1st to 9th defendants who are the principal defendants denied that Osokeji Atesimara Royal Family of Ketu is the only Ruling House entitled to present a candidate to fill the vacancy created by the death of
C the Alaketu of Ketu. They relied on Exhibit “D” and contended that from the time of its registration it superceded any other customary law pertaining to the chieftaincy.

The learned trial judge in a reserved judgment concluded thus:

*“The Declaration is contrary to traditional history and Custom
D of Ketu, it was made in violation of the rule of natural justice and as such it is null and void and of no effect.”*

He proceeded to grant the 1st, 2nd, 4th, 5th and 6th reliefs claimed by the plaintiffs. He also made the following orders which did not form
E part of the reliefs claimed by the plaintiffs:

*“(e) Within three months from today the Local Government Council concerned should take necessary action to make and register Chieftaincy Declaration for Alaketu of Ketu Chieftaincy reflecting
F Osokeji Atesimara as the only Ruling House.*

*(f) Within two months after registration of the said Declaration of Alaketu of Ketu Chieftaincy appropriate steps should be taken as laid down by the Oba and Chiefs Law of Lagos State to fill the vacant office
G of Alaketu of Ketu.”*

The appeal of the defendants to the court below was dismissed. It held that the learned trial judge came to a correct conclusion when he held that the declaration is null and void for the reason of failure to give a hearing to the persons whose interests were affected. The defendants
H have further appealed to this court. From the grounds of appeal filed, they submitted two issues for our determination.

“ 1 Whether or not the lower Courts properly evaluated the evidence before them when they found that Osokeji Atesimara is the only

Ruling House in Ketu?

2 Whether or not it was therefore proper for the lower Courts to have ordered that Epe Local Government Council, should within three months from the day of the judgment, take necessary action to make and register a Chieftaincy Declaration for Alaketu of Ketu Chieftaincy B reflecting Osokeji Atesimara as the only ruling House when in fact, the Respondents did not even ask for this relief at all?"

The above issues flow from the grounds of appeal filed and having been adopted by the plaintiffs in paragraph 5.03 of their brief of argument, it is unnecessary for me to reproduce the issues identified by them in their said brief. C

The defendants submitted in their brief that the trial judge as well as the court below failed to properly evaluate the evidence proffered by the plaintiffs themselves with regard to the issue of the Ruling House for the Alaketu Chieftaincy. They contended that the plaintiffs in their statement of claim averred that their ancestor was one Osokeji who had an only son called Adeniran who begat four children, namely Efunderu, Adeona, Otunwunmi and Otujeru. The defendants further contended that the record of proceedings at the trial court is replete with evidence of the fact that Otunwunmi Atesimara is just one branch of the entire Osokeji Ruling House and that Exhibit "B" (the Agreement with the late Oba) specifically stated that it is the entire Osokeji family that will produce future Obas and not only one branch (Otunwunmi Atesimara) as represented by the plaintiffs. We were urged to set aside the finding of the lower courts to the effect that only one branch, namely, Osokeji Atesimara branch as the only Ruling House fit to fill the Alaketu Chieftaincy because the pleading and the evidence of the plaintiffs did not justify that finding. D E F G

The plaintiffs in the brief of argument filed on their behalf submitted that the court below rightly upheld the finding of the trial court that the plaintiff's family, Osokeji family (otherwise known as Osokeji Atesimara) is the only Ruling Family in Ketu according to traditional history and custom of Ketu. They further submitted that the entire Osokeji family got the late Oba Kackson Oluwo Adenuga who came from the female line to sign an undertaking that he would not allow anyone who is not from H

Osokeji family to succeed him and that the courts below came to the conclusion that the plaintiffs' family is the only Ruling House to provide candidate for the stool of Alaketu of Ketu.

The learned trial judge held as follows:

B *'As earlier stated in this judgment the family history of Osokeji Atesimara narrated by the Plaintiffs was not challenged by the Defendants. The history is quite clear and I believe it. It is to the effect that there is only one Ruling family at Ketu and that is Osokeji Atesimara family. It appears very clear that the Declaration Exhibit "D" was irregularly made*
 C *without the knowledge of the people concerned for the purpose of extending the chieftaincy right to other two families. The Declaration is contrary to traditional history and Custom of Ketu, it was in violation of the Rule of natural justice and as such it is null and void and of no effect.'*

D The court below agreed with the above findings of the learned trial judge. It went further and held:

"In this case, the trial judge who heard and saw the witnesses believed the respondents' witnesses. The findings of facts which he made
 E *reasonably follow (sic) from their evidence which he believed. There is really nothing of substance urged why he should not have believed these witnesses, and, particularly, the 1st plaintiff witness ... Quite apart from the evidence of other witnesses who are of the same family as the 1st*
 F *plaintiff witness, there is the evidence of the 3rd plaintiff witness, Koya Rufai, who is a member of Odele family and who testified that the Osokeji family is the only ruling house in Ketu and that the Odele family is not a Ruling House."*

G I am unable to see the substance in the contention of the defendants that the courts below did not properly evaluate the evidence before them when they found that Osokeji Atesimara is the only Ruling House in Ketu. The plaintiffs in paragraph 2 of their amended statement of claim averred as follows:

H *"2. The 1st Plaintiff is the Head of Oshokeji Royal Family which is otherwise known and called OSOKEJI ATESIMARA ROYAL FAMILY OF KETU which is hereafter referred to as "the Osokeji Family."*
(Underlining is for emphasis only).

In their statement of defence, the 1st to 9th defendants admitted paragraph 2 of the amended statement of claim in paragraph 1 of their statement of defence thus:

“1. The 1st to 9th defendants admit paragraphs 2, 4, 5, 48 and 55 of the Amended Statement of Claim.”

The defendants cannot now retract their admission of a specific fact pleaded by the plaintiffs. As that fact was admitted by the defendants, no further proof of its truth was required and they are bound by it and the trial court was justified in acting on it. This court will not also countenance any argument of the defendants to the effect that the trial court or the court below did not evaluate the evidence relating to such admitted fact. See Okparaeké v. Egbuonu & Ors. 7 W.A.C.A. 53 at 55, National Investment & Properties Co. Ltd. V. The Thompson Organisation Ltd & Ors. (1969) 1 All NLR 138 at 142 and Ajuwon v. Akanni & Ors. (1993) 9 N.W.L.R. (Pt. 316) 182 at 204. From the state of the pleadings it cannot be correct as canvassed by the defendants that the lower courts did not properly evaluate the evidence before them when they found that Osikeji Atesimara is the only Ruling House in Ketu.

The task of the defendants in this appeal is made more difficult by the fact that there are before us concurrent findings of fact by both trial court and the court below. It is settled law that such concurrent findings, where there is sufficient evidence to support them should not be disturbed. See Njoku & Ors. v. Eme & ors. (1973) 5 SC. 293 at 306 and Kale v. Coker (1982) 12 SC 252 at 271. If anyone is to complain about the findings, it is not the defendants who are not members of Osokeji family.

In view of what I have said above, I must answer the first question in the affirmative.

Coming to the second question submitted by the defendants, I agree that the learned trial judge went beyond the reliefs sought by the plaintiffs when he ordered the Epe Local Government Council to make and register Chieftaincy Declaration for Alaketu of Ketu Chieftaincy reflecting Osokeji Atesimara as the only Ruling House

within three months from its judgment and prescribing the time within which the vacancy should be filled. As these reliefs were not before him, he was not competent to grant them. They were gratuitously made and are hereby set aside. The said orders are consequential and do not affect the judgment of the learned trial judge.

In the final result, this appeal fails and it is hereby dismissed with N10,000.00 costs to the plaintiffs.

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UWAIS, CJN

I have had the opportunity of reading in draft the judgment read by my learned brother Ogwuegbu, JSC. I entirely agree with the judgment and have nothing to add.

Accordingly, I too hereby dismiss the appeal with N10,000.00 costs in favour of the Respondents against the Appellants.

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WALI, JSC

I have had the privilege of reading in advance a copy of the lead judgment of my learned brother Ogwuegbu JSC and I agree with his reasoning and conclusion for dismissing the appeal.

The appeal involves concurrent findings of fact by the two lower courts. It is trite that the evaluation of evidence and making findings on it is the duty of the trial court and an appellate court will only interfere with such findings if they are perverse and lead to a miscarriage of justice. See ABINABINA V. ENYIMADU 12 WACA 171; ENANGU V. ADU [1981] 11-12 SC 25; OJOMU V. AJAO [1983] 9 SC 22 and FATOYINBO V. WILLIAMS [1956] SCNLR 274; [1956] 1 FSC 87.

In the present case, there are two concurrent findings of the lower courts on the issue that Osokeji Ruling House is the only Ruling House in Ketu, and this court will not therefore interfere with such findings since they are not perverse and are fully justified and supported by the evidence.

The learned trial judge went beyond his discretionary powers

when he made an order granting a substantial relief to wit-

“(e) Within three months from today the Local Government Council concerned should take necessary action to make and register Chieftaincy Declaration for Alaketu of Ketu Chieftaincy reflecting Osokeji Atesimara as the only Ruling House.

(f) Within two months after registration of the said Declaration of Alaketu of Ketu Chieftaincy appropriate steps should be taken as laid down by the Oba and Chiefs Law of Lagos State to fill the vacant office of Alaketu of Ketu.”

which was not claimed by the plaintiffs. There relief are hereby set aside by me.

I also hereby dismiss this appeal with N10,000.00 costs to the plaintiffs, adopting the reasons contained in the lead judgment.

MOHAMMED,JSC

I agree that this appeal has failed and for the reasons given by my learned brother, Ogwuegbu, JSC, in the draft of his judgment which he permitted me to read before now I will dismiss the appeal. The main ground of appeal is complaining against the failure of the courts below to evaluate the evidence of witnesses properly. I have looked into the evidence and the judgment of the courts below. It is plain that the trial High Court did evaluate the evidence before it and when the case reached the Court of Appeal it analysed the evidence adduced and decision of the trial High Court on the issues decided. I do not see where the two courts below have erred.

This appeal is from two concurrent findings of fact and the appellants have failed to advance any convincing reason warranting interference with such findings of fact. For this court to interfere with concurrent findings of fact the circumstances must be such that the findings of fact are patently erroneous and it would be travesty of justice to allow the findings to remain. See Mogo Chinwendu v. Nwanegbo Mbamali and Anor. (1980 3-4 SC 31 and Kale v. Coker (1982) 12 SC. 252.

Consequently this appeal has failed and it is dismissed. The

judgment of the Court of Appeal affirming the decision of the High Court is hereby confirmed. I also award N10,000.00 costs to the plaintiffs – respondents

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EJIWUNMI, JSC

I have had the privilege of reading before now the judgment just delivered by my learned brother Ogwuegbu, JSC.

C In that judgment, as the facts and issues raised thereon have been properly set down and considered, I adopt the said judgment as my own.

I will therefore also dismiss the appeal for the reasons so given. I, also award costs in the sum of N10,000.00 to the plaintiffs.

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