

SUPREME COURT OF NIGERIA

18TH MAY, 2001. SC. 5/1997

**CORAM:- S. M. A. BELGORE, M. E. OGUNDARE, E. O.
OGWUEGBU, A. I. KATSINA-ALU, U. A. KALGO, JJSC**

1. OBA JOSEPH ADEYEMIAJAYI DEFENDANT/APPELLANT
(THE OBA OF OLA)

2. HIS HIGHNESS OBA ALEBIOSU
(THE OLUPO OF AJASE-IPO, Chairman, DEFENDANTS/
Ifelodun/Irepodun Traditional Council) RESPONDENTS/

3. THE IFELODUN/IREPODUN CO-APPELLANTS
TRADITIONAL COUNCIL

AND

OBA JOSEPH ABOLARIN JOLAYEMI PLAINTIFF/
(EWEDUNMOYE I, OLOKO OF OKO) RESPONDENT

ACTIONS - *Locus standi* - The plaintiff in this case - Has the standing to sue - As he has sufficient interest in the subject matter (H 4)

APPEALS - Preliminary objection - Raised against the grounds of appeal - Are untenable - As they do not offend the Rules of the Court (H 3)

PARTIES - Necessary parties - As there was no complaint made - Against the Governor in this case - It would have been wrong to join him - In the proceedings (H 2)

PLEADINGS - Reliefs sought - Where they are claimed per writ of summons - And defendant fails to object to the irregularity before pleading to it - And there is no miscarriage of justice - The issue cannot be raised on appeal (H 5)

STATUTES - Interpretation - S.15 Kwara State Chiefs Edict No.3 of 1998 - Does not apply - Where the issue is the appointment of a member of a Traditional Council - As in this case (H 1)

FACTS

There was a need to increase the membership of the Ifelodun/Irepodun Traditional Council in Kwara State by including representatives of three Districts that have not hitherto been represented on the Council. It was the prerogative of the Governor to appoint new members to the Council and the Council therefore through a letter requested for an expansion of the Council to include representatives of those Districts. In the letter the Plaintiff's District and his Traditional office was included among the three representatives to be included. Upon the Governor giving his approval to the increase, the Chairman of the council directed his secretary to write to the 1st defendant who was the Chief of another town in the same District to which the Plaintiff belonged.

The plaintiff thereupon instituted the action leading to this appeal, claiming a declaration that he is the person recommended and approved for inclusion in the council, and a nullification of the first defendants appointment amongst other reliefs. The 1st defendant counter claimed and issues were joined. At the end of the evidence and address by counsel for the parties, the Learned Trial Judge found for the plaintiff and granted all the reliefs claimed by him while dismissing the counter claim totally. Being dissatisfied, the defendants appealed to the Court of Appeal unsuccessfully. They have further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“i. Whether or not the plaintiff (now Respondent) has locus standi to institute this action. Ground 1.

ii. Whether or not the lower court was right in holding that in spite of the failure of the Respondent to specifically ask or pray for any relief in his statement of claim as enjoined by order 25 Rule 12(3) of the Kwara State (Civil Procedure) Rules 1989 coupled with the fact that his simple claim in his oral testimony is not supported by his ‘pleadings’, the trial High Court was vested with jurisdiction to adjudicate on the plaintiff’s case. – Grounds 2 & 3.

iii. Whether or not the plaintiff’s claim was properly constituted notwithstanding the non-joinder of the Government/Governor of Kwara State or any accredited representative of Government. – Ground 4.

“1. Whether or not the Plaintiff/Respondent must comply with the condition precedent of down payment of N10,000.00 to confer jurisdiction on the trial court. (Ground 1)

2. Whether the necessary party against whom the Plaintiff/Respondent could maintain his cause of action is a party in this suit? And if the answer to this poser is in the negative, whether the suit is properly constituted.”

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

Statutes

1. I think the Plaintiff is right. I cannot, by any principle of construction of statutes, say that the above claim comes within the ambit of section 15. The issue here is one of the appointment of a member of the Traditional Council who, by virtue of section 76(2)(d) of the Local Government Edict, 1976 need even not be a chief. The Plaintiff by his claim is certainly not challenging the validity of the appointment of anyone as a chief nor has his claim anything to do with a vacant chieftaincy stool. The argument of the 2nd and 3rd Defendants on Issue 1 is completely devoid of any merit. (p. 1700 H)

Necessary parties

2. I think that the arguments of the 2nd and 3rd Defendants show a complete misconception of the facts. The Plaintiff’s case is that the Military Governor appointed him to the Traditional Council by his approval of Exhibit 1, the recommendation of the Traditional Council to him in this regard. Why then would Plaintiff need to join the Military Governor as a defendant against whom he has no claim? His complaint is against the 2nd and 3rd Defendants who changed the Military Governor’s decision by appointing the 1st Defendant to the Council, a person the Governor did not appoint. All the authorities cited in the brief of the 2nd and 3rd Defendants are just not apposite to the facts of this case. As there was no complaint against the Military Governor it would have been wrong to join him in these proceedings. (p. 1701 F)

Preliminary objection

3. The grounds are already set out. I have considered the arguments proffered by the Plaintiff in his brief in support of the preliminary objection. I find the arguments untenable. I see nothing in the grounds complained of that offend any rule of this Court. I have no hesitation, therefore, in rejecting the preliminary objection raised by the Plaintiff; it is overruled by me. (p. 1702 C)

Locus standi

4. The Ifelodun/Irepodun Traditional Council is a statutory body with defined functions. Membership of such a body cannot be just a mere nebulous matter. Plaintiff's case is that he was appointed to membership of the Council by the Military Governor but was prevented by 2nd and 3rd Defendants from taking his seat which they wrongly gave instead to the 1st Defendant. It cannot be said that Plaintiff has no interest in the subject matter sufficient enough to clothe him with standing to sue or locus standi. I agree entirely with the following passage in the lead judgment of Abdullahi JCA wherein he said:

"It is not in dispute as I have shown earlier on in this judgment, that the recommendations made in Exhibit 1 made direct reference to the office of the respondent. That recommendation was approved in Exhibit 10 by the appropriate authority. Instead of effecting the approval conveyed in Exhibit 10, 2nd and 3rd appellants without authority ditched the respondent and appointed the 1st appellant. If this situation does not confer special interest in the performance of the duty of the 2nd and 3rd appellants in relation to the respondent, I do not know what else would."

In order to determine who the Military Governor appointed to the Council from Oko/Olla District the proper approach is to read Exhibits 1 and 10 together and not separately. Reading them together, the appointment made in Exhibit 1 from that District will become clear – it is the Plaintiff rather than the 1st Defendant that was appointed. Nor did exhibit 10 empower the Council to choose who the representative for that District was to be.

The conclusion I reach is that the Plaintiff has locus standi to

institute this action. (p. 1703 A)

Pleadings

5. The 1st Defendant ought to have raised this objection before pleading to the statement of claim. Having pleaded to it and having allowed a full blown trial to be held, I think it is too late for 1st Defendant to raise the issue at the address stage. This is more so that at no time was 1st defendant misled as to the claims of the Plaintiff which he answered fully to both in his pleadings and evidence – see KESHINRO V. BAKARE (1967) ANLR 299. In the circumstance of this case, although I have held that Plaintiff’s statement of claim is defective in that it offends order 25 rule 12(3) of the trial Court’s rules, this is a mere irregularity which could have been cured by amendment, on terms, if objection had been raised at the appropriate stage. The 1st Defendant having pleaded to the defective pleading cannot raise the issue of the defect more so that there has been no miscarriage of justice. I agree with the conclusions of the two Courts below on this issue and resolve the issue against the 1st Defendant. (p. 1707 A)

NOTABLE POINT OF INTEREST

OGWUEGBU JSC

1. The rule guiding the joinder of parties.

The person to be joined must be someone whose presence is necessary as a party and the only reason which makes him a necessary party to an action is that he should be bound by the result of the action and the question to be settled. There must be a question in the action which cannot be effectually and completely settled unless he is a party.

It is improper to join as co-defendants persons against whom the plaintiff has no cause of action and against whom he has made no claim and whose interest is adverse to that of the defendants. (p. 1710 F)

REPRESENTATION

Chief Wole Olanipekun, SAN (with him A.O. Adelodun and S.B. Basambo) for the 1st Defendant/Appellant.

T.S. Ashaolu (with him Mrs. F.D. Lawal, DCL, Kwara State) for 2nd & 3rd Appellants.

Chief P.A.O. Olarunnisola, SAN (with him Chief Iyanda Fajemyo) for the Plaintiff/Respondent.

B

CASES REFERRED TO

Kesinro v. Bakare (1967) 1 ALL NLR 280

Bashua v. Maja (1976) 11SC 143

Amon v. Rapheal Tuck & Sons Ltd. (1956)1 ALL E.R. 273 at 279

C

Lajumoke v. Doherty (1969) NMLR 281 at 287

Aromire & Ors. v. Awoyemi (1972)1 ALL NLR (Pt.1)101

Uku & Ors. v. Okumagba & Ors. (1974)3 SC.35

Peenok Investment Ltd. v. Hotel Presidential Ltd. (1982)12 SC.148

D

Green v. Green (1987)3 NWLR (Pt.61)480 at 491

STATUTES REFERRED TO

Kwara State Chiefs (Appointment and Deposition) Amendment Edict No.3
E of 1988 s. 15

Local Government Edict,1976 S.76(2)(d)

Kwara State High Court (Civil Procedure) Rules 1989 Order 25 rule 12(3)

F

LEAD REASONS FOR JUDGMENT BY OGUNDARE JSC

These appeals came up for hearing on 19/2/2001 and after hearing oral arguments from learned counsel for the parties, I dismissed both appeals and indicated then that I would give my reasons for so deciding today. I now give my reasons.

G

There was need to increase the membership of the Ifelodun/Irepodun Traditional Council in Kwara State by the inclusion of representatives of three Districts not hitherto represented on the Council, that is Agunjin in Ifelodun L.G.A. Oko/Olla and Idofin-Igbara, both in Irepodun H L.G.A. It was the prerogative of the Governor of the State to appoint new members to the Council. By a letter dated 16th August 1985, the Council requested for an expansion of its membership by inclusion of representatives of the three Districts hitherto not represented on the Council. The

letter (Exhibit 1) written by the Secretary to the Council further recommended:

“From the above, I am directed to forward to you through the Sole Administrator this proposal to include:-

- 1. THE ALAGUNJIN* B
- 2. THE OLOKO OF OKO and*
- 3. THE OBA OF IDOFIN-AGBANA both in Irepodun Local Government for your approval.”*

The Military Governor gave his approval to the Council’s requests in a letter dated 19th August 1991, Exhibit 10. The letter reads: C

“MLGCA/S/118/III/471

*Dept. of Local Government,
Military Governor’s Office,
P.M.B. 1407,
Ilorin.* D

*The Secretary,
Ifelodun/Irepodun
Emirate/Traditional Council,
Ajase-Ipo.* E

APPROVAL FOR EXPANSION OF EMIRATE TRADITIONAL COUNCIL

I am directed to inform you that the Military Governor, in exercise of the powers conferred on him by the provision of Edict No. 8 of 1976, has approved your request for the expansion of your Emirate/Traditional Council with the following additional members:- F

- (i) Representative from Oko/Olla – Oko/Olla District.*
- (ii) Representative from idofin-Idofin District*
- (iii) Representative from Agunjin – Agunjin District.*

2. Arrangement is on hand to have the new appointment gazetted in accordance with Section 76(3) and (4) of Edict No. 8 of 1976. You would please take further necessary action accordingly. This letter has been copied to the Chairman of the appropriate Local Government Council(s) for information and further necessary action. H

(Sgd)

Y. K. Raibu

For: Director-General”

On receipt of Exhibit, 10, the Chairman of the Council directed the Secretary to write to the Oba of Olla appointing him to the Council.

B Oko and Olla are two separate towns in the Oka/Olla District of Irepodun Local government. On learning of this development, the Plaintiff (now Respondent before us) who is the Oba of Oko instituted the action leading to this appeal, claiming by his writ of summons:

C ‘1. That as the most senior Oba in Oko/Olla District he is the person recommended by the Ifelodun/Irepodun Traditional Council to be included in the expanded Ifelodun/Irepodun Traditional Council and the recommendation has been so approved by the Military Governor of the State;

D 2. A nullification of the purported appointment of the 1st defendant by the 2nd defendant to the Ifelodun/Irepodun Traditional Council on the ground that it is ultra vires the power of the 2nd defendant as it is neither authorised by the Ifelodun/Irepodun Traditional Council nor the
E Kwara State Military Governor.

3. A permanent injunction restraining the 2nd – 3rd defendants from recognising the 1st defendant as the authorised representative of Oko/Olla district and restraining them from allowing the 1st defendant to
F sit in the Ifelodun/Irepodun Traditional Council

4. A permanent injunction restraining the 1st defendant from
parading himself or authorising any publication presenting him as the representative of Oko/Olla district in Ifelodun/Irepodun traditional council.”

G The Oba of Olla, the Olupo of Ajase-Ipo (who is Chairman of the Traditional Council and the Ifelodun/Irepodun Traditional Council were joined as Defendants in the action. The three Defendants are the Appellants in these appeals.

H Pleadings were ordered, filed and exchanged and subsequently (as regards the defence) with leave of the trial court, amended. The 1st Defendant also filed a counter-claim whereby he claimed:

“(a) A DECLARATION that historically and customarily, the

Olola of Olla in Irepodun/Ifelodun Traditional Council Area enjoys clear supremacy over the Oloko of Oko.

(b) A DECLARATION that the Ololla of Olla, Oba Joseph Adeyemi Ajayi has been properly appointed as the representative of Oko/Olla District to the Ifelodun/Irepodun Traditional Council.

(c) A DECLARATION that the 1st defendant is the proper person to sit or attend the Ifelodun/Irepodun Traditional Council as a member for Oko/Olla district.

(d) A DECLARATION that Governor and or the Traditional Council have the power to change any order previously made or approved by them while correcting any anomaly in administration.”

The Plaintiff had by paragraph 19 of his statement of claim, claimed:

“The plaintiff therefore claims as per writ of summons.”

Evidence was led at the trial and at its conclusion and after addresses by learned counsel for the parties, the learned trial Judge, in a reserved judgment, found for the Plaintiff and granted all the reliefs claimed by him. He dismissed the 1st Defendant’s counterclaim in its entirety.

The two sets of Defendants, that is, the 1st Defendant and the 2nd and 3rd Defendants, being dissatisfied with the judgment appealed unsuccessfully to the Court of Appeal. They have now further appealed to this Court. The 1st Defendant appealed upon the following four grounds of appeal appearing in his notice of appeal:

“(1) The lower court erred in law by holding that the plaintiff/respondent has locus standi to institute this action.

(2) The Court of Appeal misdirected itself in law by holding that the non-conformity by the plaintiff/respondent with the mandatory provisions of Order 25 Rule 12(3) of the Kwara State High Court (Civil Procedure) Rules 1989 could be tolerated and allowed.

WHEN

i. The said provisions are mandatory.

ii. The Kwara State High Court (Civil Procedure) Rules of 1989 were promulgated through an Edict, thereby having the full force of law.

iii. Neither the court nor any of the parties can waive or contract out any of the provisions of the Law.

(3) *The lower court misdirected itself in law by coming to the conclusion that the plaintiff's case vests jurisdiction on the trial High Court when none (jurisdiction) was so vested.*

B (4) *The learned Justices of the Court of Appeal misdirected themselves in law by holding that the non-joinder of the Governor of Kwara State or any of the appropriate functionaries of Government responsible for chieftaincy matters was not fatal to the plaintiff's case when it is the Governor of Kwara State who has the power to appoint or nominate any person to the traditional Council under and by virtue of Section 76(2)(d) of the Local Government Edict 1976."*

C I have set out these grounds in view of the preliminary objection taken by the Plaintiff in his brief to grounds 1, 3 and 4 as being incompetent. I shall deal with this objection later.

D The 2nd and 3rd Defendants also appealed to this Court upon three grounds of appeal which read:

(1) *The lower court misdirected itself in law by coming to the conclusion that the Plaintiffs claim did not fall under the category of claims in which the Plaintiff would be required to deposit a non-refundable deposit of N10,000.00 to the Accountant General of Kwara State as a condition precedent to the determination of the claim.*

PARTICULARS

F i. *The Plaintiff/Respondent's Claim in paragraph 1 of the Writ of Summons is a Chieftaincy matter because he is seeking appointment to Ifelodun/Irepodun Traditional Council and that he is most Senior Oba in Oko/Olla district.*

G ii. *The Plaintiff/Respondent failed to deposit a sum of N10,000.00 to the Kwara State Accountant General before instituting the suit.*

H iii. *By provision of Chiefs (Appointment and Deposition) (Amendment) Law 1985 as further amended by edict No. 3 of 1988 payment of the said N10,000.00 is a condition precedent to institution of a suit both-
H ering on Chieftaincy matters in Kwara State.*

2. *The lower court erred in law in holding thus: "I also agree with the learned Counsel for Respondent that 1st, 2nd and 3rd Appellants are the desirable and the necessary parties to the suit."*

PARTICULARS

i. By the provisions of section 76 of the Local Government Law 1976 the Governor/Government of Kwara State is the Sole Authority that can establish a Traditional Council.

ii. The suit is not properly constituted for failure to join the State Governor/Government. B

3. The Court below erred in law when it held that the non-joinder of the Kwara State Government was not fatal to the case of the Plaintiff/Respondent.

i. The Plaintiff/Respondent's complaint is about the recommendation by the 2nd and 3rd Appellants for the approval of the Kwara State Government. C

ii. The Kwara State Government was not sued as a party in the suit throughout." D

The parties filed and exchanged their respective briefs of arguments, pursuant to the Rules of this Court. The 1st Defendant formulated three issues as calling for determination, that is to say:

"i. Whether or not the plaintiff (now Respondent) has locus standi to institute this action. Ground 1. E

ii. Whether or not the lower court was right in holding that in spite of the failure of the Respondent to specifically ask or pray for any relief in his statement of claim as enjoined by order 25 Rule 12(3) of the Kwara State (Civil Procedure) Rules 1989 coupled with the fact that his simple claim in his oral testimony is not supported by his 'pleadings', the trial High Court was vested with jurisdiction to adjudicate on the plaintiff's case. – Grounds 2 & 3. F

iii. Whether or not the plaintiff's claim was properly constituted notwithstanding the non-joinder of the Government/Governor of Kwara State or any accredited representative of Government. – Ground 4. G

For their part, the 2nd and 3rd Defendants posed two issues which run thus:

"1. Whether or not the Plaintiff/Respondent must comply with the condition precedent of down payment of 10,000.00 to confer jurisdiction on the trial court. (Ground 1) H

2. Whether the necessary party against whom the Plaintiff/Re-

spondent could maintain his cause of action is a party in this suit? And if the answer to this poser is in the negative, whether the suit is properly constituted.”

I think it is easier to dispose of the appeal of the 2nd and 3rd Defendants.
Issue 1

The main thrust of the argument of the two Defendants on this issue is that the Plaintiff having failed to deposit the sum of N10,000.00 before instituting his action, as required by Edict No. 3 of 1988 of Kwara State, his action was incompetent and ought to have been struck out, the court having no jurisdiction to entertain it. Plaintiff’s reply is that his action did not come under the ambit of the Edict.

Now section 15 of the Kwara State Chiefs (Appointment and Deposition) (Amendment) Edict No. 3 of 1988 provides:

“15(1) Where the Military Governor or the appointing authority has approved the appointment of a person as a chief any person who intends to challenge the validity of such appointment shall first deposit with the State Accountant-General a non-refundable sum of ten thousand Naira.

(2) Where the Military Governor or the appointing authority has not approved any appointment to a vacant chieftaincy stool any aggrieved person who institutes any Court action in connection with the vacant chieftaincy stool and join the State Government or any of its agency as a party to any such Court action shall first deposit with the State Accountant-General a non-refundable fee of ten thousand Naira.’

The relief which the two Defendants claim to fall within the ambit of the Law reads:

‘A declaration (1) that as the most senior Oba in Oko/Olla District he is the person recommended by the Ifelodun/Trepodun Traditional Council and the recommendation has been so approved by the Military Governor of Kwara State.’

I think the Plaintiff is right. I cannot, by any principle of construction of statues, say that the above claim comes within the ambit of section 15. The issue here is one of the appointment of a

member of the Traditional Council who, by virtue of section 76(2)(d) of the Local Government Edict, 1976 need even not be a chief. The Plaintiff by his claim is certainly not challenging the validity of the appointment of anyone as a chief nor has his claim anything to do with a *vacant chieftaincy stool*. The argument of the 2nd and 3rd Defendants on Issue 1 is completely devoid of any merit. I agree with the Court below, per Abdullahi JCA, as he then was, that:

"It is clear without having to say it that the provision of this section has nothing to do with appointment to membership of a Traditional Council. In any case, it is common ground that both the 1st appellant and the respondent are already chiefs in their respective domains. Membership of the Traditional Council has nothing to do with appointment of a person as a Chief or appointment to a vacant chieftaincy stool.

I agree with the learned Senior Counsel for Respondent that the respondent's claim before the lower court did not fall under the category of claims in which plaintiff would be required to deposit a non-refundable deposit of N10,000.00 to the Accountant-General of Kwara State as a condition precedent to the determination of the claims.

This issue is therefore resolved in favour of the respondent."

ISSUE 2

It is argued under this Issue that the Plaintiff ought to have joined the Military Governor as the power to appoint a member of the Traditional Council lay in him. It is contended that failure to join the Military Governor was fatal to Plaintiff's case.

I think that the arguments of the 2nd and 3rd Defendants show a complete misconception of the facts. The Plaintiff's case is that the Military Governor appointed him to the Traditional Council by his approval of Exhibit 1, the recommendation of the Traditional Council to him in this regard. Why then would Plaintiff need to join the Military Governor as a defendant against whom he has no claim? His complaint is against the 2nd and 3rd Defendants who changed the Military Governor's decision by appointing the 1st Defendant to the Council, a person the Governor did not appoint. All the authorities cited in the brief of the 2nd and 3rd Defendants are just not apposite to

the facts of this case. As there was no complaint against the Military Governor it would have been wrong to join him in these proceedings.

I, therefore, resolve Issue 2 against the two Defendants. And with the conclusions reached on Issues (1) and (2) formulated by the 2nd and 3rd Defendants, I had no hesitation in dismissing their appeal on 19/2/01.

My next consideration is the appeal of the 1st Defendant. I think this is a proper stage to consider the preliminary objection of the Plaintiff. In his brief the Plaintiff contends that grounds 1, 3 & 4 are incompetent in that they violate the Rules of this Court. It is contended that the said grounds do not have particulars of the nature of error or misdirection complained of and that they are vague and general in terms.

The grounds are already set out. I have considered the arguments proffered by the Plaintiff in his brief in support of the preliminary objection. I find the arguments untenable. I see nothing in the grounds complained of that offend any rule of this Court. I have no hesitation, therefore, in rejecting the preliminary objection raised by the Plaintiff; it is overruled by me.

I now turn to the appeal of the 1st Defendant and shall consider it on the issues as formulated by him.

Issue (1)

It is argued that none of the Plaintiff's progenitors had ever been a member of the Traditional Council and as membership of the Council was neither hereditary nor as of right, whatever claim plaintiff could have to membership of the Council would be mere privilege and not a right. His complaint, therefore, it is submitted, related to issue of mere dignity and this makes the interest of the Plaintiff merely nebulous. It is further submitted that the Plaintiff's claim amounted to compelling the acceptance and enforcement of a mere recommendation. It is submitted that in the circumstance Plaintiff lacked competence necessary standing or locus standi to institute the action. A number of authorities on locus standi was cited in the brief to buttress the arguments put forward on behalf of the Plaintiff. The same trend of argument was advanced by the learned leading counsel for the 1st Defendant at the oral hearing of the appeal.

With profound respect to learned counsel, Chief Olanipekun, SAN I do not think it is correct to describe Plaintiff's interest in the subject matter of these proceedings as merely nebulous. **The Ifelodun/Irepodun Traditional Council** is a statutory body with defined functions. Membership of such a body cannot be just a mere nebulous matter. Plaintiff's case is that he was appointed to membership of the Council by the Military Governor but was prevented by 2nd and 3rd Defendants from taking his seat which they wrongly gave instead to the 1st Defendant. It cannot be said that Plaintiff has no interest in the subject matter sufficient enough to clothe him with standing to sue or locus standi. I agree entirely with the following passage in the lead judgment of Abdullahi JCA wherein he said:

"It is not in dispute as I have shown earlier on in this judgment, that the recommendations made in Exhibit 1 made direct reference to the office of the respondent. That recommendation was approved in Exhibit 10 by the appropriate authority. Instead of effecting the approval conveyed in Exhibit 10, 2nd and 3rd appellants without authority ditched the respondent and appointed the 1st appellant. If this situation does not confer special interest in the performance of the duty of the 2nd and 3rd appellants in relation to the respondent, I do not know what else would."

In order to determine who the Military Governor appointed to the Council from Oko/Olla District the proper approach is to read Exhibits 1 and 10 together and not separately. Reading them together, the appointment made in Exhibit 1 from that District will become clear – it is the Plaintiff rather than the 1st Defendant that was appointed. Nor did exhibit 10 empower the Council to choose who the representative for that District was to be.

The conclusion I reach is that the Plaintiff has locus standi to institute this action. I, therefore, resolve Issue 1 against the 1st Defendant.

Issue (ii)

The main complaint here is that the statement of claim of the Plaintiff does not contain the reliefs he is praying for. This is so because para-

graph 19 of the statement of claim states:

“The plaintiff therefore claims as per writ of summons.”

It is contended that this averment in Plaintiff’s pleading offends Order 25 rule 12 (3) of the Kwara State High Court (Civil Procedure) Rules 1989

B which provides:

“Every statement of claim shall state specifically the relief which the Plaintiff claims, either simply or in the alternative and may also ask for general relief.”

C Admittedly there has been no strict compliance with the above rule. What the Plaintiff has done in paragraph 19 of this statement of claim was to incorporate the writ of summons in the said statement of claim. There is at the worst an irregularity here. This irregularity was not objected to at the earliest opportunity. The 1st Defendant did not, in his D original statement of defence, raise any objection to paragraph 19 of the statement of claim. Neither did he do so in his amended statement of defence. In both documents he raised a counter claim but said nothing about the seeming irregularity in the Plaintiff’s statement of claim. It was only E in the final address of learned counsel to the 1st Defendant that learned counsel mentioned for the first time the irregularity in the statement of claim. He is recorded at page 185 of the record of appeal as having submitted thus:

F “THE STATEMENT OF CLAIM AND THE RELIEF THE STATE-
MENT OF CLAIM IS INCOMPETENT

(a) *The statement of claim does not contain the relief sought except by reference to the writ of summons. This offends against the provision of Order 25 Rule 12(3) of the High Court Civil Procedure 1989. G He also refer to ‘PRACTICE & PROCEDURE OF THE SUPREME COURT, COURT OF APPEAL AND HIGH COURTS OF NIGERIA by Aguda at page 247 at para. 19.10. The statement of claim is incompetent. In making this submission we are not unmindful of the view ex- H pressed by Fidelis Nwadio in his book Civil Procedure in Nigeria page 294. The case of KESINRO V. BAKARE (1967) 1 All NLR 280 is also noted. However, it is clear from the (sic) that the statement of claim should specifically state (sic) is contain the relief sought from the court.*

The statement of claim is fatally bad.”

The learned trial Judge observed as follows:

‘The second complaint is that the statement of claim does not contain the relief sought except by reference to the writ of summons contrary to Order 25 rule 12(3) of the High Court (Civil Procedure) Rules 1989. He also referred to PRACTICE & PROCEDURE of the Supreme Court, Court of Appeal and High Courts of Nigeria by Aguda at page 247 at paragraph 19.10 to submit that the statement of claim is incompetent. Learned counsel submitted that he is not unmindful of the view expressed by Fidelis Nwadialo in his book “Civil Procedure in Nigeria page 284 and he also took note of KESHINRO V. BAKARE (1967) 1 All NLR 280. All the same, he, therefore, submitted that the statement of claim is fatally bad. My view is that the incorporation of the reliefs in the statement of claim by reference might not represent the ideal but it is adequate for the purpose of adjudication in this matter. If there has been any grouse about the statement of claim especially about the incompetence, it ought to have been taken much earlier on in other words preliminarily before proceeding to full trial. As the writ of summons and the statement of claim, stand, they competently confer jurisdiction on this court.”

This same complaint was raised before the Court below and was again rejected. Abdullahi JCA said:

“It is clear from these Supreme Court decisions that what the respondent did in this case even though discouraged is however tolerated and allowed. If I may add my humble view, learned counsel should avoid laziness in the preparation of documents for their clients. In extreme cases the laziness could result in an embarrassment to the counsel or serious inconveniences and unnecessary considerable expenses for the client or both.

In the case in hand, the claims or reliefs as set out in the writ of summons are clear enough. Bye and large the real issue of contention is appointment as a member of a Traditional Council in Ifelodun/Irepodun Traditional Council, which the respondent claimed to have a better standing rather than 1st appellant.

It is clear on the record that the appellants filed their respective statements of defence copiously and in fact the 1st appellant put up a strong counter claim to his statement of defence. In the light of this, I have no doubt in my mind that none of the appellants had been misled or prejudiced by the pleadings of the respondent in the circumstance, this issue is resolved in favour of the respondent."

The 1st Defendant has again raised the issue in this Court proffering the same argument as in the Courts below. I agree with learned leading counsel for the 1st Defendant, Chief Olanipekun SAN. that the statement of claim of the Plaintiff is irregular in that paragraph 19 thereof is not in the form laid down in Order 25 rule 12(3) of the Rules of the trial court. In BASHUA V. MAJA (1976) 11 SC 143, the plaintiff had not included in his pleading the reliefs he sought nor was any reference made therein to the writ of summons. The defendant in the case pleaded to the plaintiff's pleading without raising any objection to the defect in it. Nor was the point raised on appeal to this Court. This Court, per Sir Udo Udoma JSC, commenting on the plaintiff's pleading, observed at pp. 151-152 of the Report:

'Furthermore, in breach of order 32 Rule 7 of the Old Supreme Court (Civil Procedure) Rules, which still operated in the State of Lagos in 1972 when pleadings were close, and which Rule is now Order 17 Rule 3 of the new Rules of the High Court of Lagos State, which came into operation on 1st September 1973, the statement of claim concluded without stating specifically the relief claimed by the respondent; nor was it therein stated that the claim of the respondent was in terms of or per his writ of summons filed in the suit.

That, of course, was an unsatisfactory manner in which to settle a statement of claim filed in a suit in court in a case of this kind; and the learned trial Judge would have been justified either to strike out the statement of claim or to order that it be amended by leave on terms, if objections had properly been raised. We think that the learned trial Judge might probably have been more inclined to take the latter course having regard to the fact that even after the close of the case of the respondent leave was granted the appellant to amend his statement of defence by

adding five new paragraphs thereto.”

The 1st Defendant ought to have raised this objection before pleading to the statement of claim. Having pleaded to it and having allowed a full blown trial to be held, I think it is too late for 1st Defendant to raise the issue at the address stage. This is more so that at no time was 1st defendant misled as to the claims of the Plaintiff which he answered fully to both in his pleadings and evidence – see **KESHINRO V. BAKARE (1967) ANLR 299**. In the circumstance of this case, although I have held that Plaintiff’s statement of claim is defective in that it offends order 25 rule 12(3) of the trial Court’s rules, this is a mere irregularity which could have been cured by amendment, on terms, if objection had been raised at the appropriate stage. The 1st Defendant having pleaded to the defective pleading cannot raise the issue of the defect more so that there has been no miscarriage of justice. I agree with the conclusions of the two Courts below on this issue and resolve the issue against the 1st Defendant.

Issue (iii)

This issue has been dealt with and resolved when considering the appeal of the 2nd and 3rd Defendants. I have nothing more to add to what I have said earlier on the issue. I resolve Issue (iii) against the 1st Defendant.

It is for the reasons I give herein that I dismissed the appeals of the Appellants on 19th February 2001.

BELGORE JSC

I, on 19th February 2001, dismissed both appeals and reserved my reasons to today. The full reasons given by my learned brother, Ogundare J.S.C. fully represent my own that I adopt his reasons as mine. That was why I dismissed the appeals of the appellants.

OGWUEGBU JSC

On the 19th day of February, 2001, the appeals came up before us

for hearing and after oral submissions by learned counsel appearing for the parties, I dismissed both appeals and indicated on that day that I would give my reasons for doing so today. I now give my reasons. I agree with the leading reasons given by my learned brother, Ogundare, J.S.C.

B I will advert to the question raised by the two sets of appellants that the suit as constituted is incompetent for failure to join the State Governor/Government. The test as to whether there should be a joinder of parties in a suit arises from the need to have before the court such parties as would enable it “*to effectually and completely adjudicate upon and*
C *settle all the questions in the suit.*”

In order to answer the question, I will refer to the claim of the plaintiff. The claim as endorsed in the writ of summons is as follows:

D “1. That as the most senior Oba in Oko/Olla District he is the person recommended by the Ifelodun/Irepodun Traditional Council to be included in the expanded Ifelodun/Irepodun Traditional Council and the recommendation has been so approved by the Military Governor of the State;

E 2. A nullification of the purported appointment of the 1st defendant by the 2nd defendant to the Ifelodun/Irepodun Traditional Council on the ground that it is ultra vires the power of the 2nd defendant as it is neither authorised by the Ifelodun/Irepodun Traditional Council nor the
F Kwara State Military Governor.

3. A permanent injunction restraining the 2nd – 3rd defendants from recognising the 1st defendant as the authorised representative of Oko/Olla district and restraining them from allowing the 1st defendant to sit in the Ifelodun/Irepodun Traditional Council.

G 4. A permanent injunction restraining the 1st defendant from parading himself or authorising any publication presenting him as the representative of Oko/Olla district in Ifelodun/Irepodun traditional council.”

H The plaintiff relied on Exhibits “1” and “10” as the foundation of the action. Exhibit “1” is a proposal made by Ifelodun/Irepodun Traditional Council in Kwara State to the Military Governor of Kwara State through the Commissioner For Special Duties in the Governor’s Office for

expansion of the Traditional Council to include representatives of three districts that had been omitted and Exhibit “10” is a letter from the Military Governor’s office conveying approval to the proposal.

Exhibit “1” reads in part:

“PROPOSAL

B

From the above, I am directed to forward to you through the Sole Administrator this proposal to include -

1. THE ALAGUNJIN OF AGUNJIN in Ifelodun Local Government.

2. THE OLOKO OF OKO and

C

3. THE OBA OF IDOFIN-AGBANA both in Irepodun Local Government for your approval.

(LANRE AFOLABI)

SECRETARY

D

IREPODUN/IFELODUN TRADITIONAL

COUNCIL, AJASSE-IPO.”

The letter containing the above proposal is dated 10th August, 1989.

Exhibit “10” reads as follows:

E

“MLGCA/S/118/111/471

Dept. of Local Government,

Military Governor’s Office,

P.M.B.1407,

F

Ilorin.

19th August, 1991.

The Secretary,

Ifelodun/Irepodun

Emirate/Traditional Council,

G

Ajase-Ipo.

APPROVAL FOR EXPANSION OF EMIRATE TRADITIONAL COUNCIL

I am directed to inform you that the Military Governor, in exercise of the powers conferred on him by the provision of Edict No.8 of 1976, has approved your request for the expansion of your Emirate/Traditional Council with the following additional members:-

(i) *Representative from Oko/Olla – Oko/Olla District.*

(ii) *Representative from Idofin-Idofin District.*

(iii) *Representative from Agunjin – Agunjin District.*

2. Arrangement is on hand to have the new appointments gazetted
 B in accordance with Section 76(3) and (4) of Edict No. 8 of 1976. You
 would please take further necessary action accordingly. This letter has
 been copied to the Chairman of the appropriate Local Government
 Council(s) for information and further necessary action.

(sgd)

C

Y. K. Raibu.

for: Director-General.”

Chief Olanipekun, S.A.N. for the 1st appellant submitted in the
 1st appellant’s brief that “the failure of the respondent to join the Gover-
 D nor of Kwara State or his representative as a defendant in this action is
 fatal to his case, for the fundamental questions in this action cannot be
 effectively or completely settled or determined without the presence of
 the said Governor or his representative as a party to the action.”

E Is the non-joinder of the Kwara State Government really fatal to the pro-
 ceedings?

The principle guiding joinder of parties as provided in our vari-
 ous Rules of court has received judicial interpretations in our courts and in
 F courts of other common law jurisdictions. The purpose of the Rules is to
 allow a plaintiff to proceed in the same action against all defendants against
 whom he alleges to be entitled to any relief whether his claim is brought
 against the defendants jointly, severally or in the alternative. The person
 to be joined must be someone whose presence is necessary as a party and
 G the only reason which makes him a necessary party to an action is that he
 should be bound by the result of the action and the question to be settled.
 There must be a question in the action which cannot be effectually and
 completely settled unless he is a party. See *Amon v. Rapheal Tuck & Sons*
 H *Ltd. (1956) 1 All E.R. 273 at 279* and *Lajumoke v. Doherty (1969) NMLR*
 281 AT 287.

It is improper to join as co-defendants persons against whom the
 plaintiff has no cause of action and against whom he has made no claim

and whose interest is adverse to that of the defendants. See *Aromire & Ors. v. Awoyemi* (1972) 1 All NLR (Pt.1) 101, *Uku & Ors. v. Okumagba & Ors.* (1974) 3 SC.35, *Peenok Investment Ltd. V. Hotel Presidential Ltd.* (1982) 12 SC.148, and *Green v. Green* (1987)3 NWLR (Pt.61)480 at 491.

A careful reading of exhibits “1” and “10” along with the claim will show that the plaintiff has no claim whatsoever against the Kwara State Government and the presence of the latter will not enable the court to effectually and completely adjudicate upon and settle all the questions in the suit. The plaintiff sued the appellants whom he conceived that he has a cause of action but the appellants are trying to compel him to join the Kwara State Government whom he has no desire to sue. The learned trial judge on 29-10-92, overruled the preliminary objection of the learned appellant’s counsel on the non-joinder of the State Government and the court below also disagreed with the contention of the appellants’ counsel that the Governor/Government is a necessary party. It was the action of the 2nd appellant in causing exhibit “D9” to issue to the 1st appellant and appointing him to represent OKO/OLLA District in the Ifelodun/Irepodun E Traditional Council that led to the present proceedings. Exhibit “D9” ignored exhibits “1” and “10” which recommended the OLOKO OF OKO and two others and the Governor’s approval to the proposal.

A joinder will be necessary:

(i) if the cause or matter is liable to be defeated by the non-joinder of the third party as a defendant;

(ii) if the third party is a person who ought to have been joined as a defendant so that he may be bound by the result of the trial or his presence before the court as a defendant is necessary in order “to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter”. See The Result (1958) Pro-bate 174.

It seems plain to me that the suit was not liable to be defeated by the non-joinder of the Government of Kwara State as a co-defendant, nor was it a person who ought to have been joined as a defendant in the first instance, nor was it a party whose presence before the court as a defendant

was necessary in order to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit. The court below was therefore right in rejecting the appellants' contention that the Kwara State Government is a proper or necessary party whose absence is fatal to the proceedings.

It is for this reason and the more detailed reasons given by my learned brother Ogundare, JSC that I dismissed the appeals of the two sets of appellants on 19-2-2001.

C

KATSINA-ALU JSC

These appeals came on for hearing on 19/2/2001 and after hearing oral arguments from learned counsel for the parties, I dismissed both appeals and indicated then that I would give my reasons today.

In the meantime I have had the advantage of reading in draft the judgment of my learned brother Ogundare, JSC. I entirely agree with it. For the reasons which he has given, which I adopt as mine. I also dismissed both appeals on 19th February 2001.

KALGO JSC

On the 19th February 2001, when the 2 appeals of the appellants were heard together in this Court, I dismissed both appeals as lacking merit, and agreed to give my reasons for doing so today.

I have had the opportunity before now of reading the reasons for judgment given by my learned brother Ogundare JSC, in this matter and I entirely agree with all the reasons given therein for dismissing the appeals. I adopt the reasons as mine and associate myself fully with the views expressed therein on all the issues raised by the appellants for the determination of this Court. It is, on my part, also for those reasons articulated by my learned brother Ogundare JSC that I decided on the 19th of February 2001 to dismiss this appeal as lacking in merit.