

SUPREME COURT OF NIGERIA
13TH JULY, 2001. SC. 112/1996
CORAM:- S. M. A. BELGORE, M. E. OGUNDARE,
U. MOHAMMED, O. ACHIKE, A. O. EJIWUNMI,

CHIEF ALIU ABU (Representing Obuo
Quarters, Ebese-Ivbiaro) & 4 ORS. PLAINTIFFS/RESPONDENTS
AND

1. CHIEF ABUBAKAR ZIBIRO
ODUGBO DEFENDANT/APPELLANT

2. THE HONOURABLE COMMISSIONER
FOR SPECIAL DUTIES (DEPARTMENT OF
CHIEFTAINCY AFFAIRS)

3. THE ATTORNEY-GENERAL AND DEFENDANTS
COMMISSIONER FOR JUSTICE

4. THE MILITARY GOVERNOR
OF BENDEL STATE

CHIEFTAINCY MATTERS - Right to sue - Judicial precedent - Uwegba's case - Decided that Governor is to set up an inquiry - Before coming to a decision under s.22(6) (b) of Bendel State Chieftaincy Law (H 2)

CONSTITUTIONAL LAW - Right to sue - Conflict between a state law and s. 236(1) of the 1979 Constitution - Will render the state law void for inconsistency (H 1)

JUDICIAL PRECEDENTS - Distinguishing factors - Where facts and issues raised are not the same - A past Supreme Court decision will not be binding (H 3)

JUDICIAL PRECEDENTS - Supreme Court - Conflicting decisions on the same point - Absence of - Will make the court follow its previous decision - Where the facts and issues are on all fours (H 4)

JURISDICTION - *Basis of - Trial court has jurisdiction to entertain the present suit - Based upon the statement of claim (H 5)*

FACTS

This case has to do with a Chieftaincy dispute filed before the Auchi High Court of the former Bendel State. It is the contention of the plaintiffs/respondents that the purported appointment and approval of the 1st defendant/appellant by the Executive Council as the village head is invalid and contrary to Ivbiaro Customary Law and therefore null and void and of no effect.

The plaintiff averred that the clanship head rotates among the 3 villages of their clan. It is the most senior titled man or Odion-Ejere who is the village head that will be the clan head. Upon the death of the incumbent, one Chief Momoh Bello Bawa became the village head. Following a dispute as to who was the rightful village head, the Owan Traditional Council was directed to enquire into the dispute.

The Council went further to select 1st defendant who was not a titled man or chief as the village head. Plaintiff commenced this action contending that the inquiry was devoid of any fairness and against the customary law of their community. The trial court found in favour of the plaintiffs. 1st defendant's appeal to the Court of Appeal was not successful. He has further appealed to the Supreme Court on a single issue questioning the trial court's jurisdiction to entertain the suit.

ISSUE FOR DETERMINATION

"Whether the trial Court had jurisdiction to entertain and grant the reliefs claimed by the plaintiffs in this action."

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

Constitutional law - Right to sue - Conflict

1. *"In the light of the constitutional provision and the decisions of the Supreme Court thereon, what will be the justification for preventing an aggrieved citizen from recourse to the High Court or for the High Court*

to refuse to entertain any matter so brought before it? In my view section 22(2), (3) and (6) of the Bendel State Chieftaincy Law 1979 cannot in any way seek to derogate or circumscribe the provisions of section 236(1) of the 1979 Constitution. Any attempt to so do would make it inconsistent with that constitutional provision and therefore to that extent void. A decision that it delays the right of an aggrieved party to come to court, or that it is a condition precedent to the exercise of a right to file an action to be entertained by the High Court, seeks to circumscribe the powers of the High Court under section 236(1) of the Constitution and to that extent it is void and of no effect. It is entitled to the same fate as the provision of section 22(4) which respondent's counsel has conceded to be unconstitutional. The decision of the learned trial judge that the action of the appellant is premature and striking same out is therefore wrong, and the appellant is entitled to succeed on this issue."

I agree entirely with what is said above. (p. 2331 F)

Right to sue - Judicial precedent

2. Although the decision in Uwegba's case did take note of the procedure set out by section 22 of the Bendel State Chieftaincy Law 1979 for "settling" dispute over traditional Chieftaincies, it did not anywhere decide that the steps set out thereunder are a condition precedent to a recourse to an action in the High Court by an aggrieved party. The real importance of that case is that it decided that before coming to a decision under section 22(6)(b) of the chieftaincy law, the Governor is obliged to set up an inquiry to examine the dispute and that his failure to do so was a gross irregularity which cannot be allowed to stand. Accordingly this appeal will be and is hereby allowed."

Again I say I agree. (p. 2332 E)

Judicial precedent - Distinguishing Factors

3. Having regard to what I have stated above, I think it is self evident that in Eguamwense v. Amaghizemwen (supra), the Court in that case was mainly concerned with whether the Court can properly grant declaratory relief which would, if granted, amount to having two parallel decisions in

respect of the same matter. The argument that found favour with the Court in that case need not be repeated here as I have earlier set them out in this judgment. The Court in that case did not consider whether the decision would have been the same, if the respondent had commenced his action against the appellant after he had received the decision of the Executive Council, pursuant to the provisions of section 22(3) of the Bendel State Traditional Rulers and Chiefs Edict of 1979. Apart from the above, it is also relevant to point out that the other distinguishing factors in the instant case were not considered in the Eguamwense v. Amaghizemwen case (supra). Moreover in the instant appeal part of the case of the plaintiffs is that the 7th plaintiff had in 1979 been appointed as the village head of Ivbiaro. And that was long before the purported appointment of the 1st defendant to the same title in 1986 by the 4th defendant. The above facts were considered and upheld in favour of the plaintiffs by the learned trial judge and Court below duly confirmed them. As the 1st defendant did not appeal against those findings, it must be taken as accepted.

From what I have said above it is therefore my humble view that the facts and issues raised in the instant appeal are not the same as the facts which fell for consideration in the Eguamwense v. Amaghizemwen case (supra). (p. 2337 F)

Supreme Court - Conflicting decisions

4. It is one of the settled principles of this Court that in the absence of conflicting decisions on the same point this Court would follow and apply its previous decision where the facts and the issues of law settled in the previous decision are on all fours with the facts and issues calling for determination in a subsequent case and/or matter. However, where the previous decision defers both as to the facts and the issues of law raised thereon in the subsequent case calling for determination, that previous decision will not be followed. It follows therefore that as the facts and the issues raised in the previous case of Eguamwense v Amaghizemwen (supra) are different from and distinguishable from those facts and issues found and established in this appeal, the decision of this Court in the

case of *Eguamwense v. Amaghizemwen* (supra) cannot therefore be followed to determine this appeal. The only issue raised for the 1st defendant in this appeal must therefore fail. (p. 2338 E)

Jurisdiction - Basis of

5. It is my further view that the trial Court was vested with the jurisdiction to entertain the suit based upon their statement of claim, having regard to the settled principle of law that it is the claim of the plaintiff that determines the jurisdiction of the Court to entertain a suit before it. See Barclays bank v. Central Bank (1976) 6 SC. 175 at 193. (p. 2339 A)

NOTABLE POINTS OF INTEREST

EJIWUNMIJSC

1. Judicial precedents - When past decisions will be binding

Before answering the question I have earlier posed as to whether the case of *Eguamwense v Amaghizemwen* (supra) is applicable to the instant case on appeal, I think it is necessary to advert to the settled principle concerning the bindingness of the decisions and judgments of our Courts in the hierarchy of Courts. But for such decisions and/or judgments of the supreme Courts to be applicable and binding, the facts and issues pronounced upon by the Supreme court must be on all fours with the case under consideration by the lower court. The earlier decisions and/or judgments of this Court are also generally binding on later cases for determination in this Court when such cases are on all fours with the earlier decisions and/or judgments of this Court. These are general principles. But it is desirable to mention that there are recognised exceptions to this general rule. (p. 2336 A)

OGUNDARE JSC

2. Inconsistent decisions of the Supreme Court

It would appear, therefore, that the decision of this Court in CHIEF OSAGIE V. CHIEF OFFOR is inconsistent with its earlier decision in EGUAMWENSE and later decision in ADESOLA. I hope the Court will have the opportunity some day to resolve the conflict. It would appear,

however, that the weight of judicial opinion seems to incline toward EGUAMWENSE. Suffice it to say that the facts in the present case are not on all fours with the facts in OSAGIE II and it does not, therefore, apply in this case. (p. 2356 E)

B

3. Reverting to the supervisory jurisdiction of the court over an inferior tribunal

It is therefore not correct as submitted in the Appellant's reply brief that "in this case there is no claim or order to set aside the decision of the Executive Council" It is not suggested that under the law there was another body beyond the Executive Council to whom they should take their complaint before resorting to the court. Having exhausted the remedy provided by the Law I think Plaintiffs, if still aggrieved, could resort to the court and claim, as they did, so long as they were not claiming reliefs declaratory of the functions of the Executive Council under the Law see ADIGUN & ORS. V. ATTORNEY-GENERAL, OYO STATE (1987) 1 NWLR 678. By their pleading and claims they appear to have resorted to the supervisory jurisdiction of the court over an inferior tribunal - the Executive Council. (p. 2357 B)

Claim - Difference between declaration as to and according to customary law

4. From the wording of claim (1) the plaintiffs were not seeking a declaration as to the customary law but a declaration that according to Ivbiaro customary law, it is the most senior title holder, 'ODION EJERE', who has the exclusive preserve of conferring the 'Ejere' title. A declaration as to the customary law is a matter within the exclusive jurisdiction of those on whom it is conferred by the Traditional Rulers and Chiefs Law. It is however within the jurisdiction of the court to ascertain, as a matter of fact, what the customary law is and to decide whether the declaration sought is permitted by that law.

It is not suggested that claim (4) sought a declaration as to the customary law of Ivbi-Ada-Obi Clan. Rather it is that according to the approved chieftaincy declaration relating to the Headship of the Clan, the

7th Plaintiff was the proper person to be so appointed. I cannot see how it can properly be argued that this claim is outside the jurisdiction of the court. I think the trial court properly exercised its jurisdiction in this matter. (p. 2358 B)

B

5. Declaratory relief was properly sought instead of certiorari

Before I end this judgment, I need to say a few words on the submission made on behalf of the Appellant that the Plaintiffs should have come by way of certiorari rather than by action for declaratory reliefs. I think the various dicta of their Lordships of this court in EGUAMWENSE have settled the issue. Karibi-Whyte JSC did say in EGUAMWENSE at page 20D of the report:

C

"It is accepted that the action for declaration is a useful and important procedural method for ascertaining and determination of a point of law or the construction of a document, and for the determination of the validity of orders or decisions of inferior courts or tribunals - See VINE V. NATIONAL DOCK LABOUR BOARD (1957) AC 488. Its nature is very much misunderstood. The action for declaration is used in a great variety of circumstances and is usually accompanied by ancillary reliefs. This procedure has been very commonly adopted in cases of disputes as to title to land held under customary law. - See FABUNMI V. AGBE (1985) 1 NWLR (pt.2) 299. It is also generally used in disputes as to title to chieftaincy. See GBOKOYI V. MINISTER OF CHIEFTAINCY AFFAIRS (1965) NMLR 7". (p. 2358 H)

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E

F

REPRESENTATION

J. I. Nweze with M. B. Idris Kutigi for the 1st defendant
D. A. Alegbe with J. O. Odion for the plaintiffs

G

CASES REFERRED TO

Eguamwense v. Amaghizemwen (1993) 9 NWLR (pt. 315) p.1
Okafor & Ors. Vs. A. G. Anambra State & Ors. (1992) 8 L.R.C.N. 407
Orisakwe v. Nwokedi (1989) 2 NWLR (pt. 102) 229
Onuzulike v. Nwokedi (1989) 2 NWLR (pt. 102) 229

H

Tika-Tore vs. Abina (1973) 4. S.C.63 at 71

AKUNNIA VS. A-GANAMBRA STATE (1977) 5 S.C. 161 at 177 Amaka
v. Governor (1956) 1 FSC 57-58

Babatunde v. Governor Western Region (1960) 5 FSC 59 at 62 Ex-Parte

B Obiyan (1973) 12 S.C. 23 at p. 35

Healey v. Minister of Health (1955) 1 Q.B. 221

Smith v. East Elloe R.D.C. 1956 AC 736 at 769-770

Pyx Granite Co. Ltd v. Minister of Housing and Local Government (1958)
1 Q.B. 554

C Governor of Ondo State v. Adewunmi (1988) 3 NWLR (pt. 82)280 Labiyi
v. Anretiola (1992) 8 NWLR (pt. 258) 139

Fawenhinmi v. A.G (NO1) (1989) 3 NWLR (pt. 112) at p.707

D STATUTES REFERRED TO

Constitution of Nigeria 1979 3rd Schedule, ss.236, 6 (6)(b)

Bendel State Traditional Rulers and Chiefs Law No. 16 of 1979 ss.21,
22(1), (2), (3) & (6), 22(4), (a) & (b)

E

LEAD JUDGMENT BY EJIWUNMI JSC

This appeal is against the judgment of the Court Below (Benin
Division). That Court, by its judgment delivered on the 26th day of May,
F 1995, upheld the judgment of the Auchi High Court in respect of the
claims of the plaintiffs before that Court. It must be noted that the plain-
tiffs at the commencement of this action included Bawa Shaibu, 1st plain-
tiff, and 7th plaintiff Chief Momoh Bello Bawa (described as IVBIARO
MOST SENIOR TITLE HOLDER) 'ODION EJERE'. And later during
G the proceedings, Chief Sule Elabor was joined as the 8th plaintiff; follow-
ing the death of the 7th plaintiff. In this Court, however, the plaintiff are
as stated above.

In respect of this appeal, the only point argued for the 1st defen-
H dant, who alone has appealed to this Court, concerns the jurisdiction of
the Auchi High Court of the former Bendel State to entertain the plain-
tiffs' action. In the High Court, the plaintiffs' by virtue of paragraph 17
of their third Amended Statement of Claim, filed with the leave of the

Court, pleaded thus:-

"17. Whereof the plaintiffs claim against the defendants jointly and severally the following reliefs, that is to say:

1. A declaration that according to Ivbiaro Customary Law, it is the most senior title holder, 'Odion Ejere' who has the exclusive preserve of conferring on deserving Ivbiaro person 'Ejere title (i.e. Chieftaincy Title) by turbanning and it is he who becomes the village head of Ivbiaro in Ivbi-Ada-Obi clan when a vacancy occurs. B

2. A declaration that the purported appointment and approval of the 1st defendant by the Executive Council as the village head of Ivbiaro in Ivbi-Ada-Obi clan in Owan Local Government Area in Owan Judicial Division as contained in Bendel State Legal Notice (B.S.L.N.) 77 of 1986 are irregular, illegal, invalid, and contrary to Ivbiaro Customary Law and the provisions of Edict No. 16 of 1979 and therefore null and void and of no effect. C D

3. A declaration that the purported appointment and approval of the 1st defendant as the clan head of Ivbi-Ada-Obi by the 4th defendant acting for the Bendel State Executive Council as contained in Bendel State Legal Notice (B.S.L.N.) 77 of 1986 are not in accordance with the approved chieftaincy declaration regulating succession to the Clan Headship of Ivbi-Ada-Obi clan and so illegal, null and void and of no effect whatsoever. E

4. A declaration that the 7th plaintiff Momoh Bello Bawa is the person entitled by Ivbiaro Customary Law and under the approved Ivbi-Ada-Obi chieftaincy declaration of Customary Law regulating succession to Traditional Ruler of Ivbi-Ada-Obi clanship to be appointed the clan head. Alternatively a declaration that the 8th plaintiff, Chief Sule Elabor, the Senior Daudu of Ivbiaro is to act and/or succeed as the village head of Ivbiaro and Clan Head of Ivbi-Ada-Obi in the event that the 7th plaintiff's incapacity continues unabated and/or on his death. F G

5. An injunction restraining the 1st defendant from parading and/or holding himself out as the village head of Ivbiaro and as the clan head of Ivbi-Ada-Obi. H

6. An injunction restraining the 2nd, 3rd and 4th defendants

themselves, their servants and agents from installing the 1st defendant or giving him staff of office and/or dealing with him in any manner whatsoever as the village head of Ivbiaro and clan head of Ivbi-Ada-Obi.

7. An injunction restraining the 1st defendant from conferring on any Ivbiaro person customary title (i.e. Ejere Title) and/or to receive any customary perquisites connected therewith."

It is i think desirable to give briefly the facts that led to the claims of the plaintiffs. It would appear from the pleadings and the evidence led that Ivbi-Ada-Obi clan is made of 3 villages, namely (1) Errah, (2) Ivbiaro and (3) Warrake. It is claimed by the plaintiffs that the clanship Head rotates among the 3 villages, by virtue of the 2nd Schedule (section 30 (2) of Traditional Rulers and Chiefs Edict 1979. After the death of the Clan head from Errah, it came to the turn of Ivbiaro. It is the plaintiff's case that the most senior title man or Odion - Ejere, who is the village head will be the Clan Head. It is also the plaintiffs' case that one Adamu Odugbo who was a Clan Head appointed according Ivbiaro custom, the Chiefs who are the present plaintiffs when Adamu Odugbo died the Village Head eventually descended on Momoh Esimiki, who was succeeded in 1979 by the 7th plaintiff Chief Momoh Bello bawa. It is further claimed by the plaintiffs that during the reign of the 7th plaintiff, he performed the duties of the village head, which included, (a) granting owners consent to timber exploiters and (b) distribution of essential commodities. He was also addressed formally as the Village head of Ivbiaro. Following a dispute as to who was the rightful Village head, and upon a report made to the then Bendel State Executive Council, the Owan Traditional Council was directed to enquire into the dispute. But the Owan traditional Council went further to select the 1st defendant as the Village Head. The plaintiffs then commenced this action as they contended that the enquiry itself was devoid of any fairness and against the customary law of their community with the appointment of the 1st defendant not being a titled man or chief, an Odion - Ejere. On this aspect of their case, the plaintiffs pleaded in paragraphs 10,11, 12(a), 13, 14, 15 and 16 of their 3rd Amended Statement of claim thus:-

"Para. 10: The plaintiffs will lead evidence of Ivbiaro Custom-

ary Law to show that Ivbiaro is one of the three ruling Houses in Ivbi-Ada-Obi Clan, namely:- Errah, Ivbiaro and Warrake and succession to the Clan Headship rotates around the headships of the Ruling Houses in that order. When a vacancy occurs, the head (i.e. Village head) of the appropriate Ruling House automatically succeeds. The plaintiffs will rely on the Ivbi-Ada-Obi Clan Approved Chieftaincy Declaration as contained in B.S.L.N. 142 of 1979. B

Para.11: The plaintiffs state that they were shocked and embarrassed when the Executive Council in B.S.L.N. 77 of 1986 announced the approval of the purported appointment of the 1st defendant as the clan Head of Ivbi-Ada-Obi even though it was obvious to the 4th defendant that the 1st defendant was never appointed Ivbiaro Village Head in accordance with Ivbiaro Customary law and by those entitled to do so. C

Para. 12: The plaintiffs will lead evidence to prove conclusively that the 1st defendant was at no time appointed a village head in 1979 when the stool became vacant as required by Ivbiaro Customary law and did not act in the said capacity between 1979 and 3/10/86 and will contend that the said appointment of the 1st defendant by the Executive Council was not made bona fide as there was no vacancy in the stool of Ivbiaro Village Headship at the time the Executive Council purportedly made the said appointment and gave approval. D E

Para. 13: The plaintiffs will at trial contend vigorously that under the Customary law of Ivbiaro and Edict No. 16 of 1979, it is a condition precedent that a person must first be a village head before he can be appointed the Clan Headship of Ivbiaro-Ada-Obi clan and the clan headship automatically devolves on whoever is for the time being the Village Head of Ivbiaro. F G

Para. 14: The plaintiff succinctly state that the inquiries carried out and findings made thereon by the Owan Traditional Council as contained in its minutes dated 30/11/82 and 7/12/82 were carried out in breach of the principle of Natural Justice and the provisions of the Traditional Rulers and Chiefs Edict 1979 and as such, the subsequent appointment and approval of the 1st defendant based on the said findings and/or recommendation by the Executive Council is null and void and of H

no effect. The plaintiffs will found on the said minutes of Owan Traditional Council.

Para. 15: The plaintiffs state succinctly that they will lead evidence of Ivbiaro Customary Law to establish the following:-

B (a) How 'Ejere' title is taken and/or conferred on deserving Ivbiaro persons;

(b) How the Odion 'Ejere' is determined among the 'Ejere' title holders;

C (c) What constitute customary perquisites that the would-be 'Ejere' holder pays; and

(d) How the customary perquisites are paid by recipients of 'Ejere' titles and how received by the Odion 'Ejere' and shared among the Ejere title holders.

D Para. 16(a) The plaintiffs aver that by the purported appointment and approval of the 1st defendant as the village head of Ivbiaro and Clan Head of Ivbi-Ada-Obi by the Executive Council in preference to the 7th plaintiff the incumbent village head by Ivbiaro Customary
E Law, the plaintiffs have been prejudiced in their customary, legal and equitable right.

(b) The said purported appointment and approval constitute an assault and/or abomination of the custom of Ivbiaro people, not only to
F the annoyance of the people of Ivbiaro who cherish and jealously preserve their customs and traditions in this matter but also of their ancestral spirit.

(c) The said purported appointment and approval constitute an
G infraction of the Fundamental human Rights and of the Customary Law of Ivbiaro Community."

By his 4th Amended Statement of Defence, filed with the leave of the trial Court, the 1st defendant joined issues with the plaintiffs in respect of several of the averments made by the plaintiffs in their pleadings. Some of the averments pleaded in the 1st defendant's 4th Statement of Defence, which I considered germane read thus:-

Para. 1. The 1st defendant denies paragraphs 1(a), (b), (c), (d), (e), and (f) of the Statement of Claim and put the plaintiffs to the

strictest proof of same.

(a) *The 1st defendant avers that the 8th plaintiff are never a senior Daudu of Ivbiaro. Evidence shall be led at the trial that the 7th plaintiffs cannot appoint a chief of any grade in Ivbiaro. The conferment of Chieftaincy title at Ivbiaro is the exclusive customary right of the 1st defendant who is the village head of Ivbiaro after due consultation with other chiefs in the 4 quarters of Ivbiaro. If no village head the most senior title holder (Odion Ejere) confers chieftaincy title on deserving sons of Ivbiaro after consultation with all other chiefs of Ivbiaro.*

(b) *In answer to paragraph 1(f) the 1st defendant avers that the 2nd -6th, and the 8th plaintiffs are not title holders in Ivbiaro. They are "chiefs" made by the 7th Plaintiff for the purpose of this case. The 1st defendant avers that the 8th plaintiff was allegedly conferred with a chieftaincy title by the 7th plaintiff on the 26th day of April 1987 after the present case had been filed in Court in December 1986. The 1st defendant shall rely on a letter headed "The appointment of Alhaji Chief Sule Elabor as the Senior Daudu (Ukor) of Ivbiaro by Chief Momoh Bello Bawa" on the 26th April 1987 which photocopy was attached to the motion dated 15/7/87 to join the 8th plaintiff as a party to this case. The 1st defendant hereby gives notice to the plaintiffs to produce the original copy of this letter at the trial of this case. The 1st defendant denies the fact that the 2nd-6th plaintiffs are kingmakers.*

Para. 12: The 1st defendant admits paragraph 10 of the Statement of Claim in its entirety. The 1st defendant avers that at the time his appointment as the clan head of Ivbi-Ada-Obi was approved, it was the turn of the Village head of Ivbiaro to become the clan head of Ivbi-ada-obi (sic.) His appointment as village head having been approved, he automatically become the clan head of Ivbi-Ada-Obi and he was so approved.

Para 13: The 1st defendant in answer to paragraph 11 states that the 4th defendant did not in BSLN 77 of 1986 announce the approval of his appointment as clan head. The 1st defendant states that he was appointed village head of Ivbiaro by those entitled under the Ivbiaro native Law and Custom so to do. The 1st defendant shall at the trial rely

on all the relevant paper, documents and letter relating to his appointment.

Para. 15: The 1st defendant states that he will lead evidence of Ivbiaro customary law to establish the following at the trial.

B (a) How Ejere title is taken and/or conferred on any deserving Ivbiaro person.

(b) How he was conferred with Ejere title by the most senior title holder at Ivbiaro then - Chief Braimah Ariete the Dania of Ivbiaro.

C (c) How he was appointed by Afimosi ruling house as village head.

(d) The functions of Odion were (the oldest male also called Owolise in Ebese quarters) Ivbiaro as regard the appointment of village head.

D (e) How the customary perquisites was paid by the 1st defendant when he was conferred with Ejere title and to whom he paid same.

(f) How he was conferred with Ugbemu title as the Zaidi of Ivbiaro.

E (g) Method of appointment of village head by the Atimosi ruling house and the installation of the village head of Ivbiaro."

By paragraphs (a), & (b) of the pleading at page 122 of the printed record, the 1st defendant further alleged thus:-

F "Para. (a) In answer to paragraph 14, the 1st defendant avers that each contestant to the village headship was given opportunity to be heard by the Owan Traditional Council. The 1st defendant shall contend at the trial that the Owan Traditional Council has a legitimate right to investigate the claims and counter claims of the contestants to the village headship of Ivbiaro.

G (b) The 1st defendant denies paragraph 16(a), (b) and (c) and avers that his appointment as village head of Ivbiaro was made by those entitled under the customary law so to do. The 1st defendant further H avers that his appointment and subsequent approval by the State Executive Council did not constitute and breach the Fundamental Human Rights of the 7th plaintiff."

From the pleadings and the evidence led during the trial, it would

appear that the case for the 1st defendant is that the customary law regulating the appointment of the village head is the exclusive right of Afimosi family of Eworue sub-quarter in Ebese quarter. It is the Afimosi family, according to the 1st defendant, that produces the village head, the kingmakers, the regalia, and also confers the Ugbemu title, which qualifies a person for the village head of the clan. It is also the case of the 1st defendant that it is the Afebor family that will later ratify as the village head the person chosen by the Afimosi family. The 1st defendant also gave evidence on the procedure adopted in appointing a village head. According to him, only title holders are entitled to be nominated, and these are only from Afimosi descendants. Where there are two candidates, the selection would be settled by voting and it is the person who has a simple majority of votes over the other that would be nominated for the post. Thereafter the Afeobor family will be informed of the nomination. The families of the Odion - Ejere and other title holders will also be notified of the nomination. The title of Ugbemu will then be conferred on the nominated person, and which will be followed by the conferment on him of the title of Zaiki by the Odion-Ejere. With the title of Zaiki, the nominated person is entitled to sit on the throne. In his own situation 1st defendant said that Braima Ariete (the Odion - Ejere) conferred Ejere title on him in February 1982, and in August 1982, the said Braima Ariete conferred on him, the title of Zaiki.

After hearing evidence led by the parties, and their learned counsel, the learned trial judge Maidoh J. delivered a very well considered judgment. In the course of this judgment, and before upholding the claims of the plaintiffs, the learned trial judge had held that the whole of Ivbiaro is a ruling house, contrary to the contention of the 1st defendant that Afimosi family is the only ruling house in Ivbiaro.

The learned trial judge also made observations on the evidence on which he made findings relevant to the appointment of the 1st defendant as the clan head Ivbi-Ada-Obi. That portion of the judgment of the learned trial judge is reproduced, verbatim hereunder:-

"The Owan Traditional Council made its recommendations to the State Government (vide Exhibit 14) i.e. EXCO. By paragraphs 7

and 11(a) of the 1st defendant's Amended Statement of Defence, the defendant stated that appointment as village head was approved by the Executive Council of Bendel State on the recommendation of Owan Traditional Council, as the proper person to be appointed. By paragraphs 4
 B & 5 of the Joint Statement of Defence of 2nd to 5th defendants, it was stated that the bendel State Executive Council acted on the findings and recommendation of the Owan Traditional Council in appointing the 1st defendant as the village head of Ivbiaro and clan head of Ivbi-Ada-Obi
 C clan. The instrument of appointment is Exhibit 46 i.e. BSLN 77 of 1986. Here I pause to note that the 2nd - 5th defendants adopted and rested their case on that of 1st defendant. The appointment of 1st defendant was clearly based on the findings and recommendation of the Owan Traditional Ruling Council in appointing the 1st defendant as the village
 D head of Ivbiaro and Clan head of Ivbi-Ada-Obi. The above agrees with the plaintiffs contention that the Owan Traditional Council had no power and competence any longer to advise the Governor in Chieftaincy matter(s) as provided by third schedule of 1979 Constitution. The only competent
 E body that could have given advice following BSLN No. 2 of 1982 was the Bendel State Council of Chiefs. Since the governor acted on the advice of incompetent body in appointing 1st defendant to the offices of village head of Ivbiaro and clan head of Ivbi-Ada-Obi by means of
 F BSLN of 1986, such appointment is illegal, null and void and of no effect whatsoever. This is so when Exhibit 46 backdated the 1st defendant's appointment to 1982. By virtue of the above finding reliefs No. 17(2)(3) of the Amended Statement of Claim succeed."

The learned trial judge in conclusion then held as follows:-

G "(1) That the 7th plaintiff being the Odion Ejere was properly appointed the village head of Ivbiaro in 1979 by those who by native law and custom are entitled and authorised to do so. The 7th plaintiff was rightly appointed a village head when Chief Esimike died and va-
 H cancy occurred.

(2) That the purported appointment and approval of the 1st defendant by the Executive contained in exhibit 46 are irregular, invalid, and illegal and is contrary to Ivbiaro Customary Law and provision of

Edict No. 16 of 1979 and therefore null and void.

(3) *That the purported appointment and approval of the 1st defendant as the clan head of Ivbi-Ada-Obi are similarly void and invalid.*

(4) *Relief sought in paragraph 17 (4) of the 3rd Amended Statement of Claim succeeds save the alternative claim. The alternative relief fails save that the 8th plaintiff had been rightly appointed senior Daudu by the 7th plaintiff in 1987.*

(5) *Injunction as sought in reliefs No. 17(5) & (7) of paragraph 17 of the Amended Statement of Claim succeed, and the 1st defendant is hereby restrained from parading and/or holding himself out as the village and clan head of Ivbi-Ada-Obi, injunction is also granted restraining him (1st defendant) from conferring on any Ivbiaro person any customary title and or receiving any customary perquisites connected thereto.*

(6) *Injunction restraining the 2nd, 3rd and defendants, themselves, their agents or servants from dealing with 1st defendant in any manner whatsoever, as the village head of Ivbiaro and clan head of Ivbi-Ada-Obi."*

The 1st defendant being very dissatisfied with the judgment and orders of the trial Court, appealed to the Court below. That Court after due consideration of all the points raised before it dismissed the appeal in its entirety. The 1st defendant, still dissatisfied with the judgment of the Court below (Benin Division) coram, (Akpabio, Ogebe and Ige JJCA) has further appealed to this Court.

As I have already mentioned earlier in this judgment, the only point taken in this Court is with regard to whether the trial Court was vested with the jurisdiction to hear and determine the complaints of the plaintiffs. Pursuant thereto. F.R.A. Williams, Esq., SAN, filed an Amended Notice of Appeal with the leave of the court of Appeal, the following ground of Appeal:

"(1) *The Court of Appeal erred in law in failing to observe that the High Court of the former Bendel State had no jurisdiction to entertain the plaintiffs' action*

Further particulars of Error

(a) *The Traditional Rulers and Chiefs Edict, 1979 has remitted to the Executive Council or prescribed Authority, as the case may require, the function of determining chieftaincy disputes.*

B (b) *The same Edict has also conferred to other persons or authorise the function of making declaration stating the customary law regulating the selection or appointment of Chiefs.*

C (c) *The 1st defendant herein has been appointed as the Village Head of Ivbiaro and Clan head of Ivbi-Ada-Obi in Owan L.G.A. by the Executive Council in accordance with customary law.*

(d) *The aforementioned appointment has not been challenged or quashed by Certiorari.*

D (e) *In the premises the Court cannot exercise its jurisdiction to make declaration in respect of the same chieftaincy matter."*

E In accordance with the Rules of this Court, learned counsel for the parties filed and exchanged briefs for their respective party. And for the 1st defendant, a reply brief was also filed and served. At the hearing, learned counsel for the parties adopted and placed reliance upon the briefs so filed and served.

F As aforesaid in this judgment, the only question raised for the 1st defendant for the determination of this appeal has to do with the jurisdiction of the trial Court to entertain the suit. The question was put in the brief filed for the 1st defendant, as follows:-

"Whether the trial Court had jurisdiction to entertain and grant the reliefs claimed by the plaintiffs in this action."

G For the 1st defendant, the thrust of the argument his learned counsel who argued the brief filed by F.R.A. Williams Esq., SAN may be put thus: First is the submission that as a general principle, the vesting of power to decide a question of law or fact in an authority other than a Court of law may be construed to mean that it is the intention of the legislature to oust the jurisdiction of the Courts of law from entertaining H disputes over such questions. Secondly, it is argued that it is at least well settled that where the authority designated by statute has determined the matter remitted to it, a court of law will not or ought not to entertain an action for declaration designed to determine that very same matter. For

if that were permissible, then it is submitted, that will lead inevitably to the possibility of having two contradictory or inconsistent decisions on the same matter. In support of that submission, reference was made to the case of Eguamwense v. Amaghizemwen (1993) 9 NWLR (pt. 315) p.1. In that case this Court, had the occasion to construe the Traditional Rulers and Chiefs Edict, 1979 of the former Bendel State, and it is contended for the 1st defendant that the pronouncement of this Court in that case would go a long way to the resolution of the question.

In the view of learned counsel for the 1st defendant, the conclusion of the majority of the members of the Court is that the Edict, namely the Traditional Rulers and Chiefs Edict, must be construed to mean that the jurisdiction of the trial Court to question a quasi-judicial decision made by the Prescribed Authority or the Executive Council though capable of being quashed by Certiorari, cannot be challenged by declaratory action. Having regard, to the argument reviewed above, this court is therefore invited to uphold the appeal, set aside the judgment of the Court of Appeal, and the plaintiffs action before the High Court be struck out.

The response of the plaintiffs to all the arguments proffered for the 1st defendant are as set out in the brief filed for them by their learned counsel. The preliminary point taken for the plaintiffs is that 1st defendant was not appointed Village Head of Ivbiaro by those entitled under Ivbiaro Customary Law as required by section 22(1) and 22(2), of the Traditional Rulers and Chiefs Law, No. 16 of 1979. It is further submitted for the plaintiffs that the Owan Traditional Council which the 2nd - 4th defendants appointed to enquire into the disputed village Headship of Ivbiaro, was not empowered to appoint a Village Head for the people of Ivbiaro.

Although, it was further argued for the plaintiffs that the conduct of the inquiry was in breach of natural justice, as the Owan Traditional Council did not allow the contestants to cross-examine themselves nor were the Chiefs who constituted the kingmakers to give evidence, yet it is my view, that all that argument are not of the moment in this appeal.

This is because the 1st defendant is not challenging the findings

of facts made by the trial Court and confirmed by the Court below in this appeal. The sole question raised in this appeal is whether the trial High Court possessed the jurisdiction to entertain the suit of the plaintiffs. It is therefore argued for the plaintiffs that the moment approval is given to the appointment of the 1st defendant as the clan head of Ivbi-Ada-Obi by the Executive Council acting under powers given to it by the Traditional Rulers and Chiefs Law, No. 16 of 1979, the plaintiffs, became vested with the right to contest the recognition of the 1st defendant by recourse to the High Court under the provisions of section 236 of the Constitution of 1979. Pursuant thereto, the plaintiffs can challenge that recognition by taking a declaratory action against the defendants. In support, the following cases were cited. Okafor & Ors. Vs. A. G. Anambra State & Ors. (1992) 8 L.R.C.N. 407 at 414; Orisakwe v. Nwokedi (1989) 2 NWLR (pt. 102) 229; Uwegbe v. Attorney-General, Bendel State; Onuzulike v. Nwokedi (1989) 2 NWLR (pt. 102) 229.

It is further argued for the plaintiffs that if the act or transaction complained of is void, a declaration to that effect might issue, and for that proposition, reference was made to Tika-Tore vs. Abina (1973) 4. S.C.63 at 71. As a declaratory order merely proclaims, the existence of a legal relationship and contains no specific order, plaintiff may seek that order by a declaratory action. See AKUNNIA VS. A-GANAMBRA STATE (1977) 5 S.C. 161 at 177. Hence it is argued for the plaintiffs that as their claim was for a mere order to declare Ivbiaro Customary law that the most senior title holder confers chieftaincy title on deserving sons, and it is he who becomes the village Head (Odion Ejere), the suit was properly heard and determined upon the declaratory action instituted by the plaintiffs. It is contended also for the plaintiffs that the plaintiffs remedy does not lie only by way of certiorari. The arguments in support of that reference was made to the case of Ex-Parte Obiyan (1973) 12 S.C. 23 at p. 35, for the proposition that certiorari does not lie in respect of executive or quasi-Judicial acts. See also Amaka v. Governor (1956) 1 FSC 57-58 and also Babatunde v. Governor Western Region (1960) 5 FSC 59 at 62.

Finally it is submitted for the plaintiffs, that the cases of Eguamwense vs Amaghizemwen (1994) 14 L.R.C.N. 181; (1993) 9

NWLR (pt315) 1, and Healey vs. Ministry of health (1955) 12 B221 are distinguishable from the instant case.

I have earlier in this judgment mentioned that a reply brief was filed on behalf of the 1st defendant. In that brief, learned counsel for the 1st defendant conceded it that the jurisdiction of the Court to entertain B declaratory actions and to make pronouncement on errors of law made by inferior courts and tribunals undoubtedly exist. But it is argued that such jurisdictions are exercisable in proceedings between the parties to the decision of the tribunal which are instituted for the purpose of challenging the legality or validity of such decision and setting it aside if it is found to be illegal or void. In the instant case, it is argued that there was no claim or order to set aside the decision of the Executive Council. The case of Smith v. East Elloe R.D.C. 1956 AC 736 at 769-770 was cited. With regard to the cases brought to the attention of the Court to support D the view of the plaintiffs that the High Court has jurisdiction to entertain declaratory action as in the instant case, it is the submission of learned counsel for the 1st defendant that Eguamwense v. Amaghizemwen (supra) must be treated as having overruled them. E

Undoubtedly, therefore, the success of this appeal, depends on whether the case of Eguamwense v. Amaghizemwen (supra) is applicable to the instant appeal as argued by learned counsel for the 1st defendant. It is therefore necessary to examine the decision in that case to F answer the question. The facts in that case, i.e. Eguamwense v Amaghizemwen (1993) 9 NWLR (Pt. 315) 1 may be put briefly thus:- The appellant in that case was appointed by the Oba of Benin as the Amaghizemwen of Benin. This was after the Oba of Benin had heard the parties concerning their rights to this ancient Benin title. The respondent, G being dissatisfied with the ruling of the Oba, then took out a writ of summons on the 7th February 1986 in the High Court seeking a declaration in respect of the same issue which was decided by the Oba of Benin. Both the High Court and the Court of Appeal granted respondent the H declarations and injunction sought. The reliefs so granted to the respondent stem from what the respondent claimed. And they are:-

“(a) a declaration that the plaintiff and not the defendant is

entitled to be conferred with the chieftaincy title of Amaghizemwen of Benin; it being a hereditary title under Benin Native Law and Custom;

(b) *a declaration that the conferment of the hereditary title of Amaghizemwen of Benin by Omo N'Oba Erediauwa, the Oba of Benin, on the defendant on or about the 3rd of July, 1985 in Benin within Benin Judicial Division is contrary to Benin Native Law and Custom of inheritance and therefore ought to be set aside:*

(c) *an order of perpetual injunction restraining the defendant his heirs, servant and agents from parading himself as the Amaghizemwen of Benin."*

In the determination of this question this Court was obliged to consider whether the provisions of sections 21, 22(1), 22(2) and 22(6) of the Bendel State Traditional Rulers and Chiefs law No. 16 of 1979, did not oust the jurisdiction of the trial Court. For the appellant his learned counsel Chief F.R.A. Williams SAN, based his argument on the application of general principles of law, and the intention of the legislature as expressed in the provisions of the Traditional Rulers and Chiefs Edict No. 16 of 1979. Learned counsel submitted that the vesting power to decide a question of fact or law in a person or authority other than a Court of law is a clear indication of the intention of the legislature to vest the jurisdiction to decide such questions in the person or authority other than the Courts. This intention, it was further argued was re-enforced by the provision for the review or appeal procedures in such statutes. This contention led to what was formulated as the principle that ought to govern the issue. It reads:-

"Where an authority vested with statutory function (including the power to decide any question of law or fact) exercises that functions and he does so in relation to a matter of a kind over which he is authorised to act, then the validity of his action can only be challenged by an appeal or review (where that is available or by invoking the supervisory jurisdiction of the high Court to quash it or set it aside). It cannot be challenged by an action for a declaration."

For the respondent, his learned counsel, Mr. Osifo argued that by virtue of the unlimited jurisdiction of the High Court, and the judicial powers of

the Courts respectively in sections 236 and 6(6)(b) of the 1979 Constitution, the trial Court had the necessary jurisdiction to entertain the action. It was also the submission of Mr. Osifo that the jurisdiction of the High Court in the matter cannot be merely supervisory once it is conceded that the finality clause in section 22(4)(a) & (b) of the Traditional Rulers and Chiefs Edict 1979 is null and void. The learned counsel also referred to cases such as Pyx Granite Co. Ltd v. Minister of Housing and Local Government (1958) 1 Q.B. 554; Governor of Ondo State v. Adewunmi (1988) 3 NWLR (pt. 82)280; Labiya v. Anretiola (1992) 8 NWLR (pt. 258) 139, to support the proposition that express words are required to exclude the exercise of the jurisdiction of the High Court to grant a declaratory relief in such matters.

However, the argument proffered for the respondent did not find favour with the majority of the Court, Karibi-Whyte JSC, Belgore JSC, Olatawura JSC, Onu JSC. In this regard, see Eguamwense v. Amaghizemwen (supra) at pages 16-25; pages 25-26; 26-32; pp. 40-43. Karibi-Whyte JSC, for his part after discussing the provisions of section 6(6)(b) and section 236 of the Constitution of 1979 and had also considered the decision of court of Appeal in Fawenhinmi v. A.G (NO1) (1989) 3 NWLR (pt. 112) at p.707, took the view that the Court has stated the position too widely - as the court of Appeal suggested in its judgment that the 'powers of the High Court to made prerogative orders, declarations and injunctions, was given a new lease of life under the 1979 constitution by the combined effect of the unlimited jurisdiction of a State High Court under section 236 and section 6(6)(b) which vested judicial powers of the Constitution to extend to all matters between persons or between government or authority and any person in Nigeria and to all actions and proceeding relating thereto, for the determination of the civil rights and obligations of that person'. And also after considering whether the respondent could properly have relief sought by a declaratory action rather than seeking for an order of certiorari to quash the order of an inferior tribunal, His Lordship, Karibi-Whyte at p. 24-25 of his judgment said as follows:-

"The nature and effect of an order for certiorari is clearly dif-

ferent from a declaration. An order for certiorari corrects errors of inferior tribunals and quashes erroneous decisions. A declaration as to right already determined by the inferior tribunal does not correct the errors, if any, of the tribunal but leaves it as it is. It declares what the Court regards as the true legal position. The effect is that both any wrong decision of the inferior court, and the declaration remain. This was the situation which Denning L.J. pointed out in Healey v. Minister of Health (1955) 1 Q.B. 221, when he said that:

'there would then be two inconsistent findings, one by the Minister and the other by the Court. That would be a most undesirable state of affairs'.

It is indeed described as a legal curiosity. The effect of the decisions of the Courts below which granted the declaration sought is to create the undesirable situation stated above. Respondent has not challenged the validity of the decision of the "prescribed authority" either by appeal to the Executive Council for review, or by certiorari removing it to the High Court to be quashed. It is inappropriate to do so by a declaration. The decision of the "prescribed authority" therefore remains valid and effective. In the circumstance the High Court should have in the exercise of its jurisdiction in the declaratory relief borne in mind the fact there was a valid and subsisting decision of an inferior tribunal. The High Court would therefore be exercising its discretion to grant a declaration in respect of a legal situation which is already determined. The legal position of the status of the chieftaincy title of an Amaghizemwen of Benin in respect of which the declaration was being sought has at the time of the suit been determined by the "prescribed authority." The High Court went outside its jurisdiction in granting the declaration sought."

The other Justices of this Court, namely Belgore, Olatawura and Onu (JJSC) delivered judgments which concurred totally with that of Karibi-Whyte JSC. However, although Mohammed JSC, agreed with the majority as he said at page 36 of his judgment thus:-

"From the authorities analysed above, in this judgment, it is crystal clear that the decision which the High Court cannot make, taking into consideration the provisions of s.22 of Traditional Rulers and Chiefs

Edict No. 16 of 1979, is a declaration that the respondent is entitled to be conferred with the chieftaincy title of Ameghizemwen of Benin. If the High Court makes such a decision it would amount to having two parallel and inconsistent findings, one by the prescribed authority (The Oba of Benin) and the other by the High Court."

Yet, on what he referred to as the second leg of the respondent's claim, Mohammed JSC, deferred from the view of majority as he took the view on aspects of the reliefs sought by way of declaration by the respondent. I refer to papers 38 - 39 of this judgment in Eguamwense v. Amaghizemwen (supra); It reads, inter alia as follows:-

"It is in view of the above that I now refer to the second leg of the respondent's claim, where the High court was sought to declare that the Prescribed Authority (the Oba of Benin) acted contrary to Benin native law and custom when the title of Amaghizemwen of Benin was conferred on the appellant and also when a declaration of injunction was prayed for. These two claims fall within supervisory jurisdiction of the High Court over decisions of the Prescribed Authority. All the decided authorities referred to in this appeal, disclose a settled law that unless the jurisdiction is clearly excluded the High Court has power to interfere with the decisions of statutory tribunals. It is also settled law that an aggrieved party can invoke the supervisory jurisdiction of the High Court by way of declaration in seeking for such decisions to be set aside."

In the case in hand the (appellant) sic respondent can invoke by way of a declaration, the supervisory jurisdiction of the High Court to correct fundamental errors of law committed by the Prescribed Authority. See also Anisminic v. Foreign Compensation Commission (1969) 2 AC 147 at 171.

The provision in the traditional Rulers and Chiefs Edict No. 16 for an aggrieved party to apply to the State Executive Council for a review is an alternative remedy. In Pyx granite v. Ministry of Housing (supra) Lord Simonds held that the alternative remedy does not take away the inalienable right of Her Majesty's subject to seek redress in her courts." Now, although Mohammed JSC took the firm view that the respondent rightly sought for reliefs by way of his declaratory action nevertheless he

felt, having regard to the principles enshrined in the Privy Council judgment in Ikebife Ibeneweka & Peter Egbuna & Anor. (1964) 1 WLR that the proper decision which the High Court should have taken was to refuse to grant the relief in the exercise of its judicial discretion.

B From all I have said above the decision of the majority in a nut-shell is that the respondent was wrong to have commenced a declaratory action against the appellant, having regard to the fact that the prescribed authority had made a pronouncement upon the dispute by virtue of the provisions of section 22 of the Traditional Rulers and Chiefs Edict No. C 16 of 1979. It is desirable that section 21 and 22 of this Edict be set down. They provide as follows:-

"21. *The Executive Council may appoint in respect of a local government area or part thereof, an authority (in this Edict referred to as D 'the prescribed authority') consisting of one person or a committee of two or more persons to exercise the powers conferred under this part in respect of the office of a traditional chief or an honorary chief whose chieftaincy title is associated with a community in that area.*

E 22(1) *The conferment of a traditional chieftaincy title shall be in accordance with the customary law and shall be subject to the approval of the prescribed authority or where the provisions of section 23 have been applied, to the approval of the Executive Council.*

F (2) *Where a traditional chieftaincy title is conferred on a person by those entitled by customary law so to do and in accordance with customary law the prescribed authority or the Executive Council as the case may be, may approve the appointment.*

G (3) *Where there is a dispute as to whether a traditional chieftaincy title has been conferred on a person in accordance with customary law or as to whether a traditional chieftaincy title has been conferred on the right person, the prescribed authority or the Executive Council, as the case may be, may determine the dispute.*

H (4) *The decision of the prescribed authority or the Executive Council, as the case may be:-*

(a) *to approve or not to approve the conferment of a traditional chieftaincy title on a person; or*

(b) determining a dispute in accordance with sub-section (3) of this section; shall not be questioned in any court.

(5) The prescribed authority shall not withhold approval of the conferment of a traditional chieftaincy title on a person if such conferment is made in accordance with the customary law regulating the conferment of the chieftaincy title. B

(6) The Executive Council may, on the application of an aggrieved party:-

(a) review the decision of a prescribed authority made under sub-section (3) of this section and substitute its own decision therefor, or C

(b) approve the conferment of a traditional chieftaincy title on a person if such approval was withheld by the prescribed authority contrary to sub-section (5) of this section.

(7) Before exercising the power vested in it by sub-section (6) of this section, the Executive Council may cause such enquiries as appear to it to be necessary or desirable to be held in accordance with section 27 of this Edict." D

From the above quoted provisions of section 21 of the Traditional Rulers and Chiefs Edict, 1979, that the Executive Council of the then Bendel State Government was empowered to appoint in respect of a local government area or part thereof, an authority referred to as the Prescribed Authority consisting of one person or a committee of two or more persons to exercise the powers conferred under the law in respect of the office of a traditional Chief or an honorary chief whose chieftaincy title is associated with a community in that area. By sub-section (1) of section 22, it is provided that the conferment of traditional chieftaincy title shall be in accordance with the customary law and shall be subject to the approval of the prescribed authority. And in subsection (2) of section 22, it is enacted that where a traditional chieftaincy is conferred on a person by those entitled by customary law so to do and in accordance with customary law the prescribed authority or the Executive Council as the case may be, may approve the appointment. Then it is provided in subsection (3) of section 22, that where there is a dispute as to whether a traditional chieftaincy title has been conferred on a person in accor-

dance with customary law or as to whether a traditional chieftaincy title has been conferred on the right person, the prescribed authority or the Executive Council as the case may be, may determine the dispute.

During the preparation of this judgment, I came across the following decisions of this court which may not be directly to the appeal under consideration. But as the conclusions reached in the two cases defer from the decision in the Eguam. I deem it necessary to relate them here, so that this Court would consider them when the occasion calls for it.

The first is Olu of Warri v. Kperegbeyi (1994) 4 NWLR (Part 339) 416. It will be noticed that the issues raised in the appeal are as follows:-

"1. Whether the learned trial Judges of the court of Appeal in their detailed consideration of the plaintiff's claim before the Court the Ruling of the Learned Trial Judge, the relevant section of the Constitution and the embraced issues for determination of the appellants were justified in allowing plaintiffs appeal on the two issues of jurisdiction of the Warri High Court hearing the case and the Locus Standi of the plaintiffs to institute the action?

2. That having regard to the facts settled in the pleadings the Court of Appeal rightly came to the irresistible conclusion that the cause of action arose in 1985 and ultimately the 1979 Federation of Nigeria Constitution prevailed and Not the 1963 Constitution.

3. That on settled pleadings briefs of the parties before the Court of Appeal and the judgment of the Warri High Court particularly provision of section 22(2) Bendel State Traditional Rulers and Chiefs Law 1979, the Court of Appeal came to a judicial and judicious decision that the plaintiffs have Locus Standi to institute this action ab initio."

The court in respect of Issue (1) said inter alia, per Wali JSC, at pages 437-439, thus:-

"Both learned counsel agreed that the cause of action in this appeal arose in 1985 but differed on the applicable constitutional provisions. It is the provision of section 161 (3) of the 1963 Constitution that is apposite, as found by the learned trial judge or 1979 Constitution as

modified by section 274 of the same Constitution as contended by the learned counsel for the respondent?

The general rule of interpretation is that a subsequent Act does not affect the provision of prior, special or private Act, unless it is expressly provided; in other words, a subsequent general Act will not interfere and modify or repeat the provisions of a special or private Act, unless that intention is clearly manifested in the general Act: See *baker v. Edger* (1987) AC 748 at 7554 (PC). But this general rule is not without exception. Where a special or a private Act is absolutely inconsistent and repugnant with a subsequent general Act, the courts are bound to declare the prior special or private Act of any of their provisions repealed by the subsequent general Act. See *Bramston v. Colchester Corps*: (1858) 6 E & B 246 and *Great Central Gas Consumers Co. v. Clerke* (1863) 13 C.B. (N.S.) 838. See also Pages 381 - 2 of *Graig on Statute Law* (Seventh Edition) By S.G. G. Edgar CBE, M.A. (Cantab) and *Military Governor, Ondo State v. Adewumi* (1988) 3 NWLR (pt. 82)280.

With the enactment and coming into force of the 1979 Constitution on 1st October 1979 and the subsequent enactment of Constitution (Suspension and Modification) Decree No. 1 of 1984, can it be validly argued that the ouster clauses contained in section 22(4) and 32 of Traditional Rulers and Chiefs Edict (Law) of 1979, are still valid and subsisting, thus making section 161 (3) of the 1963 Constitution still applicable?

It cannot be disputed that with the coming into force of the 1979 Constitution the 1963 constitution went in abeyance and will only apply to causes of actions that arose under it. Both parties agreed that the cause of action in this matter arose in 1985. Therefore and in the light of the provisions of section 4(8) of the 1979 Constitution, any law enacted by the Bendel State Government before the coming into force of the 1979 constitution and which contradicts any of the provisions of the said Constitution after it came into force is either modified or repealed to conform with the Constitution. It is in order to provide for this type of a situation that section 274 of the 1979 Constitution was enacted.

It is therefore my view that, taking into consideration the provi-

sions of the 1979 Constitution (supra) the ouster clauses in the Traditional Rulers and Chiefs law 1979 of the defunct Bendel State, now applicable to Delta State, stood impliedly repealed or modified by the 1979 Constitution in order that it is brought into conformity with its provisions. The fact that Decree no. 1 of 1984 suspended section 4(8) of the 1979 Constitution, will not revive the ouster clauses in the Traditional Rulers & Chief Law 1979 since the Decree did not contain express provision to that effect, and nor can such manifest intention be gathered from its provisions. The Traditional Rulers and Chiefs Law 1979 of Bendel State stands repealed in part. See page 366-368 of Graig on Statute law (7th edition).

The decision in Uwaifo's case prohibits the courts, even after 1st October 1979 from questioning any Edict or Decree made between 1st January 1966 and 30th September, 1979 on the ground that the person or authority which made it had no capacity or power to make it, but did not preclude the courts from questioning the validity of such laws or any of their provisions that are inconsistent with the provisions of the 1979 Constitution. In other words, courts are precluded from questioning the capacity and power of the authorities in promulgating such laws. They are equally prohibited from questioning the validity of what the authorities did under such laws or interfering with any accrued or subsisting rights by virtue of such actions at the time they were still valid and subsisting. In Uwaifo's case, supra, JSC succinctly stated the law thus-

"It seems to me that while the constitution empowers the courts to inquire into the validity of any existing law, it clearly intends that the courts should not inquire into proceedings which seeks to determine issues or questions as to the competence of any authority of person (i.e. legal capacity, power, legal qualification or jurisdiction of any authority or person) to make any existing law promulgated between 15th January, 1966 and 1st October 1969".

It is important to note that the preclusion or prohibition is limited and confined to existing laws. It therefore becomes abundantly clear that if such laws or any of their provisions are inconsistent as from 1st October 1979 with the provisions of the 1979 Constitution, such laws or

any of their provisions whether or not pronounced upon by the courts as being inconsistent with the said Constitution, are impliedly repealed or modified to conform with its provisions. Likewise all things done or purported to be done under such impliedly repealed or modified laws after 1st October 1979, are equally of no effect. In *Garnett v. Bradley B* (1878) 3 APP CAS 944 at 966, commenting on the issue of implied repeal of a statute by another, Lord Blackburn stated thus-

"I shall not attempt to recite all the contrarieties which make one statute inconsistent with another. The contraria which make second C statute repeal the first. But there is one rule, a rule of common sense, which is found constantly laid down in these authorities to which I have referred, namely that when new enactment is couched in a general affirmative language and the previous law, whether a law of custom or not, D can well stand with it for the language used is all in the affirmative, there is nothing to say that the old law shall be repealed... But when the new affirmative words are, as was said in Stradling v. Mayor (15601 P. Law 199 at P.206 such as by their necessity to import a contradiction, E that is to say, where one can see that it must have been intended that the two should be in conflict, the two could not stand together, the second repeals the first."

To return to the circumstances of the case in hand, the wordings of the provisions of section 22(4) and 32 of Edict No. 16 of 1979 of F Bendel State are clearly inconsistent with the provisions of Sections 6(1), and (2), (6)(a) and (b), and 236(1) of the 1979 Constitution as at 1st October 1979. And by virtue of Section 274(1) and (4)(b) and (c) of the said Constitution as at 1st October 1979, these provisions were deemed G to have been modified either by implied repeal or by modification so as to bring the law into conformity with the Constitution, long before the enactment of Decree No. 1 of 1984".

May I also draw attention to the judgment of Mohammed JSC H where reference was made to Eguamwense v Amaghizemwen (1993) 9 NWLR (Pt. 315) I said at page 444, thus:-

"On the second issues after the decision of the "prescribed authority" to wit, the Olu of Warri, it is open to the party wishing to chal-

length the decision to either take the matter to other Executive Council of the Military governor or go to Court for redress. See Section 22(3) and (4) of Edict No. 16 of 1979 of Bendel State, Having chosen to go to Court whose decision shall be binding on the executive council it is an error to question why the respondents chose to take their matter into Court. From the wording of the statute, it is clear that going to the Executive Council of the Governor is an alternative remedy. Even if that is so, since under the provisions of Section 6 and 236 of 1979 Constitution, chieftaincy disputes, among others, are matters within the jurisdiction of the High Court the respondents are right in seeking redress in the High Court. The alternative remedy which a party can resort to in order to pursue his right does not exclude his inalienable right to seek redress in the courts.

D *I will refer to an English case which was decided on similar grounds. It is the case of Pyx Granite Co. v. Ministry of Housing and Local government (1958) 1 Q.B. 554. In that case a statute made provi-*
E *sion for determination of a dispute by the Minister and his decision was expressly made "final". The Pyx Granite Company had a dispute and instead of going to the Minister, the Company went to the High Court and sought for a declaration. The Minister said that the High Court had no jurisdiction to entertain the claim for a declaration. Lord Denning, in*
F *his judgment, held that the High Court had jurisdiction, and added that it was settled law that the jurisdiction of the High Court to grant a declaration was not to be taken away except by clear words. In the House of Lords, Lord Simons agreed with Lord Denning and concluded that even if there is an alternative remedy for a subject, his inalienable right to seek*
G *redress in her Majesty's courts cannot be taken away. See the case of Eguamwense v. Amaghizemwen (1993) 9 NWLR (Pt. 315) 1 at 35."*

The second case is:

Chief S. C. Osagie II & Anor.

H v
Chief Eugene C. Offor & Anor.
(The AjeH of Ekuoma)
(1998) 3 NWLR (pt. 541) A 205

The issues raised in this case read thus:

"(1) Does the Traditional Rulers and Chiefs Edict No. 16 of 1979, Bendel State of Nigeria provide in its section 22(2), (3) and (6) any condition precedent to the assumption of jurisdiction by the courts over suits relating to Traditional Ruler and Chieftaincy Title disputes, or in particular, the Eje Ekuoma Chieftaincy dispute? B

(2) Does Section 22(2), (3) and (6) of Traditional Rulers and Chiefs Edict No. 16 of 1979, Bendel State of Nigeria derogate from the powers of the High Court to entertain suits in view of Section 6(6)(b) and Section 236(1) of the Constitution of the Federal Republic of Nigeria, 1979? C

May I refer to pages 212-213 where Kutigi JSC, in the course of his judgment, quoted with approval the judgment of Uche Omo JCA (as he then was) and which reads: D

"Delivering the lead judgment which was concurred by the other Justices. Uche Omo, JCA., after making references to sections 6 and 236 of the 1979 Constitution and to the cases of:

Bronik Motors Ltd. v. Wema bank (1983) 6 SC. 158: (1983) 1 E SCNLR 296:

Savannah Bank v. Pan Atlantic (1987) 1 BWLR (pt. 49) 212:

Western Steel Workers Ltd. v. Iron Steel Workers union of Nigeria (1987) 1 NWLR (pt.49) 284: and

Kanada v. Governor of Kaduna State (1986) 4 NWLR (pt. 35) 361 observed as follows:- F

"In the light of the constitutional provision and the decisions of the Supreme Court thereon, what will be the justification for preventing an aggrieved citizen from recourse to the High Court or for the High Court to refuse to entertain any matter so brought before it? In my view section 22(2), (3) and (6) of the Bendel State Chieftaincy Law 1979 cannot in any way seek to derogate or circumscribe the provisions of section 236(1) if the 1979 Constitution. Any attempt to so do would make it inconsistent with that constitutional provision and therefore to that extent void. A decision that it delays the right of an aggrieved party to come to court, G H

or that it is a condition precedent to the exercise of a right to file an action to be entertained by the High Court, seeks to circumscribe the powers of the High Court under section 236(1) of the Constitution and to that extent it is void and of no effect. It is entitled to the same fate as the provision of section 22(4) which respondent's counsel has conceded to be unconstitutional. The decision of the learned trial judge that the action of the appellant is premature and striking same out is therefore wrong, and the appellant is entitled to succeed on this issue."

I agree entirely with what is said above.

He continued thus:-

"Before I conclude I will comment briefly on the cases of Military Government of Ondo State & Ors. V. Adewunmi (1985) 3 NWLR (pt. 13) 493 and Edewor v. Uwegba (1987) 1 NWLR, (pt50) page 313 (315) which were relied on by the parties. Very briefly, Adewunmi's case, is more apposite to a consideration of section 22(4) of the Bendel Chieftaincy Law 1979. A brazen attempt by the governor of Ondo State to OUST the jurisdiction of the High Court of that State on chieftaincy matters was declared invalid, unconstitutional and void. Although the decision in Uwegba's case did take note of the procedure set out by section 22 of the Bendel State Chieftaincy Law 1979 for "settling" dispute over traditional Chieftaincies, it did not anywhere decide that the steps set out thereunder are a condition precedent to a recourse to an action in the High Court by an aggrieved party. The real importance of that case is that it decided that before coming to a decision under section 22(6)(b) of the chieftaincy law, the Governor is obliged to set up an inquiry to examine the dispute and that his failure to do so was a gross irregularity which cannot be allowed to stand. Accordingly this appeal will be and is hereby allowed."

Again I say I agree.

In support of the judgment, the other Justices in the panel namely Wali JSC, Mohammed JSC, Onu JSC, Iguh JSC also delivered concurring judgment. Wali JSC, in his judgment at page 213, said:

"In so far as the provision of s.22 (2)(3) and (b) of the Traditional Rulers and Chiefs Edict No. 16 of 1979 of defunct Bendel State

puts a clog on the constitutional right of a litigant vide S. 236 (1) of the 1979 constitution to resort to court, the section is unconstitutional as it derogates from the right conferred on the citizen by the said s.236(1) supra. The respondents in this appeal are not bound to follow the provision of s.22 of Edict No. 16 of 1979 (supra) before filing their action in the High Court." Mohammed JSC at pages 213-214 said:

"I agree with my Lord, Kutigi JSC., in the judgment just read that this appeal has no merit at all. The trial High Court was wrong to strike out the action filed by the plaintiff/respondent for alleged wants of jurisdiction. If the intention of Bendel State in enacting section 22 of Traditional Rulers and Chiefs Edicts No. 16 is to oust the jurisdiction of the High Court it is void and unconstitutional."

In Eguamwense v. Amaghizemwen (1993) 9 NWLR (Pt. 315) 1, this court reversing the Court of Appeal and allowing the appeal on the issue of whether the jurisdiction of the High Court was expressly taken away. I had occasion to state the position of the law at pages 42 - 43 paragraphs C-B of the Report inter alia as follows:-

"The traditional Rulers and Chiefs Edict, 1979 No. 16 of Bendel (now Edo) State having by its section 21 and 22 (ibid) expressly or by clear provisions excluded the jurisdiction of the courts in the form of declarations in respect of customary law relating to the selection of chiefs, such sub-legislative function must perforce be vested in the prescribed authority and not a function exercisable by the court. See Adigun v. Attorney-General of Oyo State (supra). It is in this wise that I hold that the High Court's jurisdiction in respect of such declaratory reliefs as sought by the respondent in the instant case was wrongly invoked....."

As in the instant case the jurisdiction of High Court was neither ousted nor contemplated, the case of Amaghizemwen (supra) is clearly distinguishable.

There being no merit in this appeal and for the more detailed reasons given by my learned brother Kutigi, JSC with which I am in entire agreement. I too, dismiss this appeal and make similar consequential order inclusive of those as to costs."

Iguh JSC, concurred with the leading judgment by saying at page 216, thus:

"It cannot be over-emphasized that whatever a state Edict or Laws provides, they cannot override the provisions of the Constitution of Nigeria, 1979. In my view, an aggrieved party may at any state in the selection process of a candidate in a chieftaincy matter properly challenge the same in a court of law. I can find no reason to fault the judgment of the court below in this appeal."

I have before now stated the facts that led to the litigation in the case of Eguamwense v Amaghizemwen (supra), and in the instant appeal. May I however be permitted to restate them briefly, in order to draw out the distinction, if any, between the two cases. In the former case, the Oba of Benin, on the basis of his appointment as the prescribed authority by virtue of section 22(1) of the Traditional Rulers and Chiefs Edict, 1979, appointed the appellant as the Amaghizemwen of Benin. When the respondent, after protesting to the Oba of Benin about the appointment of the appellant, found that the decision made in favour of the appellant would not be changed he took out a writ of summons against the appellant. By the writ of summons the respondent sought for three reliefs which I have earlier set out in this judgment. Briefly restated, they are (a) a declaration that the respondent and not the appellant is entitled to be conferred with the chieftaincy title of Amaghizemwen of Benin; being a hereditary title under Benin Native Law and Custom; (b) a declaration that the conferment of the hereditary title of Amaghizemwen of Benin by Omo N'Oba Erediauwa, the Oba of Benin on the appellant is contrary to Benin Native Law and Custom of inheritance and therefore ought to be set aside and (e) an order of perpetual injunction restraining the defendant his heirs, servants and agents from parading himself as the Amaghizemwen of Benin. It must however be noted that the respondent did not, before he took out the writ of summons, ask for a review of the decision of the Oba of Benin by the Executive Council, in accordance with the provisions of sub section 3 of section 22 of the Traditional Rulers and Chiefs Edict 1979.

In the instant appeal, it was the appellants who took out a writ of

summons against the 1st defendant and three other persons, namely (1) the Honourable Commissioner for Special Duties [Dept. of Chieftaincy Affairs] (2) The Attorney General and Commissioner for justice and (3) The Military Governor of Bendel State for seven reliefs, embodied in the declaratory action against the above named persons. These reliefs are for (1) A declaration that according to Ivbiaro Customary law it is the most senior title holder, 'Odion Ejere' who has the exclusive preserve of conferring on deserving Ivbiaro person Ejere title (i.e. chieftaincy title) by turbaning and it is that person who becomes the village head of Ivbiaro in Ivbi-Ada-Obi clan when a vacancy occurs. (2) A declaration that the purported appointment and approval of the 1st defendant by the Executive Council as the village head of Ivbiaro in Ivbi-Ada-Obi clan is null and void. (3) A declaration that the purported appointment and approval of the 1st defendant as the clan head of Ivbi-Ada-Obi by the 4th defendant acting for the Bendel State Executive Council are not in accordance with the approved Chieftaincy Declaration regulating succession to the Clan Headship of Ivbi-Ada-Obi Clan and so illegal, invalid, null and void and of no effect whatsoever. (4) A declaration that the 7th plaintiff, Momoh Bello Bawa is the person entitled by Ivbiaro customary law and under the approved Ivbi-Ada-Obi chieftaincy declaration of customary law regulating succession to the Traditional Rulers title of Ivbi-Ada-Obi clan headship to be appointed the clan head. Alternatively, a declaration that the 8th plaintiff, Chief Sule Elabor, the Senior Daudu of Ivbiaro is to act and/or succeed as the Village Head of Ivbi-Ada-Obi in the event that the 7th plaintiff's incapacity continues unabated and/or on his death. And in sub paragraphs 5, 6, & 7 of paragraph 17 of the claim, the plaintiffs, sought various injunctive reliefs against the 1st, 2nd, 3rd and 4th defendants. Before this action was commenced, the Bendel State Executive Council had given its approval to the appointment of the 1st defendant as the Clan Head of Ivbi-Ada-Obi, following his appointment by the Owan Traditional Council. The Owan Traditional Council, had before then been appointed by the Executive Council of the then Bendel State Government to enquire into the dispute as to who was the rightful Clan Head of Ivbi-Ada-Obi clan.

Before answering the question I have earlier posed as to whether the case of *Eguamwense v Amaghizemwen* (supra) is applicable to the instant case on appeal, I think it is necessary to advert to the settled principle concerning the bindingness of the decisions and judgments of our Courts in the hierarchy of Courts. But for such decisions and/or judgments of the supreme Courts to be applicable and binding, the facts and issues pronounced upon by the Supreme court must be on all fours with the case under consideration by the lower court. The earlier decisions and/or judgments of this Court are also generally binding on later cases for determination in this Court when such cases are on all fours with the earlier decisions and/or judgments of this Court. These are general principles. But it is desirable to mention that there are recognised exceptions to this general rule. In this respect may I refer to the decision of the Court of Appeal in England, in the case of Young v. Bristol Aeroplane Co. (1994) 2 ALL. E. R. 293, at page 298.

I now turn to consider whether the facts and the issues raised in the instant appeal are the same as those raised in the previous decision of *Eguamwense v Amaghizemwen* (supra). It is common ground that the two cases concern the resolution of dispute over the appointment to a chieftaincy title. It is also common ground that the relevant law under consideration in the two cases are the provisions of sections 21 and 22 of the Bendel State Traditional Rulers and Chiefs Edict 1979. It must also be noted that in respect of the two cases the facts found and the decision of the trial Court, which were affirmed by the Court below remained unchallenged in this appeal. I will set down the facts, which are not shared in common between the two cases. They are as follows:

(1) Commencement of Action

In the *Eguamwense v Amaghizemwen* case (supra), the respondent who commenced the action in the High Court took out his writ of summons for declaratory reliefs after he was unable to persuade the prescribed authority, namely the Oba of benin, to change his mind on the appointment of the appellant as the Amaghizemwen of Benin. It is manifest that he did not appeal to the Executive Council who appointed the Oba of Benin, as the prescribed authority before commencing his action,

as required by subsection 6 of section 22 of the Traditional Rulers and Chiefs Edict of 1979.

In the instant appeal, the plaintiffs commenced their action against the 1st defendant and the other defendants after the Executive Council approval was given to the appointment of the 1st defendant by the Owan Local government Council. Before then the Executive Council had appointed the Owan Local government Council to enquire into the dispute over the Village Head of Ivbiaro in the Ivbi-Ada-Obi clan.

(2) Reliefs sought

In the case of Eguamwense v Amaghizemwen (supra) the respondent specifically stated that he was the person entitled to the chieftaincy title of Amaghizemwen, and that the conferment of the title on the appellant is irregular according to the Benin Native law and Custom of inheritance of hereditary title and that it be accordingly set aside.

In the instant appeal, the principal reliefs sought from the High Court were for (a) Declaration of the Court with regard to the Customary law of Ivbiaro concerning who can be an 'Odion Ejere', and how such a person may become the village head of Ivbi-Ada-Obi clan. (b) That it be declared that the purported appointment of the 1st defendant was, illegal, invalid, null and void, as it was not in accordance with the approved Chieftaincy Declaration regulating succession to the Clan Headship of Ivbi-Ada-Obi.

Having regard to what I have stated above, I think it is self evident that in *Eguamwense v. Amaghizemwen* (supra), the Court in that case was mainly concerned with whether the Court can properly grant declaratory relief which would, if granted, amount to having two parallel decisions in respect of the same matter. The argument that found favour with the Court in that case need not be repeated here as I have earlier set them out in this judgment. The Court in that case did not consider whether the decision would have been the same, if the respondent had commenced his action against the appellant after he had received the decision of the Executive Council, pursuant to the provisions of section 22(3) of the Bendel State Traditional Rulers and Chiefs Edict of 1979. Apart from the

above, it is also relevant to point out that the other distinguishing factors in the instant case were not considered in the Eguamwense v. Amaghizemwen case (supra). Moreover in the instant appeal part of the case of the plaintiffs is that the 7th plaintiff had in 1979 been appointed as the village head of Ivbiaro. And that was long before the purported appointment of the 1st defendant to the same title in 1986 by the 4th defendant. The above facts were considered and upheld in favour of the plaintiffs by the learned trial judge and Court below duly confirmed them. As the 1st defendant did not appeal against those findings, it must be taken as accepted.

From what I have said above it is therefore my humble view that the facts and issues raised in the instant appeal are not the same as the facts which fell for consideration in the Eguamwense v. Amaghizemwen case (supra).

It is patent that those on facts the issues raised thereon were materially different and distinguishable from the facts and the issues of law that were decided in the instant appeal in the High Court and affirmed by the Court below. I have earlier in this judgment referred to those facts and issues to show how they are different and distinguishable from those in the *Eguamwense v Amaghizemwen* (supra). It is one of the settled principles of this Court that in the absence of conflicting decisions on the same point this Court would follow and apply its previous decision where the facts and the issues of law settled in the previous decision are on all fours with the facts and issues calling for determination in a subsequent case and/or matter. However, where the previous decision defers both as to the facts and the issues of law raised thereon in the subsequent case calling for determination, that previous decision will not be followed. It follows therefore that as the facts and the issues raised in the previous case of *Eguamwense v Amaghizemwen* (supra) are different from and distinguishable from those facts and issues found and established in this appeal, the decision of this Court in the case of *Eguamwense v. Amaghizemwen* (supra) cannot therefore be followed to determine this appeal. The only issue raised for the 1st defendant in this

appeal must therefore fail. It is my further view that the trial Court was vested with the jurisdiction to entertain the suit based upon their statement of claim, having regard to the settled principle of law that it is the claim of the plaintiff that determines the jurisdiction of the Court to entertain a suit before it. See Barclays bank v. Central Bank (1976) 6 SC. 175 at 193; Adeyemi v Opeyori (1976) 9-10 SC. 31 at pages 51-52. Now, having regard to the fact that the only issue raised in this appeal has failed, it follows that the judgment and orders made by the courts below remain undisturbed.

In the result, as it is my view that this appeal lacks merit, it is dismissed in its entirety. The judgments and orders of the Court below and the High Court are affirmed. The plaintiffs are awarded costs in the sum of N10,000.00 only.

BELGORE JSC

I have read the judgment of my learned brother, Ejiunmi JSC, and I agree with him entirely that this appeal is without merit. For the exhaustive reasons adumbrated by him which i adopt as mine, I also dismiss the appeal with N10,000.00 costs to the respondents against the appellants.

OGUNDARE JSC

I was privileged to read in advance the judgment of my learned brother Ejiunmi JSC just delivered, I agree with the conclusion reached by him that this appeal be dismissed. I, however, wish to add a few words of my own to the reasons given by him for coming to that conclusion.

The issue raised in this appeal is primarily one of jurisdiction of the trial court over the subject matter of the claims before that Court. It raises once again the vexed question as to when the court can intervene, if at all, in a chieftaincy matter or other matters where statute has prescribed that decision-making be made by an authority, other than the

court. In effect, this court is to revisit in this case its decision in EGUAMWENSE V. AMAGHIZEMWEN (1993) 9 NWLR 1. If it is found that the facts in this case are on all fours with the facts in that case, we will be bound to follow it as none of the parties has invited us to depart from it. There is one similarity in the two cases which I think I ought to mention at this stage and that is that as in EGUAMWENSE, the issue of jurisdiction was never raised in the two courts below but it is being raised for the first time in this Court. And being an issue of jurisdiction, this Court cannot ignore it.

Ivbiaro, part of the Ivbi-Ada-Obi clan in Owan Local Government of Bendel State, Nigeria (now Edo State), consists of Iyokuoto, Ivbiosogben, Usu and Ebese villages. Its village Head who is also the clan Head of the whole clan is a recognised traditional chieftaincy within the meaning of the Traditional Rulers and Chiefs Law No. 16 of 1979; the office devolves automatically, on the demise of an incumbent, on the Odion Ejere, the senior title holder in Ivbiaro. According to the Plaintiffs (who are Respondents in this appeal), the 7th plaintiff was the Odion Ejere at the time the last village head, Chief Momoh Belo Bawa, died and became automatically the village head.

The 1st defendant (now appellant in this appeal) disputed this custom about the appointment of the village head. According to him, the appointment was by election from among all Ejere title holders of the Afinosi ruling house of Eworue sub-quarters of Ebese. After the election the Odion Ejere would announce the appointment. He claimed to have been elected the village head.

There thus arose a dispute as to who was the village head as between the 7th plaintiff and the 1st defendant. The dispute was referred by the chiefs of Ivbiaro to the Government of Bendel State. The Military Governor of the State pursuant to section 22(7) of the traditional Rulers and Chiefs Law ordered an enquiry to be held. An enquiry was held in November - December 1982 by the Owan Traditional Council. Acting on the findings and recommendations of the Owan Traditional Council the Executive Council of Bendel State issued on 3rd October 1986 BSLN.77 of 1986 approving the appointment of the 1st Defendant as the

Village Head of Ivbiaro and Clan Head of Ivbi-Ada-Obi Clan with effect from 30th November 1982.

The plaintiff promptly challenged this appointment by issuing a writ of summons in the High Court of Afuze Judicial Division claiming as per paragraph 17 of their 3rd Amended Statement of claim:

1. *A declaration that according to Ivbiaro Customary Laws, it is the most senior title holder, Odion Ejere who has the exclusive preserve of conferring on deserving Ivbiaro person 'Ejere' title (i.e. Chieftaincy Title) by turbanning and it is he who becomes the village head of Ivbiaro in Ivbi-Ada-Obi Clan when a vacancy occurs.*

2. *A DECLARATION that the purported appointment and approval of the 1st defendant by the Executive Council as the village head of Ivbiaro in Ivbi-Ada-Obi Clan in Owan Local Government Area in Owan judicial Division as contained in Bendel State Legal Notice (B.S.L.N.)77 of 1986 are irregular, illegal, invalid and contrary to Ivbiaro Customary law and the provisions of EDICT No. 16 of 1979 and therefore null and void and of no effect.*

3. *A DECLARATION that the purported appointment and approval of the 1st defendant as the Clan Head of Ivbi-Ada-Obi by the 4th defendant acting for the Bendel State Executive Council as contained in Bendel State Legal Notice (B.S.L.N.)77 of 1986 are not in accordance with the approved Chieftaincy Declaration regulating succession to the Clan Headship of Ivbi-Ada-Obi Clan and so illegal, invalid, null and void and of no effect whatsoever.*

4. *A DECLARATION that the 7th plaintiff, Momoh Bello Bawa is the person entitled by Ivbiaro customary law and under the approved Ivbi-Ada-Obi Chieftaincy declaration of customary Law regulating succession to the Traditional Rulers title of Ivbi-Ada-Obi Clan Headship to be appointed the Clan Head. Alternatively, a declaration that the 8th plaintiff, Chief Sule Elabor, the Senior Daudu of Ivbiaro is to act and/or succeed as the village head of Ivbiaro and Clan Head of Ivbi-Ada-Obi in the event that the 7th plaintiff incapacity continues unabated and/or on his death.*

5. *AN INJUNCTION restraining the 1st defendant from parad-*

ing and/or holding himself out as the village head of Ivbiaro and as the Clan Head of Ivi-Ada-Obi.

6. AN INJUNCTION restraining the 2nd, 3rd and 4th defendants by themselves, their servant and agents from installing the 1st defendant or giving him staff of office and/or dealing with him in any manner whatsoever as the village head of Ivbiaro and Clan head of Ivbi-Ada-Obi.

7. AN INJUNCTION restraining the 1st defendant from conferring on any Ivbiaro person customary title (i.e. Ejere Title) and/or to receive any customary perquisites connected therewith."

Chief Abubakar Zibiri Odugbo, The Honourable Commissioner for Special Duties (Department of Chieftaincy Affairs), The Attorney-General and Commissioner for Justice and the Military Governor of Bendel State were made 1st, 2nd, 3rd and 4th, Defendants respectively to the action.

Pleadings were filed, exchanged and with leave of court, amended.

The case proceeded to trial at the conclusion of which the learned trial judge adjudged as hereunder:

"In sum having regard to what has been dealt with above, I hold:

(1) that the 7th plaintiff being the Odion Ejere was properly appointed the village head of Ivbiaro in 1979 by those who by native law and Custom are entitled and authorised to do so. The 7th plaintiff was rightly appointed a village head when Chief Esimike died and vacancy occurred.

(2) that the purported appointment and approval of 1st defendant by the Executive Council as contained in Exhibit 46 are irregular, invalid, and illegal and is contrary to Ivbiaro Customary law and provision of Edict No. 16 of 1979 and therefore null and void.

(3) that the purported appointment and approval of the 1st defendant as the clan head of Ivbi-Ada-Obi are similarly void and invalid.

(4) Relief sought in paragraph 17(4) of the 3rd Amended Statement of Claim succeeds save the alternative claim. The alternative relief fails save that the 8th plaintiff had been rightly appointed senior Daudu

by the 7th plaintiff in 1987.

(5) *Injunction as sought in reliefs No. 17(5) and (7) of paragraph 17 of the Amended Statement of Claim succeed, and the 1st defendant is hereby restrained from parading and holding himself out as the village head and clan head of Ivbi-Ada-Obi. Injunction is also given B restraining him (1st defendant) from conferring any Ivbiaro person any customary title and or receiving any customary perquisites connected thereto.*

(6) *Injunction restraining the 2nd, 3rd, and 4th defendants themselves, their agents or servants from dealing with 1st defendant in any manner whatsoever, as the village head of Ivbiaro and clan head of Ivbi-Ada-Obi."* C

Being dissatisfied with this judgment, the 1st defendant appealed unsuccessfully to the Court of Appeal. He has now further appealed to this Court upon a lone ground of appeal as contained in his amended notice of appeal, the five grounds of appeal in his original notice of appeal having been abandoned. The lone ground of appeal reads: D

(i) *the Court of Appeal erred in law in failing to observe that the High Court of the former Bendel State had no jurisdiction to entertain the plaintiffs' action.* E

Further particulars of Error

(a) *The Traditional Rulers and Chiefs Edict, 1979 has remitted to the Executive Council or Prescribed Authority, as the case may require, the function of determining chieftaincy dispute.* F

(b) *The same Edict has also conferred on other persons or authorities the function of making declarations stating the customary law regulating the selection or appointment of Chiefs.* G

(c) *The 1st defendant herein has been appointed as the Village head of Ivbiaro and Clan Head of Ivbi-Ada-Obi in Owan L.G.A. by the Executive Council in accordance with customary law.*

(d) *The aforementioned appointment has not been challenged or quashed by Certiorari.* H

(e) *In the premises the court cannot exercise its jurisdiction to make declaration in respect of the same chieftaincy matter."*

Pursuant to the rules of this Court written briefs of argument were filed and exchanged. The Appellant filed a reply brief. At the oral hearing of the appeal learned counsel for the parties adopted their respective briefs and offered no further arguments. Just as in the Court below, B the 2nd - 3rd defendants did not take part in this appeal as they failed to file a brief and were not represented at the oral hearing. The only issue formulated in the appellant's brief reads:

"Whether the trial court had jurisdiction to entertain and grant the reliefs claimed by the Plaintiffs in this action." C

The main thrust of the submissions of learned counsel for the Appellant runs thus:

"The 1st defendant respectfully submits that as a general principle, the vesting of power to decide a question of law or fact in an authority other than a court of law may be construed to mean that it is the intention of the legislature to oust the jurisdiction of courts of law from entertaining disputes over such question. In any event it is at least well settled that where the authority designated by statute has determined D the matter remitted to it, a court of law will not or ought not to entertain an action for declaration designed to determine that very same matter. For if that were permissible, it leads inevitably to the possibility of having two contradictions or inconsistent decisions on one and the same E matter." F

The majority decision of this Court in EGUAMWENSE V. AMAGHIZEMWEN (supra) is relied upon in support of these submissions. It is contended that the conclusion of the majority of the members of this court is that the Traditional Rulers and Chiefs Edict (now Law) G "must be construed to mean that the jurisdiction of the High Court to question a quasi-judicial decision made by the Prescribed Authority or the Executive Council though capable of being quashed by Certiorari cannot be challenged by declaratory action". A passage in the lead judgment of Karibi-Whyte JSC in that case at page 20 of the report is relied H on as well as a dictum of Lord Denning in HEALY V. MINISTER OF HEALTH (1955) 1 QB 221 cited with approval by Karibi-Whyte JSC. Passages are also cited, and relied on, in the judgment of Belgore,

Olatawura and Onu JJSC. who sat with Karibi-Whyte, JSC on that case. It is observed that:

"Although Uthman Mohammed JSC did not agree 100% with the rest of the court it is respectfully submitted that even on the reasoning which found favour with him, the High Court ought not to have entered or granted the reliefs claimed herein."

It is finally submitted that -

"The Supreme Court is respectfully invited to hold that this is a case where the trial court had no jurisdiction to entertain the action or to grant any of the reliefs claimed by the Plaintiffs. The action should have been struck out. In the light of the determination already made and published by the authority designated by statute in B.S.L.N.77 of 1986, the court cannot or ought not to grant any of the declarations claimed. In so far as the said claims involve making a declaration that someone other than the 1st defendant is the Village Head of Ivbiaro or the Clan Head of Ivbi-Ada-Obi, it would create in the words of Lord Denning 'a most undesirable state of affairs'. In so far as they involve a statement of the customary law which regulates the appointment or selection of a chief it would be outside the scope of the judicial powers of the High Court to determine in this action the customary law applicable to the title of the 1st defendant herein since that function is already vested by statute elsewhere."

The Court is urged to allow the appeal, set aside the judgments of the two courts below and strike out Plaintiffs' action for want of jurisdiction.

For the Plaintiff it is contended in their brief that it is the Plaintiffs' statement of claim that determines jurisdiction of the trial court. After referring to paragraphs 1(f), 4(4), 11, 12(c), 13, 14 and the claims in paragraph 17, of the statement of claim, it is contended that Plaintiffs' action challenged the validity of the appointment, by the Executive Council, of the Appellant and sought to set it aside. It is submitted that the action was different to the action in EGUAMWENSE (supra) where the court was to make an appointment that the prescribed authority had not made. It is submitted that once the Executive Council exercised its powers under section 19(1) of the Traditional Rulers and Chiefs Law, No. 16

of 1979, it could be challenged by any person who felt his rights were infringed by the Council and the High Court would have jurisdiction to entertain such an action. OKAFOR & ORS. V. ATTORNEY-GENERAL, ANAMBRA STATE & ORS. (1992) 8 LRCN 407 was cited in support.

B It is also submitted that the decision of the Executive Council could be challenged by ways of declaratory action and relies on ORISAKWE V. GOVERNOR OF IMO STATE (1982) 3 NCLR 743; UWEGBA V. ATT. GEN BENDEL STATE (1986) 1 NWLR 303 and ONUZULIKE V. NWOKEDI (1989) 2 NWLR 229, in support. It is further submitted that
C if the act or transaction complained of is void, a declaration to that effect might issue. Reliance is placed for this submission on TIKA-TORE V. ABINA (1973) 4SC 63 at 71. It is submitted that proceedings by way of certiorari would not be appropriate in the case on hand particularly that
D what was being challenged was an executive or administrative act and not a judicial or quasi-judicial act. *Ex parte* OBIYAN (1973) 12 SC 23, 35 and AMALEA V. GOVERNOR, 1 FSC 57; BABATUNDE V. GOVERNOR, WESTERN REGION, 5 FSC 59, 62 are cited in support. Distin-
E guishing EGUAMWENSE and HEALEY'S case followed therein, it is argued-

*"The declaration sought in the case of HEALEY and EGUAMWENSE did not challenge the WRONGNESS of the decisions of
F the Minister and Prescribed Authority respectively but rather seeking a fresh declaration in respect of a subject-matter already decided. If the decision of a Tribunal granted jurisdiction by law to so decide and Tribunal goes wrong in law and in breach of the principles of Natural justice, the High Court in the exercise of its supervisory jurisdiction can declare
G such a decision null and void."*

It is further submitted that the decision of a statutory tribunal is not final. INLAND REVENUE V. REZCALLAH (1962) 1 ALL NLR 1, 7 to referred to and relied on. Finally, it is argued that the two declarations
H claimed in EGUAMWENSE are substantially dissimilar with those claimed in the present case on appeal. It is pointed out that "the declarations sought by the plaintiffs herein do not affect the exercise of any authority or institution of powers under an enabling statute and there is therefore

no legal obstacle in the High Court exercising its jurisdiction. It is submitted on behalf of the plaintiffs/Respondents that the declaration sought in this case are to determine their civil rights and obligations which were involved in the inquiry but were not given any reasonable opportunity of being heard." It is urged that the appeal be dismissed. B

In the Appellant's reply brief it is pointed out that the three cases cited in support of the Plaintiffs' contention that the Supreme Court has acknowledged that the decision of the Executive Council to recognise or approve the appointment of a chief can be challenged by declaratory action are either decisions of the High Court or the Court of Appeal and not of the Supreme Court and must therefore be treated as overruled by the Supreme Court decision in EGUAMWENSE V. AMAGHIZEMWEN (supra). In response to the plaintiffs argument that there is a substantial body of judicial authorities to show that the decision of the Executive Council, like that of any other statutory body can be challenged by declaratory action, it is submitted that the jurisdiction of the court to entertain declaratory actions and to make pronouncement on errors of law made by inferior courts and tribunals undoubtedly exist. But such jurisdictions are exercisable in proceedings between the parties to the decision of the tribunal which are instituted for the purpose of challenging the legality or validity of such decision and setting it aside if it is found to be illegal or void. In this case there was no claim or order to set aside the decision of the Executive Council." SMITH V. EAST ELLOE R.D.C.(1956) AC 7336, 769-770 is cited in support. D E F

I have taken pains to set out *in extenso* the submission made in the parties' briefs. I am indebted to learned counsel for their industry in drawing our attention to cases relevant to the issue we are to decide in this appeal. G

The Appellant relies entirely on EGUAMWENSE V. AMAGHIZEMWEN (supra) as ousting the jurisdiction of the court to entertain the present action. The principle of law upon which a particular case is decided is called the *ratio decidendi*, and the effect of this is to serve as basis of the doctrine of judicial precedent in subsequent cases with similar facts -see: OFUNNE V. OKOYE (1966) ANLR 91. The H

Supreme Court, like the House of Lords in England, is bound to follow its own earlier decisions, but can depart from such decisions in the interest of justice, if and when circumstances so dictate - see BUCKNOR-MACLEAN V INLAKS LTD. (1980) 8-11 SC 1. I must note that we have not been called upon to depart from any of our earlier decisions. It follows that if the facts in the case on hand are similar to those in EGUAMWENSE, we will be bound to apply its *rationes decidendi* to it.

With these two principles in mind I now ask: what are the facts in EGUAWENSE? What is (are) the *ratio (rationes) decidendi* of that case? The facts in a nutshell are that A and E claimed to be entitled to the traditional title of Amaghizenwem of Benin resulting in a dispute which the family could not resolve. The dispute was finally referred to the prescribed authority over the chieftaincy title, who was and still is the Oba of Benin. The Oba, after hearing the disputants, resolved the dispute in favour of A. E was dissatisfied and made efforts to get the Oba to change his decision but to no success. Rather than appeal to the Executive Council of the State for a review of the Oba's decision, as provided by section 22(6) (a) of the Traditional Rulers and Chiefs law, No. 16 of 1979, E instituted an action in the High Court claiming-

"(a) a declaration that the plaintiff and not the defendants entitled to be conferred with the chieftaincy title of Amaghizemwen of Benin, it being a hereditary title under Benin Native Law and Custom.

(b) a declaration that the conferment of the hereditary title of Amaghizemwen of Benin by Omo N'Oba Erediauwa, the Oba of Benin, on the defendant on or about the 3rd of July, 1985, in Benin within Benin Judicial Division is contrary to Benin Native Law and Custom of inheritance and therefore ought to be set aside.

(c) an order of perpetual injunction restraining the defendant his heirs, servants and agent from parading himself as the Amaghizemwen of Benin.

Section 22 of the Traditional Rulers and Chiefs Law provides:

22-(1) The conferment of a traditional chieftaincy title shall be in accordance with the customary law and shall be subject to the approval of the prescribed authority or where the provisions of section 23

have been applied, to the approval of the Executive Council.

(2) *Where a traditional chieftaincy title is conferred on a person by those entitled by customary law so to do and in accordance with customary law the prescribed authority or the Executive Council as the case may be, may approve the appointment.* B

(3) *Where a traditional chieftaincy title is conferred on a person in accordance with customary law or as to whether a traditional chieftaincy title has been conferred on the right person, the prescribed authority or the Executive Council, as the case may be, may determine the dispute.* C

(4) *The decision of the prescribed authority or the Executive Council, as the case may be:-*

(a) *to approve or not to approve the conferment of a traditional chieftaincy title on a person; or* D

(b) *determining a dispute in accordance with subsection (3) of this section shall not be questioned in any court.*

(5) *The prescribed authority shall not withhold approval of the conferment of a traditional chieftaincy title on a person if such conferment is made in accordance with the customary law regulating the conferment of the chieftaincy title.* E

(6) *The Executive Council may, on the application of an aggrieved party:-* F

(a) *review the decision of a prescribed authority made under sub-section (3) of this section and substitute its own decision therefor; or*

(b) *approve the conferment of a traditional chieftaincy title on a person if such approval was withheld by the prescribed authority contrary to sub-section (5) of this section.* G

(7) *Before exercising the power vested in it by subsection (6) of this section, the Executive Council may cause such enquiries as appear to it to be necessary or desirable to be held in accordance with section 27 of this Edict."* H

E's action succeeded in the High Court and was granted the claims he sought. The judgment of the High Court was affirmed, on A's appeal, by the Court of Appeal. On A's further appeal to this Court, the

issue of the jurisdiction of the trial High Court was raised for the first time. In the lead judgment of Karibi-Whyte JSC, the learned justice dealt exhaustively with the nature of the relief of declaratory order, its efficacy and the circumstances under which it should be granted. I have read all the judgments delivered by their Lordships of this Court who sat in the case. In my respectful view, the rationes decidendi upon which A's Appeal was allowed are twofold:

1. Where a statute prescribes a remedy, an aggrieved party must first exhaust that remedy before recourse to the court. Where he fails to exhaust the remedies statutorily available to him, his action is premature and does not give rise to a cognisable cause of action.

2. Where the relevant statute has given exclusive jurisdiction to another tribunal or hierarchy of tribunals to determine a matter, the jurisdiction of the court to grant a declaration on the same matter would appear to be ousted; its jurisdiction is only limited to supervisory power over the inferior tribunal.

The two principles of law enunciated in EGUAMWENSE have recently been followed by this Court in ADESOLA V. ABIDOYE (1999) 14 NWLR 28. The two principles are enshrined in a long line of decided cases both in this country and in England. Some of these decided cases are cited in EGUAMWENSE and ADESOLA. I need not list them again in this judgment.

In the course of my writing this judgment I came across two decisions of this Court which appear not to support the two principles laid down in EGUAMWENSE and ADESOLA. They are (1) HIS HIGHNESS EREJUWAI, THE OLU OF WARI & ORS. V. EGHAREGBEYIWA O. KPEREGBEYI & ORS. (1994) 4 NWLR 416 where Mohammed JSC observed at page 444 of the report:

"On the second issue, after the decision of the 'prescribed authority' to wit, the Olu of Warri, it is open to the party wishing to challenge the decision to either take the matter to the Executive Council of the military Governor or go to Court for redress. See Section 22(3) and (4) of Edict No. 16 of 1979 of Bendel State. Having chosen to go to Court whose decision shall be binding on the executive council, it is an

error to question why the respondents chose to take their matter into Court. From the wording of the statute, it is clear that going to the Executive Council of the Governor is an alternative remedy. Even if that is so, since under the provisions of Sections 6 and 236 of 1979 Constitution, chieftaincy disputes, among others, are matters within the jurisdiction of the High Court the respondents are right in seeking redress in the High Court. The alternative remedy which a party can resort to in order to pursue his right does not exclude his inalienable right to seek redress in the courts.

The learned Justice based his opinion on the decision of the English courts in PYX GRANITE CO. LTD. V. MINISTER OF HOUSING AND LOCAL GOVERNMENT (1958) 1 QB 554 and EGUAMWENSE V. AMAGHIZEMWEN (supra). As it appears that the case was concerned with the constitutionality of section 22(4) of the Traditional Rulers and Chiefs Law of Bendel State which ousted the jurisdiction of the court to question the decision of the prescribed authority or the Executive Council in chieftaincy matters, I would think that the dictum of Mohammed JSC is obiter.

(2) CHIEF F.S.C. OSAGIE II (THE OBI OF AKUMAZI) & ANOR. V. CHIEF EUGINE C. OFFOR (THE AJEH OF EKUNOMA) & ANOR. (1998) 3 NWLR 205. The two issues arising in that case were (a) Does the Traditional Rulers and Chiefs Edict No. 16 of 1979, Bendel State of Nigeria provide in its Section 22(2), (3) and (6) any condition precedent to the assumption of jurisdiction by the courts over suits relating to Traditional Ruler and Chieftaincy Title disputes, or in particular, the Eje of Ekuoma Chieftaincy dispute? and (b) Does Section 22(2), (3) and (6) of the Traditional Rulers and Chiefs Edict No. 16 of 1979, Bendel State of Nigeria derogate from the powers of the High Court to entertain suits in view of section 6(6)(b) and Section 236(1) of the Constitution of the Federal Republic of Nigeria, 1979?" It was decided that section 22(2), (3) and (6) of the Traditional rulers and Chiefs Law No. 16 of 1979 of Bendel State did not in any way derogate from or circumscribe the provisions of section 236(1) of the 1979 Constitution. Kutigi JSC who read the lead judgment opined at page 213 of the Report:

"Edict No. 16 of 1979 in section (2), (3) and (6) prescribed no condition precedent to the exercise of jurisdiction by High Court. I am also not in doubt whatsoever that these subsections derogate from the powers of the High Court to entertain suits in view of subsection 4 which
 B state that the decision of a Prescribed Authority or the Executive Council 'shall not be questioned in any court.' While I do not quarrel with the existence of a domestic forum for settlement of chieftaincy disputes, an aggrieved person should be free to decide if and when he should go there and it should not be to his detriment if he is dissatisfied with such a
 C decision and wants to go to court on the same dispute."

Wali JSC in his contribution said at p.213:

"In so far as the provision of S.22(2)(3) and (b) of the Traditional Rulers and Chiefs Edict No. 16 of 1979 of defunct Bendel State
 D puts a clog on the constitutional right of a litigant vide S.236(1) of the 1979 Constitution to resort to court, the section is unconstitutional as it derogates from the right conferred on the citizen by the said S.236(1) supra. The respondents in this appeal are not bound to follow the provi-
 E sion of S.22 of Edict No. 16 of 1979 (supra) before filing their action in the High Court."

And Iguh JSC at page 216 opined:

"It cannot be over-emphasized that whatever a state Edict or
 F Law provides, they cannot override the provisions of the Constitution of Nigeria, 1979. In my view an aggrieved party may at any stage in the selection process of a candidate in a chieftaincy matter properly chal-
 lenge the same in a court of law. I can find no reason to fault the judgment of the court below in this appeal." (Underlining are mine)

G Iguh JSC participated in the latter case of ADESOLA V ABIDOYE (supra) in which he observed at p.65 of the report:

"It is thus clear that under section 22(3) of the Chiefs Law, the determination of the validity or otherwise of the appointment of a person
 H in accordance with customary law to a minor chieftaincy is expressly vested in the prescribed authority. An aggrieved party in the matter of any such decision of the prescribed authority is, however, not without remedy. He may appeal against the same by way of representations for a

review thereof by the Commissioner for Chieftaincy Affairs as prescribed under Section 22(5) of the Law."

Later in his judgment, he opined at pp. 65-66:

"Although a Rule of Court, in an appropriate cause, may, because of the peculiar and exceptional circumstances of the case be dispensed with in the overall interest of justice and so long as no miscarriage of justice is thereby occasioned, a statutory provision may not be ignored by a Court of Law. Accordingly, where, as in the present case, a special statutory provision is made for the filing of or the prosecution of a relief, the procedure so laid down ought to be followed and complied with unless it is such that may be waived. See *ARIORI AND OTHERS V. ELEMO AND OTHERS* (1983) 1 SC 13; (1983) 1 SCNLRL 1."

He continued at page 66:

"In the present case, there is a dispute between the appellant and the 1st respondent as to whether or not the latter had been appointed in accordance with customary law to the minor chieftaincy in issue. The matter, pursuant to the provisions of section 22(3) of the Chiefs Law, was referred to the 2nd respondent, the prescribed authority, for determination. Evidence was duly heard, at the end of which the 2nd respondent decided the issue in favour of the 1st respondent. The real question for determination is whether the appellant is entitled to discountenance the adjudicative statutory provisions laid down under section 22 subsections (5), (6) and (7) of the Chiefs law and to resort to a declaratory action in the trial court in the assertion of his grievance against the decision of the prescribed authority in the dispute. I think not. In my view, the appellant, if he is dissatisfied or aggrieved by the decision of the prescribed authority is enjoined statutorily to appeal or make representations within 21 days to the Commissioner to whom responsibility for chieftaincy affairs is assigned for the decision in issue to be set aside. This is because a clear statutory provision prescribed under the law, in this case section 22(5) of the Chiefs law, 1978 may not, in my judgment, be discountenanced or contravened at will particularly where again as in the present case, the validity of such provision of the law is not in question. I think it inappropriate in the present case for the appellant to have resorted to a

declaratory action directly in the High Court in pursuit of his grievance against the decision of the appropriate authority in exercise of the powers of the latter under section 22 subsections (2) and (3) of the Chiefs law. The appellant's action, in my view, is in contravention and defiance of the provisions of section 22(5) of the said Chief law of Oyo State. I entirely agree with the Court below that the Chiefs law, 1978 of Oyo State having set up the procedure or machinery for the appointments of and the determination of disputes as to minor chieftaincies, inclusive of the one in dispute in the present action, such statutory provisions therein enacted in respect of the rights and remedies of the parties must be taken uno flatu as the one cannot be dissociated from the other. (Underlinings are mine)

In ADESOLA I observed at p.60:

"On Issues 2 and 3, I agree with the reasoning of my learned brother Karibi-Whyte JSC which I hereby adopt as mine. I am of the view that the Plaintiff/Appellant jumped the gun in instituting his action. He should first have exhausted the remedies laid down in the Chiefs law before embarking on litigation in court. That being so, I agree with the Court below that his action was premature. It was rightly struck out."

Onu JSC, after citing with approval passages from the judgment of the Court of Appeal on appeal to this Court in that case and from EGUAMWENSE, said at p.63:

"I agree with the court below that the High Court before which the action herein on appeal was commenced should have declined jurisdiction."

The learned Justice cited with approval the decision of the Court of appeal in S.A. SARUMOH V. OBA YESUFU ASANIKE & ORS. (1966) 7 NWLR 370 which had decided that where an aggrieved party failed to exhaust the remedies for redress provided him in the Chiefs Law the court should decline to entertain his action. Incidentally, Onu JSC, like Iguh JSC, took part in CHIEF F.S.C. OSAGIE II V. CHIEF EUGINE O. OFFOR supra. He also took part in EGUAMWENSE but distinguished the latter in the former case.

Ayoola JSC who participated in ADESOLA had at p.68 of the

Report said:

"The real question in this appeal is whether the Court of Appeal was right when it held that the appellant was precluded by section 22(3) of the Chiefs Law from seeking the remedies he sought in the High Court in the first instance."

B

I pause here to say that the Court of Appeal had in that case held, per Nsofor JCA-

".....in connection with determination and settlement of certain minor chieftaincy dispute, section 22 of the Chiefs Law 1978 has created and set up an adjudicative procedure and machinery. It gave 'power' to seek a remedy and to give a remedy. In my view all persons within its (section 22's) contemplation have a duty to exercise the power. May in subsection (2), (3), (4), (5) and (6).....imposed a duty."

C

The Court concluded that an aggrieved party must first exhaust the remedies provided him under the Chiefs Law before recourse to court in its supervisory jurisdiction.

D

Ayoola JSC went on to observe at pages 68-69, and I agree with him:

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"In this case the appellant had submitted the dispute envisaged in section 22(3) of the Law to determination by the 2nd respondent, the 'prescribed authority'. In doing so, he did the right thing, acting in consonance with the provisions of that subsection. The intendment of section 22(3) read with section 22(2), of the Law is that the 'prescribed authority vested with power to approve the appointment of a 'minor chief' should also have the power to determine the dispute in relation to the appointment, instead of having the question of a disputed appointment resolved by another body before deciding whether or not to approve an appointment. Where the 'prescribed authority' approves an appointment without determining a dispute relating to the appointment, the decision of the 'prescribed authority' may still be challenged pursuant to section 22(5) of the law. The intendment of these provisions is to ensure within the ambit of the Chiefs Law, a comprehensive and speedy machinery for determining questions arising from disputed appointments with less formality than would attend litigation."

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The learned justice concluded at page 69:

"I agree with the court below that the High Court should have declined jurisdiction in this case. By enacting the Chiefs Law matters relating to chiefs to whom that Law applies, have become massively regulated by statute. Although it cannot strictly be said that the Chiefs law created entirely new rights, one cannot ignore the fact that by regulating the enjoyment and assertions of existing rights relating to chieftaincy the whole system of chieftaincy has been reformed and modified. It is in this sense that it is more expedient to yield primacy to the remedies it provides and the machinery it established for any claim to those remedies. The case of *BARRACLOUGH V. BROWN* (1897) AC 615; 1895 -1899 ALL ER (rep) 239 establishes the principle that where a party claims to recover by virtue of a statute, he cannot at the same time prosecute his claim, by means other than those prescribed by the statute which alone confers the right. That principle is extended to situation such as in this case where the whole system of nomination, appointment and installation of chiefs has become massively regulated by statute."

It would appear, therefore, that the decision of this Court in *CHIEF OSAGIE V. CHIEF OFFOR* is inconsistent with its earlier decision in *EGUAMWENSE* and later decision in *ADESOLA*. I hope the Court will have the opportunity some day to resolve the conflict. It would appear, however, that the weight of judicial opinion seems to incline toward *EGUAMWENSE*. Suffice it to say that the facts in the present case are not on all fours with the facts in *OSAGIE II* and it does not, therefore, apply in this case.

In the appeal on hand, there was a dispute between the 7th plaintiff, the appellant and another person as to who was entitled to be the Village Head of Ivbiaro and Clan Head of Ivbi-Ada-Obi Clan. The dispute was referred to the Executive Council who directed an inquiry to be conducted. The inquiry was not only conducted by the Owan Local Government Traditional Council, but the Council also appointed the Appellant. The Executive Council, about 4 years later, issued a legal notice approving the appointment with effect from a date when the inquiry was supposed to be still on. The Plaintiffs sued claiming as earlier stated in

this judgment.

Surely the facts here are distinguishable from the facts in EGUAMWENSE in that the Plaintiffs in the matter on hand sought in claims 2 & 3 to set aside the appointment, and the approval of the appointment of the Appellant on the grounds that the Executive Council acted contrary to customary law, the chieftaincy declaration relating to the title of Clan Head of Ivbi-Ada-Obi Clan and the Traditional Rulers and Chiefs law. They pleaded in their statement of claim facts to support their complaints. It is therefore not correct as submitted in the Appellant's reply brief that "in this case there is no claim or order to set aside the decision of the Executive Council" It is not suggested that under the law there was another body beyond the Executive Council to whom they should take their complaint before resorting to the court. Having exhausted the remedy provided by the Law I think Plaintiffs, if still aggrieved, could resort to the court and claim, as they did, so long as they were not claiming reliefs declaratory of the functions of the Executive Council under the Law see ADIGUN & ORS. V. ATTORNEY-GENERAL, OYO STATE (1987) 1 NWLR 678. By their pleading and claims they appear to have resorted to the supervisory jurisdiction of the court over an inferior tribunal - the Executive Council.

I think claim (1) falls within the acceptable jurisdiction of the court - see; ADIGUN V ATTORNEY-GENERAL OF OYO STATE & ORS. (supra) where the submission of Chief F.R.A. Williams, SAN to the effect that-

"However, the appellants contend that what was sought from the High Court was not declaration under the Chiefs Law which would eventually be registered, but a declaratory order as to the existing customary law as a matter of fact which all High Courts have the jurisdiction to make: see Section 236(1) of the Constitution of the Federal Republic of Nigeria 1979 and Section 9 High Court Law. The effect of such a declaratory order of the court would be that any declaration made and registered under the Chiefs Law as to the customary law prevailing which was not in line with the declaratory order of the court as to the existing customary law would be void see Section 4(2)(a) and 4(4) of the Chiefs'

law. *The granting or otherwise of the declaration would depend on the evidence led as to the prevailing custom.*"

was accepted. And Obaseki, JSC in his lead judgment in the case said:

"The Court of Appeal quite properly held that 'it is not the business of the courts to make declarations of customary law relating to the selection of Chiefs under the Chiefs' Law'. But it is the business of the court to make a finding of what the customary law is and apply the law for the purpose of the claims for declarations.

From the wording of claim (1) the plaintiffs were not seeking a declaration as to the customary law but a declaration that according to Ivbiaro customary law, it is the most senior title holder, 'ODION EJERE', who has the exclusive preserve of conferring the 'Ejere' title. A declaration as to the customary law is a matter within the exclusive jurisdiction of those on whom it is conferred by the Traditional Rulers and Chiefs Law. It is however within the jurisdiction of the court to ascertain, as a matter of fact, what the customary law is and to decide whether the declaration sought is permitted by that law.

It is not suggested that claim (4) sought a declaration as to the customary law of Ivbi-Ada-Obi Clan. Rather it is that according to the approved chieftaincy declaration relating to the Headship of the Clan, the 7th Plaintiff was the proper person to be so appointed. I cannot see how it can properly be argued that this claim is outside the jurisdiction of the court. I think the trial court properly exercised its jurisdiction in this matter.

Whether a court exercises its discretion properly in a declaratory action goes to the issue of the merit of the case and not to the jurisdiction of the court to entertain such an action. As this appeal does not question the merit of the judgment of the Court below, I make no pronouncement on the appropriateness of the orders made by the trial court and affirmed by the Court of Appeal. I am satisfied that EGUAMWENSE does not apply to oust the jurisdiction of the trial court in this case. And for this reason this appeal fails.

Before I end this judgment, I need to say a few words on the submission made on behalf of the Appellant that the Plaintiffs should

have come by way of certiorari rather than by action for declaratory reliefs. I think the various dicta of their Lordships of this court in EGUAMWENSE have settled the issue. Karibi-Whyte JSC did say in EGUAMWENSE at page 20D of the report:

"It is accepted that the action for declaration is a useful and important procedural method for ascertaining and determination of a point of law or the construction of a document, and for the determination of the validity of orders or decisions of inferior courts or tribunals - See VINE V. NATIONAL DOCK LABOUR BOARD (1957) AC 488, PYX GRANITE CO. LTD. V. MINISTRY OF HOUSING AND LOCAL GOVERNMENT (1960) AC 260. Its nature is very much misunderstood. The action for declaration is used in a great variety of circumstances and is usually accompanied by ancillary reliefs. This procedure has been very commonly adopted in cases of disputes as to title to land held under customary law. - See FABUNMI V. AGBE (1985) 1 NWLR (pt.2) 299. It is also generally used in disputes as to title to chieftaincy. See GBOKOYI V. MINISTER OF CHIEFTAINCY AFFAIRS (1965) NMLR 7".

Perhaps I may also draw attention to ADESOLA V. ABIDOYE (supra) E and ATTORNEY-GENERAL, ANAMBRA STATE V. OKAFOR (1992) 2 NWLR 396 where this Court cited, with apparent approval, ORISAKWE V GOVERNOR OF IMO STATE (supra); ONUZULIKE V. NWOKEDI (supra) and UWEGBA V. ATTORNEY-GENERAL OF BENDEL STATE F (supra) - three cases which Appellant says are not judgment of this Court and, therefore, not binding on it. All these cases are declaratory actions. In MERCHANT BANK LTD. V. FEDERAL MINISTER OF FINANCE (1961) ANLR 623 another declaratory action, where Rotimi Williams QC G (as he then was) appeared for the plaintiff/appellant, Unsworth FJ in his judgment in the case with which Brett, FJ (as he then was) agreed, declared at page 628 of the Report:

"The power under Section 14 of the Ordinance are administrative powers which are properly vested in the Minister, and it is for the Minister, and not the Courts, to exercise those powers. In these circumstances, the functions of the Courts only begin if and when it is alleged (which is not the case here) that the administrative powers have not been

exercised in accordance with the Ordinance; it is these functions of the Courts which are protected by the Constitution."

All these provide a complete answer to Appellant's contention.

It is for the reasons I give above and the other reasons in the judgment of my learned brother Ejiwunmi JSC that I dismiss this appeal with N10,000.00 costs to the Plaintiffs/Respondents.

MOHAMMED JSC

C I agree that the High Court has jurisdiction to hear and determine the suit filed by the plaintiffs. I have had the preview of the judgment of my learned brother, Ejiwunmi JSC, in draft, and I concur that this appeal be dismissed.

D Chief Williams SAN, relied on a recent decision of this court in his submission that the trial court had no jurisdiction to entertain and grant the reliefs claimed by the plaintiffs in this action. This was the only issue formulated by the learned Senior Advocate for the determination of this appeal. The case is Eguamwense v. Amaghizemwen (1993) 9 NWLR (Part 315) page 1. As my learned brother, Ejiwunmi JSC, has disclosed, I took part in that appeal and held a contrary view to the opinion of the majority justices on some aspect of the appeal. With respect of Chief William's view, the present case is not on all fours with the case of Eguamwense v. Amaghizemwen (supra) in the case in hand, the plaintiffs are complaining against the violation of the approved Chieftaincy Declaration regulating succession to the Clan Headship of Ivbi-Ada-Obi Clan in appointing Chief Abubakar Zibiri Odugbo as the Clan Head. In the action, the plaintiffs prayed the court to declare the appointment and approval of Chief Odugbo as the Village head of Ivbiaro illegal, invalid, null and void.

G The plaintiffs who are respondents in this appeal, made a strong submission that Owan Traditional Council was requested to inquire into the Customary Law regulating appointment of Village Head of Ivbiaro. The traditional council went beyond the mandate given to it and interviewed the contestants. Thereafter, it selected a candidate to fill the

vacant stool. On the strength of the Council's recommendation the Executive Council of the State approved the appointment of Chief Abubakar Zibiri Odugbo. The plaintiffs submitted that Owan Traditional Council had no power and competence to recommend to the governor any person for appointment as a recognised Chief. That power was vested in Bendel State Council of Chiefs. See Bendel State Legal Notice No.2 of 1982. Thus in this case the plaintiffs are disputing the power of Owan Traditional Council to act as the "Prescribed Authority" for the appointment of the Village Head of Ivbiaro in Ivbi-Ada-Obi Clan in Owan Local government Area.

In the case of Eguamwense v. Amaghizemwen (supra) there was no dispute over the recognition of Oba of Benin as the "Prescribed Authority". The dispute in that case is whether the High Court could grant declaratory reliefs which were earlier decided by the "Prescribed Authority". The two cases are therefore not the same. In Eguamwense v. Amaghizemwen (supra) I held the view that the High Court had jurisdiction to entertain the second leg of the plaintiff's claim. I said so in the following words:

"I now refer to the second leg of the respondent's claim, where the High Court was sought to declare that the Prescribed Authority (the Oba of Benin) acted contrary to Benin native law and custom when the title of Amaghizemwen of Benin was conferred on the appellant and also when a declaration of injunction was prayed for. These two claims fall within the supervisory jurisdiction of the High Court over decisions of the Prescribed Authority. All the decided authorities referred to in this appeal, disclose a settled law that unless the jurisdiction is clearly excluded the High Court has power to interfere with the decisions of statutory tribunals. It is also settled law that an aggrieved party can invoke the supervisory jurisdiction of the High Court by way of declaration in seeking for such decisions to be set aside. In the case in hand the appellant can invoke by way of a declaration, the supervisory jurisdiction of the High Court to correct fundamental errors of law committed by the Prescribed Authority. See also Anisminic V. Foreign compensation Commission (1969) 2 A.C. 147 at 171".

I have always held the view that a citizen has inalienable right to seek redress in the High Court unless such jurisdiction has been clearly excluded by the provisions of a statute. It is plain from the facts and evidence adduced that the plaintiffs in the case in hand are right to ask for a declaration that the decision of Bendel State Executive Council which was based on Owan Traditional Council's recommendation was null and void. The plaintiffs are therefore on good ground to invoke the supervisory jurisdiction of the High Court to nullify or set aside the decision of Bendel State Executive Council because it was contrary to the existing law in the state.

For these reasons and the fuller reasons in the judgment of my learned brother, Ejiwunmi JSC, this appeal has failed and it is dismissed. I affirm the decision of the Court of Appeal. The respondents are entitled to the costs of this appeal which I assess at N10,000.00.

ACHIKE JSC

I have had the privilege of reading the leading judgment of my learned brother, Ejiwunmi, JSC. I agree with his reasoning and the conclusion that the appeal lacks merit and the same ought to be dismissed. Accordingly, I, too would dismiss the appeal with N10,000.00 costs against the defendants.

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