

SUPREME COURT OF NIGERIA

6TH JULY 2001. SC. 151/1996.

**CORAM:- U. MOHAMMED, A. I. IGUH, A. I. KATSINA-ALU,
O. ACHIKE, A. O. EJIWUNMI, JJSC.**

1. TAOFIKADESHEINDE OYEFOLU

2. MUIBI OYEFOLU

(For themselves and other members
of Adelu Branch of Iga Osolu)

..... APPELLANTS

3. RASAKI ADE-IFE OYEFOLU

(For himself and other members of
Ade-Ife Branch of Iga Osolu)

AND

ABAYOMI ADEYOSOLA DUROSINMI RESPONDENT

APPEALS - *Retrial - Error of trial court - Occasioned a miscarriage of justice - And the judgment was properly set aside - And retrial ordered (H 2)*

CHIEFTAINCY MATTERS - *Chieftaincy declaration - Error of trial court - The trial court was in error - To go outside the declaration - And invoke a principle not provided therein (H 5)*

CHIEFTAINCY MATTERS - *Chieftaincy declaration - Error of trial court - The finding of the trial court - As to membership of Iga Osolu ruling House - Is contrary to the Chieftaincy declaration - And is a fundamental error (H 6)*

COURTS - *Error of trial court - It was a fundamental error - For the Court to present facts - Which were not the case - Of either of the parties (H 1)*

CUSTOMARY LAW - *Chieftaincy declaration - Which is registered - And made pursuant to the law - Is proof of the customary law - In rela-*

tion to that chieftaincy (H 4)

JUDICIAL PRECEDENTS - *Ratio decidendi* - Decision of the court -
On issues joined by parties - Forms part of the ratio for the case (H 3)

FACTS

The appellants who were the plaintiffs filed this action against the respondent/defendant and A-G of Lagos State in the Lagos State High Court. Their claim consisted mainly of declarations pertaining to the native law and custom of the Iga Osolu ruling house and to their entitlement to provide a candidate for the stool of Osolu of Irewe. They also claimed for perpetual injunction against the 2nd defendant to restrain his installation as the Osolu of Irewe.

On the death of the previous Osolu of Irewe in March 1988, the secretary to Badagry Local Government Council circulated a public notice calling on members of the Iga Osolu Ruling House to submit the names of their candidate. After the announcement two factions of Osolu chieftaincy stool emerged. One of the factions presented the 1st appellant as its candidate for the vacant stool while the respondent was nominated by the second faction. Following the ensuing conflict, the appellants filed this action in the High Court.

The trial court at the end of trial decided in favour of the 1st appellant as the only right person to be appointed as the Osolu of Irewe and granted his claims. On appeal by the defendants, the Court of Appeal allowed the appeal and sent the case back to the High Court for retrial de novo before another judge. The appellants have therefore appealed to the Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether the Court of Appeal was correct in its view that the High Court went outside the Declaration Exhibit "E" and invoked the principle of rotation in the determination of the present suit?

2. What is the correct definition of "Iga Osolu" in the context of Exhibit 'E' and evidence adduced at the trial?

3. Who among the 2 candidates contesting for the stool of Osolu

of Irewe was validly appointed to the office?"

"3. Was the Court of Appeal right in holding that the learned trial judge's preference for the selection committee convened by Liadi Kaffo, lacked critical basis?.

4. The Appellants having failed, to file any ground of appeal, challenging the Court of Appeal's exercise of discretion in ordering a retrial of the suit, whether the Supreme Court can interfere with that decision".

HELD: (Unanimously dismissing the appeal per lead judgment of **KATSINA-ALU JSC**)

Error of trial court

1. I have earlier, in this judgment, observed that the judgment of the learned trial judge was slipshod. It lacked details and serious evaluation of evidence adduced before the court. Learned counsel for the respondent, quite correctly, argued that it was an error for the learned trial judge to say that the respondent had agreed that Adeshi was the only male child of Edini, whereas the foundation of the case of the respondent is that apart from Adeshi, Edini had two other male issues and that Iga Osolu was not restricted to any one line, but encompasses the family as a whole. The appellants' counsel put up a strong argument that the errors were non-issues, but in the judgment the learned trial judge made no effort to clear the blunders he committed during the review of the pleadings and the evaluation of the evidence. It is indeed a fundamental error, in this action, to say that Aganran Oyefolu and not Edini was the progenitor of Iga Osolu Ruling House. This was not the case of either of the parties. (p. 3006 B)

Appeals - Retrial

2. The Court of Appeal had considered the appeal, set aside the judgment and ordered for a retrial of the case, denovo, before another judge. I agree that the errors being fundamental have occasioned a miscarriage of justice. See Ozibe and ors. V. Algbe and Ors. (1977) All NLR 239. Issue 1 is therefore resolved in favour of the respondent. (p. 3006 G)

Judicial precedent - Ratio decidendi

3. The averment in paragraph 9 of appellants' Statement of Claim was denied by the respondent in the Amended Statement of Defence. The B issues were therefore joined. A trial court has a duty to make express findings on issues joined by parties and the decision of the court on such issues forms part of the ratio decidendi of that case. An issue of fact is that which if decided either in favour of the plaintiff or the defendant C would lead to a final determination of that issue by either giving a right of relief to the plaintiff or affording a defence to the defendant. See Lewis and Peat V. Akhimien (1976) 7 S.C. 157. (p. 3008 A)

Customary law - Chieftaincy declaration

D 4. Exhibit "E" is the chieftaincy declaration of the customary law regulating the selection to the stool of Osolu of Irewe. It did not provide for appointment of those entitled to fill the vacancy of the chieftaincy by rotation. It is trite law that a registered declaration made pursuant to the E provision of the law provides proof of customary law in relation to the chieftaincy for which the declaration is made and registered. See Jeje Oladele and Ors. V. Oba Adekunle Aromolaran II and Ors. (1996) 6 NWLR (part 453) 180. (p. 3008 C)

Chieftaincy declaration - Error of trial court

5. In view of what I have said the answer to formulation in issue II is in the affirmative. The Court of Appeal is correct in its decision that the High Court went outside the Declaration Exhibit "E" and invoked the G principle of rotation in the determination of the present suit. (p. 3008 E)

Chieftaincy declaration - Findings

H 6. I have already dealt with the question concerning the errors made by the learned trial judge earlier in this judgment. It is quite correct that not every mistake or slip would result in an appeal being allowed. Such interference can only occur when the error occasions a miscarriage of justice. The learned trial judge said in his judgment, as follows:

"I therefore hold that the descendants of Aganran Oyefolu constitute the Iga Osolu Ruling House of which the plaintiffs and the 2nd defendant are members".

This finding is contrary to the provisions of Exhibit "E". The chieftaincy declaration did not say that only the descendants of Aganran Oyefolu constitute the Iga Osolu Ruling House. The Court of Appeal, quite correctly, ruled that the trial judge was wrong because if Edini was acknowledged as the progenitor then he and not Aganran Oyefolu, who was Edini's descendant, should be the progenitor of the Ruling House. I have to repeat again that the errors committed by the learned trial judge were fundamental. In the context of Exhibit "E" it is not only the descendants of Aganran Oyefolu that constitute the Iga Osolu as was held by the learned trial judge in his judgment. (p. 3008 G)

NOTABLE POINT OF INTEREST

MOHAMMED JSC

1. The only way to correct errors in judgment - Is by appeal to a higher court

It is plain that the errors were not a slip but fundamental mistakes and the court below had pointed out to such misapplication of facts and erroneous evaluation of the evidence in the judgment of the trial court. A judge after making an order or giving judgment becomes functus officio. If errors are discovered in some judgment or order the only remedy is to invoke the appellate jurisdiction of a higher court to set aside the decision. This has been done in this case. (p. 3006 F)

REPRESENTATION

Kayode S. Sofola, S.A.N., with him, S.R.O. Odogun (Miss), for the Appellant.

Dotun Oduwobi Esq., for the Respondent.

CASES REFERRED TO

Ozibe and Ors. v. Algbe and Ors. (1977) All NLR 239

Lewis and Peat v. Akhimien (1976) 7 S.C. 157

Jeje Oladele and Ors. v. Oba Adekunle Aromolaran II and Ors. (1996) 6 NWLR (part 453) 180

Ayoade v. Military Governor of Ogun State (1993) 8 N.W.L.R. (part 309) 11 at 127-128

B

LEAD JUDGMENT BY MOHAMMED JSC

C The dispute over succession to the stool of Osolu of Irewe gave rise to this appeal. The appeal is from the decision of Lagos Division of the Court of Appeal. The chieftaincy dispute led the plaintiffs, who hereinafter shall be referred to as the appellant, to file this action against Adeyosola Abayomi Durosinmi and the Attorney-General of Lagos State in the Lagos High Court. Mr. Adeyosola Abayomi Durosinmi is the respondent, in this appeal. The declaratory reliefs claimed by the defendants at the High Court are as follow.

E *"1. A declaration that in accordance with tradition, native Law and Custom, there is only one Ruling house known as Iga Osolu, made up of descendants of Aganran Oyefolu, which is entitled to present candidates for the stool of Osolu of Irewu.*

F *2. A declaration that the said Aganran Oyefolu family comprises 6 male lines and 4 female lines, namely, Akingbade/Omotade, Durosinmi, Adeoye, Adelu, Adeife, Durjaiye, Asanat, Taiwo/Oriyomo, Ogunbambi, Jolade and Eyinle.*

G *1. A declaration that in accordance with tradition, native Law and Custom and usages of the Iga-Osolu Ruling House, succession to the stool devolves on the male lines of the Aganran Oyefolu Chieftaincy family otherwise known as the Iga-Osolu.*

2. A declaration that the Adelu Line of the Iga-Osolu Ruling House which has presented the 1st Plaintiff is entitled to provide a candidate for the stool of Osolu of Irewe.

H *3. A declaration that the purported candidates of the 2nd Defendant is irregular, wrong, unconstitutional, null and void and contrary to the tradition, native law Custom Usages and the Constitution of Iga Osolu of Irewe.*

4. *Perpetual injunction restraining the defendant by themselves their servants, against or privies or howsoever otherwise from taking any steps towards the installation of the 2nd defendant as the Osolu of Irewe. See Page 126 of the Record".*

From the pleadings I will state the facts of the case albeit briefly. B
The Osolu of Irewe Chieftaincy stool became vacant on the death of Oba Ashafa Adeoye Oyefolu. The Oba died on the 7th of March, 1988. In August 1988 the secretary to Badagry Local Government Council caused the following Public Notice too be circulated within the Osolu Chief- C
taincy area:

"PUBLIC NOTICE

APPOINTMENT OF OSOLU OF IREWE

*In accordance with the provision of the Obas and Chiefs of Lagos State Law, 1981, Section 17 (1) (A) (B) I, BABATUNDE AHMID D
OLUBANDO, the Secretary to the Badagry Local Government and in consonance with the existing Registered Chieftaincy Declaration, hereby call on the members of Iga Osolu Ruling House to submit the name of their candidate within thirty (30) days of the issue of this notice (i.e.) E
not later than 3rd September 1988.*

This notice is being brought to the knowledge of the head of Family, the Secretary, the Treasurer, the Trustees and all members of Iga Osolu Ruling House . F

Dated at Ajara, Badagry, this 4th day of August, 1988.

*Sgd. Tunde Olubando
Secretary to the Local
Government"* G

Soon after the announcement of the Public Notice two factions of Osolu Chieftaincy stool emerged. At a meeting convened by a faction headed by Prince Laidi Oloyede Kaffo the 1st Appellant, Prince Taofiki Adesheinde Oyefolu from Adelu Branch of Iga Osolu was considered and approved to fill the vacant stool of Osolu of Irewe. H

The other faction of the Ruling House, under the leadership of Prince Mustapha Oyefolu, met and nominated Abayomi Adeyosola Durosinmi as a candidate for the Chieftaincy stool. Each faction of the

Ruling House paraded their candidate as the Osolu elect. It was this struggle which made the appellants file this action in the High Court.

Both parties called evidence and tendered documents in order to establish before the court that their candidate is the only right person to be appointed the Osolu of Irewe. The learned trial judge considered the evidence adduced and, in what I call a slipshod judgment, he decided in favour of the appellants.

Dissatisfied with the decision of the High Court, the respondents appealed to the Court of Appeal. In a well considered judgment, the Court of Appeal, coram Sulu-Gambari, Kalgo and Uwaifo JJCA (as they then were) allowed the appeal and sent the case back to the High Court for retrial de novo before another judge. Sulu-Gambari JCA who wrote the lead judgment based his reason for sending the case back for retrial on the fact that the learned trial judge did not consider the totality of the evidence adduced before him by both parties and weigh it properly before granting the reliefs claimed by the appellants.

The appellants have now come to this court on appeal against the decision of the Court of Appeal. Three issues have been identified for the determination of the appeal by the learned Senior Advocate, Kayode Sofola, for the appellants. The issues are as follows:

"1. Whether the Court of Appeal was correct in its view that the High Court went outside the Declaration Exhibit "E" and invoked the principle of rotation in the determination of the present suit?"

2. What is the correct definition of "Iga Osolu" in the context of Exhibit 'E' and evidence adduced at the trial?"

3. Who among the 2 candidates contesting for the stool of Osolu of Irewe was validly appointed to the office?"

The respondent adopts appellants' issues 1 & 2 and added two issues which he considers relevant for the determination of the appeal. The two issues read:

"3. Was the Court of Appeal right in holding that the learned trial judge's preference for the selection committee convened by Liadi Kaffo, lacked critical basis?"

4. The Appellants having failed, to file any ground of appeal,

challenging the Court of Appeal's exercise of discretion in ordering a retrial of the suit, whether the Supreme Court can interfere with that decision".

I will start with issue I. After going through the issues raised by both parties and the submissions of counsel on the errors committed by the learned trial judge during the reviewing of pleadings in his judgment, I will regard those arguments as an issue for the determination of this appeal. I will make it issue No. 1. Learned counsel for the appellants, Kayode Sofola SAN. submitted, in the appellants' brief, that there were slips made by the learned trial judge in his judgment. The slips are not material issues but they gained some attention in the judgment of the Court of Appeal. Mr. Kayode Sofola SAN. pointed that the slip was made by the learned trial judge while reviewing the pleadings in the case at the commencement of his judgment. This is where the learned trial judge said:

"The plaintiffs averred that the Iga Osolu Ruling House was part of a larger family referred to as Aganran Oyefolu Chieftaincy Family of Irewe which is not admitted in paragraph 5 of the amended Statement of Defence that one Edini was the first Osolu who begat 6 children namely Adeshi, Iye, Ogunbayi, Erelu and Eyewo. It is also agreed by the parties that the Adeshi branch became the only branch for the Chieftaincy family (sic) as he was the only male issue."

Learned counsel for the appellants agreed that there were three errors in the summation of the learned trial judge. Mr. Kayode Sofola, SAN. however submitted that the errors were inadvertent and explained how the learned trial judge committed them. I have seen the errors. The appellants' counsel discussed them in the appellants' brief. It is correct that the learned trial judge said that the appellants averred that the Iga Osolu Ruling House was part of a larger family referred to as Aganran Oyefolu chieftaincy family. This, as Kayode Sofola, SAN. corrected, was not the case of the appellants before the trial court. Secondly, the learned trial judge said that the Defence in their pleading did not admit that Edini was the first Osolu and that he begat 6 named children. Thirdly, the learned trial judge stated that the two contending parties agreed that

Adeshi branch of the family became the only branch of the chieftaincy, as he was the only male issue. The learned Senior Advocate submitted orally and in appellants' brief that the errors were later corrected and proper averments and evidence were taken into consideration. With respect I do not accept that the errors were later corrected by the learned trial judge.

I have earlier, in this judgment, observed that the judgment of the learned trial judge was slipshod. It lacked details and serious evaluation of evidence adduced before the court. Learned counsel for the respondent, quite correctly, argued that it was an error for the learned trial judge to say that the respondent had agreed that Adeshi was the only male child of Edini, whereas the foundation of the case of the respondent is that apart from Adeshi, Edini had two other male issues and that Iga Osolu was not restricted to any one line, but encompasses the family as a whole. The appellants' counsel put up a strong argument that the errors were non-issues, but in the judgment the learned trial judge made no effort to clear the blunders he committed during the review of the pleadings and the evaluation of the evidence. It is indeed a fundamental error, in this action, to say that Aganran Oyefolu and not Edini was the progenitor of Iga Osolu Ruling House. This was not the case of either of the parties.

It is plain that the errors were not a slip but fundamental mistakes and the court below had pointed out to such misapplication of facts and erroneous evaluation of the evidence in the judgment of the trial court. A judge after making an order or giving judgment becomes functus officio. If errors are discovered in some judgment or order the only remedy is to invoke the appellate jurisdiction of a higher court to set aside the decision. This has been done in this case. The Court of Appeal had considered the appeal, set aside the judgment and ordered for a retrial of the case, denovo, before another judge. I agree that the errors being fundamental have occasioned a miscarriage of justice. See *Ozibe and ors. V. Algbe and Ors. (1977) All NLR 239*. Issue 1 is therefore resolved in favour of the respondent.

The next issue is whether the Court of Appeal is correct, in its decision, that the High Court went outside the declaration, Exhibit "E" and invoked the principle of rotation in the determination of the present suit. Learned Senior Advocate, Kayode Sofola, reproduced an extract from the lead judgment of the Court of Appeal which dealt with the matter raised in this issue. In his judgment Sulu-Gambari JCA held as follows:

" This is what informed the learned trial judge to invoke, Al-most in desperation, the principle of fair play to hold that the nominee of the respondents should be the next Osolu of Irewe since after the death of Aganran Oyefolu, three out of the six male lines have reigned in turn as Osolu of Irewe... (after making remarks on the duty of a court where a declaration exists)... It is not the business of the learned trial Judge to constitute himself as Father Christmas by looking at a chieftaincy declaration and say 'oh, three out of the six lineal descendants have occupied the post contested for, let the other three who have never presented one be allowed to provide one' not to sympathetically grant some people who have not been privileged to present a candidate a fair deal as was done by the learned trial judge, which he said accorded with fair play and equity." (underlining supplied). See pages 464-465 of the Record".

Learned counsel for the appellants pointed out that the allusion to fair play and equity did not form part of the rationes decidendi of the High Court judgment. The learned trial judge had determined the suit having resolved the relevant issues in favour of the appellants after a rational evaluation. Mr. Kayode Sofolu concluded that the passing remarks on fair play and equity was a speculative explanation as to why "the plaintiffs supports the nomination and election of the 1st plaintiff".

But the contrary is the case. In paragraph 9 of the Appellants' Statement of Claim the appellants pleaded as follows:

"After the passing away of Aganran Oyefolu, different lines of his male lineal descendants have succeeded him in turn name, Akinghade/ Omolade, Durosinmi and Adeoye lines leaving yet to take their turns the adelu, Ade-Ife and Durojaiye lines".

It is this averment which invited the learned trial judge to hold

that it is also the case for the plaintiffs, that 3 of the 6 male lines have in turn provided the Osolu after Aganran Oyefolu and that it is the turn of the outstanding 3 to succeed the throne ..." **The averment in paragraph 9 of appellants' Statement of Claim was denied by the respondent in the Amended Statement of Defence. The issues were therefore joined. A trial court has a duty to make express findings on issues joined by parties and the decision of the court on such issues forms part of the ratio decidendi of that case. An issue of fact is that which if decided either in favour of the plaintiff or the defendant would lead to a final determination of that issue by either giving a right of relief to the plaintiff or affording a defence to the defendant. See *Lewis and Peat V. Akhimien (1976) 7 S.C. 157.***

Exhibit "E" is the chieftaincy declaration of the customary law regulating the selection to the stool of Osolu of Irewe. It did not provide for appointment of those entitled to fill the vacancy of the chieftaincy by rotation. It is trite law that a registered declaration made pursuant to the provision of the law provides proof of customary law in relation to the chieftaincy for which the declaration is made and registered. See *Jeje Oladele and Ors. V. Oba Adekunle Aromolaran II and Ors. (1996) 6 NWLR (part 453) 180. In view of what I have said the answer to formulation in issue II is in the affirmative. The Court of Appeal is correct in its decision that the High Court went outside the Declaration Exhibit "E" and invoked the principle of rotation in the determination of the present suit.*

Learned counsel for the appellant dealt with the issue of slip or error in the judgment of the learned trial judge in the appellant's brief where he questioned, "what is the correct definition of "Iga Osolu" in the context of Exhibit "E" and the evidence adduced at the trial? **I have already dealt with the question concerning the errors made by the learned trial judge earlier in this judgment. It is quite correct that not every mistake or slip would result in an appeal being allowed. Such interference can only occur when the error occasions a miscarriage of justice. The learned trial judge said in his judgment, as**

follows:

"I therefore hold that the descendants of Aganran Oyefolu constitute the Iga Osolu Ruling House of which the plaintiffs and the 2nd defendant are members".

This finding is contrary to the provisions of Exhibit "E". B
The chieftaincy declaration did not say that only the descendants of Aganran Oyefolu constitute the Iga Osolu Ruling House. The Court of Appeal, quite correctly, ruled that the trial judge was wrong because if Edini was acknowledged as the progenitor then he and not Aganran Oyefolu, who was Edini's descendant, should be the progenitor of the Ruling House. I have to repeat again that the errors committed by the learned trial judge were fundamental. In the context of Exhibit "E" it is not only the descendants of Aganran Oyefolu that constitute the Iga Osolu as was held by the learned trial judge in his judgment. D

The question relating to the learned trial judge giving preference to the selection committee headed by Liadi Kaffo is, in my accepted the submission of the respondent that the learned trial judge had committed fundamental errors in the appraisal of facts and evaluation of the evidence I do not see it necessary to consider whether any of the two contestants for the stool of Osolu of Irewe was rightfully nominated. I have already affirmed that the Court of Appeal had reached a correct decision in setting aside the judgment of the learned trial judge and for ordering for a retrial of the action (de novo) before another judge. F

Consequently, this appeal has failed. The decision of the Court of Appeal is hereby affirmed. The respondent is entitled to the costs of this appeal which I assess at N10,000.00. G

IGUHJSC

I have had the privilege of reading in draft the judgment just H delivered by the learned brother, Mohammed, J.S.C. and I agree entirely that this appeal is without substance and ought to be dismissed.

The main issue for determination in this appeal is the question of

which of the two contestants, to wit, the 1st plaintiff of the Adelu line of Iga Osolu Ruling House or the 2nd defendant of the Durosinmi line of the said Iga Osolu Ruling House, having regard to the tradition, customary law and usages of Iga Osolu Ruling House and, in particular, the Chieftaincy Declaration Exhibit E, is entitled to be appointed Osolu of Irewe.

The learned trial Judge after a consideration of this issue held that as only 3 out of the 6 male lines had reigned in turn after the death of Aganran Oyefolu, the nomination and selection of the 1st plaintiff whose line was yet to occupy the throne was in accordance with fair play and equity. The trial court, in effect, introduced succession by rotation to the stool contrary to the provisions of the relevant Chieftaincy Declaration, Exhibit E. Said the learned trial Judge:-

" The evidence is that after the death of Aganran Oyefolu, 3 of the 6 male lines have reigned in turn namely, Akingbade, Durosinmi (the 2nd Defendants grandfather and D.W. 4's father) and Ashafa Adeoye (P.W.1's father). The Adelu, Adeife and Durojaiye lines are yet to occupy the Osolu throne and that is why the Plaintiffs support the nomination and election of the 1st Plaintiff who is from Adelu line as the Osolu elect. The 2nd Defendant being proposed by the defence has had his line on the throne before Oba Ashafa. The nomination and election of the 1st Plaintiff is in accordance with fair play and equity".

The court below on appeal, was of the view that the trial court had quite wrongly invoked the principle of fair play and equity to introduce succession by rotation to the stool as the same had no place in the existing Chieftaincy Declaration, Exhibit E.

Before us, learned counsel for the defendants has criticised the invocation by the trial court of the doctrines of fair play and equity and the consequent introduction of succession by rotation to the Chieftaincy Declaration, Exhibit E.

Section 11 of the Obas and Chiefs Law of Lagos State, 1981 provides as follows:-

" Where a declaration in respect of a recognised Chieftaincy is registered under this section, the matters therein stated shall be deemed to be the customary law regulating the selection of a person to be the holder

of the recognised chieftaincy to the exclusion of any other customary usage or rule".

It is thus plain that a registered Chieftaincy Declaration such as Exhibit E is declaratory of the tradition, customary law and usages relating to the selection and appointment to a particular chieftaincy stool and obviates the necessity of proof by oral evidence of such tradition, custom and usages on each occasion that the issue arises for determination by the courts. See Jeje Oladele and others v. Oba Aromolaran 11 and others (1996) 6 N.W.L.R. (Part 453) 180. As Muhammad, J.C.A. put it, and quite rightly, in my view:-

"The purpose of a registered declaration is to embody in a legally binding written statement, the customary law of a particular area, setting out clearly the method regulating the nomination and selection of a candidate to fill a vacancy in the chieftaincy of that area. This is to avoid uncertainty in the customary law of the area". See Ayoade v. Military Governor of Ogun State (1993) 8 N.W.L.R. (Part 309) 11 at 127 - 128. Accordingly the chieftaincy Declaration, Exhibit E, is deemed to be the only customary law regulating the selection of a person to be the holder of the office of the Osolu of Irewe. The Declaration derives its force and authority from the Obas and Chiefs Law, 1981 and, like any other existing law, is binding on all candidates who seek nomination and selection to fill a vacancy in the chieftaincy of the designated area. The learned trial Judge had no further duty to perform than to interpret and give effect to the provisions of the Chieftaincy Declaration, Exhibit E, having regard to its clear and unambiguous meaning. As the Court of Appeal put it:-

"The function of the court, therefore, is to apply its provisions to the facts of the case as established by evidence. The court has no power to breathe into it matters that are not contemplated in the declaration. It must give effect to the unambiguous declaration of the provisions without adding anything thereto. When in the words of the declaration, there is no ambiguity, then no exposition contrary to the expressed words is to be made."

I agree entirely with the above observation of the Court of Ap-

peal and fully endorse the same.

Adverting to the case on hand, it is crystal clear that the chieftaincy Declaration, Exhibit E, makes no provision to any rotation in the succession to the stool. It is clear to me that the learned trial Judge veered outside his jurisdiction by looking beyond the chieftaincy Declaration, Exhibit E, an exercise he was not entitled to do. It is equally plain that the trial court by upholding that the nomination of the 1st plaintiff on the ground that it was in accordance with fair play and equity as his line was yet to occupy the throne in effect invoked rotation where this was not provided for in Exhibit E and did not therefore form part of the customary law of the parties applicable to the nomination, selection and appointment as Osolu of Irewe. The case before the court was not based on fair play and equity but which of the two contesting candidates was entitled to be appointed to the vacant stool as Osolu of Irewe having regard to the prevailing customary law in issue. I think the Court of Appeal was also perfectly right when in criticising the approach of the learned trial Judge to the issue before him, it observed thus:-

" He was confused by invoking the doctrine of fair play and equity to direct that the three out of the six descendants of Edini should also be allowed to have a share of the benefit of presenting the Osolu of Irewe. That was not the issue properly brought before him. His duty here is to interpret the Chieftaincy Declaration as applied to the parties in this case and not to engage in chasing wild goose or giving unto the other party that which the other party is not entitled to in his guise of doing fair play and equity. The judge should not make a construction that is contrary to the expressed words of the declaration. He has completely derailed on this point".

It is for the above and the more detailed reasons contained in the judgment of my learned brother, Mohammed, J.S.C. that I, too, dismiss this appeal and affirm the judgment of the Court of Appeal. I abide by the order as to costs made in the leading judgment.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother, Uthman Mohammed, JSC. in this appeal. I entirely agree with it. I have nothing useful to add. I would also dismiss the appeal and affirm the decision of the Court of Appeal. I also award N10,000.00 costs in favour of the Respondents.

ACHIKE JSC

I agree with the opinion of my learned brother, Uthman Mohammed, JSC, that this appeal has failed and for the reasons given in my brother's judgment I dismiss the appeal. I also award N10,000.00 costs to the respondent.

EJIWUNMI JSC

The judgment just delivered by my learned brother Mohammed JSC was read in its draft form by me. In that judgment the facts and the issues raised thereon were carefully considered in the lead consider it necessary to examine them in this judgment. I therefore adopt as my judgment the said judgment. Consequently, the appeal is also dismissed by me, and I award costs to the respondents in the sum of N10,000.00.

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H