

SUPREME COURT OF NIGERIA
FRIDAY 9TH MAY, 2003. SC. 100/2000
CORAM:- M. L. UWAIS CJN, M. E. OGUNDARE,
A. I. IGUH, E. O. AYoola, D. MUSDAPHER, JJSC

1. THE A-G OF EKITI STATE
 2. PRINCE OLA ADEBOLA
 3. PRINCE JOSEPH ADEBAYO ADEWOLE
 4. CHIEF OYEBADE AYENI APPELLANTS
 5. CHIEF OWOEYE BADA
 6. CHIEF WERE WAYA
 7. CHIEF AROWOSAYE
AND
 1. PRINCE MICHAEL DARAMOLA
 2. PRINCE ADEOLA AJIDAHUN
 3. PRINCE OLANIYAN AJIDAHUN RESPONDENTS
 4. PRINCE TUNJI AKINYEDE
-

EVIDENCE - Courts - Findings of fact - Interference - Appellate court does not substitute its view for those of trial court - With respect to facts founded and supported by evidence (H1)

EVIDENCE - Appeals - Opinion of appellate courts - Where findings are as a result of inferences drawn from facts - Appellate court can more readily form its own opinion - Unlike where it is based on evaluation and credibility of witnesses (H2)

COURTS - Chieftaincy - Findings of fact - Correctness of - Trial court rightly found that plaintiffs do not belong to Arojojoye house - Hence Court of Appeal should have upheld same (H3)

FACTS

The parties are involved in dispute over the rightful occupant of the stool of Ajero of Ijero in Ekiti State. It is undisputed that it was the turn of Arojojoye Ruling House to produce the Ajero. Sequel to this, the House initially presented 3rd defendant/appellant to the

kingmakers as their sole candidate but the kingmakers refused and rather preferred 2nd plaintiff/respondent. However, the State Government intervened to annul the selection by the Kingmakers and subsequently appointed 4th–7th appellants as warrant Chiefs to appoint a new Ajero. The warrant Chiefs then appointed 3rd appellant and the Government subsequently approved same.

Being dissatisfied, respondents instituted this action against appellants at the High Court of Ekiti State, challenging the actions of 4th–7th appellants, the State Government and eventual selection of 3rd appellant as the Ajero. Respondent therefore contended that that Arojojoye ruling House consisted of 7 stocks and that Akata was one of the stocks. They further contended that 2nd respondent was properly selected by the Kingmakers. On the other hand appellants contended that Arojojoye Ruling House only consisted of 5 stocks and that Akata was not one of it. After the hearing, the trial court dismissed respondents' claim in its entirety as it held that they failed to prove that Akata was a stock of Arojojoye Ruling House. Aggrieved, respondents appealed to the Court of Appeal. The court allowed the appeal and held in favour of respondents. Dissatisfied, appellants filed main appeal at Supreme Court, while respondents cross-appealed.

ISSUE FOR DETERMINATION

“Considering the totality of the evidence adduced before the trial High Court and the painstaking way and manner the said trial High Court reviewed the said evidence and arrived at its judgment, whether or not the lower court was not in grave error by disturbing or setting aside the said judgment.”

HELD (Unanimously allowing the appeal while dismissing the cross-appeal per AYOOOLA JSC)

Courts - Findings of fact - Interference

1. It is by now a well known principle of our law that it is not the function of an appellate court to substitute its own views for those of a court of first instance with respect to facts found by the court and based on a dispassionate appraisal of the evidence before it.

It is pertinent to be reminded that where primary findings made by a trial court are supported by evidence preferred by that court, such findings cannot be held perverse merely because an appellate court

would have been disposed, had it been the trial court, to prefer another set of competing evidence.
(pp. 1383 B/1388 F)

Appeals - Courts - Findings of fact - Interference - Justification

2. Where findings of fact are a result of inferences drawn from facts primarily found by the trial court, the appellate court is at liberty to form its own opinion. The legal position is succinctly encapsulated in the headnote of *Okpiri & Ors. v. Jonah & Ors.* (1961) 2 NSCC 84 thus:

“In the case of finding of facts which are really inferences drawn from facts specifically found, the appellate tribunal will more readily form an independent opinion than in the case of a finding of specific fact which involves the evaluation of the evidence of witnesses particularly where the finding could be founded on their credibility or bearing.”
(p. 1383 E)

COURTS - Findings of fact - Correctness of

3. It is clear that the grounds on which the court below came to the conclusion that the trial Judge did not properly evaluate the evidence on the issue of family relationship was either mistaken or misconceived. The trial Judge made a painstaking review of the evidence, related it to the issues and in an open and even-handed manner gave reasons in support of his findings. In my judgment, the court below was in error in holding that the trial Judge did not properly evaluate the evidence of the plaintiffs. His finding that the plaintiffs, not being members of the Arojoye ruling house, had no locus standi to challenge the appointment and installation of the 3rd defendant was available to him on the evidence he preferred. The court below should have upheld that finding. (p. 1388 B/H)

NOTABLE POINTS OF INTEREST

AYOOLA JSC

1. Where plaintiff is found to lack standing to sue other issues become immaterial

Since I have upheld the finding by the trial Judge that the plaintiffs lacked standing to institute the action, that is sufficient to dispose of

the appeals and the cross-appeal of the plaintiffs and it is not necessary to consider such other several issues raised in the appeal of the 1st, 4th - 7th defendants and in the cross-appeal of the plaintiffs predicated on an assumption that the plaintiffs had a standing to institute the action. When a plaintiff had been found not to have a standing to sue, the question whether other issues in the case had been properly determined or not does not arise. (p. 1389 B)

OGUNDARE JSC

2. Appellate courts enquire not into disputes but into their trial

Where evidence has been properly evaluated, as the trial Judge painstakingly did in this case, it is not the business of an Appeal Court to embark on a re-evaluation of the evidence with a view to arriving at a different conclusion from that of the trial Judge - see: Ajadi v. Okenihun (1985) ANLR 240, 248 where Karibi-Whyte, JSC., observed:

“It is of intrinsic relevance to the administration of justice in our legal system that the hearing of an appeal does not permit the Appeal Court to enquire into disputes, but to inquire into ways the disputes have been tried and settled. (p. 1410 A)

3. A person cannot be liable for disobeying an order he does not know of

The 1st Defendant denied being served with the order. The Plaintiffs, in proof of service, tendered Exhibits U, Y and Y1 but did not call the persons that effected the service. I have examined Exhibits U, Y and Y1. In my respectful view these documents did not prove conclusively that there was service on the Attorney-General of Ondo State as representative of the Government of that State. In the circumstance it would be erroneous to hold that the Government acted in contempt of court when it appointed the 4th-7th Defendants. The Court below, was consequently in error to have so held. A person is not liable in contempt for acting contrary to an order of court that is not served on him or brought to his notice. (p. 1417 H)

4. Act done in disobedience to court order is not an illegality

I think it is wrong to say that an act done in disobedience of a court

order is an illegality. The term “illegality”, in my humble view, connotes an infraction of law. In Black’s Law Dictionary, 6th edition the word is defined- which definition I am in agreement with, thus:

“That which is contrary to the principles of law, as contra distinguished from mere rules of procedure.” (p. 1420 A)

B

REPRESENTATION

Chief Wole Olanipekun, SAN with S.O.K. Olawepo, for the 2nd & 3rd Appellants

Adedayo Fatuyi (A-G Ekiti State) with A. O. Familoni (Director of Civil Litigation), for the 1st, 4th - 7th Appellants C

A. O. Akanle, SAN with I. O. Ogbah, for the Respondent

CASES REFERRED TO

Akinloye v. Eyiola (1968) NMLR 92

D

Obisanya v. Nwoko (1974) 6 S.C. 69

Lawal v. Dawodu (1972) 1 All NLR (Pt. 2) 270

Akapo v. Hakeem-Habeeb (1992) 6 NWLR 266

Udom v. Micheletti Ltd. (1997) 8 NWLR 187

Unipetrol Nigeria Plc v. Abubakar (1997) 6 NWLR 470

E

Zango v. Governor of Kano State (1986) 2 NWLR 409

F and CCB Nig. Ltd. v. Onwuchekwa (1998) 8 NWLR 375

A-G Anambra State v. Okafor (1992) 2 NWLR 396

Kasunmu v. Abeo (1972) NSCC 145

F

Ebba v. Ogodo (1984) 4 SCNLR 372

Abcos Nig. Ltd. v. Kango Wolf Power Tools Ltd. (1987) 4 NWLR 894

Woluchem v. Gudi (1981) 5 S.C. 319

Ivory Merchant Bank Ltd. v. Partnership Invest. Ltd. (1996) 5 NWLR

Oshevire Ltd. v. Tripoli Motors (1997) 5 NWLR 1

G

STATUTE REFERRED TO

Ondo State Chiefs Edict 1984

LEAD JUDGMENT BY AYOOLA JSC

H

The appellants were the defendants in an action commenced in the High Court of the then Ondo State against them by the present respondents who were plaintiffs. For convenience the appellants are referred to as “the defendants” and the respondents as “the plaintiffs”

in this judgment.

The plaintiffs' claim in the High Court as contained in the further amended statement of claim was as follows:

B “(a) a declaration that the Arojojoye Ruling House of the Ajero of Ijero-Ekiti Chieftaincy consists of seven Stocks: Odogun, Odo Idara, (Aminmin) Akere, Kumuyi, Akata, Adewa/Aderuku and Akutupu.

(b) a declaration that the plaintiffs are authentic members of the Akata Stock of the said Arojojoye Ruling House,

C (c) a declaration that the selection and presentation of third defendant by second defendant to the kingmakers and/or third, fourth, fifth, sixth and seventh defendants (as warrants chiefs) is against the history, native law and custom of Ijero-Ekiti and hence wrongful, illegal, unconstitutional, null, void and of no effect whatsoever,

D (d) a declaration that the purported appointment by the government of first defendant of fourth, fifth and sixth and seventh defendants as Warrant Chiefs to appoint a new Ajero of Ijero-Ekiti is illegal, wrongful, against the native law and custom and tradition of Ijero-Ekiti, unconstitutional, null, void and of no effect whatsoever

E (e) a declaration that the purported appointment of third defendant as the new Ajero of Ijero-Ekiti by fourth, fifth, sixth and seventh defendants is illegal, wrongful, against the native law, custom and tradition of Ijero-Ekiti, unconstitutional, null, void and of no effect whatsoever.

F (f) a declaration that the purported approval of the appointment of third defendant as Ajero of Ijero-Ekiti by the government of first defendant is wrongful, illegal, unconstitutional, null, void and of no effect whatsoever,

G (g) an order nullifying the aforesaid appointment, the approval of appointment and installation of the third defendant as the Ajero of Ijero-Ekiti as same is against the history, native law and custom of Ijero-Ekiti and hence wrongful, illegal, null, void, unconstitutional and of no effect whatsoever,

H (h) an order restraining third defendant from parading, calling, and styling himself as the Ajero of Ijero-Ekiti and from enjoying any salary, remuneration or perquisites appertaining to the title,

(i) an order restraining the government of first defendant

from recognising the third defendant as the Ajero of Ijero-Ekiti in any manner whatsoever,

(j) a declaration that the appointment by the kingmakers of second plaintiff as the new Ajero on 9th May, 1991, is valid while the order of the government of first defendant nullifying same is wrongful, illegal, unconstitutional, null, void, and of no effect whatsoever, B

(k) an order on the government of first defendant to consider the said appointment with a view to approving of same.”

The action arose when the vacancy which occurred in the stool of Ajero of Ijero sometime in 1990 came to be filled by a candidate presented by the Arojoye Ruling House and appointed by the kingmakers subject to the approval of the Governor. The Arojoye Ruling House presented the 3rd defendant, Prince Joseph Adewole, to the kingmakers as their sole candidate but the kingmakers refused to accept his candidature but rather preferred the 2nd plaintiff, Prince Adeola Ajidahun. The government intervened to annul the selection. It appointed the 4th - 7th defendants as warrant chiefs. The warrant chiefs appointed 3rd defendant to fill the vacant stool. The appointment was subsequently approved by the Executive Council in accordance with the Chiefs Law. C
D
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By their action, the plaintiffs challenged the presentation by the 2nd defendant, selection by the 4th - 7th defendants, and the subsequent approval of the appointment by the Government of the then Ondo State of the 3rd defendant as the Ajero of Ijero. The plaintiffs claimed to be entitled to bring the action by virtue of their membership of the Akata family which they claimed was a stock of the Arojoye Ruling House of Ajero of Ijero-Ekiti Chieftaincy. Whether they were right in their claim or not thus became the threshold issue. It is evident that if their claim to membership of the Arojoye ruling house could not be sustained, their right to challenge the nomination of the 3rd defendant or the appointment of warrant chiefs by the government would be non-existent. F
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The trial Judge rejected the plaintiffs' claim that the Akata stock was a stock of the Arojoye ruling house. He commented on the absence in the pleadings of the parties, or in evidence, of their respective family trees showing their connection to the founding ancestor. He said: H

“Nobody, for instance told this court how they came by either

5 or 7 stocks. Who begat whom before you now have 5 stocks or seven stocks. Who was the ancestor of each stock and how he was connected with the apex ancestor.”

He held that the burden was on the plaintiffs who asserted that they were related to the Arojojoye ruling house to prove these facts. The trial Judge commented on the deficiency in the evidence in support of the plaintiffs’ case thus:

“Even though paragraph 9(a) - (g) of the further Amended Statement of Claim lists the head and the founder of each of the seven stocks and paragraphs 13-15 attempts to link these with Eiyebiokin whom the plaintiffs call the apex ancestor, yet evidence was not called on these The only available evidence on the part of the plaintiffs is the evidence of 1st and 3rd Plaintiffs who merely said Abulalasogun was the first son of Eiyebiokin and that Awodola was the son of Abulalasogun while Awodola was the father of Akata. They did not link Awodola with any of the other six stocks, nor did they say how many sons Eiyebiokin had and their names and how eventually the seven stocks became established.”

Turning to the inconclusiveness of conflicting traditional history, the trial Judge considered evidence of facts in recent times relied on by the plaintiffs. These were mainly chieftaincy alleged to be exclusively reserved for princes which members of Akata family have held, and the interaction of the Akata family with the rest of the ruling family, such, for instance as sharing a goat whenever anybody dies. The trial Judge found that no Akata had been given a ‘princely chieftaincy’ and, rejected the assertion of interaction. On the other hand, there were the facts found by the trial Judge that none of the descendants of Abulalasogun who was said to be the first son of Eiyebiokin had ever contested the Ajero Stool, let alone being an Ajero; that Abulalasogun who was said to be the 1st son of Eiyebiokin was himself granted land; that there was no mention of any time any members of the Akata family held any position either as Elerebi or Secretary in Arojojoye ruling house nor was any specific occasion recalled when the Akata family joined the other members of the Arojojoye ruling house to do anything.

In conclusion, the trial Judge found as follows:

“On the whole on this issue I hold that the Plaintiffs have not satisfied me that they are entitled to the declaration that there are

seven stocks in Arojojoye ruling house and hence I hold that they have no locus standi to challenge the appointment and installation of the 3rd defendant.”

In the event, he dismissed the suit in its entirety. The plaintiff appealed to the Court of Appeal.

Onnoghen, JCA., who gave the leading judgment of the Court of Appeal put the pleadings at the forefront of his consideration of the issue of fact concerning the relationship of Akata family to the ruling house. He referred to paragraphs 22-29 of the further amended Statement of Claim where the plaintiffs averred that members of Akata stock held, at various times, chieftaincy titles, all described as “princely titles.” The learned Justice was of the opinion that it was clear that the trial Judge did not evaluate that aspect of the plaintiffs’ case and did not consider the effect of the admission of all these averments in the further amended statement of the 2nd and 3rd defendants. He said:

“It is important to note that the admission concerning the princely titles held by members of Akata family were without qualifications.”

He went further to hold that:

“It is my considered view that the 2nd and 3rd Respondents having made these admission cannot be heard to say otherwise.”

In regard to the evidence of the witnesses, the learned Justice was of the opinion that the way the trial Judge treated the evidence of some of the witnesses of the plaintiffs left much to be desired. The specific witnesses were P.W.4, who described himself as a prince of Arojojoye Ruling House from Adewa stock and, P.W.7, who was the head of the Kumuyi section of the Arojojoye ruling house. The court below criticised the use of the evidence of the 3rd defendant to discredit P.W.4 on a point on which the witness was not cross-examined. It found that the trial Judge was wrong to have made use of the facts which P.W.7 was not confronted with in cross-examination. It was of the opinion that the trial Judge’s evaluation of the evidence of P.W.8 was lacking in that “his evidence was not considered at all by the trial court in the judgment.” The court below criticized the judgment of the trial Judge in regard to the inference he drew from the fact that the plaintiffs’ ancestor, one Abulalasogun, claimed by the plaintiffs to be the son of Eiyebiokin, took a grant of land. It was of the view

that the fact that the ancestor of the plaintiffs was granted land was blown out of proportion by the trial Judge.

In conclusion, the court below found that the plaintiffs “proved that there are seven stocks in that family. They did prove that Akata stock is one of the stocks in Arojoye ruling family from the totality of the evidence before the court.” From this finding, it inevitably followed, as put in the leading judgment of the court below, that the nomination of the 3rd defendant was vitiated by the exclusion of the plaintiffs from the family meetings at which he was nominated. In the event, the court below set aside the judgment of the High Court and granted several of the reliefs sought by the plaintiffs.

The defendants’ appeal from the decision of the court below raised several issues. The plaintiffs also cross-appealed. However, the issue relevant to the relationship of the plaintiffs to the ruling house which is decisive of all the appeals is the third issue raised by the 2nd and 3rd defendants as follows:

“Considering the totality of the evidence adduced before the trial High Court and the painstaking way and manner the said trial High Court reviewed the said evidence and arrived at its judgment, whether or not the lower court was not in grave error by disturbing or setting aside the said judgment.”

Mr. Olanipekun, SAN, counsel for the 2nd and 3rd defendants, argued that the court below usurped the role of the trial Judge and descended into the arena by assessing witnesses and ascribing probative values to their evidence. It was argued that the court below was wrong in the view it held that the defendants should have specifically confronted the plaintiffs with the facts they relied upon in their defence. It was submitted that, in any event, the defendants’ “elaborately led evidence” which was believed rightly by the lower court that the plaintiffs are not related to them and are not members of their ruling house. Mr. Olanipekun, though not conceding that the defendants made the admissions pointed out in the judgment of the court below, argued that even if they did make such admissions, a declaratory relief could not be granted on mere admissions.

For his part, Mr. Akanle, SAN, counsel for the plaintiffs, defended the judgment of the court below largely on the grounds on which the trial court had proceeded. He submitted that the judgment of the court below was perverse: (i) because of the admission by the

defendants of paragraphs 22 to 29 of the further amended Statement of Claim; (ii) because the evidence of P.W.4, P.W. 7 and P.W. 8, given by other stocks of the ruling house supported the plaintiffs' case but was discredited by the trial Judge in an 'unorthodox' manner; (iii) because the trial Judge did not weigh the evidence of both sides as to the origin of the plaintiffs' family put forward by the defendants but unsupported by evidence; and (iv) because witnesses testified for the plaintiffs as against two from the defendants. B

It is by now a well known principle of our law that it is not the function of an appellate court to substitute its own views for those of a court of first instance with respect to facts found by the court and based on a dispassionate appraisal of the evidence before it. In *Kasunmu & Anor v. Abeo* (1972) NSCC 145 this court said at p. 149: C

"It is not, as we have always said, the function of a Court of Appeal to substitute its own views for those of a first instance tribunal with respect to facts found by that tribunal on a dispassionate appraisal of the evidence before it. But, equally, clearly a Court of Appeal would be failing in its duty if by adopting the attitude of over restraint it allows facts found by such tribunal or inference not arising from facts found by such tribunal, to stand." E

However, where findings of fact are a result of inferences drawn from facts primarily found by the trial court, the appellate court is at liberty to form its own opinion. The legal position is succinctly encapsulated in the headnote of *Okpiri & Ors. v. Jonah & Ors.* (1961) 2 NSCC 84 thus: F

"In the case of finding of facts which are really inferences drawn from facts specifically found, the appellate tribunal will more readily form an independent opinion than in the case of a finding of specific fact which involves the evaluation of the evidence of witnesses particularly where the finding could be founded on their credibility or bearing." G

In this case the fundamental flaw in the judgment of the court below is that court proceeded on the erroneous footing that the defendants admitted the averments relating to some chieftaincy held by members of the plaintiffs' family and alleged to be exclusively "princely titles" pleaded in paragraphs 22-28 of the further amended statement of claim. The court below had focused on the admission of H

these paragraphs in paragraph 1 of the further amended statement of defence of the 2nd and 3rd defendants, but had over-looked paragraph 11 of the further amended Statement of Defence where it was specifically averred in regard to paragraphs 20 - 28 of the further amended Statement of defence as follows:-

B “With reference to paragraphs 20, 21, 22, 23, 24, 25, 26, 27 and 28 of the further amended Statement of Claim, while admitting that some of the titles stated in those paragraphs are princely titles, the 2nd and 3rd defendants say as follows:

C (a) That not all the titles are princely titles.

(b) Egbedi Chieftaincy is not a princely title but a title reserved for the head hunter, and can be given to any hunter of prowess who deserves it in any family in the Community.

(c) Only the Odogun Chieftaincy is a princely title peculiar only to the princes.

D (d) Onigemo Chieftaincy can be given to any Omo Osa (Prince) or any preferred associate of princes.

(e) Elewere Chieftaincy is a title of no or title (sic) importance and is for the head of the work force or youths in the palace, particularly for communal labour.

E (f) The fact that anyone holds any of these titles in paragraphs 20-28 does not ipso facto qualify him or make him a Prince by Blood in Ijero.”

F In regard to paragraph 29 of the further amended statement of claim, which was also admitted in paragraph 1 of the further amended statement of defence of the 2nd and 3rd defendants, it was averred specifically in paragraph 13 of the said defence as follows:

G “In answer to paragraph 29 of the further amended statement of claim, the defendants say that even though some members of Akata Family may participate in funeral ceremonies of deceased members of Ijero Royal Family, contributing food, drinks and money, defendants say that this is because of their long association as palace domestic and friends of members of the Royal family. This is usual in any Communities. There is a reciprocation of gifts at funeral ceremonies and festivals.”

H Infelicitous as the drafting of the further Statement of Defence may have been, such infelicity of drafting does not justify the conclusion of the court below ignoring the specific averments, denying

the paragraphs in question and raising germane issues in defence. It is no longer a recondite principle of our system of pleading that either party may include in his pleading inconsistent sets of material facts. However, in this case there were no inconsistent averments in the defence in question if the further statement of defence is read as a whole and not disjointedly. The further amended statement of defence should have been read as a whole. Paragraphs 11 and 13 of the further amended statement of defence when read with paragraph 1, shows the limited extent to which the 2nd and 3rd defendants were prepared to admit the relevant paragraphs of the further Amended Statement of Claim. It is evident that several averments of fact in the paragraphs in question were clearly denied, albeit in a later part of the pleading of the 2nd and 3rd defendants. Had the court below adverted to paragraph 11 of the further amended statement of defence of the 2nd and 3rd defendants, it would not comfortably have come to the conclusion which it did, that:

“The admission concerning the princely titles held by members of Akata family was without qualifications.”

And, also that:

“...the 2nd and 3rd respondents having made these admissions cannot be heard to say otherwise.”

The learned trial Judge was within his rights to have received and relied on evidence adduced in denial of facts pleaded by the plaintiffs in paragraphs 22-29 and to have come to the conclusion, on the evidence before him that “no Akata has been given a princely chieftaincy.”

The witnesses whose evidence the court below said the trial Judge did not properly evaluate were specifically identified in the leading judgment of the court below. First, is the evidence of P.W.4 about which the trial Judge said:

“The evidence of P.W. 4, Johnson Adenigba, who described himself as a transporter from Adewa family cannot be relied upon. He merely said ‘I am related to the plaintiffs who are from the Akata family.’ He could not tell me any details of the relationship; who begat whom and how they came to have seven stocks. In fact all his evidence on the chieftaincy that are exclusively reserved for princes and which the Akata family had held before it was faulted by other witnesses...”

In a later part of his judgment the trial Judge said about PW.4:

“It was this Johnson Adenigba that the 3rd defendant said was not a member of Arojojoye ruling house because he was brought by his mother from somewhere else and so could not be a competent witness of the genealogy of the Arojojoye ruling house. The 3rd defendant’s assertion on this was not debunked by the plaintiffs.”

Onnoghen, JCA., who delivered the leading judgment of the court below cited, as instance of lack of proper evaluation of the evidence of P.W. 4, the fact that the witness was not cross-examined as to his membership of Arojojoye and that 3rd defendants’ witness evidence to that effect came only during cross-examination and not in-chief.

Although no question was asked the PW.4 about his membership of Arojojoye family, the evidence was let in by the cross-examination of the 3rd defendant and thus became evidence which the trial Judge was entitled to rely on. The plaintiffs could probably have sought leave to rebut the evidence, but they did not. That was why the trial Judge said that the 3rd defendant’s assertion was not debunked.

The court below ignored the fact that several reasons were contained in the passage quoted above from the judgment of the trial Judge for rejecting the evidence of P.W.4 other than and before the “post-script” reference to the assertion of the 3rd defendant later in the course of the judgment. The court below did not consider those other reasons which were on their own cogent enough.

Second, is the evidence of P.W. 7 in regard to which the criticism of the court below was that P.W.7 was not confronted in cross-examination with the fact which emerged in the evidence of D.W. 3 that Kumuyi stock of Arojojoye Ruling House ceased to meet in P.W.7’s house due to disagreement over the chieftaincy issue. However, in the context of the totality of the evidence led in the case, the issue made out of this criticism was out of proportion to what was material in resolving the issue of plaintiffs’ membership of the ruling house. The short evidence of P.W. 7 which consisted of the bare assertion that: The Ajidahun are my paternal relations. They are from the Akata Section”, hardly carried the plaintiffs’ case any further. In the same vein is the rather inconsequential statement which was not in issue and was not denied by anyone, contained in

the evidence of P.W.7, that “We Arojojoye ruling house do things in common e.g. burial, chieftaincy, marriage etc.” The bare assertion carried no weight, because the trial Judge having determined that the case would turn on events in recent times, the latter statement could not have been of any use when the issue was whether or not the plaintiffs were members of Arojojoye ruling house and the statement fell short of amounting to evidence that the plaintiffs did participate in the events enumerated by the witness. B

Finally, on the question of evaluation of the evidence of specific witnesses, the court below criticized the trial court’s judgment on the ground that P.W.8’s evidence was not considered at all by the trial court in its judgment. Apart from merely saying that “Akata was a prince. Akata begat Ajidahun”, P.W.8’s evidence was directed at the appointment of the 3rd defendant, about which he said he knew nothing, and the default of the 2nd defendant in performing “according to the family wish” in regard to the nomination of the 3rd Defendant. In cross-examination he said he could not relate the origin of the seven branches of the ruling house. C

The learned trial Judge extensively stated the evidence of P.W.8 in his judgment on pages 340-341 of the record. It seems evident, from the following findings which he made, first, that no evidence was called by the plaintiffs to link the claimed seven stocks with Eiyebiokin whom the plaintiffs called the apex ancestor, and, secondly, that the case fell to be determined by recourse to events in recent times, that he did not make any special mention of the evidence of P.W.8 seems inconsequential since that witness did not provide evidence of the link of the plaintiff to the seven stocks they alleged, and he did not give evidence of recent events in regard to the question of the plaintiffs’ membership of the Arojojoye Ruling House. That the trial Judge extensively narrated the evidence of that witness, showed that he was not unmindful of it. D

The court below criticized the use made of the admission by 3rd plaintiff that their ancestor was granted land between Obalogbo’s land and the palace and the inference he drew from that admission as follows: “if the claim that Abulalasogun was the 1st son of the Eiyebiokin was true then it was he that should grant land to other people by virtue of his position as heir to the Oba Eiyebiokin.” Considering that it is for the plaintiffs to establish their case and the E

fact that the plaintiffs must rely on the strength of their case and not on the weakness of the defence, juxtaposing the admission made as above with the evidence of D.W.4 that their ancestor Obaleyahin begged for land from Olorisa as the court below did, did not carry the plaintiffs' case any further.

B It is clear that the grounds on which the court below came to the conclusion that the trial Judge did not properly evaluate the evidence on the issue of family relationship was either mistaken or misconceived. The trial Judge made a painstaking review of the
C evidence, related it to the issues and in an open and even-handed manner gave reasons in support of his findings. He made it clear early in his judgment that the pleadings of the Plaintiffs were deficient as to the family tree needed to buttress their claim and the failure to lead evidence on such. He had recourse to evidence of recent facts to test the probability of competing traditional history. At the end of
D the day, he found that he was "more persuaded by the story of the defendants than the plaintiffs' story which was not supported by acts of recent times." He found that the plaintiffs have not discharged the onus on them. I venture to think that it was rather unfair to the learned Judge, and with respect, tends to portray a lack of appreciation of
E his painstaking efforts and reasoning to hold, as the court below did, that:

"However, from the totality of the evidence before the court particularly the way the learned trial Judge handled the appellants' case, it is obvious that even if the appellants had called a Bishop, the
F learned trial Judge would still not have accepted his (sic) evidence."

It is pertinent to be reminded that where primary findings made by a trial court are supported by evidence preferred by that court, such findings cannot be held perverse merely because an appellate court would have been disposed, had it been the trial court, to prefer another set of competing evidence. Furthermore, where a
G piece of evidence is of little or no value in determining an issue, that the trial court ignored such evidence or wrongly rejected or accepted it would make no difference to the conclusion.

In my judgment, the court below was in error in holding that
H the trial Judge did not properly evaluate the evidence of the plaintiffs. His finding that the plaintiffs, not being members of the Arojojoye ruling house, had no locus standi to challenge the appointment and

installation of the 3rd defendant was available to him on the evidence he preferred. The court below should have upheld that finding.

Since I have upheld the finding by the trial Judge that the plaintiffs lacked standing to institute the action, that is sufficient to dispose of the appeals and the cross-appeal of the plaintiffs and it is not necessary to consider such other several issues raised in the appeal of the 1st, 4th - 7th defendants and in the cross-appeal of the plaintiffs predicated on an assumption that the plaintiffs had a standing to institute the action. When a plaintiff had been found not to have a standing to sue, the question whether other issues in the case had been properly determined or not does not arise.

However, I comment further, albeit briefly, on the first issue in the cross-appeal, which is: "Whether or not the lower court was, in view of the evidence led, right in holding that cross-appellants failed to prove that the Arojojoye Ruling House comprises seven stocks, which is their claim (a)". It is evident that the main question, and one of substance, in the case was whether Akata was a member of the Arojojoye Ruling House or not. It was not a matter of arithmetic at all as the plaintiffs' counsel would seem to have wanted to make it. It is clear that once the crucial finding is upheld that Akata was not a member of the Arojojoye Ruling House, the number of stocks making up the ruling house could not remain seven as claimed by the plaintiffs. The finding by the trial Judge that the plaintiffs were not authentic members of that ruling house was enough to settle the matter. The second issue in the cross-appeal touched on the refusal of the court below to restrain the first defendant from recognizing the 3rd defendant as the Ajero of Ijero. As already stated, that issue falls with the finding as to the lack of standing of the plaintiffs.

In the result, I allow the defendants' appeal and dismiss the plaintiffs' cross-appeal. I set aside the judgment of the court below and restore the judgment of the High Court dismissing the plaintiffs' suit in its entirety together with the costs awarded by that court. The defendants, now appellants, are entitled to costs of this appeal and cross-appeal which I order to be N10,000 to each set of appellants and N5000.00 each in respect of the appeal in the Court of below.

UWAIS CJN

I have had the privilege of reading in draft the judgment read

by my learned brother, Ayoola, JSC. I entirely agree with him that the joint appeal by the 1st, 4th and 7th defendants has merit and so also the joint appeal by the 2nd and 3rd defendants. The cross-appeal by the plaintiffs is devoid of merit.

B Accordingly, I too allow the appeals by the defendants and dismiss the cross-appeal by the plaintiffs. I set aside the judgment of the Court of Appeal and restore that of the High Court which dismissed the plaintiffs' claims. I adopt the order by my learned brother, Ayoola, JSC., as to costs.

C _____

OGUNDARE JSC

D This appeal concerns the chieftaincy of Ajero in Ijero Ekiti of Ekiti State. Following the demise of Oba Eyeowa II the Ajero of Ijero Ekiti in October 1990, there arose a vacancy in the chieftaincy which according to the chieftaincy declaration relating to the title, was to be filled by the Arojoye Ruling House. In February 1991, the Secretary for the Ijero Local Government called on the Ruling House to produce a candidate or candidates for consideration by E the kingmakers for appointment as the Ajero. Prince Ola Adegbola (2nd Defendant) who was head of the Arojoye ruling house was to summon a meeting of the ruling house to consider the person or persons to be forwarded to the kingmakers for consideration for F appointment. According to the plaintiffs, Prince Adegbola did not summon any meeting but rather forwarded the name of Prince Joseph Adebayo Adewole (3rd Defendant) as a sole candidate nominated by the ruling house for consideration by the kingmakers.

G The kingmakers rejected the nomination of Prince Adewole and called on the ruling house to forward more names. It would appear that there was no agreement as between the ruling house and the kingmakers as to the person or persons nominated. In consequence, Ondo State Government (Ekiti State was in Ondo State at the time) appointed six warrant chiefs in place of the traditional kingmakers to appoint a new Ajero. On this development, the plaintiff took out an H action suit No. HCJ/24/91 against the Defendants in this action. The warrant chiefs met, considered the nomination of Prince Adewole and appointed him the Ajero, an appointment which was approved by the

Ondo State Government. Before this appointment, the plaintiffs had in suit No. HCJ/24/91 obtained an interlocutory injunction restraining the Governor from appointing warrant kingmakers. Following the appointment the plaintiffs took out the present action claiming, as per paragraph 84 of their further amended statement of claim,

“(a) a declaration that the Arojojoye Ruling House to the Ajero of Ijero-Ekiti Chieftaincy consists of seven stocks: Odogun, Odo-Idara, (Aminmin) Akere, Kumuyi, Akata, Adewa Aderuku and Akutupu;

(b) a declaration that the plaintiffs are authentic members of the Akata Stock of the said Arojojoye Ruling House;

(c) a declaration that the selection and presentation of third defendant by second defendant to the kingmakers and/or third, fourth, fifth, sixth and seventh defendants (as Warrants Chiefs) is against the history, native law and custom of Ijero-Ekiti and hence wrongful, illegal, unconstitutional, null and void and of no effect whatsoever;

(d) a declaration that the purported appointment by the government of first defendant of fourth, fifth, sixth and seventh defendants is illegal, wrongful, against the native law, custom and tradition of Ijero-Ekiti, unconstitutional, null, void and of no effect whatsoever;

(e) a declaration that the purported appointment of third defendant as the new Ajero of Ijero-Ekiti by fourth, fifth, sixth and seventh defendants is illegal, wrongful, against the native law, custom and tradition of Ijero-Ekiti, unconstitutional, null, void and of no effect whatsoever;

(f) a declaration that the purported approval of the appointment of third defendant as Ajero of Ijero-Ekiti by the government of first defendant is wrongful, illegal, unconstitutional, null, void and of no effect whatsoever;

(g) an order nullifying the aforesaid appointment, the approval of appointment and installation of the third defendant as the Ajero of Ijero-Ekiti as same is against the history, native law and custom of Ijero-Ekiti and hence wrongful, illegal, null, void, unconstitutional and of no effect whatsoever;

(h) an order restraining defendant from parading, calling, and styling himself as the Ajero of Ijero-Ekiti and from enjoying any

salary, remuneration or perquisites appertaining to the title;

(i) an order restraining the government of first defendant from recognising the third defendant as the Ajero of Ijero-Ekiti in any manner whatsoever;

(j) a declaration that the appointment by the kingmakers of second plaintiff as the new Ajero on 9th May, 1991 is valid while the order of the government of first defendant nullifying same is wrongful, illegal, unconstitutional, null, void and of no effect whatsoever;

(k) an order on the government of first defendant to consider the said appointment with a view to approving of same.”

Pleadings having been completed, the case proceeded to trial on the plaintiffs’ Further Amended Statement of Claim, their amended reply, the Further Amended Statement of Defence of the 2nd and 3rd defendants and the Amended Statement of Defence of the 1st, 4th - 7th defendants.

The learned trial Judge after a painstaking review and evaluation of the evidence adduced before him found the claims of the plaintiffs not proved and dismissed the same in-toto. He adjudged as follows:

“On the whole on this issue I hold that the Plaintiffs have not satisfied me that they are entitled to the declaration that there are seven stocks in Arojojoye ruling house or that they are authentic members of the Arojojoye Ruling House and hence I hold that they have no locus standi to challenge the appointment and installation of the 3rd defendant and the suit is hereby accordingly dismissed in its entirety.”

The plaintiffs being dissatisfied with this judgment appealed to the Court of Appeal which latter court allowed the appeal, set aside the judgment of the trial High Court and adjudged as hereunder:

“In conclusion, I am of the view that this appeal be allowed and the judgment of the trial court in Suit No. HCJ/35/91 delivered by Hon. Justice S. K.. Ajayi on 31st March, 1995 be and is hereby set aside. In its place there shall be judgment for the appellants in the following terms:

1. That the appellants are authentic members of the Akata stock of Arojojoye Ruling House.

2. That the selection and presentation of third respondent by second respondent to the warrant chiefs is null and void as no

members of Akata stock participated in the nomination exercise as required by custom and the law.

3. That the purported appointment of the 4th, 5th, 6th and 7th respondents as warrant chiefs by the Government of Ondo State represented by the 1st Respondent contrary to an order of court is null and void. B

4. That the subsequent appointment of 3rd Respondent as the new Ajero of Ijero-Ekiti by the 4th, 5th, 6th and 7th Respondents is illegal, wrongful, null and void.

5. That the purported approval of the appointment of the 3rd Respondent as Ajero of Ijero-Ekiti by the Government of Ondo State represented by 1st Respondent is wrongful, illegal, null and void. C

6. It is hereby ordered that the aforesaid appointment, approval of appointment and installation of the 3rd Respondent as the Ajero of Ijero-Ekiti be and are hereby nullified. D

7. The 3rd Respondent is hereby restrained from parading, calling and styling himself as the Ajero of Ijero-Ekiti and from enjoying any salary, remuneration or perquisites appertaining to that title.

8. It is further ordered that reliefs Nos. (a), (i), (j) and (k) on the Further Amended Statement of Claim at pages 221 and 222 of the record of proceedings be and are hereby refused. E

9. There shall be costs in favour of the appellants against the Respondents which I fix at N5,000.00."

It is against this judgment that the 2nd and 3rd defendants have now appealed to this court upon 12 grounds of appeal. The 1st, 4th, 5th, 6th and 7th defendants also appealed against the said judgment upon 9 grounds of appeal. The plaintiffs being also dissatisfied with some aspects of the judgment of the Court of Appeal appealed to this court upon 3 grounds of appeal. F G

Pursuant to the Rules of this court, the parties filed and exchanged their respective briefs of argument in respect of the appeals. At the oral hearing of the appeal, on application made to the court, we made an order substituting Attorney-General of Ekiti State for Attorney-General of Ondo State as 1st Defendant/Appellant in the appeal. Learned counsel for the parties proffered oral submissions in elucidation of the points raised in their respective briefs. H

Three issues have been formulated as calling for determination in the main appeal of the 2nd and 3rd defendants. These are:

“(i) Having refused the main reliefs of the plaintiffs relating to the number of stocks making up the Arojojoye Ruling House and as adumbrated under reliefs (a), (i), (j), (k) and (l) of the further amended statement of claim, whether or not the lower court was still not in error by allowing the appeal before it and declaring the appointment of the 3rd Appellant as wrongful, null and void - grounds 1, 5 and 10.

“(ii) Considering the state of the law, pleadings and oral evidence adduced, whether or not the lower court was justified or possessed the jurisdiction to make the orders contained in the last paragraph of its judgment – Grounds 2, 3,4 and 12.

“(iii) Considering the totality of the evidence adduced before the trial High Court and the painstaking way and manner the said trial High Court reviewed the said evidence and arrived at its judgment, whether or not the lower court was not in grave error by disturbing or setting aside the said judgment- Grounds 6,7,8,9 and 11.”

In respect of the appeal of the 1st, 4th - 7th Defendants, the following 3 issues are also formulated:

“(i) Whether a court can award a relief not claimed by a party and whether a party is expected to comply with a court order he has no notice or is aware of (Grounds 3 & 4).

“(ii) Whether the lower court was right in declaring null and void and setting aside the appointment of 3rd Defendant/Appellant as Ajero of Ijero Ekiti in the circumstances of this case (Grounds 1,2,5,6 and 10).

“(iii) Whether the lower court was right in declaring null and void the appointment of 4th, 5th, 6th and 7th defendants/appellants as warrant Chiefs and also reversing the findings and decision of the trial court in this case (Grounds 7, 8 and 9).”

and in respect of the cross-appeal of the Plaintiffs the following 2 issues have been raised:

“A. Whether or not the lower court was, in view of the evidence led, right in holding that cross-appellants failed to prove that the Arojojoye Ruling House comprises seven stocks, which is their claim (a).

B. Whether or not the lower court was right in refusing to grant cross-appellants’ claim (i).”

I shall now consider the issues raised before us.

Marrying the issues as formulated by the two sets of Defendants, I would say that the issues calling for determination in this appeal are:

(1) Having refused the main reliefs of the Plaintiffs relating to the number of stocks making up the Arojojoye Ruling House and as adumbrated under reliefs (a), (i), (j), (k) and (l) of the further amended statement of claim, whether or not the lower court was still not in error by allowing the appeal before it and declaring the appointment of the 3rd appellant as wrongful, null and void; B

(2) Considering the state of the law, pleadings and oral evidence adduced, whether or not the lower court was justified or possessed the jurisdiction to make the orders contained in the last paragraph of its judgment; C

(3) Considering the totality of the evidence adduced before the trial High Court and the painstaking way and manner the said trial High Court reviewed the said evidence and arrived at its judgment, whether or not the lower court was not in grave error by disturbing or setting aside the said judgment and; D

(4) Whether a court can award a relief not claimed by a party and whether a party is expected to comply with a Court order he had no notice or is aware of. E

The issues raised by the Plaintiffs in their cross-appeal are subsumed in the above issues.

I shall now proceed to consider the four issues above, taking Issues 1 and 3 together. F

Issues 1 & 3

(1) Having refused the main reliefs of the plaintiffs relating to the number of stocks making up the Arojojoye Ruling House and as adumbrated under reliefs (a), (i), (j), (k) and (l) of the further amended statement of claim, whether or not the lower court was still not in error by allowing the appeal before it and declaring the appointment of the 3rd appellant as wrongful, null and void. G

(3) Considering the totality of the evidence adduced before the trial High Court and the painstaking way and manner the said trial High Court reviewed the said evidence and arrived as its judgment, whether or not the lower court was not in grave error by disturbing or setting aside the said judgment. H

I have earlier in this judgment set out the reliefs claimed by

the Plaintiffs at the trial. It is apparent on the face of the relief that Plaintiffs' case is based essentially on (a) that there are seven stocks (or branches) constituting the Arojojoye ruling house of which Akata is one and that Plaintiffs are members of that stock. Their complaint is that the Akata stock was not invited to a meeting of the ruling house at which the 3rd Defendant was nominated. It is equally their complaint that the 2nd Plaintiff was not considered for nomination because he belongs to the Akata family which the Defendants do not recognise as a branch of the Arojojoye ruling house whose turn it was to present a candidate or candidates for appointment to fill the vacant stool.

To succeed, therefore, in their reliefs, there must be a finding in their favour that there are seven branches or stocks that form the Arojojoye ruling house. It is not seriously disputed by the defence that the Plaintiffs are members of the Akata family; they, however, seriously contested the claim of that family to be a stock of the Arojojoye family.

Both sides agree on one point and that is, that Odogun, Gangan-a-riran (otherwise Odo-Idara), Akere, Kumuyi and Aderuku are five branches of the Arojojoye Ruling House. In paragraph 6 of the Further Amended Statement of Defence of the 2nd and 3rd defendants, they averred as follows:

"6. The 2nd and 3rd Defendants deny paragraph 9 of the Further Amended Statement of Claim and put the plaintiffs to the strictest proof thereof. The Defendants in answer to that paragraph aver as follows:

(a) There are only five branches to the Arojojoye Ruling House: namely-

- (i) Odogun branch,
- (ii) Gangan-a-riran branch, comprising Odo-Idara and Odo-Iwaro (Akutupu) Stocks,
- (iii) Akere branch whose head is Aminin,
- (iv) Kumuyi branch and
- (v) Aderuku branch founded by Aderuku Arojojoye from whom the name Arojojoye took its root. Adewa was the son of Aderuku Arojojoye."

And in paragraph 9 of the Further Amended Statement of Claim of the Plaintiffs, they averred:

“9. The said Arojoye Ruling House consists of seven Stocks:-

(a) Odogun stock with Prince Owolabi as head, and Ajayi Iyun-Baba-Ileke, son of late Oba Agbeleja Odundun, as founder;

(b) Odo-Idara stock with Prince Ojo Aderiye as the head and a full brother of late Oba Eiyebiokin, as founder; B

(c) Akere stock with Prince John Olatunde as head and a son of late Oba Agbeleja Odundun as founder;

(d) Kumuyi stock with Omoniyi Kumuyi as head and Eyeowa Ataranmotan, a son of late Oba Agbeleja as founder; C

(e) Akata stock with Prince Chief Michael Daramola (first Plaintiff) as head, and Adegbuyi Abulalasogun, direct son (Abilagba - First born) of late Oba Eiyebiokin, as founder;

(f) Adewa/Aderuku stock with Prince Ola Adegbola, (Second defendant) as head and late Oba Aderuku Arojoye, son of late Oba Odundun Agbeleja as founder; D

(g) Akutupu stock with Prince Gesinde as head and formerly part of Odo-Idara stock (b) (supra).”

The area of disagreement is over (i) whether Odo-Idara and Akutupu (or Odo-Iwaro) form one branch known as Gangan-a-ri-ran or are different branches and (ii) whether Akata of the Plaintiffs is a branch of the ruling house. If, therefore, the Plaintiffs’ version is found correct, then they are members of the Arojoye ruling house and are entitled to be considered for appointment as the Ajero. But if the version of the 2nd and 3rd Defendants is found to be correct, then the Plaintiffs’ case must be dismissed. E F

What did the trial court find? The learned trial Judge observed:

“...let me quickly settle this question as to how many branches are there in Arojoye ruling house. The Plaintiffs say there are 7 but the defendants say that there are five. Both agree on the following branches: Akere, Adewa, Odogun, Akutupu and Kumuyi. The defendants say that G

Akutupu and Odo-dara are one and the same thing while the Plaintiffs say that they are separate branches and of course the main contention is the Akata branch which the Plaintiffs maintain forms a branch while the defendants say Akata is not a branch at all. I tend to believe the defendants on the Akutupu/Odo-dara issue. The list of H

attendance at the meeting of 20th & 22nd April 1991 called by the Babalogbon group did not contain Odo-dara at all while Akutupu featured very well. This indicates that Akutupu must have included Odo-dara. So, really, the only dispute is that of Akata...”

Dealing with the issue of Akata, the learned Judge said:

B “I now come to the third issue which is the relationship of Akata family with the Arojojoye ruling house. I consider this to be the pivot on which the whole case stands... Now, the Plaintiffs are contending that the Akata family of which they are descendants are part of Arojojoye ruling house and that Abulalasogun their ancestor was the first son of Eiyebiokun while Agbeleja the ancestor of Arojojoye ruling house was the brother of Abulalasogun. I must say here that I am not impressed by the failure of both parties to prove by evidence or even in their pleadings the family tree from the apex ancestor to the present generation. Nobody, for instance told this court how they came by either 5 or 7 stocks. Who begat whom before you now have 5 stocks or seven stocks. Who was the ancestor of each stock and how was he connected with the apex ancestor? Having said that I must remark that the onus of proof rests squarely on the Plaintiffs. It is they who assert that they are related to the Arojojoye ruling house.”

E The learned Judge examined closely the evidence led before him and observed:

“There is conflict in the traditional history. While the Plaintiffs say their ancestor was the first son of Oba Eiyebiokin, the Defendants are saying that Abulalasogun, the Plaintiffs’ ancestor came from Uro. This is oath against oath. Let us examine the evidence on either side and put them on an imaginary scale. The 1st & 3rd Plaintiffs said in their evidence that Abulalasogun was the first son of Oba Eiyebiokin and that he was a brother to Agbeleja. Even though, paragraph 9(a)-(g) of the further Amended art Statement of Claim lists the head and the founder of each of the seven stocks and paragraphs 13-15 attempt to link these with Eiyebiokin whom the Plaintiffs call the apex ancestor, yet evidence was not called on these and on the authority of *J. E. Elukpo & Sons Ltd, v. F.H.A. (1991) 3 NWLR (Pt.179) 322*, this court cannot regard those averments as evidence in support of their claim. The only available evidence on the part of the plaintiffs is the evidence of 1st & 3rd Plaintiffs who merely said Abulalasogun was the first son of Eiyebiokin and that Awodola was the son of

Abulalasogun while Awodola was the father of Akata. They did not link Awodola with any of the other six stocks, nor did they say how many sons Eiyebiokin had and their names and how eventually the seven stocks became established. In fact these two Plaintiffs were the only people who tried to link Akata with Arojojoye ruling house at all. I am aware of the provision of our Evidence Act that says there is no specific number of witnesses required to establish a fact but one would have been happier to have an independent witness to give the details of the relationship. The evidence of P. W.4 Johnson Adenigba who described himself as a transporter from Adewa family cannot be relied upon. He merely said 'I am related to the Plaintiffs who are from Akata family. We are all from Arojojoye Ruling House. We interact as a single family.' He could not tell me any details of the relationship; who begat whom and how they came to be seven stocks. In fact, all his evidence on the chieftaincy that are exclusively reserved for princes and which the Akata family had held before it was faulted by other witnesses. It had been established for instance, that while the Elewere is a royal chieftaincy, evidence had been led to the effect that one Ajidahun who was an Elewere relinquished it after 15 years to take up Eisiken Chieftaincy on the protest of the 3 ruling houses of Ijero. It has also been established that any hunter could be appointed the Egbedi and that Eisiken is not a royal chieftaincy reserved for princes."

Applying the guideline laid down in *Kojo v. Bonsie* (1957) 1 WLR 1223 in resolving conflict in traditional history, learned Judge went on:

"And so, we shall now have recourse to events in recent times and see to which extent the evidence of each party has passed the test of facts in recent years. I have held here that intra family marriages can hardly be used to determine blood relationship because the Plaintiffs claim that members of different stocks of the Arojojoye ruling house inter marry freely and they gave examples which to were not denied. The defendants' answer, (particularly that of the 2nd defendant) is that such marriages must have been contracted outside Ijero without the couple knowing that they were related. On chieftaincy, the defendants have established some chieftaincy which are exclusively reserved for princes and which have never (been) taken by anybody from Akata. The only exception to this was the Elewere held by one

Afolabi Ajidahun but which he relinquished after 15 years. The defendants said it was the princes' protest that forced him to relinquish it to take Esinkin which is the Akata's family chieftaincy. Egbedi is a hunter's chieftaincy. So I am satisfied that no Akata has been given a princely chieftaincy. Most important is the interactions of the Akatas with the rest of the ruling family. Even though Johnson Adenigba said the Akatas always join the Arojoye ruling house in sharing a goat whenever anybody dies and they interact as a single family, it was this Johnson Adenigba that the 3rd defendant said was not a member of Arojoye ruling house because he was brought by his mother from somewhere else and so could not be a competent witness on the genealogy of the Arojoye ruling house. The 3rd defendant's assertion on this was not debunked by the Plaintiffs. Madam Oriade Babalola debunked the claim of P.W.7, Joshua Kumuyi that the Akatas are the same with Arojoye ruling house. He was declared a persona non grata and the entire Kumuyi family boycotted him and ceased to meet in his house for their family meetings when they sensed that he was romancing with the Ajidahuns. She said they knew that he had been bought. This was not controverted by the Plaintiffs. The evidence of Princess Chief Eyeloja Adam is succinct and categorical on the issue. She denied any relationship between the Akatas and the Arojoye ruling house. To cap the denial of the Plaintiffs' claim, the 2nd defendant was emphatic on the fact that the Akatas had not been doing anything with them during the life time of the late Oba. They were meeting regularly every fortnight and it was only when the selection exercise began that the Akatas wanted to bulldoze themselves into their meeting. They have not been holding meetings with them before. Furthermore if Chief Eisikin, an Akata Chief, could be kingmaker, the probability of an Akata to be a prince becomes remote because a prince cannot be a kingmaker. I also find it curious that none of the descendants of Abulalasogun who was said to be the 1st son of the Eiyebiokin had ever contested the Ajero stool, let alone being an Ajero. No independent witness came forward to link the Akata with any ruling house and the fact that the Chairman and the Secretaries of the 3 ruling houses in Ijero wrote against the candidature of the 2nd Plaintiff (Exhibit R) makes this story of consanguinity with the Arojoye Ruling House less credible. Defence witnesses said it was when this tussle began that the Ajida-

huns started to add the title 'prince' to their names. Another point of note is the admission of the 3rd Plaintiff that Abulalasogun, their ancestor was granted land between Obalogbon's land and the palace. If the claim that Abulalasogun was the 1st son of Eiyebiokin was true then it was he that should grant land to other people by virtue of his position as heir to the Oba Eiyebiokin. In fact this piece of evidence supports the defendants' story that Abulalasogun was granted land at Odo Ogode by Obalogbon and that they farm on Olotin's land and that that was how they became in-laws to the Olotin. Throughout the proceedings, there was no mention of any time any member of the Akata family held any position either as Elerebi or Secretary in Arojojoye ruling house nor was any specific occasion recalled when the Akatas joined the other members of the Arojojoye ruling house to do anything apart from wild and generalised assertions by the Plaintiff witnesses 'We do everything together'. From all this, I am more persuaded by the story of the defendants than the plaintiffs' story which is not supported by acts of recent time."

And finally found:

"This onus the Plaintiffs have not satisfactorily discharged"

The learned Judge concluded:

"On the whole on this issue I hold that the Plaintiffs have not satisfied me that they are entitled to the declaration that there are seven stocks in Arojojoye ruling house or that they are authentic members of the Arojojoye ruling house..."

With his findings the learned Judge rejected Plaintiffs' version that there are seven branches or stocks constituting the Arojojoye ruling house and that Akata is one of them.

On Plaintiff's appeal to the Court of Appeal, that court, per Onnoghen, JCA., (who delivered the lead judgment with which the other Justices that sat with him agreed), set out paragraphs 22-29 and 60 - 65 of the further amended statement of claim of the Plaintiffs and observed that the averments in these paragraphs were admitted by the defence in paragraph 1 of the Further Amended Statement of Defence of the 2nd and 3rd Defendants and, by implication, in paragraphs 2 and 11 of the amended statement of defence of the 1st, 4th - 7th defendants. The learned Justice of the Court of Appeal opined that those averments need no further proof and concluded that the trial Judge did not properly consider the effect of the admissions

of those averments on the case. He also observed that some vital averments in the Plaintiffs' pleadings were also admitted by the 2nd and 3rd Defendants which admission ought to favour the Plaintiffs. The learned Justice proceeded to evaluate the evidence adduced at the trial and came to the conclusion that -

B "It is also my view that the appellants proved that they are members of Arojojoye ruling family even though they have not proved that there are seven stocks in that family. They did prove that Akata stock is one of the stocks in Arojojoye ruling family from the totality C of the evidence before the court.

On the other hand, the 2nd and 3rd Respondents who alleged that the appellants' ancestor came from Uro failed to establish same by positive evidence. No member of the family the appellant's are alleged to come from in (sic) Uro was called to trace their relationship with the Akata family of Ijero.

D In conclusion, it is my considered view that the trial Judge did not properly evaluate the evidence of the appellants. In fact, he did not evaluate the impact of the admissions made by the Respondents in their pleadings." (Underlining is mine for emphasis)

E In the end, the court dismissed Plaintiffs' claims (a), (i), (j) and (k).

The 2nd and 3rd Defendants have in this appeal attacked the above findings of the court below. It is the submission of their learned leading counsel, Chief Olanipekun, SAN, that as the fulcrum F of Plaintiffs' case is that there are 7 stocks constituting the Arojojoye Ruling House and as the court found that they failed to prove this fact, their case ought to fail. Learned Senior Advocate also argued that the court below having dismissed the main or core reliefs of the Plaintiffs, was in error in not dismissing the entire Plaintiffs' case. He submitted that where a principal order or relief was refused, the court G could not go on to grant ancillary and/or consequential relief sought since those would not have any solid foundation upon which to stand. He relied on *Akapo v. Hakeem-Habeeb* (1992)6 NWLR 266 at 297, per Karibi-Whyte, JSC. It is learned Senior Advocate's submission that the other reliefs of the Plaintiffs are "ancillary, subjected or sub-ordinate" to the principal reliefs the court below refused. He argued H further:

"As rightly held by the trial court in the last but one paragraph

of its judgment on page 366, the locus standi of the plaintiffs to institute this action has not been established since they have failed to establish that there are seven stocks within the Arojojoye Ruling House as pleaded by them. Since the plaintiffs have refused to establish this, their right to challenge the appointment or installation of the 3rd appellant/defendant is not cognizable by law. Put in another way, their right is questionable, nebulous, unidentifiable and unsubstantiated. In this type of situation, their case ought to have been dismissed or at best, struck out.”

Mr. Akanle, SAN, learned leading counsel for the Plaintiffs, in his brief, asserts:

“(a) the claim that there are seven stocks in Arojojoye Ruling House is crucial to cross-appellants’ case.

(b) but the claim that their Akata stock is one of the seven and hence part and parcel of Arojojoye is more crucial and it is a distinct claim on its own,

(c) although the Court of (1st) instance found against Akata but the court below found for it; consequently Akata stock of the plaintiffs-cross-appellants has the locus standi to institute the action herein,

(d) contrary to what the two courts below held, it is the contention of cross-appellants that they did prove the existence of seven stocks,”

He referred to the evidence at the trial and came to the conclusion that the two courts below were in error when they both held that Plaintiffs failed to prove that there were seven stocks constituting the Arojojoye ruling house. Learned Senior Advocate has, in effect, argued part of the cross-appeal along with the main appeal of the 2nd and 3rd Defendants.

I have given careful consideration to the submissions of learned counsel. No doubt the pivot of Plaintiffs’ case is based on there being seven stocks or branches constituting the Arojojoye ruling house and that their stock, Akata, is one of the seven stocks. If they fail to prove the former I cannot see how the latter can arise. This is so as the 2nd and 3rd Defendants maintain all along that there are five stocks. The Plaintiffs agree with them on the five stocks. To make up their seven stocks, they divided one of the five stocks, Akutupu, into two, namely, Odo-Idara and Akutupu, and added their own stock as

the seventh. Having found, therefore, that Plaintiffs failed to prove there were seven stocks, I fail to understand how the court below arrived at the conclusion that Akata was a stock of the Arojoye Ruling House. Of the five stocks agreed to by both parties, Akata is certainly not one. How then can the finding of the court below be justified?

Both parties relied on evidence of traditional history, which conflicted with each other. The learned trial Judge, in my humble view, applied the correct test in determining which history was probable and came to the right conclusion, based as it were, on the evidence of events in recent times. He considered all the evidence relevant to the issue and came to the conclusion that plaintiffs failed to prove there were seven stocks in the Arojoye Ruling house and also that Akata was not one of the stocks constituting that ruling house.

In faulting the trial Judge's conclusion, the court below held that some vital averments in the Plaintiffs' pleadings were admitted by the Defendants and this should be enough to prove their case. How far is the court below right? In paragraphs 22-29 of their Further Amended Statement of Claim, the Plaintiffs averred:

"22. Late Chief Afolabi Ajidahun, grandson of Oguntomi-loye Akata and senior brother of second Plaintiff was in 1963 made Chief Elewere, traditional leader of the young princes of Ijero-Ekiti, he relinquished the post in 1978 to take a higher title.

23. Late John Dada Arowolo, grandson of Akata, was until 1984 Chief Egbedi, a princely title, whose holder is the traditional head of the hunters of the town who are regarded as personal bodyguards of the Ajero.

24. Late Papa Owolawi Popoola, a grandson of Akata, held the title of Sajuku Ewere, another princely title until 1950 when he was promoted to Agba-Igemo.

25. Late Papa Boriowo, a grandson of Akata, held the title of Olukotun Omo Ajero, a princely title of Agba Igemo, until his death in 1943.

26. The following members of Akata stock currently hold the following princely titles:-

- (a) Tunde Bello, the Eisa Ewere,
- (b) Michael Daramola, the Eye Igemo,
- (c) Oladipo Boriowo, the Olukotun Elegbe,

- (d) Oladipo Boriowo, the Akowe Ikarakara,
- (e) Omoniyi Arowolo, Majeobaje Olori Omo-Ehin.

27 The present Onigemo is Chief Ojo Aderiye, a prince from Odo Idara stock.

28. The present Elewere is Chief J. O. Ojo, a prince from Odogun stock. B

29. Plaintiffs' Akata stock participated fully in funeral ceremonies of deceased members of Ijero Royal family like the burial, the Ita and Ije ceremonies contributing money, food, drinks, goats, kolanuts, ram and fried Akara balls." C

These paragraphs tend to show that members of Akata stock hold or have held princely titles which fact, if true, would make them recognised as princes of Ijero.

The 2nd and 3rd Defendants in paragraph 1 of their further amended statement of defence admitted paragraphs 22-29 above. D In the face of their paragraph 1, if considered in isolation, it is hard for them to contend that members of Akata stock are not princes. But in paragraphs 9, 10, 11, 12 and 13 of their pleadings, they averred thus:

"9. The Defendants deny paragraphs 11,12,13,14 and 15 E of the further amended Statement of Claim and put the Plaintiffs to the strictest proof thereof. The Defendants aver that Akata is NOT the son of the late Awodola.

They aver further that:-

- (a) Akata was the son of Adegbuyi Abulalasogun. F
- (b) Abulalasogun was not the son of Eiyebiokun, but was a migrant from Uro, in Igbomina land.
- (c) He later became an Omodeowa (a palace domestic) serving under and in the palace of the Ajero, Oba Agbeleja. G
- (d) Akata was thus a stranger in Ijero.

(e) Uro is a village about four kilometers from Otun. It was a village under Otun. Formerly Otun was administered as part of Igbomina Division of Ilorin Province. It is now a part of Ekiti Division in Ondo State due to Administrative changes. It was during the reign of Ajero Atobatele that Otun was merged with Ekiti Division. All former Moba District including Uro then became part of Ekiti Division. H

(f) Abulalasogun having been born in Uro migrated to Ijero. He lodged with Obalogbo who later introduced him to Oba Agbeleja.

He told Oba Agbeleja that he left Uro because of the Eisinkin Chieftaincy dispute.

(g) Obalogbo handed him to the Oba. The Oba asked him to (sic) with the head of the palace domestic (Olori Omode Owa). He thus became a prominent palace domestic.

B (h) He was of good character. After sometime he asked for land to build a house upon. The Oba asked Obalogbo to give him land. Obalogbo gave him land at 'Odogede'. Till today the family's cognomen includes 'Omo Ogede gbodo omi tribiribi' Omo oka oju ona, onlesure gogo'. Their further cognomen includes their connection with Uro i.e. 'Omo Iyanna mefa Lijoko, omo opopometa lora'. Ujoko is the road leading to the Plaintiffs ancestor's house in Uro.

(i) When Abulala (sic) settled in the palace, he married a woman called Igbo Awofunmike the daughter of Chief Olotin of Ijero as his first wife.

D (j) Awofunmike begat Adegbuyi for Abulala. Adegbuyi begat Akata the forefather of the Plaintiffs.

(k) Because Akata was brave, he accompanied Oba Oguntomiloye Oyiyo to wars. Princes by tradition were not allowed to lead soldiers into wars because of the fear of being killed there - (which may affect their succession to the throne). Because of Akata's bravery he was conferred with the title of Balogun. No Prince is ever made Balogun.

F (l) Akata begat Akanle Ajidahun, the father of the Plaintiffs - 2nd and 3rd Plaintiffs. The Plaintiffs forefathers had never contested for the Ajero stool because they knew that they were not members of the Royal Family.

(m) Farmland (Royal)

G There are two types of Royal land (1) Stool land (2) Private Royal Land. Stool land is land attached to the Ajero land. Private Royal land is land which though may be used by an Ajero is not stool land. The particular Ajero may acquire it or the use of it through his mother's family or through other means and may not pass it on to the Oba who succeeds him.

H (n) The plaintiffs or their ancestors have no access to any of the Stool land. At Arun, Stool land is contiguous to Olotin family's land but both are at Arun farmland. Popoola, the senior brother of Akanle Ajidahun farms on Olotin's portion of Arun farmland. Akanle

also farmed on the same Olotin's portion of Arun. There is no stool land known as Ita Oniyan.

It was Prince Ojo Abuloke from Oyiyo Ruling House who gave land to Boriowo, (brother of Daramola). Daramola has no farm at Amun. Daramola only moved to Oketagba last year after the pendency of this case and he was given aw (sic) from the land by Onigemo's (Odo Idara Stock) farmland. B

(o) Marriages

There is no intermarriage within Adewa Aderuku Stock. But members of Akata Stock have married from Agbeleja family. This is because they are not related by blood. Copious evidence will be led to show intermarriages between Akata family and the 2nd - 3rd Defendant's families. C

(i) Sajowa the son of Akata, married Princess Ajayi Fayemi - daughter of Odogun Ajayi Iyun. (Son of Agbeleja). D

(ii) Princess Ajayi Awoyemi, grand daughter of Oba Agbeleja was married to Akanle Ajidahun etc.

(p) Isagun Festival

No wife of the Plaintiffs' family is ever an Olori, (Oba's wife). None of the Plaintiffs' family's children ever take part in the Royal Isagun ceremony, their own Isagun is called Isagun Eisinkin. E

(q) Documentary evidence will be led to show that Plaintiffs formerly claimed to have belonged to Eiyebiokin Stock but later they claimed to belong to Oba Agbeleja Stock. F

(r) In rebuttal of the pleadings and evidence given by the Plaintiffs describing the process of appointing a new Ajero, the 2nd and 3rd defendants deny the averments as being entirely false. The 2nd and 3rd defendants will at the trial give detailed evidence as to the process of selecting, appointing and installing an Ajero from the beginning to the end i.e., from selection to the final rites performed on the Ajero-elect to make him a full fledged Ajero. G

(s) The 2nd and 3rd defendants aver that all that process was meticulously gone through and performed by the various persons involved on the 3rd defendant to make him an Ajero. H

(t) The 2nd and 3rd defendants will at the trial give the full cognomen of the Ajero Royal family and show that it is different entirely from that of the plaintiffs' family."

10. The 2nd and 3rd defendants deny paragraph 19 of the

further amended Statement of Claim and put the plaintiffs to the strictest proof thereof. In further answer to that paragraph the defendants aver as follows:-

B (a) That Adewa/Aderuku branch has no common ancestry with Akata in Eiyebiokin in that Abulalasogun was not in any way related by BLOOD to Adewa or Aderuku.

(b) That Adewa was the Son of Aderuku Arojoye.

(c) That the name 'Arojoye Ruling House' has its origin in the name Aderuku Arojoye.

C (d) That Prince Ojo Aderiye was not a brother of the late Oba Eiyebiokin. He was a grandson of Oba Agbeleja.

(e) Oba Agbeleja was not the Son of Oba Eiyebiokin.

D 11. With reference to paragraphs 20, 21, 22, 23, 24, 25, 26, 27 and 28 of the further amended Statement of Claim, while admitting that some of the titles stated in those paragraphs are princely titles, the 2nd and 3rd defendants say as follows:-

(a) That not all the titles are princely titles.

(b) Egbedi Chieftaincy is not a princely title but a title reserved for the head hunter, and can be given to any hunter of prowess who deserves it in any family in the Community.

E (c) Only the Odogun Chieftaincy is a princely title peculiar only to the princes.

(d) Onigemo Chieftaincy can be given to any Omo Owa (Prince) or any preferred associate of princes.

F (e) Elewere Chieftaincy is a title of no or title (sic) importance and is for the head of the work force or youths in the palace, particularly for communal labour.

(f) The fact that anyone holds any of these titles in paragraphs 20-28 does not ipso facto qualify him or make him a Prince by Blood in Ijero.

G 12. The defendants aver further that:-

(a) Akata was not a native of Ijero.

(b) When Akata the son of Abulalasogun wanted land to build a house upon wherein to live with his family, the Ajero Oba Agbeleja, requested Chief Obalogbo Iyanumegunseyin to give him land at Okelogbo quarters.

H (c) At that time there were already many people who had already settled with the Obalogbo quarters.

(d) These people were called the Okelogbo Aborigines.

(e) However, Akata was granted land to build his house upon amongst them. They became tenants to them, i.e., people like –

(i) Chief Ologun Olo, who was Chief Ologun Obaye known as war-lords.

(ii) Chief Ologun Famuyiwo Olobiri the father of Otokiti - the father of Familola (or Funilola Owoeye). ^B

(iii) Chief Ologun Ekeju-Olofinlusi who became an Onigemo.

(f) That Ademuyiwa did not become an Onigemo. The title of Onigemo does not belong to the Akata descendants but to the Aborigines of Okelogbo who are Landlords to Akata. All the above written titles are taken by the Aborigines and not by the descendants of Akata. ^C

(g) That there are many titles of title (sic) or no importance which can even be given to strangers who please the Oba or the Community or who are close friends or associates of the Princes or for one reason of (sic) another, which titles originally were used amongst the princes. ^D

(h) For an example the Oloriomodeba Chieftaincy next in rank to the Ogboni Chieftaincy itself, was given to one Akinsola, a native of Ogbomoso, who lived in the Ogboni Compound for several years. He died recently. However, he could not aspire to the Ogboni Chieftaincy which is the head Chieftaincy in that Family, because he was a stranger. ^E

13. In answer to paragraph 29 of the further amended Statement of Claim, the defendants say that even though some members of Akata Family may participate in funeral ceremonies of deceased members of Ijero Royal Family, contributing food, drinks and money, defendants say that this is because of their long association as palace domestic and friends of members of the Royal Family. This is usual in any Communities. There is a reciprocation of gifts at funeral ceremonies and festivals.” ^F

Thus, reading the pleadings of these two Defendants as a whole, it is erroneous to find that they admitted that members of the Plaintiffs’ family held princely titles as their paragraph 1 would suggest. Surely, if their Lordships of the court below, with respect to them, had considered the pleadings of the 2nd and 3rd Defendants as a whole they would not have come to the conclusion they reached that the ^H

Defendants made admissions inimical to their case. That premise upon which the finding of the learned trial Judge was disturbed is, with respect, unjustifiable.

The court below, per Onnoghen, JCA., also re-evaluated the evidence adduced at the trial and came to the conclusion that the trial Judge did not properly evaluate the evidence. With respect, I think this approach is wrong. Where evidence has been properly evaluated, as the trial Judge painstakingly did in this case, it is not the business of an Appeal Court to embark on a re-evaluation of the evidence with a view to arriving at a different conclusion from that of the trial Judge - see: *Ajadi v. Okenihun* (1985) ANLR 240, 248 where Karibi-Whyte, JSC., observed:

“It is of intrinsic relevance to the administration of justice in our legal system that the hearing of an appeal does not permit the Appeal Court to enquire into disputes, but to inquire into ways the disputes have been tried and settled - see *Zaria v. Maituwo* (1966) N.M.LR 59; *Oroke v. Edet* (1964) NMLR 118.”

See also *Ebba v. Ogodo* (1984) 4 SCNLR 372, 388-389; (1984) NSCC 255 at 267 where Obaseki, JSC., observed:

“This Court has time without number emphasised that it is no business of the Appeal Court to substitute its view of the evidence for that of the learned trial Judge and I find it again necessary to point out that miscarriage of justice will definitely result from adopting such a course of action when it is unwarranted. The need to ensure that justice is not miscarried should always dominate the attitude and thinking of appeal courts when dealing with appeals raising questions of fact. See *Victor Woluchem and Ors. v. Chief Simeon Gudi & Ors.* (1981) 5 S.C. 319 at 326; *Akinloye v. Eyiola* (1968) NMLR 92 at 95; *Obisanya v. Nwoko* (1974) 6 S.C. 69 at 80; *Lawal v. Dawodu* (1972) 1 All NLR (Pt.2) 270 at 286; *Kakarah v. Imonikhe* (1974) 4 S.C. 153; *Mogaji v. Odofin* (1978) 4 S.C. 91.”

For the reasons I have given herein, I think the finding of the Court below that Akata family is a stock of the Arojoye ruling house of Ijero Ekiti, after it had found, and correctly too, that Plaintiffs failed to prove that there were 7 stocks or branches constituting the ruling house, is perverse and I unhesitatingly set it aside. The learned trial Judge arrived at correct findings, which I hereby affirm. Issues (1) and (3) are therefore resolved in favour of the 2nd and 3rd Defendants

and for the same reasons, Issue 1 in the Plaintiffs' cross-appeal is resolved against them.

Perhaps this is an appropriate stage to consider Plaintiffs' Issue 2 of their cross-appeal, that is, whether or not the lower court was right in refusing to grant cross-appellants' claim (i). It is not clear on record why the court below refused this claim. The refusal would appear to run against the tenor of that court's judgment, particularly reliefs 4-7 granted by the court. If, therefore, the judgment of the Court of Appeal is sustained, the dismissal by that court of Plaintiffs' relief (i) must be set aside and that relief granted also. We, therefore, must wait to the end of the judgment before finally deciding the fate of the cross-appeal of the Plaintiffs.

As Plaintiffs have failed to prove that they are members of the Arojojoye ruling house, it follows that they would not have locus standi to institute their action against the Defendants; their case, on this ground, ought to be struck out. This would have been sufficient to dispose of the appeal of the 2nd and 3rd Defendants. As their Issue (2) is, however, tied to the main issue raised in the appeal of the 1st, 4th-7th Defendants, I shall now proceed to consider Issues (2) and (4) together.

Issues 2 and 4

"Considering the state of the law, pleadings and oral evidence adduced, whether or not the lower court was justified or possessed the jurisdiction to make the orders contained in the last paragraph of its judgment."

"Whether a court can award a relief not claimed by a party and whether a party is expected to comply with a court order he has no notice or is aware of."

Plaintiffs filed two previous actions on the Ajero controversy, to wit, Suits Nos. HCJ/17/91 and HCJ/24/91. During the pendency of Suit No. HCJ/24/91, they applied for, and obtained, an order of interlocutory injunction, restraining the 1st Defendant from appointing warrant chiefs for the purpose of appointing a new Ajero. Plaintiffs subsequently filed the action -HCJ/35/91 leading to this appeal. And on 28th day of January 1992, in the course of moving the trial court to amend the writ of summons and statement of claim in the said HCJ/35/91, learned counsel, Mr. Akanle, withdrew the two previous actions and proceeded only with the suit HCJ/35/91.

The plaintiffs' pleadings throw some light on why they had to file three actions in respect of the same subject matter. They pleaded thus:

"55. Plaintiffs know that second defendant did all he did to prevent second plaintiff being appointed the new Ajero.

B 56. Plaintiffs later understood that the Ondo State Government had decided to appoint six Warrant Chiefs in place of the traditional kingmakers of Ijero-Ekiti to appoint a new Ajero of Ijero-Ekiti, and this at the instance of second defendant.

C Consequently plaintiffs filed Suit Number HCJ/24/91 whose statement of claim is hereby pleaded as well as the Writ.

57. The said traditional Kingmakers have never refused nor failed to perform their functions under the law in relation (to) the appointment of any new Ajero of Ijero-Ekiti.

D 58. The only thing the Kingmakers did was to consider the candidature of all applicants wishing to become the Ajero instead of that of the only person whose name second defendant sent to the Kingmakers instead of the names of all the said applicants.

E 59. Already plaintiffs had filed an action, Suit Number HAD/17/91 against second defendant. The Writ and Statement of Claim are pleaded.

60. Early in December, 1991, Plaintiffs got to know that the government of first defendant had decided to appoint another set of Warrant Chiefs to appoint a new Ajero.

F 61. Plaintiffs then sought for, and obtained, an order of court restraining the Ondo State Government from appointing any warrant chiefs to appoint a new Ajero.

62. The said order is hereby pleaded.

G 63. On or about 14th December, 1991, the said government appointed fourth, fifth, sixth and seventh defendants and one Chief Oladipupo Balogun, The Adara, as Warrant Chiefs to appoint a new Ajero

H 64. On 14th December, 1991, on the day for the Gubernatorial and State Assembly election the said five Chiefs were locked inside the Conference Room of the Ijero Local Government, Ijero-Ekiti to appoint a new Ajero.

65. Fourth, fifth, sixth and seventh defendants signed the document of purported appointment and on 17th December, 1991,

the Ondo State Government announced third Defendant as Ajero of Ijero-Ekiti. The said Chief Adara, however, refused to sign.

66. The relevant affidavit of the Adara and his evidence will be relied upon at the trial.

67. The sixth and the seventh defendants were specifically mentioned in paragraph 8 of the affidavit on which the order referred to in paragraph 61 supra was made. B

68. Plaintiffs shall contend that the said two chiefs acted in contempt of this court in acting as warrant Chiefs.

69. Plaintiffs shall at the trial contend that the Chairman of Ijero Local Government in announcing the fourth, fifth, sixth and seventh defendants as well as Chief Adara that they had been appointed as Warrant Chiefs acted in contempt of this court as he was served with a copy of the order referred to in paragraph 61 supra. C

72. Thus it is patent that the selection, appointment, approval D of appointment, installation and coronation of the third defendant as Ajero are all against the history, native law and custom of Ijero-Ekiti.

73. The action of the government of first defendant forestalled and prompted this Honourable Court as to what it could have decided in Suit Number HCJ/17/91 and HCJ/24/91 referred to above. E

74. The action of the government is a slap on the face of the Ijero- Ekiti Kingmakers.

75. The action of the government is a disobedience of Court's order referred to in paragraph 61 supra. F

76. The action of the government amounts to contempt of this Honourable Court."

It would appear from the Plaintiffs' pleadings and the facts of this case that suit No. HCJ/24/91 and the order of interlocutory injunction made therein were still extant when the Military Governor of Ondo State appointed warrant chiefs (4th - 7th Defendants), who subsequently appointed the 3rd Defendant as the Ajero of Ijero Ekiti which appointment was approved by the Government and 3rd Defendant was installed and given staff of office. Rather than the Plaintiffs amending their claims in Suit No. HCJ/24/91 in the light of these developments and moving the Court to set aside the appointment of the warrant chiefs made in contravention of the order of interlocutory injunction, and subsequent steps taken, they instituted a new action HCJ/35/91 and withdrew HCJ/24/91. It is the consequence of G H

the action of the Government of Ondo State in appointing warrant chiefs in contravention of order of court that is to be determined in the appeal of the 1st, 4th - 7th Defendants.

I may note at this stage that the matter was not made an issue at the trial court. The issue that was raised, and on which the learned trial Judge pronounced, was the power of government under the Chiefs Law to appoint warrant chiefs in the circumstances of the case. The Plaintiffs, as appellants, however took up the matter on appeal to the Court of Appeal. In deciding the matter, Onnoghen, JCA, opined:

“It is my considered view that the action of the Ondo State Government in proceeding to appoint Warrant Chiefs is disobedience to an existing valid order of competent court is a blatant, brazen and impudent act of executive lawlessness bordering on contempt of court which ought not to be tolerated or encouraged - See Governor of Lagos State v. Ojukwu (1986) 1 NWLR (Pt. 18) 621. Odogwu v. Odogwu (1992) 2 NWLR (Pt.225) 599; Registered Trustees Apostolic Church v. Olowoleni (1990) 6 NWLR (Pt.158) 514.

It is on record that the warrant chiefs went ahead to act as kingmakers and appointed the 3rd Respondent. It is trite law that you do not put something on nothing and expect it to stand. The sub-issue as to whether the appointment of the warrant chiefs is in accordance with the provisions of the Chiefs Edict 1984 as Amended becomes a mere academic exercise and also irrelevant in view of the findings that the appointment was done in disobedience of court order and therefore void.”

and went on to adjudge:

3. That the purported appointment of the 4th, 5th, 6th and 7th respondents as warrant chiefs by the Government of Ondo State represented by the 1st Respondent contrary to an Order of Court is null and void.”

The conclusion as well as the order made in consequence have come under attack in the appeal of the 1st, 4th - 7th defendants. It is the contention of the learned Attorney-General of Ekiti State, Mr. Fajuyi that the reliefs granted by the court below are not those claimed by the Plaintiffs, that, therefore, that court had awarded to the Plaintiffs what they did not claim. It is submitted that the court below acted without jurisdiction in doing so.

It is the contention of Chief Olanipekun, SAN, and echoed by the learned Attorney-General of Ekiti State, that the interlocutory order of injunction was never served on the Military Governor of Ondo State or the Attorney-General of that State. He referred to the evidence of P.W.5 and D.W.5, who denied he was ever served with the order of injunction. Learned Senior Advocate submitted that an act done in violation or disobedience of a court order was not, per se, void. He observed that the order of interlocutory injunction was not made in the present action but in a different action. He also observed that disobedience of court order was not made an issue at the trial. Learned counsel submitted that it was wrong of the court below to make an order not asked for by the Plaintiffs. B C

Mr. Fajuyi, learned Attorney-General of Ekiti State, in his own submissions urged the court to take note of the fact that the reliefs granted by the court below to the Plaintiffs were different from what the Plaintiffs claimed. He submitted that the court below acted without jurisdiction when it amended or redrafted the claims of the Plaintiffs and awarded to them what they did not claim. Learned Attorney-General relied on *Oshevire Ltd. v. Tripoli Motors* (1997) 5 NWLR 1 at 24 A-E; *Udom v. Micheletti Ltd.* (1997) 8 NWLR 187 at 205 B-D and *Imolome v. WAEC* (1992) 9 NWLR 303. He reiterated the submission that there was no evidence of service of any court order on the Ondo State Government nor was service of court order pleaded. Learned Attorney-General referred to paragraphs 61 and 69 of the further amended Statement of Claim and submitted that there was no proper or any service of any court order on the Defendants, particularly the 1st Defendant and/or the Military Governor. D E F

Mr. Akanle, for the Plaintiffs, submitted both in his brief and in oral address, that the order of interlocutory injunction was served on the Attorney-General of Ondo State. He referred to paragraphs 60-65 of the plaintiffs' Further Amended Statement of Claim and observed that the 1st, 4th-7th Defendants did not deny the averments in those paragraphs and must deem to have admitted them. I may note here that this submission which was made in the court below found favour with that court. Mr. Akanle referred to Exhibits Y and Y1 to show there was proof of service of the order. Learned Senior Advocate submitted that an act done in disobedience of a court order is void and cited in support *Babatunde v. Olatunji* (2000) 2 S. C. 9; G H

(2000) 2 NWLR 557, 568 C-D. He urged the court not to disturb the finding of the Court below on this issue.

After the conclusion of oral hearing and judgment had been reserved, Chief Olanipekun, SAN., and Mr. Akanle, SAN., each forwarded to us a list of additional authorities to buttress their submissions. These authorities will be considered, where necessary, in the course of this judgment.

Back to the issue on hand. The following questions arise:

1. Did the Plaintiffs prove the scope of the order of interlocutory injunction they obtained in Suit HCJ/24/91?

2. When was the order made and was it subsisting at the time 4th - 7th Defendants were appointed?

3. Was the order served on the person restrained?

4. What is the consequence of the flouting of the order, if it is found that it was served?

As regards questions 1, 2 and 3, the Plaintiffs in paragraphs 60 -69 of their pleadings averred facts which go to show that an order of interlocutory injunction was made restraining the Government of Ondo State from appointing warrant chiefs to appoint a new Ajero. There was, however, no averment that the order was served on the Government but on the Chairman of Ijero Local Government who was not the person restrained.

The 3rd plaintiff, Olaniyan Ajidahun who was the star witness for the Plaintiffs, in his evidence at the trial, testified:

“We later learned that the Government was going to appoint 5 warrant chiefs. Thereupon we instituted HCJ/24/91. The case was not heard. In December 1991, we understood that another set of warrant chiefs would be appointed and so we brought a motion ex-parte to stop the Government and it was granted but the motion on notice was not argued. The ex-parte motion was granted on 5/12/91. Eventually some warrant chiefs were appointed. The warrant chiefs met on Saturday 14/12/91. The motion on notice was not argued before the motion on notice was due on 16/1/92 and the appointment took place on 14/12/91. This is the enrolment of the Order in which the court restrained the Government on the appointment of warrant chiefs (Tendered as Exhibit B). The court’s order was served on the Attorney-General and the Chairman, Ijero Local Government, Deputy Governor (Ondo State). The following are the appointed

warrant Chieives: Chieives Ologbosere (7th Defendant), Akogun (5th Defendant), Olomofe (6th Defendant), Olowosare (4th Defendant). The fifth one Chief Adara of Odo Idara did not participate.”

Still on the service of the order of interlocutory injunction, P.W.5 Joseph O. Alabi, a court bailiff attached to Ijero High Court testified thus: B

“I received a subpoena to tender the proof of service on the Attorney-General court Order. Mrs. T. K. Owolabi effected the service. She is now at Ikare. She swore to an affidavit of service which is at page 160 of the case file.” C

Mrs. Owolabi was not called to testify.

D.W.5, Afolabi Oye who was at all times relevant to this case, the Secretary to the Ijero Local Government, in his evidence, said:

“I was not served with any court’s injunction restraining the appointment of warrant chiefs. Tendered as Exhibit U is the proof of service on the Local Government Typist. I did not hear that there was any such court order.” D

In the course of trial, Exhibits U, Y and Y1 were tendered and admitted in evidence; they are all affidavits of service in suit HCJ/24/91. E

I have examined Exhibits B, U, Y and Y1 and comment as follows. No doubt an order was made in suit HCJ/24/91 on 5th December 1991, restraining the Government of Ondo State “from appointing new Warrant Chiefs for the purpose of selecting a new F Ajero of Ijero Ekiti until this order is discharged or the substantive suit is disposed of by this court whichever is earlier” - see Exhibit B. There is no evidence that the order was ever discharged but there is evidence on record that the substantive suit in which the order was made was withdrawn in court by Plaintiffs’ counsel Mr. Akanle, on 28th January, 1992. It would appear from the record, therefore, that the order subsisted from 5th December, 1991 to 28th January, 1992. Within this period it would be in contempt of court if the Ondo State Government appointed warrant chiefs to appoint an Ajero of Ijero Ekiti, that is, of course, if the Government was served with, or knew H of, the order. And the onus was on the Plaintiffs to prove this.

The 1st Defendant denied being served with the order. The Plaintiffs, in proof of service, tendered Exhibits U, Y and Y1 but did not call the persons that effected the service. I have examined Exhibits

U, Y and Y1. In my respectful view these documents did not prove conclusively that there was service on the Attorney-General of Ondo State as representative of the Government of that State. In the circumstance it would be erroneous to hold that the Government acted in contempt of court when it appointed the 4th-7th Defendants. The Court below, was consequently in error to have so held. A person is not liable in contempt for acting contrary to an order of court that is not served on him or brought to his notice. *Husson v. Husson* (1962) 3 All ER 1056; 1 WLR 1434.

This conclusion would have been enough to dispose of Issues 2 and 4 but for the order (c) made by the court below on which learned leading counsel for the parties addressed the court extensively. The court below, per Onnoghen, JCA., had held:

“It is my considered view that the action of the Ondo State Government in proceeding to appoint Warrant Chiefs in disobedience to an existing valid order of a competent court is a blatant, brazen and impudent act of executive lawlessness bordering on contempt of court which ought not to be tolerated or encouraged - See *Governor of Lagos State v. Ojukwu* (1986) 1 NWLR (Pt.18) 621. *Odogwu v. Odogwu* (1992) 2 NWLR (Pt.225) 599; *Registered Trustees of Apostolic Church v. Olowoleni* (1990) 6 NWLR (Pt.158) 514.

It is on record that the warrant chiefs went ahead to act as kingmakers and appointed the 3rd Respondent. It is trite law that you do not put something on nothing and expect it to stand. The sub-issue as to whether the appointment of the warrant chiefs is in accordance with the provisions of the Chiefs Edict 1984 as Amended becomes a mere academic exercise and also irrelevant in view of the findings that the appointment was done in disobedience of court order and therefore void.”

With profound respect to their Lordships of the court below, I think they are clearly wrong in holding that an act done in disobedience of an existing valid order of a court is void.

Mr. Akanle, SAN, for the Plaintiffs, has argued in support of this finding and has furnished to the court a list of authorities. I have examined all these authorities and the dicta highlighted in them. With respect to learned Senior Advocate, I do not think the authorities went as far as the court below postulated. The authorities cited are: *Governor of Lagos State v. Ojukwu* (1986) 1 NWLR 621, 637 G-H;

A-G Anambra State v. Okafor (1992) 2 NWLR 396 at 421 B-C. 430 D-F; Okoya v. Santili (1994) 4 NWLR 256, 290 B; Zango v. Governor of Kano State (1986) 2 NWLR 409 at 415E; Abcos Nig. Ltd. v. Kango Wolf Power Tools Ltd. (1987) 4 NWLR 894 at 907 C-D; Bedding Holdings Ltd, v. National Electoral Commission (1992) 8 NWLR 428 at 438B, 439F; Ivory Merchant Bank Ltd, v. Partnership Investment Ltd. (1996) 5 NWLR 362 at 367. Unipetrol Nigeria Plc v. Abubakar (1997) 6 NWLR 470 at 478 F and CCB Nig. Ltd, v. Onwuchekwa (1998) 8 NWLR 375 at 395D. After citing this galaxy of authorities, learned Senior Advocate submitted:

“In view of the foregoing since the trial court gave order on 5th December, 1991, in Suit Number HCJ/35/91 (sic) that government should not appoint any Warrant Chiefs, the action of the government in disobeying the court order by appointing Warrant Chiefs who subsequently appointed third defendant, Prince Adebayo Adewole, (the unusual sole candidate) as Ajero of Ijero-Ekiti on 14th December, 1991, and which appointment was approved by the same government on 17th December, 1991, contrary to the Chiefs Edict of 1984, the whole action of the government which is a party to the case is an illegality and as decided in the cases cited above the appointment of warrant chiefs, the subsequent appointment made by the warrant Chiefs on the 14th December, 1991, and the approval by government of the appointment made by the Warrant chiefs on the 17th December, 1991 should be nullified and set aside.”

With respect to learned Senior Advocate, I do not think the authorities he relied on including Babatunde v. Olatunji (supra) support his submission.

No doubt the court frowns on disobedience of its orders, particularly by the Executive branch of Government and has used rather harsh language, such as “executive lawlessness”, in describing such acts of disobedience. On the application of an aggrieved party, the court has, in appropriate cases, not hesitated to exercise its coercive power to set aside such acts done in disobedience of its order and restore the parties to the position they were before such disobedience. See - Governor of Lagos State v. Ojukwu (supra). The rationale for this course of action by the court is to ensure the enthronement of the rule of law rather than acquiesce in resort to self-help by a party. That was the course of action taken by the aggrieved party in some

of the authorities cited by Mr. Akanle. The other authorities deal with illegality and the consequences of illegality. The court also has power of sequestration and committal against persons disobeying its orders.

I think it is wrong to say that an act done in disobedience of a court order is an illegality. The term “illegality”, in my humble new,
 B connotes an infraction of law. In Black’s Law Dictionary, 6th edition the word is defined- which definition I am in agreement with, thus:

“That which is contrary to the principles of law, as contra distinguished from mere rules of procedure.”

C Turning now to the case on hand, the Plaintiffs having obtained in suit HCJ/24/91 an interim injunction against the Government of Ondo State restraining the latter from appointing Warrant Chiefs who, in turn, were to appoint the Ajero of Ijero Ekiti, ought to have ensured that the order was properly served on the Attorney-General (who was defendant in the case). If on being made
 D aware, by service, of the order the Government proceeded to appoint Warrant Chiefs in disobedience of the court’s order, Plaintiffs should have moved in the case (that is, HCJ/24/91) for an order setting aside the appointment of the warrant chiefs and whatever
 E action the chiefs would have taken subsequent to their appointment. Rather than take such a course of action, the Plaintiffs instituted a new action, HCJ/35/91 claiming reliefs set out in the earlier part of this judgment. And going through the reliefs sought by them in the new action, they did not even seek to set aside the appointment of
 F the 4th - 7th Defendants on the ground that their appointment was made in disobedience of court order of injunction. It was the court that proceeded to grant them the reliefs they did not claim. I think this is wrong – see *Ekpenyong v. Nyong* (1975) 2 S.C. 71, 80 where this court reiterated the principle thus:

“Secondly, we think that, as the reliefs granted by the learned
 G trial Judge were not those sought by the applicants, he went beyond his jurisdiction when he purported to grant such reliefs. It is trite law that the court is without the power to award to a claimant that which he did not claim.”

H For the reasons I have stated herein, Issues 2 and 4 must be resolved against the Plaintiffs as well as the Issue 2 of their cross-appeal. And all the Issues canvassed having been resolved against the Plaintiffs and in favour of the Defendants, I agree with my learned

brother, Ayoola, JSC., that the appeal of the 1st, 4th - 7th Defendants and of the 2nd and 3rd Defendants succeed and are hereby allowed. The judgment of the Court of Appeal is set aside also by me and that of the trial High Court dismissing Plaintiffs' claims is restored. The Plaintiffs' cross-appeal is dismissed. There shall be costs to each set of Defendants in the sum of N10,000.00 as costs of this appeal and N5,000.00 as costs of this appeal in the Court of Appeal. B

IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Ayoola, JSC., and I am in agreement that this appeal is meritorious and ought to be allowed.

It is plain that the trial High Court after a painstaking evaluation of the evidence dismissed the plaintiffs' claim in its entirety. However, the court below which neither saw nor heard the parties and their witnesses while they testified proceeded once again to re-evaluate the evidence led in the case, quite erroneously, in my opinion, and as a result of which it arrived at a wrong decision in the appeal before it. In my view the unwarranted and unjustifiable reversal of the findings and decisions of the trial court on essential issues of fact by the court below was against the weight of evidence led at the trial and constituted a grave miscarriage of justice that its judgment cannot be allowed to stand. E F

Accordingly, I, too, allow the appeals by the defendants. The judgment of the court below including its orders as to costs is hereby set aside and in substitution thereof, the decision of the trial High Court dismissing the plaintiff's suit in its entirety is hereby restored. The plaintiffs' cross-appeal, for reasons contained in the leading judgment must fail and the same is hereby dismissed. The defendants/appellants are entitled to the costs of this appeal and cross-appeal as assessed in the leading judgment. G

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MUSDAPHER JSC

I have had the preview of the judgment of my learned

brother, Ayoola, JSC., with which I am in agreement. For the same reasons contained therein, which I adopt as mine, I allow the appeal.

In consequence, I set aside the decision of the court below

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