

SUPREME COURT OF NIGERIA
FRIDAY 23RD MAY, 2003. SC. 76/1999
CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU,
E. O. AYOOOLA, N. TOBI, D. MUSDAPHER, JJSC

GANIYU LAWAL MOSOJO

(For himself and on behalf of all other
members of Obasinkin Logun
Kando Family of Ila Orangun)

..... APPELLANT

AND

1. THOMAS ADESOLA OYETAYO

2. OBA WILLIAMS A. AYENI

3. CHIEF J. O. OTITOOLA

4. CHIEF E. OLADOSU

..... RESPONDENTS

5. CHIEF J. BABALOLA

6. CHIEF A. OYEWUMI

7. CHIEF A. ATOYEBI

8. CHIEF O. A. OYEWOLE

9. COMMISSIONER FOR CHIEFTAINCY
& COMMUNITY AFFAIRS, OSUN STATE

10. ATTORNEY GENERAL &
COMMISSIONER FOR JUSTICE,
OSUN STATE

ACTIONS - Cause of action - Meaning - It is the fact which when
proved - Will entitle plaintiff to a remedy against defendant (H1)

JURISDICTION - Courts - Determination - It is the time when the
cause of action arises - That decides whether the High Court has
jurisdiction (H2)

CHIEFTAINCY MATTERS - Chieftaincy - Recognition of - By the
provisions of Recognized Chieftaincies Order 1976 - Obasinkin chief-
taincy became a minor chieftaincy - And it is no more recognized (H3)

FACTS

Plaintiff/appellant sued defendants/respondents at the High

Court of Osun State, Oshogbo claiming sundry reliefs by which he contested the appointment and installation of 1st respondents by the 2nd - 8th respondents, as the Obasinkin of Ila. Appellant suing in representative capacity, asserted that the Obasinkin Chieftaincy is exclusive to his family and that the appointment of 1st respondent as Obasinkin was contrary to native law and custom of Ila-Orangun because he is not related to appellant's family. Appellant therefore traced the history of all eleven Obasinkins that have so far reigned up to the last one, to his family.

On the other hand, respondents argued that though 1st respondent was not from appellant's family, he was rightfully appointed in view of the Chieftaincy Declaration of 1960, Exhibit D, which added the family of respondents as a second ruling house in respect of the chieftaincy. But appellant replied by stating that they were unaware of such declaration and moreover that it no longer applied to the Obasinkin Chieftaincy by virtue of the Recognized Chieftaincies (Revocation and Miscellaneous provisions) Order 1976, which relegated the Chieftaincy to minor Chieftaincy. After hearing, trial court found for appellant and gave judgment in his favour. Aggrieved, respondents appealed to Court of Appeal, which appeal was allowed. Dissatisfied, appellant appealed to Supreme Court.

ISSUE FOR DETERMINATION

"1. What is the cause of action and when did it accrue in the matter?

2. Whether as regards the Obasinkin Chieftaincy, the Chieftaincy Declaration of 1960 is still valid and subsisting having regard to the Recognised Chieftaincies (Revocation and Miscellaneous) Order, 1976 (W.S.L.N. 6 of 1976).

3. Did the High Court (Court of first instance) in this matter have jurisdiction to entertain this matter as it did?"

HELD (Unanimously allowing the appeal per KUTIGI JSC)

ACTIONS - Cause of action - Meaning

1. The words "cause of action" have been defined by this Court in a number of cases simply to mean the facts which when proved will entitle a plaintiff to a remedy against a Defendant.

It is obvious to me that the cause of action in this case arose in October 1983 when the 1st Defendant was appointed the Obasinkin. The Plaintiff instituted this action immediately thereafter in November 1983. The Plaintiff could not have lawfully sued anyone in 1960 except perhaps the officials engaged in the making or preparation of Exhibit D itself. But then there was a reigning Obasinkin (before Exhibit D) who the evidence shows died in 1982. So the cause of action here is the appointment or installation of 1st Defendant as the Obasinkin on the basis or authority of Exhibit D, and nothing else. (p. 1556 G/1557 A)

JURISDICTION - Courts - Determination

2. It is the time when the cause of action arises or occurs that decides in this case whether the trial High Court has jurisdiction.

It is obvious having held above that the cause of action arose in 1983 (and not in 1960 as erroneously found by the Court of Appeal), the trial High Court had the undoubted jurisdiction to have tried the matter as it had done. (p. 1557 C/F)

CHIEFTAINCY MATTERS - Chieftaincy - Recognition of

3. There is no doubt that by the provisions of the Recognised Chieftaincies (Revocation and Miscellaneous Provisions) Order, 1976 (W.S.L.N. 6 of 1976), the Obasinkin Chieftaincy became a minor chieftaincy and it is no more a recognised Chieftaincy. As such it is no longer subject to Part 2 of Chiefs Law and consequently any declaration in respect of the Chieftaincy, in this case Exhibit D, can no longer be deemed to be the customary law regulating the selection of a person to be holder of that chieftaincy to the exclusion of other customary usage or rule. (p. 1557 D)

REPRESENTATION

S. B. Ajayi, for Plaintiff/Appellant

Chief Bisi Adegunle, for the Defendants/Respondents

CASES REFERRED TO

Savage v. Uwechia (1972) 3 S.C 214

Egbe v. Adefarasin (1987) 1 NWLR (Pt. 47)1

Alese v. Aladetuyi (1995) 6 NWLR (Pt. 403) 527

Bello v. Attorney General of Oyo State (1986) 5 NWLR (Pt. 45) 828

STATUTES REFERRED TO

Recognized Chieftaincies (Revocation and Miscellaneous Provisions)
Order 1976.

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LEAD JUDGMENT BY KUTIGI JSC

In the High Court of Justice holden at Oshogbo, the Plaintiff sued the Defendants claiming as follows-

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1. Declaration that the appointment and installation of Mr. Thomas Adesola Oyetayo (that is 1st Defendant) by the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Defendants, as the Obasinkin of Ila is contrary to the native law and custom of Ila Orangun and is therefore null and void.

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2. Perpetual injunction restraining the 1st Defendant from acting and or parading himself as the Obasinkin of Ila Orangun.

3. Perpetual injunction restraining the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 10th Defendants from recognising the 1st Defendant as the Obasinkin of Ila Orangun.

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4. An order of the Court setting aside the Chieftaincy Declaration in Ila as affecting the Obasinkin Chieftaincy in Ila Orangun and to declare the same as being contrary to native law and custom of Ila Orangun and there fore null and void.

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Pleadings were ordered, filed and exchanged. The Plaintiff with leave of Court later filed an Amended Statement of Claim. The 1st to 8th Defendants filed a joint Statement of Defence. The 9th and 10th Defendants also filed their joint Statement of Defence. The case then proceeded to trial. At the trial the Plaintiff testified and called five other witnesses while seven witnesses gave evidence for Defendants.

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Briefly put the Plaintiff's case is that he is a member of the Obasinkin Logun Kando family of Ila-Orangun and that he took the action on behalf of himself and the family. He said the Obasinkin Chieftaincy is exclusive to his family and that the appointment of the 1st Defendant as the Obasinkin by the other Defendants is contrary to native law and custom of Ila-Orangun, because the 1st Defendant is not related to the Logun Kando family. He traced the history of all the eleven Obasinkins who reigned up to the last one who died in 1982 to his family. The Defendants on the other hand contended

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that although the 1st Defendant was not a member of the Plaintiff family, they relied on the Chieftaincy Declaration of 1960's (Exhibit D in the proceedings) which added the family of the 1st Defendant as a second Ruling House in respect of the Chieftaincy. The Plaintiff's reaction to this 1960 Chieftaincy Declaration, (Exhibit D), was that the family was not aware of it and that at any rate the Obasinkin Chieftaincy has been relegated to a minor Chieftaincy by virtue of THE RECOGNISED CHIEFTAINCIES (REVOCATION AND MISCELLANEOUS PROVISIONS) ORDER, 1976 (W.S .L.N. 6 of 1976), that it was no longer subject to the provisions of Part 2 of the Chiefs Law of the former Western State and consequently the 1960 Chieftaincy Declaration was no longer applicable.

After the close of evidence on both sides, learned counsel for the parties addressed the Court. In a reserved judgment, the learned trial Judge carefully evaluated and weighed the evidence led before him and found for the Plaintiff. He concluded his judgment thus-

"In my considered judgment, the Plaintiff has proved his case and he is entitled to the reliefs sought. I grant the following orders-

1. A declaration that the appointment and installation of Mr. Thomas Adesola Oyetayo (that is the 1st Defendant) by the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Defendants, as the Obasinkin of Ila is contrary to the native law and custom of Ila-Orangun and is therefore null and void.

2. Perpetual injunction restraining the 1st Defendant from acting or parading himself as the Obasinkin of Ila-Orangun.

3. Perpetual injunction restraining the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 10th Defendants from recognising the 1st Defendant as Obasinkin of Ila-Orangun.

4. An order setting aside the Chieftaincy Declaration in Ila as affecting the Obasinkin Chieftaincy in Ila Orangun in that it is contrary to native law and custom of Ila Orangun and therefore null & void."

Dissatisfied with the above judgment, the Defendants appealed to the Court of Appeal, holden at Ibadan. In a unanimous judgment, the Court of Appeal allowed the appeal and set aside the judgment of the trial High Court.

Aggrieved by the judgment of the Court of Appeal, the Plaintiff has now appealed to this Court. The parties filed and exchanged

briefs of argument which were adopted and relied upon at the hearing of the appeal.

Mr. Ajayi, learned counsel for the Plaintiff, has identified in his brief the following issues as arising for determination in the appeal.

They read -

B “1. What is the cause of action and when did it accrue in the matter?

2. Whether as regards the Obasinkin Chieftaincy, the Chieftaincy Declaration of 1960 is still valid and subsisting having regard to the Recognised Chieftaincies (Revocation and Miscellaneous) Order, 1976 (W.S.L.N. 6 of 1976).

3. Did the High Court (Court of first instance) in this matter have jurisdiction to entertain this matter as it did?”

D I ought to say at this juncture that this is a straight-forward case. The facts are largely not in dispute. This is clearly a question of the application of the law to the facts as found or established in Court.

Issue (1)

E The question here is simply whether the cause of action in this case arose in 1960 when the Chieftaincy Declaration (Exhibit D) was made and the 1st Defendant’s family made a second Ruling House therein, or in 1983 when the 1st Defendant was installed as the Obasinkin to the detriment of the Plaintiff’s family.

F The Court of Appeal clearly in my view came to an erroneous conclusion when it held that –

“It is therefore apparent that the Act Exhibit ‘D’ which constitutes the cause of action in the instant case arose in 1960 and not in 1982 on the demise of the Obasinkin Jekayinfa and I so hold” (see per Okunola, JCA., on page 248).

G The words “cause of action” have been defined by this Court in a number of cases simply to mean the facts which when proved will entitle a plaintiff to a remedy against a Defendant (see for example Savage v. Uwechia (1972) 3 S.C 214, Bello v. Attorney General of oyo State (1986) 5 NWLR (Pt. 45) 828, Egbe v. Adefarasin (1987) 1 NWLR (Pt. 47)1.

H It is obvious to me that the cause of action in this case arose in October 1983 when the 1st Defendant was appointed the Obasinkin. The Plaintiff instituted this action immediately thereafter in November

1983. The Plaintiff could not have lawfully sued anyone in 1960 except perhaps the officials engaged in the making or preparation of Exhibit D itself. But then there was a reigning Obasinkin (before Exhibit D) who the evidence shows died in 1982. So the cause of action here is the appointment or installation of 1st Defendant as the Obasinkin on the basis or authority of Exhibit D, and nothing else. B

I therefore resolve this issue in favour of the Plaintiff.

Issues (2) & (3) - These issues are directly linked with themselves and with issue (1) above. Issue (1) is undoubtedly the mother of issues (2) & (3). It is the time when the cause of action arises or occurs that decides in this case whether the trial High Court has jurisdiction or whether Exhibit D is still valid and therefore subsists. There is no doubt that by the provisions of the Recognised Chieftaincies (Revocation and Miscellaneous Provisions) Order, 1976 (W.S.L.N. 6 of 1976), the Obasinkin Chieftaincy became a minor chieftaincy and it is no more a recognised Chieftaincy. As such it is no longer subject to Part 2 of Chiefs Law and consequently any declaration in respect of the Chieftaincy, in this case Exhibit D, can no longer be deemed to be the customary law regulating the selection of a person to be holder of that chieftaincy to the exclusion of other customary usage or rule (see for e.g. Aleso v. Aladetuyi (1995) 6 NWLR (Pt. 403)527). C D E

It is obvious having held above that the cause of action arose in 1983 (and not in 1960 as erroneously found by the Court of Appeal), the trial High Court had the undoubted jurisdiction to have tried the matter as it had done. The two issues are therefore resolved in favour of the Plaintiff. F

All the issues having been resolved in favour of the Plaintiff, the appeal succeeds and it is hereby allowed.

The judgment of the Court of Appeal is accordingly set aside G while that delivered by the trial High Court on 22nd March, 1990, is restored. The Plaintiff is awarded costs of N10,000.00 in this Court and N5,000.00 in the Court below against the Defendants.

KATSINA-ALU JSC

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I have had the advantage of reading in draft the judgment of my learned brother, Kutigi, JSC. I entirely agree with it. And for the reasons he has given, I would also allow the appeal with costs.

AYOOLA JSC

Having had the privilege of reading in draft the judgment just delivered by my learned brother, Kutigi, JSC., for the reasons
 B he gives, I too would allow this appeal, set aside the judgment of the court below and restore the judgment of the trial High Court. The plaintiff is entitled to costs of the appeal in the Court of Appeal which is N5000.00 and of this appeal which is N10,000.00 awarded to the
 C plaintiff.

TOBI JSC

I have read the judgment of my learned brother, Kutigi, JSC.,
 D and I agree with him that this appeal should be allowed.

A cause of action arises on the date of occurrence, neglect or default complained of and not the consequence or result of any of the above. I do not think the Court of Appeal is right in holding that the cause of action in this matter arose in 1960. On the contrary
 E the cause of action arose on the demise of the Obasinkin Jekayinfa in 1982, a demise which created the vacancy of the stool. I therefore agree with the submission of learned counsel for the appellant that the cause of action arose on the 23rd October, 1983, when the
 F 1st defendant/respondent was appointed as the new Obasinkin of Ila-Orangun.

Exhibit D is the Chieftaincy Declaration in respect of the Obasinkin Chieftaincy of 1960. By the Chiefs Law of Western Region, 1959, the Obasinkin Chieftaincy was a recognised chieftaincy. But the situation changed in 1976 when the Recognised Chieftaincies
 G (Revocation and Miscellaneous) Order was made, an order which made the Obasinkin Chieftaincy a minor chieftaincy. In the circumstances, I agree with learned counsel for the appellant that by virtue of the Recognised Chieftaincies (Revocation and Miscellaneous) Order, 1976, the Obasinkin Chieftaincy is no longer applicable or relevant to that chieftaincy.

H In the light of the above, there cannot be any dispute that the High Court has jurisdiction to entertain the matter, and the court

rightly exercised the jurisdiction under Section 236 of the Constitution of the Federal Republic of Nigeria, 1979.

In sum, I set aside the judgment of the Court of Appeal. I hereby restore the judgment of the High Court. I award N10,000.00 costs to the appellant.

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MUSDAPHER JSC

I have read before now the judgment of my Lord, Kutigi, JSC., just delivered and I agree with the reasoning and the conclusion. For the same reasons which I respectfully adopt as mine I too, allow the appeal. The judgment of the Court below is accordingly set aside while the judgment of the trial Court delivered on the 22/3/1996 is hereby restored. I award the appellant costs of N10,000.00 against the respondents.

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