

SUPREME COURT OF NIGERIA  
FRIDAY 23RD MAY, 2003. SC. 29/1995  
CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU,  
E. O. AYOOOLA, N. TOBI, D. MUSDAPHER, JJSC

CHIEF RAYMOND D. OGOLO & ORS ..... APPELLANTS  
AND  
1. CHIEF PAUL D. FUBARA & ORS ..... RESPONDENTS  
2. CHIEF FESTUS O. S. .... RESPONDENTS/  
MINIMAH & ORS ..... CROSS-AP-  
PELLANTS

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APPEALS - Reply brief - Purpose - Reply brief should be limited to answering any new point - Arising from respondent's brief - And should not repeat points already made in appellant's brief (H1)

APPEALS - Ground - Not borne out of record - Meaning - A ground is said not to be borne out of the record - If it is not found or traced in the record (H2)

CROSS EXAMINATION - Parties right to - Cross examination is a right available to parties in litigation - And it cannot be taken away merely because - Some plaintiffs were joined in the case (H3)

ACTIONS - Joinder of parties - Propriety - Where parties have similar interest in a matter - They can be joined as co-plaintiffs - And they are free to retain the services of different counsel (H4)

APPEALS - Records of appeal - Binding nature of - Appellate court is bound by the record - As it has no jurisdiction to go outside same - To draw conclusions (H5)

PLEADINGS - Reply - Averments - Failure to counter - Effect - Where new issues are raised in statement of defence - Plaintiffs are expected to file a reply thereto - Otherwise the issues are deemed admitted (H6)

APPEALS - Issue - Relevancy - Role of Jaja Executive Authority

was not a live issue in the matter - So the conclusion reached on it could not have been the basis - For a decision in favour of cross appellants (H7)

EVIDENCE - Proof - Paternity of 4<sup>th</sup> appellant - Respondents could not falsify the claim of appellants - That 4<sup>th</sup> appellant is the son of the late Amanyanabo (H8)

### FACTS

The 1<sup>st</sup> set of plaintiffs/respondents (acting for themselves and as representatives of Dappaye-Amakiri and Kiepirima sections of Opobo town) sued defendants/appellants in the High Court of Rivers State, claiming sundry reliefs by which they contested the appointment and installation of 4<sup>th</sup> defendant/appellant as the Amanyanabo of Opobo. The basis of respondents' case is two-pronged. The first is that 4<sup>th</sup> appellant is an Okrika man, being the son of one Ezekiel Ogan and as such not qualified to be made an Amanyanabo of Opobo. The second is that the procedure for appointment of an Amanyanabo of Opobo was not followed in the appointment of 4<sup>th</sup> appellant in that the kiepirima and Dappaye-Amakiri sections, who are the king-makers, were not involved in his appointment.

On the other hand it is appellants' case that 4<sup>th</sup> appellant was not the son of Ezekiel Ogan but rather the 1<sup>st</sup> son of late Chief (Dr.) Douglas Jaja, the immediate past Amanyanabo of Opobo. Appellants insisted that the appointment of 4<sup>th</sup> appellant was regular as they refuted the evidence that no person could be appointed Amanyanabo without the consent of the Dappaye-Amakiri and Kiepirima sections. Subsequent to the institution of the action, the 2<sup>nd</sup> set of plaintiffs/respondents intervened in the suit and were joined as co-plaintiffs. After hearing, the trial court gave judgment to respondents as it found that the established custom was that the appointment of an Amanyanabo required the consent of Dappaye-Amakiri and Kiepirima Sections. Aggrieved defendants appealed to court of Appeal unsuccessfully. That court also found that there could not be a valid marriage between 4<sup>th</sup> appellant's mother and the late Amanyanabo, Douglas Jaja to entitle 4<sup>th</sup> appellant to the stool. Being aggrieved, appellants filed appeal at Supreme Court, while 2<sup>nd</sup> set of respondents cross-appealed.

### ISSUES FOR DETERMINATION

“(a) Whether, having regard to the finding of the trial court, the contrary finding of the Court of Appeal on the paternity of the 4th Defendant can be upheld.

(b) Whether it was proper for the 2nd Respondents to have been joined in this suit; and if it was proper whether it was also proper to permit the Respondents to cross-examine the witnesses of one another.

(c) Whether, having regard to the paramountcy of the issue of lack of evaluation by the trial court, it was correct for the Court of Appeal to assume that the trial court made a proper evaluation of the evidence led by the parties, and dismiss the appeal before it without first determining that such a proper evaluation was actually conducted.

(d) Whether the reliefs claimed by the Respondents ought to have been granted.”

**HELD** (Unanimously allowing the appeal and dismissing the cross-appeal per TOBI JSC)

APPEALS - Reply brief - Purpose

1. Counsel for the appellants as well as counsel for the 1st set of plaintiffs/respondents repeated themselves in their Reply Briefs. A Reply Brief should be limited or restricted to answering any new points arising from the respondent’s Brief and not to repeat points already made or dealt with in the Appellant’s Brief. It is not the function or role of a Reply Brief to improve on the Appellant’s Brief by repeating the arguments contained therein but rather to reply to new points which are substantial in the Respondent’s Brief. (p. 1582 B)

APPEALS - Ground - Not borne out of record - Meaning

2. I do not see the complaint of the appellants at all. A ground is said not to be borne out of the Record, if it is not found or traced in or vindicated by the Record. The misdirection complained of is in the last paragraph of the leading judgment of Ndoma-Egba, JCA., at page 907 of the Record: What is contained in the Record cannot be said not to have been borne out of the Record. (p. 1583 D)

CROSS EXAMINATION - Parties right to

3. The issue raised by the appellants particularly in the main Brief is not so much on the joinder of the 2nd set of plaintiffs but rather the plaintiffs cross-examining themselves.

In my view, they are perfectly free to cross-examine each other's witnesses but the cross-examination must not give rise to the presentation of opposing interests or opposing evidence or opposing claims or reliefs. Counsel on both sides have the right, through discreet and dexterous co-ordination, to cross-examine each other's witnesses with a view to beefing up or improving the common case of the plaintiffs as presented by them. Cross-examination is a right available to parties in litigation and it cannot be taken away merely because some plaintiffs have joined others in the case. (p. 1584 H/1585 F)

ACTIONS - Joinder of parties - Propriety

4. Where parties have same or similar interest in a matter, they can apply to join as co-plaintiffs and that is proper in our adjectival law. Accordingly, I do not see anything wrong for the 2nd set of plaintiffs to join this suit. The 2nd set of plaintiffs can decide to have the same counsel with the 1st set of plaintiffs if they so wish. I do not see anything wrong with that. There is also nothing wrong for the 2nd set of plaintiffs to retain the services of different counsel, if they so wish. It is not my understanding of the decision in *Fadayomi v. Sadipe* (supra) that the co-plaintiffs must retain the same counsel with the original plaintiffs. That will be wrong because parties in litigation have the right to brief counsel of their own choice.

The important aspect is that the plaintiffs in the matter (original and co-plaintiffs) must present a common front and a common interest in the presentation of their claims or reliefs. They must, on no account, present opposing interests or opposing claims or reliefs. (p. 1585 C)

Records of appeal - Binding nature of

5. Where the conclusion of the Court of Appeal is not borne out from the Record, this Court is competent to interfere as such conclusion, is perverse. I therefore interfere with the erroneous conclusion of the Court of Appeal that the trial Judge held that the 4th defendant/appellant is not an Opobo man but an Okrika man.

That apart, the court was, with the greatest respect, in error

when it came to the conclusion that the defendant/appellant “disavowed his paternity as a sacrifice for the lush benefits and pomp of the Amanyabos.” There is no such evidence before the trial Judge and the Court of Appeal was not competent to introduce that in its judgment. An appellate court is always bound by the Record and the Record only. It has no jurisdiction to go outside the Record and draw conclusions which are not supported by the Record. (p. 1587 H)

PLEADINGS - Reply - Averments - Failure to counter - Effect C

6. The problem I have is that there is no averment in any of the paragraphs of both statements of claim on the involvement of the plaintiffs/ respondents in the selections, proclamation and installation of any of the Amanyabos right from Chief Jack Jaja Annie Pepple to the last one, Chief Dr. Douglas Jaja. And in this regard, general D averments of the type of paragraphs 12 and 13 do not meet the requirements in such a very important aspect of the matter, particularly in the light of the averments in paragraphs 2, 9, 10, 11, 12 and 13 of the Amended Statement of Defence.

The defendants/appellants presented a very detailed and formidable case in their Amended Statement of Defence and I expected E the plaintiffs/ respondents to file a Reply, in respect of the new issues raised in the Amended Statement of Defence, but that was not done. It is the law that a fact not denied is deemed to be admitted. F (p. 1589 D)

APPEALS - Issue - Relevancy

7. The Court of Appeal was therefore right when it came to the following conclusion at page 907 of the Record: G

***“It is not disputed that the Amanyaboship is not by inheritance. The Jaja Executive Authority as far as Chieftaincy in Opobo is concerned, is irrelevant. It exists only to promote the solidarity of Jaja House.”***

Learned counsel for the 2nd set of plaintiffs/respondents, H with respect, was not correct when he argued that the Court of Appeal ought to have found in favour of the 2nd set of Respondents/ Cross-Appellants since that was one of the grounds of the cross-appeal. The role of the Jaja Executive Authority was not a live issue

in the matter and therefore the conclusion reached on it could not have been the basis of a decision in favour of the cross-appellants. (p. 1593 D)

EVIDENCE - Proof - Paternity of 4<sup>th</sup> appellant

B 8. Both parties tendered exhibits in support of their cases. Of the many exhibits tendered by the respondents none falsified the claim of the appellants that the 4th defendant/appellant is the son of Chief Douglas Jaja, the late Amanyanabo of Opobo. And that is the crux of the dispute.

C On the contrary, the appellants tendered exhibits confirming the paternity of the 4th defendant/appellant.

I see in this case the plaintiffs/respondents making very tall and loud claims with little or no evidence in support. On the other hand, the defendants/appellants had a heavy relevant documentation which they tendered in evidence as averred in paragraphs 13 and 15 of the amended statement of defence.

D In sum, this appeal succeeds and it is allowed. (p. 1593 G/1594 H)

## E NOTABLE POINT OF INTEREST

### **TOBI JSC**

#### ***1. Joinder of plaintiffs or defendants is allowed***

Joinder of parties, either plaintiffs or defendants, is allowed in our procedural law. Accordingly, a party who wants to be joined as a plaintiff or as a defendant is free to make an application and the court of trial will be able to grant the application if there is merit. Joinder of parties is to avoid multiplicity or duplicity of actions and to save litigation time in the judicial process. It is also one way of trying to avoid abuse of the court process. (p. 1584 F)

### **REPRESENTATION**

E. G. Sofunde, SAN with M. I. Hanafi and K. F. Elelu, for Appellants  
Ledum Mitiee, for 1st set of Respondents  
Femi Falana, for 2nd set of Respondents

### **CASES REFERRED TO**

- Mogaji v. Odojin (1978) 4 S. C. 91
- Abisi v. Ekwealor (1993) 7 NWLR (Pt. 302) 643
- Fadayomi v. Sadipe (1986) 2 NWLR (Pt. 25) 736
- Appleson v. Littlewood (1939) 1 All ER 464
- Re Vanderille's Trusts No. 2 (1974) 1 Ch 269
- Balogun v. Labiran (1988) 3 NWLR (Pt. 80) 66 B
- Ezewani v. Onwordi (1986) 4 NWLR (Pt. 33) 27
- Dakur v. Dapal (1988) 10 NWLR (Pt. 571) 573
- Lawal v. G.B. Ollivant Nig. Ltd. (1972) 3 S.C. 124
- Ayoola v. Baruwa (1999) 11 NWLR (Pt. 628) 595 C
- Ogunnaike v. Ojayemi (1987) 1 NWLR (Pt. 53) 760
- Oladipupo v. The State (1993) 6 NWLR (Pt. 298) 131
- Union Bank Nigeria v. Adeniran (1987) 1 NWLR (Pt. 47) 52
- Nwawuba v. Enemu (1988) 2 NWLR (Pt. 78) 581
- Peenock Investments Ltd v. Hotel Presidential (1982) 12 S.C. 1 D

#### STATUTES & RULES REFERRED TO

Evidence Act LFN 1990, s. 188(2)

High Court Rules of Eastern Nigeria, O.4 r. 8(1)

E

#### BOOK REFERRED TO

Phipson on Evidence, 12<sup>th</sup> Edn., Para 1590, p.655

#### LEAD JUDGMENT BY TOBI JSC

F

This is a fairly complicated appeal. It has to do with the paramount rulership of Opobo town known as the Amanyano of Opobo town.

P.W.1, Chief Paul D. Fubara, said that on 9th December, 1980, a Council of Chiefs meeting was held. The 3rd defendant, in that meeting, brought four bottles of gin and informed the Council that the 4th defendant had been selected as the Amanyano-elect of Opobo. The Council unanimously warned the 3rd defendant to see Kiepirima and Dappaye-Amakiri Sections on such matters first. P.W. 1 was also told that the Council was not prepared to discuss such matters until the final funeral ceremony of the late Amanyano, the ceremony of which burial was to end on 30th December, 1980.

H

P.W. 1 said that on 11th December, 1980, the 3rd defendant came to him and said that he had come to approach him and to

inform him that an Amanyambo-elect had been named. He made the approach because the 3rd defendant knew that P.W.1 told the 3rd defendant that the procedure was wrong and that he was going to summon a meeting of his people to discuss with them.

B Before the meeting was summoned, they heard over the radio that an Amanyambo-elect had been installed in Opobo. That was on 15th December, 1980. There was also an advert in the Tide Newspaper announcing the election. The newspaper carried the photograph of the 4th defendant.

C On 17th December, 1980, the Council of Chiefs met and P. W. 1 was asked to sign a document to induct the 4th defendant as the Amanyambo of Opobo. P.W.1 refused to sign the document. He walked out of the Council meeting.

D Thereafter, the Kiepirima and Dappaye-Amakiri Sections put up a refutal in the same newspaper. This was on the 21st December, 1980. 2nd defendant comes from that section. That section, according to P. W. 1, made a publication dissociating themselves from whatever the 2nd defendant did or purported to have done on their behalf. The publication was in the Tide Newspaper. Thereafter the 1st set of plaintiffs waited whether there would be any peace move. When E nothing to that effect happened, an action was brought by the 1st set of plaintiffs for themselves and representing the Dappaye-Amakiri Section and the Kiepirima Section of Opobo town.

F The plaintiffs claimed against the defendants jointly and severally:

“(i) A declaration that under Opobo Customary Law, the recognised traditional King-Makers are the Dappaye-Amakiri and Kiepirima Sections of Opobo Town.

G (ii) A declaration that under Opobo Customary Law, the 4th Defendant has no right, title or interest to succeed to the headship of Opobo Main House of Opobo or to the office and dignity of the Amanyambo of Opobo town.

H (iii) A declaration that neither the Opobo Council of Chiefs nor the Jaja Executive Authority either alone or jointly is entitled to proclaim or install the 4th Defendant or any other person the Amanyambo of Opobo Town without the approval of the Dappaye-Amakiri and Kiepirima Sections of Opobo Town.

(iv) A perpetual injunction restraining the 1st, 2nd and 3rd



Defendants whether by themselves, servants, agents or otherwise howsoever from proclaiming, installing or holding out the 4<sup>th</sup> Defendant as the Amanyanabo of Opobo Town and

(v) A perpetual injunction restraining the 4th Defendant whether by himself, servants, agents or otherwise howsoever from holding himself out as or acting in the office of Amanyanabo of Opobo Town.” B

The case of the plaintiffs could be briefly summarised. The 4th defendant, Dandeson Mac Pepple is a son of Ezekiel Ogan and Violet Ogan, nee Epelle. Ezekiel Ogan, the father of the 4th defendant, came from Ama in Okrika. This makes the 4th defendant an Okrika man. According to Opobo native law and custom, the 4th defendant, who is an Okrika man, is not qualified to be made an Amanyanabo of Opobo. Apart from the fact that 4th defendant is an Okrika man, the procedure for appointment as Amanyanabo of Opobo was not followed in the appointment of the 4th defendant. It is the case of the plaintiffs that the Kiepirima and Dappaye-Amakiri sections, being king-makers, must be involved in the appointment of the 4th defendant, as Amanyanabo, which was not the case. C D

The case of the defendants, as narrated in court by the 4th defendant, could also be briefly summarised. His name is Dandeson Douglas Jaja and not Dandeson Ogan. His father was late Chief (Dr.) Douglas Jaja, the Amanyanabo of Opobo and not Ezekiel Ogan, as claimed by the plaintiffs. He lived with his father Chief (Dr.) Douglas Jaja and not with Ezekiel Ogan. His mother is Mrs. Violet Douglas Jaja and not Mrs. Violet Ogan, as claimed by the plaintiffs. The father of D.W.4 (4th defendant) died on 31st July, 1980, when D.W.4 was in Britain on a course. He returned home on receipt of a cablegram and he took part in the funeral obsequies of the father, the late Amanyanabo. Witness claimed that he was the chief mourner and that he performed the functions of the first son. After the burial of the father, he, D.W.4, was selected as successor to his father. The selection, D.W.4 claimed, was in accordance with laid down procedure of Opobo town. Witness rejected the evidence that no person could be appointed Amanyanabo without the consent of the Dappaye-Amakiri and Kiepirima sections. E F G H

The learned trial Judge gave judgment to the plaintiffs. The trial Judge said at pages 617 and 618 of the Record:

“That the custom has grown up or established that the Jaja Executive Authority must select the person or the candidate with the consent of the King-Makers, namely, the Dappaye-Amakiri and Kiepirima Sections .... The Chiefs Council will then proclaim him the Amanyanabo-elect and the date for installation, and crowning will be announced later. That on the date of installation, the Dappaye-Amakiri Section again has a role to play and that they had not performed this function of theirs on the 4th Defendant. They did not receive their customary presents and did not accept to officiate and never officiated in the installation and crowning of 4th Defendant. In this instant case, these important procedures relating to the selection, presentation, installation and crowning had not been complied with. They had been bypassed and as such a violation of the native law and custom of Opobo people had been committed. The reasons for the grant of the injunction has thus been shown and proved and the injunction ought to be granted.”

Dissatisfied, the defendants appealed to the Court of Appeal. That court dismissed the appeal. The court dealt with the paternity of the 4th defendant, the change of surname by the mother, and the status of Jaja Executive Authority. Ndoma-Egba, JCA., in his leading judgment, said at page 902 of the Record:

“By the facts on record and with emphasis on the decisive issues in this appeal, it has become clear that there could not be a valid marriage between 4th defendant/appellant’s mother and the late Amanyanabo of Opobo, Douglas Jaja, to entitle him (4th appellant) to the paramount stool-ship of Opobo people. His mother may well be an Opobo woman by birth. However, according to the written law amply in evidence in this appeal of general acceptance, citizenship is patrilineal. It is not disputed that the Amanyanabo is not by inheritance. The Jaja Executive Authority, as far as Chieftaincy in Opobo is concerned, is irrelevant. It exists only to promote the solidarity of Jaja House. It is necessary to mention that the sudden change of surnames by the 4th defendant/appellant’s mother in a newspaper advertisement is intriguing and may not be unconnected with his (4th appellant) ambitions. From all that has been said, the respondents, by the action taken, have avoided an abrupt break from the tradition and custom practised over the years in Opobo and with the Minima Accord on ‘election’ of Amanyanabos.

In the final analysis, this appeal is unmeritorious. It is accordingly dismissed with costs to each set of plaintiffs/respondents fixed at N1,500.00.”

Still dissatisfied, the defendants have appealed to this court. There are appeal and cross-appeal. Briefs were filed and exchanged. The appellants formulated the following issues for determination. B

“(a) Whether, having regard to the finding of the trial court, the contrary finding of the Court of Appeal on the paternity of the 4th Defendant can be upheld.

(b) Whether it was proper for the 2nd Respondents to have been joined in this suit; and if it was proper whether it was also proper to permit the Respondents to cross-examine the witnesses of one another. C

(c) Whether, having regard to the paramountcy of the issue of lack of evaluation by the trial court, it was correct for the Court of Appeal to assume that the trial court made a proper evaluation of the evidence led by the parties, and dismiss the appeal before it without first determining that such a proper evaluation was actually conducted. D

(d) Whether the reliefs claimed by the Respondents ought to have been granted.” E

The 1st set of plaintiffs/respondents formulated the following issues for determination:

“(1) Whether the Court of Appeal was right and or justified in upholding the joinder of 2nd set of Respondents as co-plaintiffs in the case and whether their joinder occasioned any miscarriage of justice. F

(2) Whether the Court of Appeal was right in holding that the trial Judge correctly appraised and evaluated the evidence led and came to the right conclusion, or G

(3) Whether the Court of Appeal was right in dismissing the Appellants’ appeal.”

The 2nd set of plaintiffs/respondents in their brief formulated the following issues for determination in the Defendants’ appeal. H

“A. WHETHER the Court of Appeal rightly upheld the joinder of the 2nd set of Plaintiffs/Respondents as co-plaintiffs having regard to the facts of this case.

B. WHETHER the Court of Appeal rightly held that the

learned trial Judge properly evaluated the evidence led by the parties.

C. WHETHER the Court of Appeal rightly dismissed the Appeal of the Defendants/Appellants.”

The 2nd set of plaintiffs/respondents/cross-appellants also formulated the following issues for determination in their cross-appeal:

B “1. Whether the Court of Appeal was right in dismissing the cross-appeal on the ground that it lacked merit having regard to the findings of the lower court on the issues raised in the cross-appeal.

C 2. Whether the affirmation of the judgment of the High Court by the Court of Appeal was not in conflict with the overall tenor, scope and purport of the judgment of the trial court.

3. Whether the Court of Appeal was right in dismissing the cross-appeal having found that the 4th Defendant/Appellant is not an Opobo man by birth but an Okrika man.

D 4. Whether the Court of Appeal was right in dismissing the cross-appeal having found that the 14 Sections of Opobo Town have a role to play in the election of Amanyanabo of Opobo Town.”

Defendants/appellants/cross-respondents formulated the following issues for determination:

E “1. Whether the Court of Appeal failed to consider or consider adequately the cross-appeal and whether this has resulted in a miscarriage of justice?

F 2. Whether the affirmation of the judgment of the High Court was not in conflict with the decision of the Court of Appeal dismissing the cross-appeal.

3. Whether having regard to the findings of the trial court and/or the Court of Appeal on

(a) the paternity of the 4th defendant;

(b) whether the 4th defendant is an Opobo man or an Okrika man;

G (c) his right to selection and proclamation as the Amanyanabo of Opobo; and

H (d) the existence and/or validity of the marriage between the late Chief Douglas Jaja and Mrs. Violet Ogan (late Mrs. Violet Jaja); the Court of Appeal failed to determine the complaint of the 2nd set of plaintiffs that the learned trial Judge was wrong in failing to hold that the 14 sections in Opobo Town have a role to play in the election of the Amanyanabo of Opobo Town and this had led to miscarriage

of justice?’

Learned counsel for the appellants, Mr. Sofunde, SAN, on Issue (a) described the findings of the Court of Appeal on the paternity of the 4th defendant as most uncharitable, as there was no evidence before the trial court of what the Court of Appeal said about the ‘lush benefits and pomp of the Amanyanabo.’ On the contrary, the clear historical evidence was that every Amanyanabo starting from Jaja had undergone some form of trial, probation, deposition, exile and suffering, learned Senior Advocate contended. He submitted that the finding of the learned trial Judge that the 4th defendant is not the child of Mr. Ogan but that his natural father is the late Chief Douglas Jaja, is correct. B  
C

Learned counsel submitted on Issue (b) that the respondents ought to have been joint plaintiffs presenting one case through one counsel, as the law does not allow more than one set of plaintiffs, whatever their number. He cited *Fadayomi v. Sadipe* (1986) 2 NWLR (Pt.25) 736 at 742; *Mogaji v. Odojin* (1978) 4 S.C. 91 at 93-96; *Abisi v. Ekwealor* (1993) 7 NWLR (Pt. 302) 643; Section 188(2) of the Evidence Act, 1990, and *Phipson on Evidence* 11th edition, para 1543 at page 646. Counsel examined in detail the issues as joined on the pleadings between the respective parties in his brief which is not paged. D  
E

Learned counsel submitted on Issue (c) that the trial court failed to appreciate the essential need to weigh the totality of the evidence before it and further that the Court of Appeal perpetuated this failure. Counsel dealt with the evidence of the appellants in paragraphs 5.14 to 5.24, which he claimed, the trial court did not consider. F

On Issue (d), learned counsel submitted that on a just and fair evaluation of the evidence on record it was not proper for the trial court to have entered judgment against the appellants; so also was it doubly unfair for the Court of Appeal, without so much as a cursory examination of the process by which the trial court reached its decision, to have upheld the trial court’s decision. He attacked a specific finding of the trial Judge at paragraph 6.2 of his brief and urged the court to allow the appeal. G  
H

Learned counsel for the 1st set of plaintiffs/respondents, Mr. Mittee, submitted on Issue No. 1 that it is precisely in cases where

persons claim some share of interest in the subject matter of a suit that the Rules of Court enjoin courts to exercise discretion in joining such person as party to the suit. He cited Order 4 Rule 5(1) of the High Court Rules of Eastern Nigeria.

B It was the submission of learned counsel that the Court ought to join all necessary parties to a proceeding. To counsel, a party will be necessary whose presence will enable the court to have before it all parties to the dispute relating to one subject matter before the court so that the disputes may be determined without delay, inconveniences and expense of separate trials and actions. He cited *Uku v. Okumagba* (1974) 3 S.C. 35; *Ogbene and Sons Ltd., v. Amoruwa* (1986) 3 NWLR (Pt. 32) 856; *Peenock Investments Ltd, v. Hotel Presidential* (1982) 12 S.C. 1 at 96; *Green v. Green* (1987) 3 NWLR (Pt. 61) 480; *Fadayomi v. Sadipe* (1986) 2 NWLR (Pt. 25) 736; and *Ayoola v. Baruwa* (1999) 11 NWLR (Pt. 628) 595 at 611.

D Learned counsel submitted that the question as to the customary procedure for the selection, presentation and proclamation of an Amanyanabo of Opobo is not one that can be effectively disposed of in the absence of persons who claim that they have the customary right of final approval or rejection of a candidate for Amanyanabo of Opobo. He maintained that the 2nd set of plaintiffs/respondents are necessary parties to the suit. He relied once again on *Ayoola v. Baruwa* (supra).

F On the issue of cross-examination, learned counsel submitted that there is no distinct ground of appeal challenging the procedure whereby the two sets of plaintiffs were allowed to cross-examine each other's witnesses. He referred the court to Ground VII of the defendants/appellants Grounds of Appeal.

G Learned counsel also submitted that once a party has been joined, he is entitled to all rights and incidents of being a party to a suit. A party cannot be joined as a necessary party and deprived of the rights of a party to a proceeding, counsel argued. He cited Section 188(2) of the Evidence Act, 1990 and Phipson on Evidence. 12th edition, paragraph 1590, page 655. Counsel submitted that the Court of Appeal was justified in upholding the joinder of the 2nd set of plaintiffs/respondents as parties to the action and that the joinder H is consistent with justice.

On Issue No. 2, learned counsel submitted that the jurisdiction

of the Supreme Court is over appeals from the Court of Appeal not from decisions of the High Court. Thus, complaints about what a trial court did, counsel contended, ought to be taken before the Court of Appeal and not the Supreme Court. He cited *Balogun v. Labiran* (1988) 3 NWLR (Pt. 80) 66 at 84.

Counsel submitted that the Supreme Court will not disturb concurrent findings of fact by the lower courts unless there is some miscarriage of justice or a violation of some principles of law or procedure. He cited *Kulobo v. Ikuomola* (1999) 9 S.C. 31; (1999) 12 NWLR (Pt. 629) 146; *UBA Ltd, v. Achoru* (1990) 6 NWLR (Pt.156) 254 and *Agwuenedu v. Onwumere* (1994) 1 NWLR (Pt. 321) 375. Counsel dealt in some detail with the findings of the trial Judge and submitted that the findings are supported by Sections 74(2), 120 and 123 of the Evidence Act.

It was the submission of learned counsel that failure of the 3rd defendant/appellant to give evidence either to challenge the admission pleaded by the 1st set of respondents in paragraph 5 of the statement of claim or in proof of the circumstances of the admission, leaves the admission unchallenged and the learned trial Judge was entitled to act on it as the truth. Counsel defined an admission in paragraph 4.21 of his brief. He cited *Seismograph Service (Nigeria) Limited v. Chief Eyuafe* (1976) 9 and 10 S.C. 135 and *Ogunnaike v. Ojayemi* (1987) 1 NWLR (Pt. 53) 760 at 770. On the attitude of the Court in respect of admission against interest, counsel cited *Nwawuba v. Enemu* (1988) 2 NWLR (Pt. 78) 581 at 594 and 595.

Counsel went through in paragraphs 4.24 to 4.28 some findings of the learned trial Judge in respect of successors of Opobo House, the Minima Agreement and the Jaja Dynasty, and argued that although there are occasions when the custom relating to succession to the throne are breached, that does not mean that the custom does not exist. He cited *Kimdey v. Military Governor of Gongola State* (1988) 2 NWLR (Pt.77) 445. On Exhibit 9, learned counsel reasons that the respondents were entitled to address the court on it even though they never pleaded it. He cited *Sketch Publishing Co. Ltd. v. Alhaji Ajagbemokeferi* (1989) 2 S.C. (Pt. II) 73; (1989) 1 NWLR (Pt. 100) 678.

It was the submission of counsel that where there are two versions of an essential fact and these versions contradict one another



and a trial Judge accepts one version, by implication he has rejected the other. Citing *Balogun v. Labiran* (1988) 3 NWLR (Pt. 80) 66, and *Onwuka and Sons v. Ediala and Sons* (1989) 1 S.C. (Pt. II) 1; (1989) 1 NWLR (Pt. 92) 189 at 208, counsel submitted that what the learned trial Judge did in this case is exactly what the trial court did in the *Onwuka* case.

On the complaint that the 1st set of plaintiffs/respondents did not plead that a candidate be an *Amanymanabo* with their approval, learned counsel submitted that there is no specific ground of appeal on the point. It is therefore not legitimate for defendants/appellants to challenge the judgment of the court below on the point as they have done in paragraph 5.6(b) of their brief. Counsel submitted in the alternative that the pleadings in paragraphs 3,4,5,9, 10 and 12 and the particulars of claim are sufficient pleadings for the purpose. He contended that since Exhibit B, the newspaper advert emanated from the pleadings, the doctrine of incorporation by reference applied and the exhibit formed part of the pleading. He cited *Abed Brothers Ltd. v. Niger Insurance Ltd.* (1974) 4 ECLR 525 at 536; *Appleson v. Littlewood* (1939) 1 All ER 464 at 466; *Lawal v. G.B. Ollivant Nig. Ltd.* (1972) 3 S.C. 124 at 128, and *Ezewani v. Onwordi* (1986) 4 NWLR (Pt. 33) 27 at 46. Exhibit B is to the effect that because the plaintiffs/respondents as kingmakers have not considered, accepted and presented any candidate as the *Amanymanabo-elect*, the publication by the defendants/appellants to the effect that the 4th defendant is the *Amanymanabo-elect* of *Opobo Town* is null and void and against the customs and traditions of *Opobo town*, learned counsel reiterated. He relied on the definition of king-maker in *Chambers 20th Century Dictionary* (1983) as “one who has the creating of kings or other high officials in his power.” Counsel also relied on paragraph 18 of the Statement of Defence and paragraph 10 of the Statement of Claim and Exhibits K, L and M.

Learned counsel argued that the appellants’ submission that the 1st set of plaintiffs/respondents did not plead that their approval was a condition precedent to a person becoming an *Amanymanabo* is misconceived as that is clear from Exhibit B, which is incorporated by reference in paragraph 10 of the Statement of Claim, although the technical words “condition precedent” were not used. Counsel contended that where the wording of a pleading is sufficiently clear



to describe a technical word meant to be pleaded, the mere fact that such technical word was not used shall not render the pleading bad and ineffective and that it is no more the practice for pleadings to state the legal result, but rather any legal consequence of which the facts permit. Counsel cited *Union Bank Nigeria v. Adeniran* (1987) 1 NWLR (Pt. 47) 52 at 61; *Re Vanderille's Trusts No. 2* (1974) 1 Ch. 269 at 321; *Peenock Investment Ltd. v. Hotel Presidential Ltd.* (1982) 12 S.C. 1 at 96 and *Ezewani v. Onwordi* (supra). Counsel also relied on paragraph 12 of the Statement of Claim.

On the issue of the paternity of the 4th defendant/appellant, learned counsel submitted that at the very worst, the statement by the Court of Appeal that 4th defendant/appellant "disavowed his paternity as a sacrifice for the high benefits and pomp of the Amanyana-bo" could be an obiter. Counsel cited portions of the findings of the Court of Appeal on the Minima Agreement as it related to the 4th defendant/appellant and submitted that the concurrent finding on the point above is sufficient for the Court of Appeal to have dismissed the appellants' appeal.

Urging the court to dismiss the appeal, learned counsel submitted that the learned trial Judge was justified in preferring the plaintiffs/respondents' evidence to that of the defendants/appellants in view of the fact that the substantial body of the oral evidence supported more of the documentary evidence in support of the respondents' case than that of the appellants. He cited what Nnaemeka-Agu, JCA., said in *Kimdey's* case.

Learned counsel for the 2nd set of plaintiffs/respondents, Mr. Falana, submitted on Issue No. 1 of his amended brief that the case of *Fadayomi v. Sadipe* (1986) 2 NWLR (Pt. 25) 736 cited by counsel for the defendants/appellants does not support the contention that co-plaintiffs must have their case presented through one and the same counsel. He cited what Karibi-Whyte, JSC., said in the case. Apart from the statement that the procedure adopted by the learned trial Judge was "an illegal, unjust and unfair method," nowhere did the defendants/appellants point out how the cross-examination of witnesses by the plaintiffs/respondents was injurious to the case of the appellants, counsel argued. He pointed out that the appellants cross-examined all the witnesses called by the respondents.

Learned counsel contended that Section 188(2) of the Evi-

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dence Act cited by the appellants does not support their case as the law clearly provides that the examination of a witness by a party other than the party who calls him shall be called his cross-examination. He also contended that counsel for the appellants quoted Phipson on Evidence out of context. The correct position of law enumerated by the learned authors, counsel submitted, is that “a defendant may cross-examine a defendant.... whether he has given evidence against him or not.” To counsel, it logically follows that a plaintiff can cross-examine a co-plaintiff.

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On Issue No. 2, learned counsel submitted that the slips or omissions the appellants referred to in respect of the case of the 1st set of plaintiffs/respondents are not material as to adversely affect the case made out by them. He maintained that in line with the authorities of *Kimdey v. Military Governor, Gongola State* (1988) 2 NWLR (Pt. 77) 445 and *Umoru v. Oduogu* (1993) 6 NWLR (Pt. 298) 217, both the High Court and the Court of Appeal placed due reliance on the documentary evidence to assess the oral evidence led in court. Since the case of the plaintiffs/respondents was essentially in tandem with the documentary evidence, the learned trial Judge had no other alternative than to hold that the case was proved by them on the balance of probability which is the standard required in civil cases, learned counsel reasoned.

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Counsel contended that since the two lower courts made concurrent findings of fact on the issues he enumerated in paragraph 4.03 of his brief, this court will not disturb such findings. He cited *Bashaya v. State* (1998) 4 S.C. 199; (1998) 5 NWLR (Pt. 550) 351 and *Nwobodo v. Chief Federal Electoral Officer* (1984) 1 SCNLR 1.

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Dealing with the role of Kingmakers, counsel submitted that the finding of the trial Judge that the Kiepirima and Dappaye-Amakiri sections are Kingmakers, cannot be attacked in view of the unchallenged oral evidence of the respondents and the contents of Exhibit L. Counsel claimed that the role of the Kiepirima and Dappaye-Amakiri Sections of Opobo Town in the election, presentation and installation of the Amanyanabo is clearly set out therein and that Exhibit V discredited the case of the appellants. Counsel submitted in the alternative that the appellants did not comply with the procedure set out in Exhibit 40.

On the paternity of the 4th defendant/appellant, learned

counsel submitted that the finding of the Court of Appeal that the 4th defendant/appellant is an Okrika man cannot be faulted as it was predicated on the evidence led in the trial court by the parties. He also dealt with the Minima Agreement in paragraph 7.04 of his brief.

On Issue No.3, learned counsel contended that while it is not the business of an appellate court to substitute its views for the views of a trial court, where a trial court fails to evaluate evidence properly, an appellate court can interfere with a view to evaluating or re-evaluating such evidence. He cited *Akinloye v. Eyilola* (1968) NMLR 92 at 95; *Evang v. Adu* (1987) 11-12 S.C. 25; *Woluchem v. Gudi* (1981) 5 S.C. 29 and *Dakur v. Dapal* (1988) 10 NWLR (Pt. 571) 573 at 586. It was the argument of counsel that having regard to the weighty evidence led by the respondents which remained unchallenged by the appellants, the learned trial Judge was right in his finding that there is no Jaja dynasty and that the Kiepirima and Dappaye-Amakiri sections constitute the kingmakers of Opobo Town. He urged the Court to dismiss the appeal.

Arguing Issues 1 and 2 together in the 2nd set of plaintiffs/respondents/cross-appellants' brief, Mr. Falana submitted that having regard to the findings of the Court of Appeal in respect of the issues raised in the cross-appeal, the Court of Appeal was in grave error when it casually dismissed the cross-appeal in its entirety. Counsel submitted that in view of the finding of the Court of Appeal reproduced on paragraph 2.11 of the cross-appeal, that court ought to have found in favour of the 2nd set of respondents/cross-appellants. Counsel cited *Ezeonwu v. Onyechi* (1996) 3 NWLR (Pt. 438) 499. He argued that the learned trial Judge suo motu made the award when none of the parties was heard on the assertion that Jaja Executive Authority had a role to play in the nomination of any person or candidate in respect of the Amanyanabo of Opobo. He cited *Adeosun v. Babalola* (1972) 5 S.C. 292.

In the entire judgment of the Court of Appeal, the merits and demerits of the cross-appeal were not considered; hence the court failed to advert its mind to the vital issues raised therein, learned counsel submitted. He pointed out what he regarded as difference in findings of both courts in paragraph 2.14 of his brief.

On Issue No. 3, learned counsel submitted in the light of the findings of the Court of Appeal in respect of the 4th defendant/ap-

pellant, that the Court should have upheld the cross-appeal instead of dismissing it. He cited *Ezekiel v. Alabi* (1964) 2 All NLR 43 and *Okonkwo v. Okagbue* (1994) 9 NWLR (Pt. 368) 327.

On Issue No. 4, learned counsel submitted that the Court of Appeal was wrong in dismissing the cross-appeal having found that the 14 Sections of Opobo Town have a role to play in the election of Amanyanabo of Opobo Town. He copiously reproduced the evidence of the parties on pages 19 to 33 of the brief, the Minima Agreement on page 34 of the brief and cited *Omorie v. Idugiemwanye* (1985) 1 NWLR (Pt. 5) 41; *Adegoke v. Adibi* (1992) 5 NWLR (Pt. 242) 410; *Aro v. Lagos Island Local Government Council* (2001) 32 WRN 72 and *Basil v. Fajebe* (2001) 4 S.C. (Pt. II) 119; (2001) 21 WRN 58 at 75. He urged the court to allow the cross-appeal.

The defendants/appellants/cross-respondents' brief in response to cross-appellants' brief submitted on Issue No. 1 that the Court of Appeal considered the cross-appeal. Counsel contended that what the Court of Appeal did was to examine the appeal of the defendants and in the process, all the matters in controversy between the parties were examined and resolved one way or the other. He argued that the 2nd set of plaintiffs cannot really complain that they suffered any miscarriage of justice by the method adopted by the court.

On Issue No. 2, learned counsel urged the court to strike out Ground 2 as it is incompetent. He cited *Oladipupo v. The State* (1993) 6 NWLR (Pt. 298) 131 at 140. Counsel conceded in the alternative that in so far as the Court of Appeal differed with the finding of the trial court on the issue of the Jaja Executive Authority, Ground 2 ought to succeed subject to the fate of the defendant's substantive appeal.

On the issue why the Court of Appeal did not allow the cross-appeal, learned counsel submitted that there is no basis for the Court of Appeal to have allowed the cross-appeal. Counsel took time to examine paragraph 15 of the statement of defence and the findings of the learned trial Judge on the issue and submitted that there was a clear intention to decide that the 4th defendant was the son of the late Chief Douglas Jaja and that he is an Opobo man who is entitled to be the Amanyanabo of Opobo if properly selected and proclaimed. Counsel argued that there was no finding whatsoever

that the 4th defendant was not the son of late Chief Jaja or that he is an Okrika man. He quoted the findings of the Court of Appeal at paragraphs 5.1.10 and 5.1.11, of his Brief. Counsel pointed out that the Court of Appeal reached the same conclusion as the trial Judge in respect of the alleged marriage between late Chief Douglas Jaja and Mrs. Violet Ogan by concluding that there was no valid marriage. B

On the issue whether the 14 Sections of Opobo Town have a role to play in the election of the Amanyano of Opobo Town, learned counsel submitted that the Court of Appeal, contrary to the contention of the 2nd set of plaintiffs in their Brief, did not make a finding supporting their case. The decision, counsel argued, did not pronounce on the role of the 14 Sections, rather it merely treated them as constituencies from which the Amanyano is eligible to come. Counsel submitted in the alternative that the issue would also abide the fate of the defendant's appeal. He urged the court to dismiss the cross-appeal. C D

Counsel for the 2nd set of respondents and cross-appellants' in his Reply Brief, repeated his argument in the 2nd set of respondents' Brief. He cited again the decision of *Fadayomi v. Sadipe* (1986) 2 NWLR (Pt. 25) 736. E

On evaluation of evidence, counsel submitted that the slips or omissions in the case of the 1st plaintiffs/respondents are not material as to adversely affect the case made out by them.

In his reply on the role of Kingmakers, counsel submitted that the finding of the trial court that the Kiepirima and Dappaye-Amakiri sections are kingmakers cannot be attacked in view of the unchallenged oral evidence of the plaintiffs/respondents and the contents of Exhibit L. On the issue of the books tendered in evidence, learned counsel submitted that the authors had died before evidence in the matter was given hence they could not give evidence at the trial. He dealt once again with the Minima Agreement and the paternity of the 4th defendant/appellant. He reiterated his earlier argument in respect of the failure of the Court of Appeal to consider the cross-appeal. F G

In Appellant's Reply Brief to Brief of 1st set of Respondents, learned counsel reopened virtually all the issues earlier argued in his Briefs, including the issues of joinder, evaluation of evidence, and the Minima Agreement. He cited *Ige v. Farinde* (1994) 7 NWLR (Pt.334) 42; *Commissioner for Works Benue State v. Devcom Development* H

Consultants Ltd. (1988) 7 S.C. (Pt.1) 29; (1988) 3 NWLR (Pt. 83) 407 at 420; Oshoboja v. Dada (1987) 4 NWLR (Pt. 66) 565 at 572 and 573; Lewis v. Daily Telegraph No. 2 (1964) 1 All ER 705 at 714.

Counsel for the appellants as well as counsel for the 1st set of plaintiffs/respondents repeated themselves in their Reply Briefs. A Reply Brief should be limited or restricted to answering any new points arising from the respondent's Brief and not to repeat points already made or dealt with in the Appellant's Brief. It is not the function or role of a Reply Brief to improve on the Appellant's Brief by repeating the arguments contained therein but rather to reply to new points which are substantial in the Respondent's Brief. See Okpala v. Ibeme (1989) 3 S.C. (Pt.1) 61; (1989) 2 NWLR (Pt. 102) 208; H.H. Uneji v. Attorney-General of Imo State (1995) 4 NWLR (Pt.391) 552; Ijade v. Ogunyemi (1996) 9 NWLR (Pt. 470) 17; Ajileye v. Fakayode (1998) 4 NWLR (Pt. 545) 184.

Let me first take the preliminary objection raised by the appellants. The objection is on grounds 1, 2, 3 and 4 of the grounds of appeal in the notice of cross-appeal of the 2nd set of plaintiffs/respondents/cross-appellants filed on 9th October, 1996. The first objection is that there are no issues raised in the 2nd set of plaintiffs/respondents' Brief dated 27th August, 2001, and filed on 28th August, 2001, covering grounds 1 and 4 of the grounds of appeal. The second objection is that the complaint in ground 2 is not borne out by the record. The third objection is that grounds 2 and 3 filed on 9th October, 1996, do not arise from the judgment of the Court of Appeal on the cross-appeal having regard to the notice of appeal filed.

I take the objections in turn. The first objection is in respect of grounds 1 and 4 vis-à-vis the issues raised in the 2nd set of plaintiffs/respondents' amended Brief. Grounds 1 and 4 read:

"1. NON-DIRECTION: The learned Justices of the Court of Appeal failed to direct their minds sufficiently or at all to the cross-appeal of the 2nd set of Plaintiffs/Respondents/Cross-Appellants and thereby reached an erroneous conclusion....."

IV. ERROR-IN-LAW: The 2nd set of Plaintiffs/Respondents/Cross-Appellants having made an issue of the traditional functions and importance of the 14 sections of Opobo Town in the following words...."

With respect, the objection is not well taken. Issues Nos. 1 and 4 arise from grounds 1 and 4 respectively. Both ground 1 of the grounds of appeal and Issue No. 1 of the Brief deal with what the Court of Appeal failed to do in respect of the cross-appeal. To be precise, while the ground of appeal complained that the Court of Appeal failed to direct its mind to the cross-appeal, the issue omnibusly (sic) dealt with dismissing the same cross-appeal. B

Ground 2 reads as follows:

‘MISDIRECTION-IN-LAW: The Learned Justices of the Court of Appeal misdirected themselves in law in the following portion of the judgment: C

“The judgment of the Court below is hereby affirmed.”

This is followed by three particulars of misdirection. I do not see the complaint of the appellants at all. A ground is said not to be borne out of the Record, if it is not found or traced in or vindicated by the Record. The misdirection complained of is in the last paragraph of the leading judgment of Ndoma-Egba, JCA., at page 907 of the Record: What is contained in the Record cannot be said not to have been borne out of the Record. This objection also fails. D

The third objection, as indicated above is taken on grounds 2 and 3. I have reproduced ground 2. Let me reproduce ground 3 for ease of reference: E

‘MISDIRECTION-IN-LAW: The Learned Justices of the Court of Appeal misdirected themselves in law in the following portion of the judgment: F

“The Learned Trial Judge also found as fact that the 4th Defendant/Appellant is not an Opobo man and thereby erroneously concluded that cross-appeal did not succeed.

Again, with the greatest respect, I do not agree with learned G counsel. Grounds 2 and 3 arise from the total implication of the judgment of the Court of Appeal on the cross-appeal. The Court of Appeal said at page 907 of the Record on the cross-appeal:

“In the final analysis, this appeal is unmeritorious. It is accordingly dismissed with costs to each set of plaintiffs/respondents fixed at N1,500.00. The judgment of the court below is hereby affirmed. The cross-appeal by the 1st and 2nd set of respondents is predicated on the same facts. The judgment, I have said, is sufficiently supported by the evidence. I do not see any merit in the cross-appeal. It cannot H



succeed. It fails.”

By the last five sentences, the Court of Appeal said it all and it is that the cross-appeal based on the same facts as the main appeal is dismissed because it lacked merit. The clear and direct implication of the above is that all that the Court of Appeal said in the judgment  
B as it related to the main-appeal applied to the cross-appeal.

I think I can go a bit further. In view of the fact that the learned trial Judge made findings and came to conclusions which resulted in the cross-appeal, the conclusion reached by the Court of  
C Appeal that “The judgment of the court below is hereby affirmed,” ground 2 clearly arises from the judgment of the Court of Appeal on the cross-appeal.

Ground 3 complained of the Court of Appeal wrongly crediting to the trial Judge that the 4th defendant/appellant is not an Opobo man and thereby erroneously concluded that the cross-appeal did  
D not succeed. This is an aspect which I will take later in the judgment but suffice to say here that the Court of Appeal was clearly in error in introducing the Okrika element of origin in respect of the 4th defendant/appellant. In sum, the preliminary objection fails.

Joinder of parties, either plaintiffs or defendants, is allowed  
E in our procedural law. Accordingly, a party who wants to be joined as a plaintiff or as a defendant is free to make an application and the court of trial will be able to grant the application if there is merit. Joinder of parties is to avoid multiplicity or duplicity of actions and  
F to save litigation time in the judicial process. It is also one way of trying to avoid abuse of the court process.

The issue raised by the appellants particularly in the main Brief is not so much on the joinder of the 2nd set of plaintiffs but rather the plaintiffs cross-examining themselves. The case of Fadayomi v. Sadipe (supra) was cited. In that case, this court held that where  
G there is more than a single plaintiff in an action, they must always act together. They must either be represented by the same counsel, or where they have briefed separate counsel, such counsel must act together.

In Ige v. Farinde (1994) 7 NWLR (Pt. 354) 42, Iguh, JSC, said at page 70:  
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“It is, no doubt, desirable that intending co-plaintiffs should make sure that no conflict of interest nor any division of opinion



between the original plaintiff and themselves is likely to arise, for co-plaintiffs will not be allowed to sever or take inconsistent steps and ought to be represented at the trial by the same solicitor or counsel.”

Where parties have same or similar interest in a matter, they can apply to join as co-plaintiffs and that is proper in our adjectival law. Accordingly, I do not see anything wrong for the 2nd set of plaintiffs to join this suit. The 2nd set of plaintiffs can decide to have the same counsel with the 1st set of plaintiffs if they so wish. I do not see anything wrong with that. There is also nothing wrong for the 2nd set of plaintiffs to retain the services of different counsel, if they so wish. It is not my understanding of the decision in *Fadayomi v. Sadipe* (supra) that the co-plaintiffs must retain the same counsel with the original plaintiffs. That will be wrong because parties in litigation have the right to brief counsel of their own choice.

The important aspect is that the plaintiffs in the matter (original and co-plaintiffs) must present a common front and a common interest in the presentation of their claims or reliefs. They must, on no account, present opposing interests or opposing claims or reliefs. In my view, they are perfectly free to cross-examine each other’s witnesses but the cross-examination must not give rise to the presentation of opposing interests or opposing evidence or opposing claims or reliefs. Counsel on both sides has the right, through discreet and dexterous co-ordination, to cross-examine each other’s witnesses with a view to beefing up or improving the common case of the plaintiffs as presented by them. Cross-examination is a right available to parties in litigation and it cannot be taken away merely because some plaintiffs have joined others in the case.

An appellant who complains that the original plaintiffs and the joined co-plaintiffs freely cross-examined their witnesses has a legal duty to go further to show that the questions they fielded resulted in creating different cases vis-à-vis the relief sought in the case. The appellants did not go that length and this court is not in a position to deal with the issue further. If the appellants’ had taken us through the questions asked, the court would have been in a position to determine whether there was a miscarriage of justice arising from the questions in respect of the plaintiffs presenting different cases. I stop here on that issue.

The 4th defendant/appellant is the cynosure of this case, so

to say. He is the centre of attraction, the man who was selected as the Amanyabo of Opobo Town. The case of the respondents is that he cannot be appointed Amanyabo of Opobo because he is not from Opobo Town. The second complaint is that he was not selected by the kingmakers. The appellants' case is that the 4th defendant/  
 B appellant is the proper person to be appointed as Amanyabo of Opobo Town and that he was properly so appointed.

Paragraph 8 of the statement of claim of the 1st set of plaintiffs/ respondents averred as follows:

C "The 4th Defendant is the son of Mrs. Violet Ezekiel Ogan, nee Epelle... By reason of the foregoing, the 4<sup>th</sup> Defendant is not entitled to compete for election as head of Opobo Main House or to the office and dignity of the Amanyabo of Opobo."

Paragraph 18 of the statement of claim of the 2nd set of plaintiffs/respondents averred as follows:

D "The 2nd set of Plaintiffs will further lead evidence to show that the 4th Defendant is by Opobo Native law and custom not a citizen of Opobo Town but a citizen of Okrika Town by reason of his birth by Mrs. Violet Ezekiel Ogan the wife of the Mr. Ezekiel Ogan of Ogan Ama-Okrika."

E Paragraph 16 of the statement of defence averred as follows:

"In further answer to paragraph (9) of the Statement of Claim the Defendants assert that on compliance with the procedure for the selection of Amanyabo the 4<sup>th</sup> Defendant was presented  
 F to the Council of Chiefs of Opobo Town which according to custom proclaimed the 4<sup>th</sup> Defendant the Amanyabo-elect of Opobo. The Defendants assert that the 4th Defendant is the head of the Jaja Main House which leadership automatically entitles him to the title, dignity and office of the Amanyabo of Opobo."

G The 4th defendant, as D.W.4, in his evidence-in-chief said at page 369 of the Record;

H "It is completely false to say that sometime in my life I answered Dandeson Ogan. My father was the late Chief (Dr.) Douglas Jaja, the Amanyabo of Opobo. It is false that Ezekiel Ogan was my father and that I lived with him. I had never in my life lived with Ezekiel Ogan. I lived with my father Chief (Dr.) Douglas Jaja. My mother is Mrs. Violet Douglas Jaja. I started to live with my father at the age of seven. Before that age of seven, I was living with my

mother.”

On the issue of the correct paternity of the 4th defendant/appellant, and his status qualifying him as Amanyano, the learned trial Judge said at pages 616 and 617 of the Record:

“There are also many other issues which had been raised which having found as I did, I do not, therefore intend to go into such minor details. I will but say that on the whole my findings are as follows:

(4) That the 4th Defendant is the son of late Chief Douglas Jaja and thus an Opobo citizen and thus qualifies to be selected to the big house as per custom and as per the Mimima Agreement. He is also qualified to be an Amanyano.”

The Court of Appeal in its judgment said at pages 903 and 904 of the Record:

“Whether the 4th defendant/appellant is an Opobo man or an Okrika man is a question of fact with which this court is loathe to interfere unless the conclusion on that is clearly unsupportable having regard to the printed evidence. The learned trial Judge also found as fact that the 4th defendant/ appellant is not an Opobo man by birth. He is an Okrika man. He disavowed his paternity as a sacrifice for the lush benefits and pomp of the Amanyano. His pretence is against the custom and tradition of the Opobo people.

It clear from the above that the Court of Appeal was in error when it credited to the trial Judge that the 4th defendant/appellant is not an Opobo man but an Okrika man. The learned trial Judge did not say that. As a matter of fact, he came to the contrary conclusion, that is, the 4th defendant/ appellant is an Opobo man.

Where the conclusion of the Court of Appeal is not borne out from the Record, this Court is competent to interfere as such conclusion, is perverse. I therefore interfere with the erroneous conclusion of the Court of Appeal that the trial Judge held that the 4th defendant/appellant is not an Opobo man but an Okrika man.

That apart, the court was, with the greatest respect, in error when it came to the conclusion that the defendant/appellant “disavowed his paternity as a sacrifice for the lush benefits and pomp of the Amanyano.” There is no such evidence before the trial Judge and the Court of Appeal was not competent to introduce that in its judgment. An appellate court is always bound by the Record and

the Record only. It has no jurisdiction to go outside the Record and draw conclusions which are not supported by the Record.

Learned counsel for the 2nd set of plaintiffs/respondents contended that the Court of Appeal ought to have arrived at a different decision in the light of the above conclusion it reached. With  
B respect, that is tantamount to pursuing the shadow and leaving the substance. In the light of the clear mistake on the part of the Court of Appeal, this court must correct the mistake and will not dismiss the appeal on the ground of the mistaken conclusion of the Court of  
C Appeal.

And that takes me to the issue whether the plaintiffs/respondents are kingmakers. There is no specific averment in the statement of claim by the 1st set of plaintiffs/respondents that they are the kingmakers. However, the totality of the statement of claim present them as such, particularly paragraphs 1, 2 and 5. There are clear averments  
D in the statement of claim by the 2nd set of plaintiffs/respondent that both the 1st set of plaintiffs/respondents and themselves are kingmakers. This is clear in paragraphs 9, 10 and 11 of the statement of claim.

The statement of claim of the 2nd set of plaintiffs/respondents paint a beautiful chronological genealogy of the Kiepirima and Dappaye-Amakiri sections. The statement of claim also avers in some admirable detail the successors to the title of Amanyanabo beginning from Chief Jack Jaja Annie Pepple known in history as  
E King Jaja, and ended in Chief Douglas Mac Pepple, later known as  
F Chief (Dr.) Douglas Jaja who died in 1980. It is the successor to Chief (Dr.) Douglas Jaja that has caused this litigation.

The procedure for the selection, proclamation and installation of an Amanyanabo of Opobo is comprehensively averred to in the statement of claim of the 2nd set of plaintiffs/respondents. Paragraphs  
G 12 and 13 aver to the involvement of the plaintiffs/respondents sections, in the whole affair of selection of Amanyanabo:

“12. When the Dappaye-Amakiri and Kiepirima sections are satisfied with the candidate presented to them, the most senior Chief of the Kiepirima section who is automatically known as ORUSENIBO  
H of Opobo Town presents this candidate to the whole town, which is the 14 sections. The town then so gathered considers the candidate so presented for acceptance or rejection.

13. If the candidate is accepted then the Orusenibo informs the Opobo Council of Chiefs of the result of the presentation who will then make the PROCLAMATION of an Amanyanabo - Elect. If rejected the whole process is repeated.”

The problem I have is that there is no averment in any of the paragraphs of both statements of claim on the involvement of the plaintiffs/respondents in the selections, proclamation and installation of any of the Amanyanabos right from Chief Jack Jaja Annie Pepple to the last one, Chief Dr. Douglas Jaja. And in this regard, general averments of the type of paragraphs 12 and 13 do not meet the requirements in such a very important aspect of the matter, particularly in the light of the averments in paragraphs 2, 9, 10, 11, 12 and 13 of the Amended Statement of Defence.

The defendants/appellants presented a very detailed and formidable case in their Amended Statement of Defence and I expected the plaintiffs/ respondents to file a Reply, in respect of the new issues raised in the Amended Statement of Defence, but that was not done. See *Bakare v. Ibrahim* (1973) 6 S.C. 205; *Akeredolu v. Akinremi* (1989) 5 S.C. 102; (1989) 3 NWLR (Pt.108) 164; *Lion of Africa Insurance v. Fisayo* (1986) 4 NWLR (Pt. 37) 674; *Adelaja v. Oguntayo* (2001) 6 NWLR (Pt. 710) 593. It is the law that a fact not denied is deemed to be admitted. See *Adeleke v. Aserifa* (1986) 3 NWLR (Pt. 30) 575. *Nnonye v. Anyichie* (1989) 2 NWLR (Pt. 101) 110.

It is appropriate to take the issue in respect of the 14 traditional sections here, as it is related to the larger issue of kingmakers. The 2nd set of plaintiff/respondents averred to the 14 traditional Sections of Opobo Town in paragraph 22 of their Statement of Claim. Amongst the 14 sections, Dappaye-Amakiri and Kiepirima sections featured as Nos. 6 and 7 respectively. The relevance of the 14 traditional Sections from the point of view of the 2nd set of plaintiffs/respondents is the averment in paragraph 19 of their Statement of Defence that the 3rd defendant/appellant admitted in a 1977 document entitled Application for Recognition of the incumbent-elect of a recognised chieftaincy stool, that “the procedure for the election of candidates is elective by the agreement of the fourteen sections.”

The important aspect is that apart from the averment in respect of the 14 traditional sections involvement as Kingmakers, there

is no evidence that all the 14 sections (including the two) were really involved in the selection and proclamation of any of the Amanyanabos from King Jaja to the present day.

B That takes me to the Minima Agreement. I think I should copy the Agreement here because of the heavy reliance on it by the plaintiffs/respondents:

“MINIMA AGREEMENT

C By virtue of powers and authority we vested upon Chief Jack Jaja Annie Pepple as successor of Opobo House, we, the undersigned comrade Chiefs, comprising the political representative to the said House, this day, hereby declare our voluntary engagement to elude Grand Bonny with a view to settle elsewhere in Andonney territory, and that the said Chief Jack Jaja Annie Pepple and ourselves, parties hereto, have agreed between us and concluded the following articles:

ARTICLE 1

D For the better carry on of the War with Manilla House people we hereby jointly engage to provide men, Arms, Ammunitions and to contribute money and property towards all expenses incurred in maintaining the war men with the necessary stores.

E ARTICLE 2

F It is understood here in that for our losses in men and property as the result of the Civil War, each of us and each of our successors or persons representing our interest, from time to time, shall have the indefinite title to a share of the revenues from Comey, Work-Bar, and such other imposts and levies after twenty-five per centum of the whole has been reserved as income for the big house.

ARTICLE 3

G It is also agreed among us that the Executive Authority for the Government of the Settlement shall be solely reserved to each of us and to each of our successors or persons representing our interests, from time to time, as lawfully qualified for selection and installation, as successor to the big House.

H Made at Mimina, Grand Bonny, the 13th October, 1869, Sgd. Jack Jaja Annie Pepple, Black Fubara, Jim Wariso, Wogu Dappe, John Africa, Anne Steward, George Darriar, Captain Uranta, Haw Strongface, John Tom Brown, Obarney Fine Bone, Deerie Tulefare, Manilla, Jack Tulefare.

Witnessed for the above 15 marks. Sgd. D. Laybour, J.

Hamynway, D.C. Williams.”

Mr. Falana contended in the amended cross-appellants’ Brief that while the High Court and the Court of Appeal held that the Minima Agreement existed and forms the Constitution of Opobo Town, both courts failed to invoke the relevant portions of the Agreement. Learned counsel did not indicate the relevant portions of the Agreement for the benefit of the court. B

As seen above, the Minima Agreement is made up of a preamble, and three articles. Article 1 provided for how the people can “better carry on the war with Manilla House People” and the joint provision of men, arms and ammunitions, money, property for the maintenance of the war. This certainly has nothing to do with Kingmaking. Article 2 provided for compensation for those who were involved in the civil war. Again, this has nothing to do with Kingmaking. It is only Article 3 which provided for Kingmaking. Let me reproduce it once again for ease of reference: D

“It is also agreed among us that the Executive Authority for the Government of the Settlement shall be solely reserved to each of us and to each of our successors or persons, from time to time, as lawfully qualified for selection and installation, as successor to the big House.” E

Article 3 in very vague language, provided for succession “to the big House.” The Agreement nowhere defines that big House. That apart, there is no mention of the 14 traditional sections in the Agreement. I do not expect that, as the Agreement, it would seem, was first in time. Similarly, the two sections of the plaintiffs/respondents are not mentioned in the Agreement, again for the same reason that the Agreement was first in time. Frankly, I do not see any nexus between the Minima Agreement and the reliefs sought in this case. G

Learned counsel for the 2nd plaintiffs/respondents dealt in some detail with the books which were tendered in evidence, Exhibits O, S and U. As they relate essentially to the Minima Agreement, I should not take the arguments further, in view of my conclusions on that Agreement. H

Let me pause here to take the issue of dynasty in Opobo. In paragraph 7 of the statement of claim of the 2nd set of plaintiffs, is averred:

“The present dynasty in Bonny is the Perekule dynasty



which is the same as the Pepple dynasty. When King Pepple died he was succeeded as King by King Fubara. Before Fubara took up the kingship he handed his personal Chieftaincy House to Chief Ibani. Ibani House exists today in Bonny as Manilla Pepple House. When King Fubara died and because he had no child the throne went to  
B his junior brother of the same mother by name Opobo.”

In answer to the above, the defendants, in their amended statement of defence, averred in paragraph 7:

“The Defendants admit that the present dynasty in Bonny is  
C the Perekule dynasty which is the same as the Pepple dynasty. The Defendants deny the rest of paragraph (7) of the Statement of Claim.”

In spite of the admission by the plaintiffs that King Jaja established a Royal Dynasty and enthroned himself (see page 182; lines 25-28), the learned trial Judge said at page 592 of the Record:

“Having regard to the facts in this case, it is hard for one to  
D say that there was a dynasty in Opobo. If that was so there was no reason if Arthur Mac Pepple was the senior in age to Chief Sunday Jaja why Sunday Jaja should succeed to throne before Chief Arthur Mac Pepple if he was a son of Jaja and succession is as stated by  
E 4th Defendant and as in Exhibit 40... Headship of Opobo House as shown in history does not descend from father to son. There also it showed that succession was not dynastic as it was not from father to son, but that succession was reserved for members of Opobo House who were generally accepted by the others as being fit proper person  
F to occupy the stool of Opobo Main House. That was, in fact, how Jaja got the stool.”

The learned trial Judge, in my view, wrongly came to the above finding. The Judge also got himself mixed up when he moved to the Jaja Executive Authority. He said at page 617 of the Record:

“That the custom has grown up or established that the Jaja  
G Executive Authority must select the person or the candidate with the consent of the kingmakers, namely Dappaye-Amakiri, and Kiepirima sections.

Learned counsel for the 2nd set of plaintiffs/respondents rightly submitted in his cross-appellants’ amended Brief that the  
H learned trial Judge’s findings quoted above goes to no issue as the defendants in their counterclaim never claimed to show that the Jaja Executive Authority has a role play in the selection of any person or



candidate.

The Court of Appeal was therefore right when it came to the following conclusion at page 907 of the Record:

***“It is not disputed that the Amanyaboship is not by inheritance. The Jaja Executive Authority as far as Chieftaincy in Opobo is concerned, is irrelevant. It exists only to promote the solidarity of Jaja House.”*** B

Learned counsel for the 2nd set of plaintiffs/respondents, with respect, was not correct when he argued that the Court of Appeal ought to have found in favour of the 2nd set of Respondents/Cross-Appellants since that was one of the grounds of the cross-appeal. The role of the Jaja Executive Authority was not a live issue in the matter and therefore the conclusion reached on it could not have been the basis of a decision in favour of the cross-appellants. C

I think I should at this stage examine some of the exhibits. D Both parties tendered exhibits in support of their cases. Of the many exhibits tendered by the respondents none falsified the claim of the appellants that the 4th defendant/appellant is the son of Chief Douglas Jaja, the late Amanyabobo of Opobo. And that is the crux of the dispute. E

On the contrary, the appellants tendered exhibits confirming the paternity of the 4th defendant/appellant. In Exhibit 20, a letter dated 10th October, 1978, from Chief Douglas Jaja to the 4th defendant/appellant, when he was in England for his studies, he addressed him as “My dear Dandy.” That in itself is not evidence of sonship. F The letter is clearly headed “Brief Letter from Your Father.” This is clear evidence of sonship. The letter shows affection. Let me quote only the first paragraph:

“I am grateful to God that you arrived safely and everything G went smoothly according to your satisfaction. Your letter was handed to me through Mr. Gabriel Bell Gam with many thanks.

That is not all. On 4th January, 1979, Chief Douglas Jaja, the father of the 4th defendant/appellant wrote another letter to his son. Again, he addressed him in his usual affection: “My dear Dandy.” H Let me again quote the opening paragraph of the letter:

“Acceptable my apology for the long silence over your letters, the fact was ill health and in a very severe condition while in Lagos in October, 1978, which coursed (sic) anxiety over sincere Opobo

people that made them to keep every information secret even to Opobo people and my family uninformed.”

The last paragraph of the letter ended thus:

“I wish you the best of the season and I sincerely wish you all that you wish yourself this 1979. Accept my unreserved fatherly love.”

Your father

(Sgnd.) D. Jaja”

Ex. 27 is the Induction of the Crown Prince Dandison Douglas Jaja, Amanyanabo of Opobo into the Council of Chiefs on 17th December, 1980. It reads:

“I, Chief Raymond Daminabo Ogolo, Vice Chairman, Opobo Council of Chiefs do hereby, receive you, Crown Prince Dandison Douglas Jaja, Amanyanabo of Opobo, into the Opobo Council of Chiefs to take the place of your late father, Chief Douglas Jaja, in accordance with the traditions and usages of this ancient town of Opobo.”

The exhibit was signed by ten Chiefs. It is clear from the above exhibits that the 4th defendant/appellant is the son of Chief Jaja, the late Amanyanabo of Opobo. The fairly curious aspect is that the plaintiffs/respondents had no valid answer to the above evidence, which is documentary.

I see in this case the plaintiffs/respondents making very tall and loud claims with little or no evidence in support. On the other hand, the defendants/appellants had a heavy relevant documentation which they tendered in evidence as averred in paragraphs 13 and 15 of the amended statement of defence.

In sum, this appeal succeeds and it is allowed. The judgment of the High Court as well as that of the Court of Appeal which affirmed the judgment of the High Court are hereby set aside. Plaintiffs’ claims are dismissed in their entirety. In view of the fact that the appeal of the defendants/appellants is allowed, the cross-appeal by the plaintiffs/respondents fails. I award N10,000.00 costs in favour of the appellants in this appeal, N5,000.00 in favour of the appellants as costs in the Court of Appeal and N2,500.00 costs in favour of the appellants as costs in the High Court.

KUTIGI JSC

I have had a preview of the judgment just rendered by my learned brother, Tobi, JSC. For the reasons ably set out in the said judgment I will also allow the appeal. Accordingly, the judgments of both the trial High Court and that of the Court of Appeal are hereby set aside. And in their places an order dismissing Plaintiffs' claims in their entirety is substituted. The Defendants' appeal having succeeded against all the Plaintiffs, there is no need to consider the cross-appeal of the 2nd set of Plaintiffs, which is accordingly struck-out. I endorse the order for costs.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother, Niki Tobi, JSC. I entirely agree with him that this appeal has merit and must be allowed.

The case of the plaintiffs at the trial court was three-pronged. The first is that Dappaye-Amakiri and Kiepirima sections of Opobo are the Kingmakers. They founded their case on the Minima Agreement of 1869. Second, that the fourteen (14) families that comprise Opobo Town are the Ruling Houses. Third, the 4th defendant is not entitled to compete for election as head of Opobo Main House or to the office and dignity of the Amanyanabo of Opobo. I shall now consider these claims in that order.

Dappaye-Amakiri and Kiepirima Sections

The plaintiffs averred in paragraphs 1, 2, 3 and 4 of the Statement of Claim as follows:-

"1. The 1st Plaintiff in this action, Chief Paul D. Fubara, is the Chief of Dappaye-Amakiri Section of Opobo Town. The 2nd Plaintiff, Isreal C. Ogolo Fubara, is a Senebo of the Ogolo Fubara House within the said

Dappaye-Amakiri Section of Opobo. Both Plaintiffs with leave of this Honourable Court bring this action for themselves and as representing the said Dappaye-Amakiri Section and have brought this action as co-Plaintiffs with the 3rd and 4th Plaintiffs.

2. The 3rd Plaintiff, Arthur D.S. Toby, is the Chairman of the

Toby Main House within the Kiepirima Section of Opobo Town and also the Chairman of the said Kiepirima Section. The 4th Plaintiff, Fred Oko Annie Stewart, is a Senebo in Annie Stewart Main House within the said Kiepirima Section. Both Plaintiffs have with leave of this Honourable Court brought this action for themselves and as  
B representing the Kiepirima Section of Opobo Town as co-Plaintiffs representing the Dappaye-Amakiri Section of Opobo Town.

3. The subject matter of this claim is the right title and interest of the 4th Defendant to succeed to the headship of Opubo Main  
C House or the Office and dignity of the Amanyanabo of Opobo Town and the customary procedure for the election, proclamation and installation of head of Opubo Main House and the Amanyanabo of Opobo.

4. On the 13th day of October, 1869, at Minima in Bonny Jack Jaja Annie Pepple now known to history as King Jaja of Opo-  
D bo and the 14 founding fathers of what has now become known as Opobo Town entered into the Minima Agreement which said Agreement has been and is accepted as the Constitution and basis for the administration of Opobo customary political affairs. By the said Agreement to which the predecessors in title and office of both  
E the Plaintiffs and the 1st, 2nd and 3rd Defendants as well as King Jaja were parties, it was among other things agreed that “..... the executive authority for the government of the settlement shall be solely reserved to each of us and to each of our successors or persons  
F representing our interests, from time to time, as lawfully qualified for election and installation as successor to the Big House.”

The Plaintiffs and each of them will found their case on the said Minima Agreement, the original text of which is now lost but which said agreement is now a matter of public history. Accordingly, the plaintiffs will rely on historical works to prove the purport of the  
G said Agreement.”

By these paragraphs, the plaintiffs appear to be saying that Dappaye-Amakiri and Kiepirima sections of Opobo Town are the kingmakers without whose approval, no Amanyanabo would be installed. They founded their claim on the Minima Agreement of  
H 1869.

The law is that a plaintiff must establish the case he put forward by credible evidence. He must satisfy the court by the evidence

called by him.

In the present case, the plaintiffs have the onus to prove by evidence those Amanyanabos who were crowned or installed with their approval from 1869 when the Minima Agreement was signed to date. The late Amanyanabo Chief Douglas Jaja died in 1980.

First let us examine the text of the Minima Agreement. It reads:

“By virtue of powers and authority we vested upon Chief Jack Jaja Annie Pepple as successor of Opobo House, we, the representative of the said house, this day, hereby declare our voluntary engagement to elude Grand Bonny with a view to settle Jaja Annie Pepple and ourselves, parties hereto, have agreed between us and concluded the following articles:

#### ARTICLE 1

For the better carry on of the War with Manilla House people we hereby jointly engage to provide men, Arms, Ammunitions and to contribute money and property towards all expenses incurred in maintaining the war men with the necessary stores.

#### ARTICLE 2

It is understood herein that for our losses in men and property as the result of the Civil War, each of us and each of our successors or persons representing our interest, from time to time, shall have the indefinite title to a share of the revenues from Comey, Work-Bar, and such other imposts and levies after twenty-five per centum of the whole has been reserved as income for the big house.

#### ARTICLE 3

It is also agreed among us that the Executive Authority for the Government of the Settlement shall be solely reserved to each of us and to each of our successor or persons representing our interests, from time to time, as lawfully qualified for selection and installation, as successor to the big House.

Made at Mimina, Grand Bonny, the 13th October, 1869.

Sgd, Jack Jaja Annie Pepple, Black Fubara, Jim Wariso, Wogu Dappe, John Africa, Anne Steward, George Darriar, Captain Uranta, Haw Strongface, John Tom Brown, Obarney Fine Bone, Deerie Tulefare, Manilla, Jack Tulefare.

Witnessed for the above 15 marks.

Sgd. D. Laybour, J. Hamynway, D.C. Williams.”

In the context of the plaintiffs' claims, the Minima Agreement is a worthless document. This can be seen from the text of the Agreement itself and the devastating admission made by P.W.6 at page 182 lines 13-26 of the record wherein the witness admitted that;

B "1. Nowhere in the Minima Agreement is the word "king" mentioned.

2. The Minima Agreement does not envisage a republican form of government.

C 3. Contrary to what the Minima Agreement envisaged, King Jaja established a royal dynasty and enthroned himself.

D By this admission, the kernel of the defence had been admitted and the crux of the plaintiffs' claim was completely shattered. Yet in spite of the admission by the plaintiffs that contrary to the Minima Agreement, King Jaja established a royal dynasty and enthroned himself, the learned trial Judge held that there was no royal dynasty in Opobo. He said:

E "Having regard to the facts in this case, it is hard for one to say that there was a dynasty in Opobo. If that was so there was no reason if Arthur Mac Pepple was the senior in age to Chief Sunday Jaja why Sunday Jaja should succeed to throne before Chief Arthur Mac Pepple if he was a son of Jaja and succession is as dated by the 4<sup>th</sup> Defendant and as in Exhibit 40... Headship of Opobo House as shown in history does not descend from father to son. There also it showed that succession was not dynastic as it was not from father to son, but that succession was reserved for members of Opobo House F who were generally accepted by the others as being fit proper person to occupy the stool of Opobo Main House. That was, in fact, how Jaja got the stool."

G This witness had earlier testified to the effect that in September, 1977 the 14 sections of Opobo forwarded a document on the recognition of Opobo Stool otherwise known as Amanyanabo of Opobo to the Commissioner in charge of Chieftaincy Affairs in Rivers State. A copy of this document was received in evidence as Exhibit "L". P.W.6 in his evidence in cross-examination stated that Exhibit L had the approval of both Dappaye-Amakiri and Kiepirima and that a prospective Amanyanabo cannot be appointed and installed without H their approval. He said this right of kingmakership is peculiar to the 1st set of plaintiffs. However, when asked to show where in Exhibit

L this peculiar right is written, the following dialogue ensued, at p. 176 lines 3-16:

“Q- You had every opportunity of informing the Rivers State Government as to the procedure for the appointment, installation of the Amanyanabo in Exhibit L. Show in Exhibit L where you have these rights you are talking about? B

Ans- It is embodied in page 6 of Exhibit L.

Q- Is it contained in page 6 that no person shall be appointed or installed without the approval of the Dappaye-Amakiri and Kiepirima Sections? C

Ans-It is not contained in this page or any other page because this is Government guideline.

Q- You agree that there is nothing in Exhibit L that shows that Dappaye-Amakiri and Kiepirima Sections will approve or reject a candidate to be appointed an Amanyanabo of Opobo Town is D necessary?

Ans- Yes, it is not in Exhibit L.”

I must point out that Exhibit L was in fact a private document prepared and sent to the Government of Rivers State by the 14 sections of Opobo. It must also be pointed out that Rivers State Government rejected Exhibit L. E

In spite of the evidence quoted above the trial Judge still saw it fit to find that the 1st set of plaintiffs was kingmakers and that the Minima Agreement had been enforced over time, he said inter alia: F

“I accept without more that the Kiepirima and Dappaye-Amakiri sections have by custom of Opobo people become king-makers and the Jajas the Opobo House people nominates the successor to the headship with consent of king-makers...”

The Court of Appeal did not do better. It said that the 1st set of plaintiffs had proved a right to kingmakership based on the Minima Agreement. In the course of its judgment the Court of Appeal said: G

“I agree with the learned trial Judge that the said accord exists and (sic) binding. The defendants/appellants are avoiding it in order to foist the 4th defendant/appellant as the Amanyanabo - Elect of H Opobo Town.”

I must add here that the plaintiffs admitted through P. W. 1 at p. 161 of the record that in 1936 the then District Officer followed the procedure at the election of the two previous Amanyanabos and

only the Opobo Council of Chiefs comprising thirty-four chiefs voted for the new Amanyenabo even though other people were present (Underlining for emphasis).

Clearly therefore, the decision of the trial court was not supported by the evidence before it. There was no basis in fact for the, trial court to grant the declarations and injunctions claimed or for the Court of Appeal to uphold the trial court decision.

14 Families in Opobo Town

It was the case of the plaintiffs that the fourteen (14) families that comprise Opobo Town are the Ruling Houses. There was no evidence whatsoever to establish this claim. I mean they did not produce evidence to show that any Opobo citizen from outside Jaja House, had ruled Opobo.

I have already shown, earlier on in this judgment, that contrary to the claim of the plaintiffs, King Jaja in 1869 created his dynasty and installed himself. This explains why all the past Amanyenabos were from Jaja House. This claim as can be seen clearly is without foundation.

4th defendant

The case of the plaintiffs is that the 4th defendant who was selected by the Opobo Council of the Chiefs as the Amanyenabo Elect to succeed his late father, Chief Douglas Jaja, who died in 1980, was not qualified to contest for the exalted throne on the ground that he was not the son of Chief Douglas. He was said to be the son of one Ezekiel Ogan, an Okrika man.

The learned trial Judge, however found as a fact the 4th defendant was the son of late Amanyenabo of Opobo, Chief Douglas Jaja. He said inter alia in the course of his judgment:

“...I have but come to the conclusion that the 4th defendant is not the child of Mr. Ogan but that his natural father is the late Chief Douglas Jaja...”

In this case the 4th defendant is thus an Opobo citizen and the child of the late Chief Douglas Jaja.

Having thus held that the 4th defendant is the son of the late Chief Douglas Jaja and thus an Opobo citizen, he is as well qualified, if selected according to the native law and custom of Opobo to be the head of Opobo or Jaja House and automatically the Amanyenabo of Opobo.”



In spite of this clear finding by the learned trial Judge, the Court of Appeal said:

“The learned trial Judge also found as fact that the 4th defendant/ appellant is not an Opobo man by birth. He is an Okrika man. He disavowed his paternity as a sacrifice for the lush benefits and pomp of the Amanymanabo.” B

Be that as it may, the finding of the trial Judge is that the 4th defendant is the son of late Chief Douglas Jaja and therefore an Opobo citizen.

Let me recap what happened here. The plaintiffs pleaded that Dappaye-Amakiri and Kiepirima sections are kingmakers in Opobo. C They did not prove it. The evidence they called falsified their claim. Next, the plaintiffs claimed that the 14 Houses in Opobo are Ruling Houses and that there is therefore no Jaja Dynasty. This claim also failed. They could not mention one citizen from outside the Jaja D House that ever ruled Opobo. In addition they shattered their claim by their own admission that King Jaja established a royal dynasty and enthroned himself. Thirdly, it was their case that the 4th defendant was not the son of the late Amanymanabo, Chief Douglas Jaja but the son of Ogan an Okrika man. This claim also failed. The learned trial E Judge held that the 4th defendant is the son of the late Chief Douglas Jaja.

In spite of the glaring evidence before the trial court, that court found that Dappaye-Amakiri and Kiepirima Sections were F Kingmakers. The court also found that there was no Jaja dynasty in Opobo. These findings were affirmed by the Court of Appeal. In other words they are concurrent findings of fact.

These findings are not supported by the evidence before the court. They are without doubt perverse. The attitude of this court is G that where there are concurrent findings by the two lower courts it will not disturb such findings unless they are shown to be perverse - Chinwendu v. Mbamali (1980) 3-4 S.C. 31; Aja v. Okoro (1991) 7 NWLR (Pt. 203) 260. These findings, therefore must not and cannot H be allowed to stand.

All the above claims of the plaintiffs I have discussed above failed. It is still a wonder why the learned trial Judge entered judgment for the plaintiff and also why the Court of Appeal affirmed that decision. The claims of the plaintiffs ought to have been wholly

dismissed.

It is for these reasons and the fuller reasons given by my learned brother, Niki Tobi, JSC., that I too allow the appeal and set aside the judgment of the trial court and judgment of the Court of Appeal which affirmed it. I make an order dismissing the claims of the plaintiffs. I abide by the order for costs.

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AYOOLA JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Tobi, JSC. I agree that the appeal be allowed for the reasons he gives. I too would allow the appeal and set aside the judgment of the High Court and of the court below affirming that judgment. In place therefore I enter judgment dismissing the plaintiffs' suit. The appellants are entitled to costs of the trial assessed at N2,500 and costs in the Court below and of this appeal assessed, respectively, as N5000 and N10,000.

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MUSDAPHER JSC

I have had the preview of the judgment of my learned brother, Tobi, JSC., with which I entirely agree. I adopt the same reasons contained in the aforesaid judgment and I consequently allow the appeal and set aside the decisions of the Court of Appeal and the trial court and in place of which I order the dismissal of the plaintiffs' claims. The cross-appeal is also dismissed. I abide by the order for costs contained in the leading judgment.