

**SUPREME COURT OF NIGERIA**  
25TH JUNE, 2004. SC. 24/2000  
**CORAM:- I. L. KUTIGI, A. I. IGUH, A. O. EJIWUNMI,**  
**D. MUSDAPHER, I. C. PATS-ACHOLONU, JJSC**

1. OLUSOLAFATUNBI  
2. ALABI BANGBOYE ..... PLAINTIFFS/APPELLANTS  
(For themselves and on behalf  
of Fatunbi & Morenikeji  
Ruling Houses of Igbogila)

AND

1. EBENEZER O. OLANLOYE  
2. EGBADO NORTH  
LOCAL GOVERNMENT  
3. COMMISSIONER FOR ..... DEFENDANTS/RESPONDENTS  
LOCAL GOVERNMENTS  
4. MILITARY GOVERNOR OF  
OGUN STATE

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EVIDENCE - Credibility - Witnesses - Exaggeration in the evidence of a witness - Removes credibility therefrom (H1)

CHIEFTAINCY MATTERS - Evidence - Ruling house - Existence of Oshin ruling house - From which 1st respondent was appointed as chief - Is in existence - Contrary to appellants' contention (H2)

ILLITERATES - Protection of - Documents - Purpose of s.3 of Illiterates Protection Law - The protection enures only to the illiterate (H3)

APPEALS - Issues - Emanation of - Must be from the original claims - Argument of counsel - Should emanate from the issues - Not the grounds

**1734** Fatunbi v. Olanloye (2004) 6 KLR (pt. 182) 1733; (2004) 12 NWLR  
of appeal (H4)

APPEALS - Chieftaincy matters - Concurrent findings - That Oshin is a ruling house - Not being perverse - Will not be disturbed (H5)

### **FACTS**

The cause of action is in respect of the right candidate to the chieftaincy stool of Baale of Igbogila, in Ogun State. Plaintiffs/appellants filed an action before the High Court against the defendants/respondents. They claimed inter alia, that the 1st respondent being of Oshin family which is not a ruling house in Igbogila, the approval accorded to his candidature is null and void. At the close of hearing, the trial court found in favour of the appellants.

Respondents' appeal to the Court of Appeal was upheld. Being aggrieved appellants have now appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*1. Whether or not the appellants' other reliefs or claims as endorsed on the Amended Writ of Summons and Amended Statement of Claim are secondary or incidental to the claim that Oshin is not a Ruling House in Igbogila.*

*2. Whether or not, as the Court of Appeal said, the requirement in Section 3, Illiterates Protection Law, that the writer of a document signed or thumb printed by an illiterate person must write his name in the jurat is meant for 'the purpose of tracing the writer. If so, what then is the protection given to the illiterate person on whose behalf the letter or document was written without compliance with the requirement of Section 3 of the said Law. Etc see p. 1738*

**HELD** (Unanimously dismissing the appeal per **PATS-ACHOLONU JSC**)  
***Exaggeration in the evidence of a witness***

1. It is difficult to believe or understand the appellants' new found stand or stance. When the evidence of a witness is so exaggerated that it enters into the realm of flamboyancy or recklessness and petulance or appears as an

affront to reason and intelligence, no credibility ought to be accorded to it.  
(p. 1745 D)

***Existence of Oshin ruling house***

2. In other words, there is no other Ruling House known or recognised by the Egbado - Ketu District Council as it was then known and described. From the plethora of evidence available as can be seen from both official documents and the nature of the testimony in court, Oshin does not just appear to be a Ruling House, it would seem to be the Ruling House. The evidence of the appellants contains tissue of half truths, patent falsehoods. In their bid to convince the court that there is no such Ruling House as Oshin they unwittingly showed double face in that they did not object when it suited them but raised and cried blue murder when the tide turned. When he was not favoured, he was prepared to ditch the name and state that Oshin is not existing. That is the case of the fox and sour grape metaphor I have earlier referred to.

The court of first instance even admitted that there is in existence Oshin Ruling House but most regrettably in considering and analysing the relevant points agitated before it, somehow decided and found itself making a finding that goes diametrically against the grain of its original position which ought to flow sequentially from its earlier findings. In my view, Oshin Ruling house exists as the appellants have not succeeded in showing that there is no such House. The holding of the court below on this point is significant. Therefore, the 1st issue, indeed the mainstay of the action as well as this appeal, fails. It is important to understand that the appellants challenged the appointment of the 1st respondent as coming from non-existing Ruling House known as Oshin. If there is no Oshin Ruling House the appointment of the 1st respondent would be void. The appellant himself had told a brazen falsehood when he said he had never heard of Oshin Ruling House yet he did not object when he was described as coming from that house. You cannot put something on nothing. It will collapse.  
(p. 1746 A)

***ILLITERATES - Protection of - Documents***

3. Implicit in that section is that where there exists a doubt or a denial as to the correct statements that were made by the illiterate, the writer will be traced to show whether the contents of the document represent the veracity of what the illiterate asserts. In other words, the protection singularly inures only to the illiterate.

The person or persons on whose behalf Exhibit ‘E’ was made is the 1st appellant in this case. If the maker of the statement and the person on whose behalf the statement was made disagree about the correctness of the contents in any testimony in court, it is for the trial court to make a finding and in such a situation, an appellate court ought not to interfere. In any case, as there was no objection by the appellants at the trial stage they cannot be heard now to complain of non-compliance. They will be estopped from blowing hot and cold at the same time. This issue collapses on its face. (p. 1749 D)

***APPEALS - Issues - Emanation of***

4. The appellants shall not be allowed to improvise their case on appeal, and the issues to be resolved at any time even in the appellate courts must at all times emanate squarely from the claims made in the court of first instance, to wit, the issues in controversy, whether of fact or of law and must be traced to the request, prayer or claim of the proponents of the case.

It is long settled by this court that arguments and addresses of counsel in their briefs should be on what is contained in the issues formulated and not on the grounds of appeal. In other words, the fons et origo of the appeal from which the issues to be determined emanate, and from which the grounds of appeal is formulated are directly as should be directly or circumstantially connected with what the court of first instance was being asked to do which was to make a declaration or give an answer. Issues framed from the grounds of appeal are not meant to afford a party an opportunity of making an entirely new case which did not feature at the trial court, and is not one that goes to the jurisdiction of the court. (p. 1750 D)

***APPEALS - Chieftaincy matters - Concurrent findings***

5. On yet another angle of the case, the two lower courts made a concurrent finding of fact that there is a Ruling House called Oshin Ruling House in Igbogila. It is not part of the case of appellants in their pleadings as to whether or not Oshin is a Ruling House in Igbogila. This court for emphasis having dwelt at length on the issue of Oshin Ruling House sees nothing deficient or perverse in the finding of the Oshin as ruling house which would make this court intervene. Not having come from that ruling house, the 1st appellant cannot expect to be appointed a Baale as by his own mouth he has dissociated himself from any connection whatsoever ever, under oath from Oshin Ruling House. (p. 1751 A)

D

**REPRESENTATION**

Chief V. A. Odunaiya, for the Appellants.

Chief S. A. Adejumo, SAN., (with him, M. A. Adegbola), for the 1st Respondent.

E

**CASES REFERRED TO**

Agi v. Ejinkeonye (1992) 3 NWLR (Pt. 228) 200 at 208

Adejumo v. Ayantegbe (1989) 6 S.C. (Pt. 1) 76; (1989) 3 NWLR (Pt. 110) 417 at 430

F

Aja v. Okoro (1991) 7 NWLR (Pt. 203) 260 at 277

Agbai v. Okagbue (1991) 7 NWLR. (Pt. 204) 391 at 421

Edoplolo & Co. Ltd. v. Ohenhen (1994) 7 NWLR (Pt.358) 511 at 525

G

Djukpan v. Orovuyovbe (1967) 1 All NLR 134 at 140

Anyabusi v. Igwunze (1995) 6 NWLR (Pt. 401) 225

Akinbobola v. Plisson Fisco [1991] 1 NWLR(Pt. 167) 370

Anyanwu v. Mbari [1992] 5 MWLR (Pt. 242) 386

Otitoju v. Governor of Ondo State [1994] 4 NWLR (Pt. 340) 518

H

**STATUTES REFERRED TO**

Chiefs Law (Cap.19) Laws of Western Nigeria SS. 30 (1) (a), 11(1)  
(a)

Illiterates Protection Law (Cap. 47) Laws of Ogun State 1978 S. 3

B

**LEAD JUDGMENT BY PATS-ACHOLONU JSC**

This appeal is in respect of the right candidate to be the Baale of Igbogila. The appellants had instituted an action in the High Court claiming several reliefs the most prominent being that the 1st respondent being of Oshin family, which is not a ruling house in Igbogila, the approval accorded to his candidature is null and void and unconstitutional in that it is contrary to the customary law of Igbogila, and violates the spirit of the provisions of the Chiefs Law (Cap. 19) Laws of Western Nigeria as applicable in Ogun State. In the court of first instance, judgment was given to the plaintiffs. The present respondents thereupon appealed to the Court of Appeal which reversed the judgment of the High Court and gave judgment in favour of the said respondents and set aside the judgment of the High Court. Piqued no doubt by the turn of events the plaintiffs with the leave of the court appealed to this court. From the grounds of appeal, the appellants formulated 9 issues for determination . I hereby set them down as follows:-

1. Whether or not the appellants' other reliefs or claims as endorsed on the Amended Writ of Summons and Amended Statement of Claim are secondary or incidental to the claim that Oshin is not a Ruling House in Igbogila.

2. Whether or not, as the Court of Appeal said, the requirement in Section 3, Illiterates Protection Law, that the writer of a document signed or thumb printed by an illiterate person must write his name in the jurat is meant for the purpose of tracing the writer. If so, what then is the protection given to the illiterate person on whose behalf the letter or document was written without compliance with the requirement of Section 3 of the said Law.

3. Whether or not the failure of the writer to comply with the provisions of Section 3 Illiterates Protection Law renders such letter or docu-

ment so prepared, for and on behalf of an illiterate unenforceable, void ab initio or voidable at the instance of the illiterate person, if so, what is the ultimate effect of the document?

4. Whether or not Exhibit “E” in this case, which does not contain the name and address of the writer, complied with the provisions of Section 3, Illiterates Protection Law (Cap. 47) Laws of Ogun State 1978 Edition.

5. Whether it was proper for the lower court to determine the validity of the appointment of the 1st respondent as Baale of Igbogila based on an invalid Exhibit E and not on the compelling oral testimony before the trial court.

6. If the above issue No. 4 is resolved in the negative, whether the 1st respondent can be said to have been validly appointed by the majority of the Kingmakers in Igbogila having regard to the oral testimonies of both parties before the trial court.

7. Whether from the abundant evidence on record, Oshin Ruling House can be said to be the only Ruling House that exists in Igbogila.

8. Whether or not Exhibits ‘A’, ‘B’ and ‘C’ in this case, can be said to have been wrongly admitted having regard to the pleadings and evidence of the parties before the trial court and the provisions of Sections 93, 94, 96, 97 and 98 of the Evidence Act?

9. Whether Section 10 of the Commission of Inquiry Law (Cap. 24) Laws of Ogun State, is applicable to Exhibits A, B and C and therefore render them inadmissible.

The respondent in turn framed five issues for consideration by the court. The issues distilled are as follows, to wit:

1. Whether the lower court was right in holding that the failure of the appellants to prove so as found by the learned trial Judge that there is Oshin Ruling House must affect the fate of other reliefs by the appellants which are secondary or incidental to the success of the main claim on the eligibility of Oshin as a ruling house in Igbogila.

2. Whether the lower court was right in holding that Section 3 of Illiterate Protection Law of Ogun State was complied with D.W. 1 and that the appellants have failed to prove beyond reasonable doubt that there was

fraud, rigging or manipulation of votes as alleged by them.

3. Whether in relation to the number of ruling houses the lower court was right in holding that *“it cannot be said that the plaintiffs/respondents have discharged their burden by calling sufficient and reliable evidence from the community to prove the custom they alleged”*.  
B

4. Whether the lower court was right in holding that Exhibits “A”, “B” and “C” were wrongly admitted by the trial court and that the trial court wrongly relied on them to find evidence of custom governing the Baaleship of Igbogila in favour of the appellants.  
C

5. Whether the lower court was right in holding that by virtue of Section 10 of Commission of Inquiry Law (Cap. 24) Laws of Ogun State, Exhibits “A”, “B” and “C” were inadmissible to prove facts in recent years in relation to the Baaleship of Igbogila.

D Before going further into the nuances of this matter having carefully read the pleadings of the parties, it is unarguable that the crux of the case i.e. the real issue in controversy is whether Oshin is a Ruling House or in fact the Ruling House. After answering the poser, the next question is which of  
E the contending persons should be the Baale of Igbogila; the 1st respondent said to be of Oshin which it is alleged is not a Ruling House and therefore cannot produce a traditional ruler of the community, or the 1st appellant for whom approval was not given but said to come from a Ruling House by his  
F claim. A critical examination of the issues as made out by the appellants shows that the question to be resolved appears amorphous and not very succinct, and, they lack quality of clarity and precision. It seems to me that the issues as adumbrated by the respondents capture the essence of the ingredients as ingrained in the grounds of appeal.

G Now let me take up issue No .1 because it seems to be the central kernel of the case. It is indeed from where other complaints ‘have their inception. Let me recap the contents of paragraphs 1, 2, 7 and 8 of the plaintiffs otherwise the appellants’ Statements of Claim.

H *“Paragraph. 1. 1st plaintiff is a member of the Fatunbi Ruling House of Igbogila.*

*Paragraph 2. The 2nd plaintiff is a member of the Morenikeji Ruling House of Igbogila.*



*Paragraph 7. The plaintiffs averred that there are 3 ruling houses in Igbogila viz:- Esu Ruling House, Fatunbi Ruling House and Morenikeji Ruling House.*

*Paragraph 8. The plaintiffs averred that there is no Oshin Ruling House in Igbogila”.*

What this means from the appellants point of view is that if the 1st respondent does not come from any of the 3 Ruling Houses mentioned by the appellants in Paragraph 7 of the Statement of Claim, then he cannot possibly be nominated or be selected as Baale as contended by the appellants. It is in this spirit that the appellants had averred in their pleadings that the court should declare that Esu, Fatunbi and Morenikeji are the only 3 Ruling Houses in Igbogila. Contrariwise, it is the respondents case that there is only one Ruling house in Igbogila which is Oshin, and that as a matter of fact the 1st and 2nd appellants and the 1st respondent had vied for and fought for the stool of Baale as members of Oshin Ruling House.

Now, interestingly, in the course of his testimony in; court, the 1st appellant admitted having seen Exhibit ‘E’ (a document emanating from one of the Kingmakers) which has the expression “*Oshin Ruling House*” showing that he comes from Oshin written on it but he did not protest at the nomenclature or such a description of him being of Oshin ruling house. Equally too in reference to Exhibits F and FI, he said “*The certificate showing their votes also show that my name was submitted by Oshin Ruling House*”. To point out the importance attached to the issue of whether Oshin is a Ruling House or not the 4th plaintiff witness had testified as follows:-

*“I do not know any candidate from Oshin Ruling House..... I used to hear of Oshin Family but I do not know of any Baale from Oshin House”.*

The mainstay of the appellants’ ease revolves around the one important point, that is, whether anyone from Oshin family which they contend is not a Ruling house in Igbogila can produce a Baale as it is not one of the 3 Ruling Houses. The conclusion of course is that if Oshin is a Ruling House, or as claimed by the respondents that the appellants once contested the chieftaincy title as coming from a Ruling house of Oshin same as the respondents are contesting, then the case of the appellants would fall flat

down. The center piece therefore, of the case is to be found on the antecedent or history of what happened earlier before the institution of this action, id est, whether it is the story of the sour grapes and the fox, (the fox having made fruitless attempts by jumping up to pluck ripe apples abandoned the idea by stating that the apples were sour anyway). In the High Court, the learned trial court had held as follows:-

1. *“That there are three Ruling Houses of Baale of Igbogila Chieftaincy which are entitled to provide candidates in the following order of rotation to fill successive vacancies in the Chieftaincy:-*

- (i) *Oshin Ruling House comprising descendants of Kaato and Esu*
- (ii) *Fatunbi Ruling House comprising descendants of Fatunbi.*
- (iii) *Morenikeji Ruling House comprising descendants of Morenikeji.*

2. *That whenever it is its turn to present a candidate a Ruling House holds meeting presided over by the head of the Ruling Houses where a candidate or candidates are selected and presented to the Kingmakers.*

3. *That preference is given to males over females in a Ruling House in selection of candidates.*

4. *That there are seven Kingmakers with the following traditional titles:*

- (i) *Apena*      (ii) *Erelu*      (iii) *Abore*
- (iv) *Oluwo*      (v) *Elemo*      (vi) *Somofe*
- and (vii) *Ajagunna*

5. *That the Aboro of Ibese is the consenting authority in respect of any appointment of Baale of Igbogila made by the Kingmakers.*

*The above to my mind will represent substantially the customary law applying to Baale Igbogila Chieftaincy within the meaning of the provision of Section 30(1) (a) of the Chiefs Law”.*

Then further below the court said:

*“Now, to return to the action of D.W.I in 1982, a quick perusal of Exhibit ‘M’ - the Public notice issued by the witness shows that in the notice, he named one Ruling House viz Oshin Ruling House as the only Ruling House to provide candidate or candidates for filling the vacant stool of Baale of Igbogila. According to the notice, Oshin Ruling House*

*comprised (1) Keji (2) Akinlolu and (3) Fatunbi families. I am afraid, having regard to my findings above in respect of the number of Ruling Houses and their order of rotation, D.W. I clearly acted in error in following Exhibit 'O' by inviting Keji, Akinlolu (descendant of Oshin) and Fatunbi families together and under one umbrella namely, Oshin Ruling House".* B

What is Exhibit 'M'? Exhibit 'M' is a circular letter written by the Local Government Secretary informing the people concerned about the appointment and filling of the stool of Baale from the only Ruling House. It reads thus:

*"Public Notice Appointment of New Baale of Igbogila* C

*Notice is hereby given in accordance with Section 11(1) (a) of the Chiefs Law Cap. 19 that the Ruling House whose turn it is to provide candidate or candidates to fill the vacant stool of Baale of Igbogila is Oshin ruling House, the only Ruling House comprising (1) Keji (2) Akinlolu (3) Fatunbi families. The Oshin Ruling House is hereby called upon to nominate, within 14 days of this notice (that is on or before Tuesday, 9th March, 1982, except Saturday and Sunday) candidate or candidates for selection by the kingmakers.* D

*3. The nomination of candidate or candidates shall be made at a family meeting presided over by the Head of the Oshin Ruling House and attended by equal number of members of Keji, Akinolu and Fatunbi families. The Secretary to Local Government shall be informed of the date, time and place of the family meeting to enable him attend as an observer. Made at Ayetoro this 23rd day of February, 1982".* E F

For this the lower court held as follows:-

*"In the present case, the learned trial Judge made his own evaluation of evidence and arrived at some findings of facts. Amongst such findings are the fact that Oshin is in fact a Ruling House or one of the Ruling Houses in Igbogila contrary to the respondents' claims and pleadings that it is not one of such Ruling Houses eligible to provide a candidate for the Baale of Igbogila. Yet he went ahead and granted the other reliefs claimed by the said respondents - namely, that the appellant's appointment was contrary to native law and custom on Igbogila Chieftaincy and to consequently set aside the said appointment. In my view since the backbone or substratum* G H

of the respondents' claims and pleadings is that Oshin is not one of the Ruling Houses in Igbogila Chieftaincy under the customary law relating thereto, the respondents' failure to prove so as found by the learned trial Judge in his judgment at pages 119-120 of the record must affect the fate of the other reliefs or claims of the said respondent which are secondary or incidental to the success of their main claim on the eligibility of Oshin as a Ruling House in Igbogila. It is, therefore, my view that by reference to the findings of fact by the learned trial Judge on the matter and his subsequent order setting aside the appellant's appointment or selection, there is a transparent or apparent injustice and perversity in his evaluation of evidence or that he did not properly and dispassionately appraise or evaluate the evidence as adduced by the parties before him. Thus he has violated the principles in the above cited cases particularly the *Gaji v. Odofin* (supra) (1978) 4 SC. 91 and *Egonu v. Egonu* (supra). Consequently, where this happens, this court as an appellate court can interfere or disturb such evaluation and findings especially because they are apparently perverse and injustice has not been done in the case'.

The 1st appellant had in the course of his testimony said:  
*"It is untrue that Fatunbi is a branch of Oshin Ruling House. It is untrue that on the 8th March, 1982, my family held a meeting as a branch of Oshin Ruling House"*.

During the cross-examination he said in relation to Oshin Ruling House  
*"I have never heard of the name Oshin in Igbogila until 1982"*.  
 Further down he said:

*"Oshin Ruling House is written in Exhibit 'E'. The certificates showing their votes also show that my name was submitted by Oshin Ruling House."*

I shall now state below the contents of other relevant exhibits submitted in the court below viz; Exhibits E, F and Fl.

Exhibit 'E' states, *"Chief Salau Olaloye, the Elemo of Igbogila, having considered the three nominations submitted for filling of the vacant stool of Baale of Igbogila hereby certify that Ebenezer O. Olanloye is the most suitable candidate of those names submitted to us by Oshin House for the vacant stool of the Baale of Igbogila"*.

Two other Chiefs gave certificate of appointment to the 1st appellant, that is, in Exhibits 'F' and 'FI'. The important thing about the certificate of appointment given to the 1st appellant is for the "*vacant stool of Baale of Igbogila*". On why he did not protest of the recital that he is "*most suitable candidate out of the three names submitted .....by Oshin Ruling House*" as relating to his certificate of appointment, he said:

*"I did not write any protest letter against the use of the name Oshin in Exhibit 'E' because I had earlier submitted a memorandum to Adesanya Commission in the Ruling House at Igbogila".*

Even the 7th plaintiff witness had testified like some others that he did not protest the name Oshin as a Ruling House during the selection.

What bothers me and indeed would task the mind of any person of mere average intelligence is this, if Oshin does not exist as a Ruling House, why did the principal persons inclusive of the person most affected by the reference to him as having been presented by Oshin not protest. **It is difficult to believe or understand the appellants' new found stand or stance. When the evidence of a witness is so exaggerated that it enters into the realm of flamboyancy or recklessness and petulance or appears as an affront to reason and intelligence, no credibility ought to be accorded to it.** Consider, for example, the evidence of D.W. 1 i.e., the Secretary of Ijebu North Local Government, Ijebu Igbo.'

*"I remember I received a paper from the Governor's office stating "Declaration in respect of only one Ruling House that is Oshin Ruling House at Igbogila". I acted on the information contained in the paper when I invited Oshin Ruling House for nomination of candidate".*

(Exhibit D is apparently the paper). Continuing, this witness said:

*"I was present on 8th March, 1982, when Oshin Ruling House met and nominated three candidates, viz, 1st and 2nd plaintiffs and the 1st defendant (the 1st appellant)".*

The witness in his testimony also made mention of Exhibit 'O' which is a document made in 1964 by the Egbado-Ketu District Council about a declaration regulating the selection of Baale of Igbogila. The 1st paragraph of that letter stated thus:

*"There is only one Ruling House Oshin - comprising of Keji, Akinlolu*

and *Fatunbi families*".

**In other** words, there is no other Ruling House known or recognised by the Egbado - Ketu District Council as it was then known and described. From the plethora of evidence available as can be  
 B seen from both official documents and the nature of the testimony in court, Oshin does not just appear to be a Ruling House, it would seem to be the Ruling House. The evidence of the appellants contains tissue of half truths, patent falsehoods. In their bid to convince the court that there is no such Ruling House as Oshin they  
 C unwittingly showed double face in that they did not object when it suited them but raised and cried blue murder when the tide turned. When he was not favoured, he was prepared to ditch the name and state that Oshin is not existing. That is the case of the fox and sour  
 D grape metaphor I have earlier referred to.

The court of first instance even admitted that there is in existence Oshin Ruling House but most regrettably in considering and analysing the relevant points agitated before it, somehow decided and  
 E found itself making a finding that goes diametrically against the grain of its original position which ought to flow sequentially from its earlier findings. In my view, Oshin Ruling house exists as the appellants have not succeeded in showing that there is no such House. The  
 F holding of the court below on this point is significant. Therefore, the 1st issue, indeed the mainstay of the action as well as this appeal, fails. It is important to understand that the appellants challenged the appointment of the 1st respondent as coming from non- existing Ruling House known as Oshin. If there is no Oshin Ruling House the  
 G appointment of the 1st respondent would be void. The appellant himself had told a brazen falsehood when he said he had never heard of Oshin Ruling House yet he did not object when he was described as coming from that house. You cannot put something on nothing. It will  
 H collapse. |

I would now consider the relevance of other issues argued by the parties. A proper reading and synthesizing of the other issues seem wholly and entirely dependant or incidental to and definitely subordinate to the main

issue. Indeed other issues appear academic from my holding above.

Let me state why I said that the other issues are mere academic. The 1st appellant disowned Oshin Ruling House and asserted vigorously that it does not exist, that he has never heard of it, and that he does not come from that Ruling House. That is his stand. If he does not come from the only Oshin Ruling House, in essence he cannot be a candidate of Baale stool. B

Let me go back to the pleadings of the appellants as plaintiffs:

1. *“The first plaintiff is a member of the Fatunbi Ruling House of Igbogila.*

2. *The plaintiff is a member of the Morenikeji Ruling House of Igbogila.* C

3. *The plaintiffs averred that there is no Oshin Ruling House in Igbogila”.*

Now since the Court of Appeal has held that there is only one Ruling House which is Oshin and the appellants had rejected both in their pleadings and evidence in court and utterly repudiated and refuted the existence of Oshin Ruling House and since therefore by his ipse dixit the first appellant does not come from there, this court ought not ordinarily discuss the other issues formulated in the appellants’ brief. D E

However, for purposes of the restatement of the law, I have decided to discuss the purport of the other issues 2, 3,4 and 5. The appellants had argued that the first respondent was not duly appointed by the majority of the kingmakers in Igbogila as Exhibit ‘E’ failed to reflect correctly the pattern of voting of the kingmakers. The complaint of the appellants is that Exhibit ‘E’, the certificate of appointment did not contain the name and address of the writer and that there was no jurat and therefore the document should be inadmissible. Section 3 of Illiterates Protection Law (Cap. 47) G Laws of Ogun State, 1978 Edition states:-

*“Any person who shall write any letter or document at the request, on behalf or in the name of any illiterate person shall also write on such letter or other document, his own name as the writer thereof and his address and his so doing shall be equivalent to a statement ;-* H

(a) *That he was instructed to write such letter or document by the person for whom it purports to have been written and that the letter or*

*document fully and correctly represents his instruction: and*

(b) *If the letter or document purports to be signed with the signature or mark of the illiterate person, that prior to its being so signed, It was read over and explained to the illiterate person, and that the signature or mark was made by such person”.*

In the course of his argument the learned counsel for the appellant cited the case of *SCOA Zaria v. Okon* (1959) 4 FSC 220 at 223. Now in respect of the alleged non-compliance with Section 3 of Illiterates Protection Law, the lower court held as follows:-

“As to the arguments in both briefs on the application of the *Illiterates Protection Law of Ogun State (Supra)* to the contents and validity of Exhibit ‘E’, I am of the view as also conceded in the respondent’ brief, that the document (i.e. certificate of appointment or vote signed by P.W.4) is admissible and was in fact admitted by the trial court without objection. It is therefore late for the respondent to raise objection on its admissibility now. Besides, the requirement in Section 3 of the Law that the writer of a document signed or thumb-printed by an illiterate person must write his name in the jurat has been held to be for the purpose of tracing the writer in the case of *SCOA Zaria v. Okon*. (*Supra*, cited by both parties) and that the non-compliance does not render the document void but only voidable at the instance of the illiterate person - See also *Djukpan v. Orovuyovbe* (1967) 1 All NLR 134 at 140-141. Thus in the present case, the illiterate person who wanted to void the exhibit (i.e. Exhibit E) did not furnish sufficient evidence to prove his allegation and the document should still stand and be enforced against him. Moreover, by looking at the exhibit, it will be vividly seen that it contains the required jurat in the following words:-

“Read and explained to me in Yoruba Language with full and clear understanding.

RTI

*The Elemo of Igbogila*

15th March, 1982”.

It needs be emphasized that the provision in Section 3 (*Supra*) is intended for the protection of the illiterate person. Essentially, it is equally to trace the whereabouts of the maker of the statement. Care must be



taken that we do not put in the intendment of that provision what is not intended to accomplish. It is to ensure that what is stated there reflects what the illiterate person has stated and intended to be correctly put in such a document, and he is the only person to complain if that is not the case. Thus in *Edopololo & Co. Ltd. v. Ohenhen* (1994) 7 NWLR (Pt.358) B 511 at 525, the Supreme Court, per Iguh, JSC, held;

*“It ought also to be noted that Section 3 of that law only raises or provides certain presumptions of law in respect of a document prepared at the request of an illiterate by any person who shall write such a document his own name as the writer and his address .... The purpose of the said provisions under Section 3 of the law is also to ensure in furtherance to the said protection of illiterate that the writer of such document is identified or traced.”* C

**Implicit in that section is that where there exists a doubt or a denial as to the correct statements that were made by the illiterate, the writer will be traced to show whether the contents of the document represent the veracity of what the illiterate asserts. In other words, the protection singularly inures only to the illiterate.** (See *Djukpan v. Orovuyovbe* (1967) 1 All NLR 134 at 140 and *Anyabusi v. Igwunze* (1995) 6 NWLR (Pt. 401) 225 at 272. D

**The person or persons on whose behalf Exhibit ‘E’ was made is the 1st appellant in this case. If the maker of the statement and the person on whose behalf the statement was made disagree about the correctness of the contents in any testimony in court, it is for the trial court to make a finding and in such a situation, an appellate court ought not to interfere. In any case, as there was no objection by the appellants at the trial stage they cannot be heard now to complain of non-compliance. They will be estopped from blowing hot and cold at the same time. This issue collapses on its face.** F G

Issues 6, 7, and 8 argued together are once again as to the status of Oshin Ruling House. One of the points raised by the appellants here is whether or not Oshin Ruling House is in Igbogila. I find this point utterly strange. By their statements of claim and the ipse dixit of the 1st appellant there is nothing like Oshin Ruling House. In fact, the 1st appellant had in his H

testimony, part of which I stated earlier on, said that there is nothing like Oshin Ruling House; he had not even heard of it. I find it dishonest and disingenuous to backtrack and ask the court to determine whether it is the only Ruling House, in other words, tacitly acknowledging that it is a ruling house. That is not part of their claims and they should not be allowed to turn the court into vaudeville in order to resort to all sorts of ignoble and unedifying legal gymnastics where an artist will graciously indulge in all forms of somersaults. Let me capitulate some of the reliefs as contained in their pleadings:

(b) *“A declaration that there is no Oshin Ruling House in Igbogila in the Isokan Local Government Area of Ogun State.”*

(c) *“A declaration that there are 3 Ruling Houses in Igbogila namely Esu, Fatunbi and Morenikeji Ruling Houses.”*

There was no claim that the court or first instance should make a declaration that Oshin Ruling House is not the only Ruling House in Igbogila. **The appellants shall not be allowed to improvise their case on appeal, and the issues to be resolved at any time even in the appellate courts must at all times emanate squarely from the claims made in the court of first instance, to wit, the issues in controversy, whether of fact or of law and must be traced to the request, prayer or claim of the proponents of the case.**

It is long settled by this court that arguments and addresses of counsel in their briefs should be on what is contained in the issues formulated and not on the grounds of appeal. (See Agi v. Ejinkeonye (1992) 3 NWLR (Pt. 228) 200 at 208. Adejumo v. Ayantegbe (1989) 6 S.C. (Pt. 1) 76; (1989) 3 NWLR (Pt. 110) 417 at 430, Aja v. Okoro (1991) 7 NWLR (Pt. 203) 260 at 277 and Agbai v. Okagbue (1991) 7 NWLR. (Pt. 204) 391 at 421). **In other words, the fons et origo of the appeal from which the issues to be determined emanate, and from which the grounds of appeal is formulated are directly as should be directly or circumstantially connected with what the court of first instance was being asked to do which was to make a declaration or give an answer. Issues framed from the grounds of appeal are not meant to afford a party an opportunity of making an entirely new case which did not**

feature at the trial court, and is not one that goes to the Jurisdiction of the court.

On yet another angle of the case, the two lower courts made a concurrent finding of fact that there is a Ruling House called Oshin Ruling House in Igbogila. It is not part of the case of appellants in their pleadings as to whether or not Oshin is a Ruling House in Igbogila. This court for emphasis having dwelt at length on the issue of Oshin Ruling House sees nothing deficient or perverse in the finding of the Oshin as ruling house which would make this court intervene. Not having come from that ruling house, the 1st appellant cannot expect to be appointed a Baale as by his own mouth he has dissociated himself from any connection whatsoever ever, under oath from Oshin Ruling House.

In the final result there is hardly anything further to state in this case. That being the case, the appeal fails and collapses and is dismissed. I affirm the judgment of the Court of Appeal. The appellants are to pay costs assessed at N10,000.00.

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E

### KUTIGIJSC

I read before now the judgment just delivered by my learned brother, Pats-Acholonu, JSC. I agree with him that there is no merit in this appeal. It is accordingly dismissed. The judgment of the Court of Appeal is affirmed. I endorse the order for costs.

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### IGUHJSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Pats-Acholonu, JSC., and I agree that this appeal is lacking in substance and it is hereby dismissed by me.

I abide by the order as to costs contained in the leading judgment.

**EJIWUNMI JSC**

As I was privileged to have read in advance the lead judgment of  
B my brother, Pats-Acholonu, JSC., wherein he dismissed this appeal, and  
as I agree with the reasons given in the said judgment for dismissing the  
appeal, I also dismiss the appeal. I also abide with the other consequential  
orders made therein.

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**MUSDAPHER JSC**

The dispute giving rise to the litigation on appeal arose in the course  
D of the selection, appointment and approval of the successor to the stool of  
Baale of Igbogila in the Isokan Local Government Area of Ogun State. The  
incumbent of the Stool, Baale Labiyi Fakeye died in 1979. The Secretary to  
the Local Government in the usual manner invited the Ruling House to nominate  
E candidate or candidates for the vacant stool. The nomination made in 1981  
was followed by the recommendation by Kingmakers of the 1st respon-  
dent herein for appointment to the stool but was found by the approving  
authority to be defective and was disallowed. A fresh nomination was con-  
F ducted on the 8/3/1982 by the representatives of the Ruling Houses and at  
the end of which the 1st respondent and the two appellants herein were  
nominated to vie for the selection to the stool.

The King Makers on 15/3/1982 by a majority of 3 votes selected and  
recommended the approval of the 1st respondent as the Baale. Eventually  
G the 1st respondent's selection was approved by the State Government.  
Dissatisfied with the approval of the 1st respondent's appointment, the  
appellants instituted this action in the Ogun State High Court against the 1st  
respondent and others, challenging the 1st respondent's approval and  
H appointment and they also sought eight other specific reliefs. On the 6/7/  
1985, the trial court partially found for the plaintiffs/appellants. The ap-  
pointment of the 1st respondent as the Baale of Igbogila was set aside. The  
1st respondent felt aggrieved with the decision and appealed to the Court

of Appeal. The Court of Appeal on the 29/4/1999 allowed the 1st respondent's appeal and set aside the decision of the trial court and ordered the dismissal of the plaintiffs/appellants' claims. This is a further appeal to this court by the plaintiffs/appellants.

The first issue for determination submitted the appellant is "whether or not the appellants' other reliefs or claims as endorsed on the Amended Statement of Claim are secondary or incidental to the claim that Oshin is not a Ruling House in Igbogila". It is submitted that the appellants challenged the appointment of the 1st respondent on two grounds (1) Oshin Ruling House did not exist and therefore the 1st respondent could not be selected as the Baale and (2) the 1st respondent did not secure the majority of votes at the election.

Now, in its judgment, the Court of Appeal per Adamu, JCA., and concurred to by Olagunju and Adekeye. JJCA., observed:-

*"In my view since the back bone or substratum of the respondents' claims and pleadings is that Oshin is not one of the Ruling Houses in Igbogila Chieftaincy under the customary law relating thereto, the respondent's failure to prove so as found by the learned trial Judge in his judgment at pages 119-120 of the record must effect the fate of the other reliefs or claims of the said respondents which are secondary or incidental to the success of their main claim on the eligibility of Oshin as a Ruling House in Igbogila. It is, therefore my view that by reference to the findings of fact by the learned trial Judge on the matter and his subsequent order setting aside the appellant's appointment or selection, there is a transparent or apparent injustice and perversity in his evaluation of the evidence"*

I entirely agree with the respondent's counsel, that this observation is unassailable and is valid. The crux of the matter was that the appellants claimed that there was no Ruling House known as Oshin and since the first respondent is undoubtedly from Oshin Ruling House, it did not matter even if all the kingmakers voted for the first respondent, since, if, as claimed by the appellant. Oshin is not a House, to produce a Baale. So the fundamental and crucial issue was whether Oshin was a Ruling House or not. All other claims of the appellants as the plaintiffs would

serve no purpose, if the appellants were right that Oshin was not a Ruling House. Again, what the appellant claimed as their relief under “e” and “f” was that the appointment and approval of the first respondent as the Baale of Igbogila should be set aside because it was contrary to the native law and custom because there is not Oshin Ruling House. I cannot find any relief in relation to the number of votes secured by the first respondent which was claimed by the appellants. The appellants cannot now on appeal claim a relief which was never claimed before the trial court. I accordingly resolve the first issue against the appellants.

Now, issues 2, 3, 4 and 5 were argued together and they deal with the question whether the first respondent was nominated by the majority of Kingmakers. In my view, the complaints of the appellants are of no moment in view of the relief sought by the appellant as the plaintiffs at the trial court. For ease of reference and in order to show clearly what was claimed, I reproduce hereunder the appellants’ claims as the plaintiffs before the trial court:

“(a) A declaration that the purported approval of the first defendant as the new Baale of Igbogila from the Oshin Ruling House by the 2nd to 4th defendants is illegal, unconstitutional, null and void and of no effect begin contrary to and in violation of the provisions of the Chief’s Law [Cap. 19] Laws of Western Nigeria now applicable to Ogun State.”

(b) A declaration that there is no Oshin Ruling House in Igbogila in the Egbado North Local Government Area of Ogun State.”

(c) A declaration that there are three Ruling Houses in Igbogila namely, Esu, Fatunbi and Morenikeji Ruling Houses.”

(d) A declaration that Oshin Ruling House not being a Ruling House in Igbogila is not entitled to present, select, recommend or appoint any candidate or candidates for the vacant stool of the Baaleship of Igbogila.”

(e) A declaration that the purported approval of the 1st defendant as the Baale elect by the 2nd and 4th defendant is contrary to the customary law of appointment of a Baale of Igbogila.”

(f) An order setting aside the purported appointment and approval of the 1st defendant as the Baale of Igbogila etc.”

(g) An injunction restraining the 2nd - 4th defendants or any other

*person howsoever from recognising the Oshin Ruling House as a Ruling House in Igbogila and from installing or performing the Iwoye Ceremony of the 1st defendant as the new Baale of Igbogila etc.”*

(h) *An order to compel the 2nd - 4th defendants to call upon the Fatunbi Ruling House or failing which the Morenikeji Ruling House to select a candidate or candidates to fill the vacant stool of Baale of Igbogila.”* B

Thus, the chief relief the appellants sought in this action was to set aside the appointment and the approval of the 1st respondent as the Baale of Igbogila mainly on the ground that in accordance with the customary law, there is no Ruling House known as Oshin and that the 1st respondent having hailed from Oshin House is not competent to be the Baale of Igbogila. Accordingly, the issue of the number of votes scored by any of the contestants was not a matter for which the appellants as the plaintiffs sought any relief. It is elementary and settled law that a court will not normally grant any relief to a party which has not been specifically claimed. See Akinbobola v. Plisson Fisco [1991] 1 NWLR (Pt. 167) 270. The appellants did not claim or ask that the 1st appellant having won the election, he should be declared as the elected Baale of Igbogila. It is my view that the argument of counsel on all these issues cannot and did not affect the crucial findings and the decision of the lower court. It is also now settled that a party cannot maintain on appeal a case diametrically different from one maintained at the trial. An appeal is normally a continuation of the trial. D E

In any event, it is not every mistake or error in a judgment that will result in the appeal being allowed. It is only when the error is substantial in that it has occasioned a miscarriage of justice that this court will interfere. See Onajobi v. Olanipekun [1985] 4 S.C (Pt. 2) 156. Ike v. Ugboaja [1993] 6 NWLR (Pt. 301) 539, Anyanwu v. Mbara [1992] 5 NWLR (Pt. 242) 386. But these issues are entirely academic and in essence matters of no consequence in the determination of the matter having regard to the fact that no relief was asked for in relation to them at the trial and indeed as resolved in issue one, that these various matters are clearly merely incidental to the crucial claim of the non-existence of the Oshin Ruling House. I accordingly resolve issues 2, 3, 4 and 5 against the appellants. F G H

Next, the learned counsel for the appellants argued issues 6, 7 and 8.

These are concerned with the finding whether Oshin ruling house exists in Igbogila. Now, both the trial court and the Court of Appeal made a finding that in Igbogila there is Oshin Ruling house. The appellants did not appeal against the finding of the learned trial Judge at the Court of Appeal. This  
B court, in the absence of special circumstances indicating obvious error leading to a miscarriage of justice will not reopen concurrent and consistent questions of fact. See *Coker v. Oguntola* [1985] 2 NWLR (Pt. 5) 87, *Ezewani v. Onwordi* [1986] 4 NWLR (Pt. 33) 27, *Otitoju v. Governor of Ondo State*  
C [1994] 4 NWLR (Pt. 340) 518. By these issues, this court is asked to retook at the concurrent findings of fact without assigning any cogent reasons or special circumstances why this court will embark on such course of action.

I find no merit in these issues and they are also accordingly resolved against the appellants.

D It is for these observations and the opinion contained in the leading judgment of my Lord, Pats-Acholonu, JSC, that I too, dismiss the appeal as lacking in merit. I affirm the decision of the Court of Appeal. The first respondent is entitled to costs assessed at N10,000.00.

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