

SUPREME COURT OF NIGERIA

9TH JULY, 2004. SC.206/1999

**CORAM:- S. M. A. BELGORE, A. I. KATSINA-ALU, A. O.
EJIWUNMI, D. MUSDAPHER, D. O. EDOZIE, JJSC**

1. LASISI OYEWUNMI AROYEWUN

2. ALHAJI LASISI AYODABO

3. Tafa ODEDE APPELLANTS

4. ALHAJI ALAKA IKU OLA

5. AMUSA ADEBISI

AND

OBA YESUFU ADEOLA ADEDIRAN RESPONDENT
(Ajoriwin of Irawo)

CHIEFTAINCY MATTERS - Evidence - Chief's jurisdiction - Facts in this case - Show that the new settlement founded by 1st appellant - Is still under the 1st respondent's chieftaincy - As the only recognized Chief (H1)

CHIEFTAINCY MATTERS - Actions - Jurisdiction - Present suit is not a chieftaincy dispute - As to raise the issue of jurisdiction (H2)

APPEALS - Concurrent findings - Will not be disturbed - As no miscarriage of justice was occasioned (H3)

FACTS

In 1952 the 1st defendant/appellant and the respondent/plaintiff contested entitlement to the chieftaincy stool of Oba Ajoriwin being the only recognized chieftaincy of Irawo in Ifedapo Local Government Area of Oyo State. Respondent was successful in the contest. The 1st appellant did not challenge his success but he rather moved about 2 miles away with his supporters and founded an area called Irawo-Owode.

Towards abating the nuisance created by the rebellion of the 1st appellant, the respondent filed this action before the High Court. He claimed a declaration that he is the only recognized Chief of Irawo, and an injunction

restraining the 1st appellant from parading himself in any form as a recognized chief within Irawo community. The trial court found in favour of the respondent. Appellants' appeal to the Court of Appeal was dismissed. They have further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether in all the circumstances of this case the Court of Appeal was right in making the order for declaration as made and in granting the order of injunction.

2. Whether the Court of Appeal was right in holding that the trial court has jurisdiction in the matter and that the dispute was not a chieftaincy dispute within the ouster clause of the Chief's Law.

HELD (Unanimously dismissing the appeal per **KATSINA-ALU JSC**)

Evidence - Chief's jurisdiction

1. From the pieces of evidence called by the appellants themselves, which I have highlighted above, one crucial fact has been established. It is this. That the area they now call Irawo-Owode has always been within the jurisdiction of Oba Ajoriwin. It is important not to lose sight of the fact that it was when in 1952, the 1st appellant lost the throne to the respondent that he moved to a little distance away from Irawo town with his supporters to found Irawo-Owode an area within the jurisdiction of the Ajoriwin. This fact, indeed, is not in dispute. Put in another way, the 1st respondent was from the outset and still is the only recognized Chief of Irawo in Ifedapo Local Government Area of Oyo State. The complaint of the appellants in this regard is clearly without merit. (p. 2187 D)

Present suit is not a chieftaincy dispute

2. I think there is a misconception of the plaintiff's claim. Section 24 of the Chief's Law Cap. 19 Vol. 1 Laws of Western Nigeria 1959 defines "*chieftaincy question*" as any question relating to the selection, appointment, installation, deposition, suspension or abdication of a chief". A causal reading of the claim of the plaintiff would reveal that plaintiff was not challenging the selection, appointment and installation of the 1st defendant. This is because the plaintiff contested with the 1st defendant for the throne of

Ajoriwin of Irawo in 1952. The plaintiff won and was duly installed. He is still on the throne.

In the second place, the plaintiff's suit is not against his deposition or suspension. As I indicated above, the plaintiff is the Ajoriwin of Irawo. He has neither been deposed nor suspended. It can therefore be seen clearly that the plaintiff's claim in the present action is not a chieftaincy dispute. (p. 2188 C)

APPEALS - Concurrent findings

3. As I have already indicated there is a concurrent finding by the lower courts that the claim of the plaintiff was not a chieftaincy claim. It is now settled practice that the Supreme Court will not interfere with concurrent findings of the lower courts unless they are not justified by the evidence and have thereby occasioned a miscarriage of justice. The appellants have not persuaded me to hold a contrary view. (p. 2188 G)

REPRESENTATION

Chief M. O. Ayorinde, (with him, K. F. Elelu Esq.), for the Appellants.
Chief Bisi Adegunle, for the Respondent.

CASES REFERRED TO

Akeredolu v. Akinremi (1989) 5 S. C 102, (1989) 3 NWLR (Pt 108) 164
Osho v. Foreign Finance Corporation (1991) 4 NWLR (Pt. 184) 157

STATUTE REFERRED TO

Chiefs Law Cap. 19 Vol. 1 Laws of Western Nigeria 1959 s. 24

LEAD JUDGMENT BY KATSINA-ALU JSC

This appeal is from a judgment of the Court of Appeal, Ibadan delivered on 25th June, 1990 whereby the court dismissed the appeal of the defendants.

By a statement of claim dated 14th March, 1986, the plaintiff claimed against the defendants four reliefs, to wit:

(i) Declaration that the plaintiff is the only recognized Chief or Oba

Ajoriwin of Irawo in Ifedapo Local Government Area of Oyo State of Nigeria.

(ii) Declaration that there is only one Irawo and no Irawo-Ile of Irawo-Owode in Ifedapo Local Government Area of Oyo State of Nigeria.

B (iii) Perpetual injunction restraining the 1st defendant from parading himself in any form as a recognized Chief or Baale within Irawo Community.

C (iv) Injunction restraining defendants, their agents, privies and or supporters from illegally naming and using part of Irawo as Irawo Owode.

However, in the course of the trial the plaintiff withdrew the reliefs claimed in paragraphs (ii) and (iv) above. The only live claims before the trial court were (i) and (iii).

D The brief facts of this case are these. Prior to 1952 the plaintiff and the 1st Defendant contested for the Obaship of Irawo otherwise known as the Ajoriwin of Irawo a town near Oyo in the Oyo State of Nigeria. The plaintiff triumphed and was duly installed as the Ajoriwin of Irawo. The 1st defendant did not challenge his defeat in any of the ways open to him under E the law. In protest however, the 1st defendant and his supporters moved from Irawo to a place about 2 miles away to settle. The defendants christened this settlement "*Irawo-Owode*"

F As I have already indicated the defendants lost both in the trial court and the Court of Appeal. The defendants have now further appealed to this court.

In their brief of argument the defendants raised four issues for our determination. These read as follows:

G 1. Whether the Court of Appeal was right in view of the pleadings of the parties, especially the respondents, and their evidence before the trial High Court, when it held that Irawo means Irawo Owode plus Irawo Ile when this was not the case canvassed by the parties.

H 2. Whether the Court of Appeal was right to have defined Irawo to mean Irawo Owode and Irawo Ile when the trial High Court had earlier found that the two places were separate and when there has been no appeal on the said finding.

3. Whether the dispute in this proceeding is a chieftaincy dispute

and if so, whether the High Court or any court had jurisdiction at any time prior to the 1979 Constitution to entertain a dispute involving chieftaincy, the cause of action having arisen in 1952 and whether or not the provisions of the 1963 Constitution prevail.

4. Whether an order of injunction can be rightly ordered when a legal B right thereto has not been established.

For the plaintiff, two issues were set down for determination by us in this appeal. They read as follows:

1. Whether in all the circumstances of this case the Court of Ap- C
peal was right in making the order for declaration as made and in granting the order of injunction.

2. Whether the Court of Appeal was right in holding that the trial D
court has jurisdiction in the matter and that the dispute was not a chief-
taincy dispute within the ouster clause of the Chief's Law.

The two issues raised by the plaintiff encompass the four issues formulated by the defendants. For this reason, I adopt the plaintiff's issues for the purpose of determining this appeal.

As I have earlier indicated, in the course of the trial, the plaintiff E
withdrew reliefs (ii) and (iv) leaving only reliefs (i) and (iii) which for refer-
ence I read them again:

(i) Declaration that the plaintiff is the only recognized chief or Oba F
Ajoriwin of Irawo in Irawo in Ifedapo Local Government Area of Oyo State
of Nigeria

(ii) Perpetual injunction restraining the 1st defendant from parad-
ing himself in any form as a recognized Chief or Baale within Irawo Com-
munity,"

I shall consider the issues raised in this appeal in the light of claims G
(i) and (iii) reproduced above.

ISSUE No. 1: The plaintiff sought a declaration that he is the only
recognized Chief in Irawo or Oba Ajoriwin of Irawo in Ifedapo Local Gov-
ernment Area. The Defendants appellants had contended in their brief of H
argument that the court of trial had found as a fact that there were Irawo-
Ile and Irawo-Owode in line with their Statement of Defence. It was
therefore the submission of the defendants that the claim of the plaintiff that

there was only one Irawo was not established. I must point out here that though the learned Judge had found as a fact that there were two Irawos :- Irawo-Ile and Irawo-Owode, the learned trial Judge however held that the plaintiff is the only recognized Chief in Irawo as a whole. In his own words:

B *“In sum, the plaintiff succeeds in part,
 (i) declaration is granted that the plaintiff is the only recognized
 Chief or Oba Ajoriwin of Irawo, be it know as Irawo-Owode in Ifedapo
 Local Government Area of Oyo State of Nigeria.”*

C The Court of Appeal affirmed the above decision of the trial Judge.
 In the course of its judgment the Court of Appeal per Akpabio, JCA., said.

*“..... I hold the view that Irawo-Owode plus Irawo-Ile
 together make up what is known as Irawo simpliciter, and the plaintiff/
 respondent as the Ajoriwin of Irawo is the common Oba for both districts,
 D i.e., Irawo-Owode and Irawo-Ile.*

 That court then proceeded to make the following declaration:

*“It is therefore hereby declared that the plaintiff/respondent is the
 only recognized Chief or Oba Ajoriwin of Irawo in Ifedapo Local Govern-
 E ment Area of Oyo State of Nigeria.”*

 The above declaration is amply supported by the evidence pre-
 sented before the trial court. Let me explain. The appellants at page 2 of their
 brief of argument stated as follows:

F *“Up till 1952, there used to be a town known simpliciter as Irawo.
 The ruler was known as Ajoriwin of Irawo. Around that period, there was
 a dispute between the 1st Appellant and the 1st Respondent on the ascen-
 sion to the throne of Ajoriwin of Irawo. In the ultimate the 1st Respon-
 dent was installed to the throne.*

G *The 1st Appellant and his supporters in protest moved from Irawo
 to a place about 2 miles away to settle. The new place was called ‘Irawo
 Owode’ by them. The situation has remained so since 1952.”*

H In the course of the trial the 5th defendant/appellant, Amusa Adebisi
 testified as D.W.I. He testified in part thus:

*“We used to call the whole place then Irawo. The name Irawo-Ile
 came about when the first defendant left the town for Irawo-Owode”.*

 Under cross-examination this witness said:

“The NTC was there before I was born. I know that the Ajoriwin leased the land to NTC on behalf of the entire Irawo Community. The only secondary school we have is known as Comprehensive High School, Irawo, not Irawo-Ile or Irawo-Owode. Our maternity centre is Irawo Maternity Centre. Our Post Office is known as Irawo Postal Agency. Our Customary Court is Irawo Customary Court..... I know that the Ajoriwin is the Oba of whole Irawo not for Irawo-Ile alone, it includes Irawo-Owode” (Underlining for emphasis).

D.W.3, Lawani Akande Aroyewun is the 1st defendant appellant in this court. In his evidence he said inter alia:

“Oba Aderinola was the Oba Irawo some 48 years ago There was never two Irawos but one”

Under cross-examination, the 1st Appellant testified thus:

“The former Ajoriwin leased the land at Owode to the NTC on behalf of himself and the entire Irawo Community. The NTC is still there paying rent to the Ajoriwin now on the throne.”

From the pieces of evidence called by the appellants themselves, which I have highlighted above, one crucial fact has been established. It is this. That the area they now call Irawo-Owode has always been within the jurisdiction of Oba Ajoriwin. It is important not to lose sight of the fact that it was when in 1952, the 1st appellant lost the throne to the respondent that he moved to a little distance away from Irawo town with his supporters to found Irawo-Owode an area within the jurisdiction of the Ajoriwin. This fact, indeed, is not in dispute. Put in another way, the 1st respondent was from the outset and still is the only recognized Chief of Irawo in Ifedapo Local Government Area of Oyo State. The complaint of the appellants in this regard is clearly without merit.

ISSUE NO.2: The second issue is whether the Court of Appeal was right in holding that the trial court has jurisdiction in the matter and that the dispute was not a chieftaincy dispute. In other words there is a concurrent finding of fact that the claim herein is not a chieftaincy claim The defendants/appellants at page 6 of their brief of argument state as follows:

“A look at the claims of the plaintiff/respondent as endorsed on the

fact of both the Writ of Summons and Statement of Claim shows that the plaintiff in the main had (4) four legs of claim two of which deals (sic) mainly with chieftaincy matters:

Declaration that the plaintiff is the only recognized Chief or Oba
B Ajoriwin of Irawo in Irawo in Ifedapo (sic) Local Government of Oyo State of Nigeria.

(2)

(3) Perpetual injunction restraining the 1st defendant from parad-
C ing himself in any form as a recognized Chief or Baale within Irawo com-
munity.

(4)

I think there is a misconception of the plaintiff's claim. Section
D 24 of the Chief's Law Cap. 19 Vol. 1 Laws of Western Nigeria 1959
defines "*chieftaincy question* "as any question relating to the selec-
tion, appointment, installation, deposition, suspension or abdication
of a chief". A causal reading of the claim of the plaintiff would reveal
that plaintiff was not challenging the selection, appointment and
E installation of the 1st defendant. This is because the plaintiff con-
tested with the 1st defendant for the throne of Ajoriwin of Irawo in
1952. The plaintiff won and was duly installed. He is still on the throne.

In the second place, the plaintiff's suit is not against his depo-
F sition or suspension. As I indicated above, the plaintiff is the Ajoriwin
of Irawo. He has neither been deposed nor suspended. It can there-
fore be seen clearly that the plaintiff's claim in the present action is
not a chieftaincy dispute.

G Now, this is what I think the plaintiff's claim is all about. What the
plaintiff sought to do in this action was to abate the nuisance created by the
rebellion of the 1st defendant.

As I have already indicated there is a concurrent finding by
H the lower courts that the claim of the plaintiff was not a chieftaincy
claim. It is now settled practice that the Supreme Court will not inter-
fere with concurrent findings of the lower courts unless they are not
justified by the evidence and have thereby occasioned a miscarriage

of justice. The appellants have not persuaded me to hold a contrary view. See *Akeredolu v. Akinremi* (1989) 5 S. C 102, (1989) 3 NWLR (Pt 108) 164; *Osho v. Foreign Finance Corporation* (1991) 4 NWLR (Pt. 184) 157.

In the result this appeal fails. I dismiss it and affirm the decisions of B the High Court and the Court of Appeal. The respondent is entitled to costs of N 10,000.00 against the appellant.

C

BELGORE JSC

I read the judgment of my learned brother, Katsina-Alu, JSC., and I am in full agreement with him that this appeal is devoid of merit. I dismiss it for the reasons ably adumbrated in that judgment with the same order as to D costs.

EJIWUNMI JSC

I have had the advantage of reading in draft the judgment just delivered by my learned brother, Katsina-Alu, JSC. I entirely agree with the reasons given therein for dismissing this appeal. I too will dismiss the appeal. I agree with the order as to costs as contained in the judgment.

F

MUSDAPHER JSC

I have had the opportunity to read before now the judgment of my Lord, Katsina-Alu, JSC., just delivered with which I entirely agree. For the same reasons contained in the aforesaid judgment, I too dismiss the appeal. G I abide by the order for costs proposed in the lead judgment.

H

EDOZIE JSC

I had a preview of the leading judgment just read by my learned brother, Katsina-Alu, JSC., I agree with him that the Court of Appeal was right in making the order of declaration to the effect that the plaintiff/

respondent is the only recognized Chief or Oba Ajoriwin of Irawo. The Court was also right in granting an order of injunction against the 1st defendant/appellant restraining him from parading himself in any form as a recognized Chief or Baale within Irawo Community. There was overwhelming evidence from both sides to support the declaration and order of injunction. I also take the view that the plaintiff's claim did not relate to a chieftaincy matter within the contemplation of Section 24 of the Chief's Law, Cap 19 Vol. 1 Laws of Western Nigeria, 1959 and that the Plaintiff's action was well within the jurisdiction of the court.

The appeal lacks substance. I also dismiss it with N10,000.00 costs to the respondent against the appellants.

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