

SUPREME COURT OF NIGERIA

10TH DECEMBER, 2004. SC. 285/2001

**CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU, U. A. KALGO,
I. C. PATS-ACHOLONU, G. A. OGUNTADE, JJSC**

CHIEF IYHEJEE ELUGBE DEFENDANT/ APPELLANT

1. THE MILITARY ADMINIS-
TRATOR, EDO STATE OF NIGERIA

2. THE ATTORNEY-GENERAL AND
COMMISSIONER FOR JUSTICE,
EDO STATE OF NIGERIA DEFENDANTS/RESPONDENTS

3. THE COMMISSIONER FOR
SPECIAL DUTIES DIRECTORATE OF
LOCAL GOVT. AND CHIEFTAINCY
AFFAIRS, EDO STATE
AND

1. CHIEF EMIMIGBE OMOKHAFE

2. CHIEF ILAVBAEBOR IKHEAFE PLAINTIFFS/RESPONDENTS

3. CHIEF OMOIGBERA USIKHIFO

(For themselves and on behalf of Otuo
Ikeheheghoki Age-Group and members
of Otuo Clan Community except the
4th defendant and his supporters)

JURISDICTION - Absence of - Courts - Should consider the issue of
jurisdiction - Before any further step in the matter (H1)

JURISDICTION - Parties - Duty to raise issue of jurisdiction - Falls on all
the parties and the court (H2)

COURTS - Jurisdiction - Issue of - That arose before Court of Appeal -
Can be challenged before Supreme Court - By a party that did not raise it
before lower court (H3)

APPEALS - Jurisdiction - Fresh matters - Cannot be raised on appeal - But issue of jurisdiction is exceptional (H4)

APPEALS - Retrial - Ordered by lower court - Is proper (H5)

CHIEFTAINCY MATTERS - Jurisdiction - Statutes in issue - Were not violated by the claim (H6)

FACTS

Before the Edo State High Court, Afuze, plaintiffs/respondents filed an action against the 4th defendant/appellant and 3 others. They sought to establish that appellant was not entitled to hold the office of the chieftaincy stool in controversy. Respondents filed their Statement of Claim while appellant filed his Statement of Defence. Appellant filed an application, by which he prayed the trial Court to dismiss the claim on the ground inter alia, that respondents have no locus standi. The Court ruled that it had no jurisdiction to hear the suit and dismissed it.

Dissatisfied, the respondents filed an appeal before the Court of Appeal, which ordered a rehearing in allowing the appeal. An issue of jurisdiction was raised for the 1st time before the court below by the 1st to 3rd Defendants who did not file any pleading before the trial Court. Appellant has now appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether or not the appellant could in his appeal before this court raise as he has done under his issue No. 1 the question of the ouster of jurisdiction of the court founded on Section 5 of Decree No.1 of 1984 and Section 1(2) (b) (i) of Decree No. 13 of 1984.

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

1. I think that it is necessary to reiterate here that the question of absence of jurisdiction in a court to hear a matter is a threshold issue and of the greatest importance in all litigations. It must therefore be looked into first or at the

earliest opportunity offered depending on the particular proceeding. The reason is obvious. Any court proceedings, no matter how well conducted, without jurisdiction, will be a nullity. Where therefore the issue of jurisdiction is raised, the court has a duty to consider it timeously before taking any further step in the matter. (p. 2441 B)

Parties - Duty to raise issue of jurisdiction

2. I must stress here that the duty to raise absence of jurisdiction in a court to hear a case is not placed upon a particular party, or defendant in a proceeding. It is of course from experience that it is always the defendant who raises it. The court itself can and often raises the question. Indeed it is settled law that the issue of jurisdiction could be raised at any stage of the proceedings up to the Supreme Court. When it is successfully raised the suit is terminated by a striking out order. An order striking out a case effectively brings the proceedings to an end unless and until an appellate court rules otherwise. Therefore it is erroneous to think or argue as the respondent has done by his preliminary objection that the 4th defendant could not contest before this court the correctness of the decision of the court below on jurisdiction just because it was the 1st to 3rd defendants alone that had raised the issue before the court below. If the court below had struck out the suit on the ground that the court has no jurisdiction to hear it by virtue of Decrees 1 and 13 of 1984, the order would have enured to the benefit or advantage of the 4th defendant notwithstanding that the issue was raised by the 1st to 3rd defendants. It seems to me that the 4th defendant by the same parity of reason is clearly entitled to contest on appeal before this court the correctness of the decision of the court below on the point. (p. 2441 E)

Jurisdiction - Issue of - That arose before Court of Appeal

3. The court below heard the objection as raised by the 1st to 3rd defendants. The court took the view that the objection was not properly raised. It therefore discountenanced it. The question of jurisdiction of the court to hear the suit therefore legitimately becomes a point decided by the court below which could be challenged on appeal before this court irrespective of the party that had first raised the objection before the court below. I therefore overrule the

objection by the respondent on the point. (p. 2442 C)

Fresh matters - Cannot be raised on appeal save issue of jurisdiction

4. It is generally the law that fresh matters cannot be raised on appeal without leave of the court. But the issue of jurisdiction has always been considered exceptional. Therefore the Court of Appeal was in error not to have allowed the parties to fully address it on the question of jurisdiction raised before it. (p. 2443 E)

C APPEALS - Retrial

5. The Court of Appeal, per Akaahs, JCA., came to a right decision by sending the case back for a rehearing. It reasoned thus:

“In the instant case the learned trial Judge was duty bound to examine the pleading vis-a-vis the Traditional Rulers and Chiefs Edict, 1979; the Registered Declaration of Otuo Chieftaincy (otherwise known as B.S.L.N. No. 141 of 1979) and the Edo State Legal Notice (E.S.L.N. No.5) of 1996 to see if the reliefs sought in the suit are outside the said Registered Declaration on Otuo Chieftaincy. The learned trial Judge abdicated this responsibility and preemptorily dismissed the substantive suit on his understanding of the consequences attaching to Exhibit “B”.

The order remitting the suit for rehearing by Edo State High Court would enable the parties to agitate afresh the issue of jurisdiction vis-a-vis Decrees 1 and 13 of 1984. (p. 2443 F)

CHIEFTAINCY MATTERS - Jurisdiction

6. With respect to Decree No.1 of 1984, nothing in the claim of the plaintiffs questioned the validity of any law. And with respect to Decree No. 13 of 1984 whether or not the jurisdiction of the court is ousted will depend on whether or not there existed a chieftaincy declaration. In the manner the parties framed their pleadings, this is a question that will be determined at the trial.

In the result, I dismiss this appeal and affirm the order of retrial made by the court below. (p. 2444 E)

NOTABLE POINT OF INTEREST

OGUNTADE.JSC

1. Any party in a matter - Has the right to appeal

I think that the objection by the plaintiffs/respondents is misconceived. Section 233 (5) of the 1999 Constitution of the Federal Republic of Nigeria provides;

“5. *Any right of appeal to the Supreme Court from the decisions of the Court of Appeal conferred by this section shall be exercisable in the case of civil proceedings at the instance of a party thereto or.....*” (p. 2447 F)

REPRESENTATION

Shehu Ilegieumo, Esq., for the Appellant.

A. A. Atemoagbo, for the Respondents.

CASES REFERRED TO

FRN v. Ifegwu (2003) 5 S.C 252; (2003) 15 NWLR (Pt.842) 113

Ayman Ent. Ltd. v. Akuma Ind. Ltd. (2003) 6 S.C. (Pt. II) 44; (2003) 12 NWLR (Pt.836) 22

Onyema & Ors v. Oputa & Anor. (1987) 3 NWLR (Pt 60) 259 293

Alao v. C.O.P. (1987) 4 NWLR (Pt.64) 199

Oredoyin v. Arowolo (1939) 7 S.C. (Pt.II) 1, (1989) 4 NWLR (Pt 114) 172.

State v. Onagoruwa (1992) 2 NWLR (pt.221) 33

Okafor v. A. G. Anambra State (1991) 6 NWLR (Pt.200) 659

Adesanya v. President (1981) 5 S.C. (Reprint) 69; (1981) 1 NCLR 388

Pan-Asian African Co. Ltd. v. NICON (1982) 9 S.C. (Reprint) 1; (1982) 9 S.C 1

Tukur v. Gongola State (1989) 9 S.C. 1(1989) 4 NWLR (Pt.117) 57

STATUTES & RULES REFERRED TO

Constitution of Nigeria 1999 s. 233(5)

Decree No. 1 of 1984 s. 5

Decree No. 13 of 1984 s. 1(2)(b)

Chieftaincy Declaration Edict of Edo State

Court of Appeal Rules O. 3 r. 14(2)

LEADJUDGMENTBYKATSINA-ALU

The plaintiffs had brought their suit at the Afuze High Court of Edo State as the representatives “of Otuo Ekheheghaki Age-Group and members of Otuo Clan Community except the 4th defendant and his supporters” claiming against the four respondents (herein-after referred to as the defendants) the following reliefs:

“1. A DECLARATION that on the death of an Ovie (Ororoso) of Otuo before the expiration of his ten years tenure, no vacancy is created but his immediate deputy who is the second Enriyheha Traditional Chief automatically ascends the throne for the unexpired term of the late Ovie (Ororoso) in accordance with Otuo Customary law regulating succession to the Traditional Ruler title of the Ovie (Ororoso) of Otuo.

2. A declaration that on the 19th December, 1994, Otuo Igbogbe Chieftaincy Festival appointments of the then incoming Otuo Traditional Ruler Chiefs, the 1st plaintiff was appointed as the second Enriyheha traditional chief by Otuo kingmakers.

3. A declaration that on the death of the then Ovie (Ororoso) of Otuo, Chief L.B. Iraoya, on 4/9/95, the 1st plaintiff automatically succeeded him as the Ovie (Ororoso) of Otuo for his unexpired term.

4. A declaration that the 4th defendant, Chief lyhejee Elugbe not being an Enriheha title holder is competent to be the Ovie (Ororoso) of Otuo in accordance with the Otuo Customary Law regulating succession to the Traditional Ruler of Ovie (Ororoso) of Otuo and the Registered Otuo Chieftaincy Declaration 1979.

5. A declaration that any purported recommendation of appointment of the 4th defendant as Ovie (Ororoso) of Otuo is contrary to the Otuo Customary Law regulating succession to the Traditional Ruler Title of Ovie (Ororoso) of Otuo and is therefore null and void.

6. An injunction restraining the 1st, 2nd and 3rd defendants as agents of the Edo State Government from appointing or recognizing the 4th defendant as the Ovie (Ororoso) of Otuo to succeed Late Chief L.B. Iraoya.”

I intend in this judgment to make reference only to such aspects of the proceedings at the High Court which are relevant to the determination of the issues raised in this appeal.

The plaintiffs filed a Statement of Claim dated 14th May, 1996. The 4th defendant filed a Statement of Defence on 5th July, 1996. In paragraph B 17 of the said Statement of Defence, the 4th defendant pleaded:

“17. At or before the trial of this suit, the defendant will urge this Honourable Court to dismiss the plaintiffs’ action upon the following grounds:

(a) The plaintiffs have no locus standi to institute this suit.

(b) The suit discloses no cause of action.

(c) This Honourable Court has no jurisdiction to hear the suit.”

The 4th defendant on the same date i.e. 5/7/96 filed an application that the plaintiffs’ suit be dismissed for reason of the matters pleaded in paragraph 17 of his Statement of Defence as reproduced above. Arguments were later heard on the 4th defendant’s application. The trial Judge in his ruling of 21st March, 1997, held that he had no jurisdiction to hear the suit. The suit brought by the plaintiffs was accordingly dismissed. E

Dissatisfied, the plaintiffs brought an appeal before the Court of Appeal sitting at Benin City. It was inter alia contended by the plaintiffs before the Court of Appeal that the trial Judge was wrong to have peremptorily dismissed plaintiffs’ suit without hearing evidence. The F Court of Appeal, Benin (coram Rowland, Ibiyeye and Akaahs. JJCA)., heard the appeal. The judgment of the court was delivered on 12th March 2001. In the leading judgment delivered by Akaahs, JCA., concurred in by Rowland, JCA., and Ibiyeye, JCA., the appeal was allowed. The court below was of the view that the parties having filed pleadings the court of trial should have heard the case on its merits. It was ordered that the case be heard on its merits. G

The 4th defendant was dissatisfied with the judgment of the court and has now brought this appeal. In the appellant’s brief tiled on behalf of H the 4th defendant, two issues were identified as arising for determination in the appeal namely:

“(a) Has the lower court jurisdiction to entertain the appeal in view

of Section 5 of Decree No. 1 of 1984?

(b) Was the lower court right when it held in its judgment that “in fact the issue of ouster of jurisdiction does not arise and learned counsel has not followed the laid down procedure for raising such issues. It is contained in Order 3 Rule 14(2) of the Court of Appeal Rules which stipulate that a respondent who decides to contend on appeal that the decision of the court below should be affirmed on grounds other than those relied upon by the court must give notice to that effect, specifying the grounds of the contention.”

The respondent’s counsel in his brief took a preliminary objection to that part of the appellant’s issues dealing with ouster of the jurisdiction of the court which was hinged on Section 5 of Decree No. 1 of 1984 and Section 1(2)(b)(i) of Decree No. 13 of 1984. The learned counsel then proceeded to formulate one issue for determination, to wit:

“Whether the learned Justices of the Court of Appeal were right in holding that “in fact the issue of ouster of jurisdiction does not arise and learned counsel has not followed the laid down procedure for raising such issue.” It is contained in Order 3 Rule 14(2) of the Court of Appeal Rules which stipulate that a respondent who decides to contend on appeal that the decision of the court below should be altered on grounds other than those relied upon by the court must give Notice to that effect specifying the grounds of contention. The plaintiffs’ claim was not dismissed for ouster of jurisdiction.”

The question I ought to first determine is whether or not the appellant could in his appeal before this court raise as he has done under his issue No. 1 the question of the ouster of jurisdiction of the court founded on Section 5 of Decree No.1 of 1984 and Section 1(2) (b) (i) of Decree No. 13 of 1984. The respondent’s counsel anchored his objection on the fact that the 1st to 3rd defendants who had not filed a Statement of Defence before the High Court were the same parties who before the court below raised for the first time the absence of jurisdiction in the High Court to hear the suit as stipulated under Section 5 of Decree No. 1 of 1984 and Section 1 (2) (b) (i) of Decree No. 13 of 1984. Counsel argued that the High Court did not in its ruling on the objection raised by the 4th defendant decline to hear the case for the

reason that the two sections of Decree No. 13 of 1984 referred to above ousted the jurisdiction of the court. Finally, counsel argued that it was the 1st to 3rd defendants who in any case had for the first time raised the issue of ouster under Decrees 1 and 13 of 1984 before the court below and that the 4th defendant (now appellant) could not agitate before this court an issue B which was raised by other defendants in the court below.

I think that it is necessary to reiterate here that the question of absence of jurisdiction in a court to hear a matter is a threshold issue and of the greatest importance in all litigations. It must therefore be C looked into first or at the earliest opportunity offered depending on the particular proceeding. The reason is obvious. Any court proceedings, no matter how well conducted, without jurisdiction, will be a nullity. See Ayman Ent. Ltd, v. Akuma Ind. Ltd. (2003) 6 S.C. (Pt. II) 44; (2003) 12 NWLR (Pt.836) 22; Alao v. C.O.P. (1987) 4 NWLR (Pt.64) 199; Oredoyin D v. Arowolo (1939) 7 S.C. (Pt.II) 1, (1989) 4 NWLR (Pt 114) 172. Where therefore the issue of jurisdiction is raised, the court has a duty to consider it timeously before taking any further step in the matter. See State v. Onagoruwa (1992) 2 NWLR (pt.221) 33; Okafor v. A. G. Anambra E State (1991) 6 NWLR (Pt.200) 659.

I must stress here that the duty to raise absence of jurisdiction in a court to hear a case is not placed upon a particular party, or defendant in a proceeding. It is of course from experience that it is F always the defendant who raises it. The court itself can and often raises the question. See Adesanya v. President (1981) 5 S.C. (Reprint) 69; (1981) 1 NCLR 388. Indeed it is settled law that the issue of jurisdiction could be raised at any stage of the proceedings up to the Supreme Court. See: G FRN v. Ifegwu (2003) 5 S.C 252; (2003) 15 NWLR (Pt.842) 113; Pan-Asian African Co. Ltd, v. NICON (1982) 9 S.C. (Reprint) 1; (1982) 9 S.C 1; Tukur v. Gongola State (1989) 9 S.C. 1(1989) 4 NWLR (Pt.117) 57. When it is successfully raised the suit is terminated by a striking out order. An order striking out a case effectively brings the proceedings to an end H unless and until an appellate court rules otherwise. Therefore it is erroneous to think or argue as the respondent has done by his preliminary objection that the 4th defendant could not contest before

this court the correctness of the decision of the court below on jurisdiction just because it was the 1st to 3rd defendants alone that had raised the issue before the court below. If the court below had struck out the suit on the ground that the court has no jurisdiction to hear it by virtue of Decrees 1 and 13 of 1984, the order would have enured to the benefit or advantage of the 4th defendant notwithstanding that the issue was raised by the 1st to 3rd defendants. It seems to me that the 4th defendant by the same parity of reason is clearly entitled to contest on appeal before this court the correctness of the decision of the court below on the point.

The court below heard the objection as raised by the 1st to 3rd defendants. The court took the view that the objection was not properly raised. It therefore discountenanced it. The question of jurisdiction of the court to hear the suit therefore legitimately becomes a point decided by the court below which could be challenged on appeal before this court irrespective of the party that had first raised the objection before the court below. I therefore overrule the objection by the respondent on the point.

Now to the issues for determination in the appeal. I propose to deal with the two issues together. I observed earlier in this judgment that the 4th defendant pleaded in his Statement of Defence at paragraph 17 thereof that the plaintiffs had no locus standi to bring the suit. Later the 4th defendant brought an application that plaintiffs' suit be dismissed. The High Court in its ruling delivered on 21-3-97 on the application by the 4th defendant upheld the objection raised in these words:

"I have carefully considered the copious affidavit evidence from both sides and the submissions of learned counsel on them. There is no doubt that in view of the peculiar circumstances of the customs and tradition of the people of Otuo, the plaintiffs/respondents herein have interest in the Ovie of Otuo Chieftaincy Title. I so hold for whatever it is worth.

However, in the face of Exhibits A and B attached to the Motion Papers filed herein on 1674/96, and the consequences attaching to Exhibit B in particular, under our applicable laws, no useful purpose will be served by prolonging the life of the substantive suit.

Accordingly, the order of interim injunction made herein is hereby vacated and the substantive suit is hereby dismissed.”

The plaintiffs, being dissatisfied with the ruling of the High Court brought an appeal against it at the Court of Appeal, Benin Division. The Court of Appeal in its judgment on 12/3/2001 allowed the appeal.

I would like to recall here that it was at the Court of Appeal that the 1st - 3rd defendants raised the issue of jurisdiction premised on the provisions of Decrees Nos. 1 and 13 of 1984. In reacting to the submissions by the 1st - 3rd defendants that the High Court has no jurisdiction to entertain the suit, the Court of Appeal, per Akaahs, JCA., stated thus:

“The arguments put forward by the learned Chief Legal Officer, Ministry of Justice, Edo State on behalf of the 1st- 3rd respondents cannot be accommodated in this appeal. In fact the issue of ouster of jurisdiction does not arise and learned counsel has not followed the laid down procedure for raising such issue. It is contained in Order 3 Rule 14(2) Court of Appeal Rules which stipulated that -

‘A respondent who desires to contend on the appeal that the decision of the court below should be affirmed on grounds other than those relied upon by that court must give notice to that effect specifying the grounds of the contention.’

The plaintiffs’ claim was not dismissed for ouster of jurisdiction.”

It is generally the law that fresh matters cannot be raised on appeal without leave of the court. But the issue of jurisdiction has always been considered exceptional. Therefore the Court of Appeal was in error not to have allowed the parties to fully address it on the question of jurisdiction raised before it. However the Court of Appeal, per Akaahs, JCA., came to a right decision by sending the case back for a rehearing. It reasoned thus:

“In the instant case the learned trial Judge was duty bound to examine the pleading vis-a-vis the Traditional Rulers and Chiefs Edict, 1979; the Registered Declaration of Otuo Chieftaincy (otherwise known as B.S.L.N. No. 141 of 1979) and the Edo State Legal Notice (E.S.L.N. No.5) of 1996 to see if the reliefs sought in the suit are outside the said Registered Declaration on Otuo Chieftaincy. The learned trial Judge

abdicated this responsibility and preemptorily dismissed the substantive suit on his understanding of the consequences attaching to Exhibit “B”.

The order remitting the suit for rehearing by Edo State High Court would enable the parties to agitate afresh the issue of jurisdiction vis-a-vis Decrees 1 and 13 of 1984. I think it is necessary to set out the provisions of Section 5 of Decree No. 1 of 1984 and Section 1 (2)(b)(i) of Decree No. 13 of 1984 on which reliance was placed as ousting the jurisdiction of the court.

Section 5 of Decree No. 1 of 1984 provides:

“No question as to the validity of this or any other Decree or any Edict shall be entertained by any court of law in Nigeria.”

Section 1 (2)(b)(i) of Decree No. 13 of 1984 provides:

“No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict and if any such proceedings are instituted before or after the commencement of the Decree, the proceedings shall abate, be discharged and made void.”

With respect to Decree No.1 of 1984, nothing in the claim of the plaintiffs questioned the validity of any law. And with respect to Decree No. 13 of 1984 whether or not the jurisdiction of the court is ousted will depend on whether or not there existed a chieftaincy declaration. In the manner the parties framed their pleadings, this is a question that will be determined at the trial.

In the result, I dismiss this appeal and affirm the order of retrial made by the court below. I award costs in favour of the plaintiffs/respondents against the 4th defendant/appellant which I assess at N10,000.00.

KUTIGIJSC

I read in advance the judgment just delivered by my learned brother, H Katsina-Alu, JSC. I agree with him to dismiss the appeal. I think the Court of Appeal was right when it set aside the order dismissing the plaintiffs’ suit and ordered the trial of the substantive suit before another Judge of Edo State High Court. The dismissal of the suit was clearly misconceived as it was

premature. I will therefore dismiss this appeal as lacking in merit. The appeal is accordingly dismissed with costs as assessed.

KALGOJSC

I have read in advance the judgment just delivered by my learned brother, Katsina-Alu, JSC., in this appeal. I entirely agree with the reasoning and conclusions reached therein and I am fully convinced that the appeal has no merit and should be dismissed.

The issue of jurisdiction is so important in our adjudicative procedure that it can be raised at any stage of the proceedings of any court in this country. See *Onyeama & Ors. v. Oputa & Anor.* (1987) 3 NWLR (Pt.60) 259 at 293; *Adegoke v. Adibi* (1992) 5 NWLR (Pt.242) 410; *Akinfolarin v. Akinola* (1994) 3 NWLR (Pt.335) 659. In the circumstances of this case, I am of the view that the issue of jurisdiction of the trial court was properly raised in the trial court but that the learned trial Judge was wrong to uphold the objection and proceed to terminate or dismiss the case at that stage without hearing the evidence of the parties on their pleadings. Therefore the Court of Appeal was perfectly right in setting aside the order of the trial court and remitting the case back to the trial court for hearing and determination as the issue of jurisdiction was wrongly decided by the trial court.

In the result, I also dismiss this appeal and award the costs of N10,000,00 in favour of the plaintiffs/respondents.

PATS-ACHOLONUJSC

I have read in draft the judgment of my learned brother and Lord, Katsina-Alu, JSC., and I agree with him. I strongly believe and I hold it as one of our cardinal principles of jurisprudence that where a party either due to some carelessness or oversight overlooked a legal point bordering on the competence of a court at the earliest moment or opportunity, he should not be estopped or barred from raising that point at a later date but more particularly before the rendition of judgment after he might have discovered the mistake. Jurisdiction being a fundamental gateway to an assumption of

power can be raised at any time as the practice is not immutable. It is a sine qua non for the existence of power to adjudicate on a matter.

I too would dismiss the appeal and affirm the order of retrial. I abide by the consequential orders made.

B _____

OGUNTADEJSC

C This was a chieftaincy dispute in connection with succession to the traditional rulership of Otuo in Edo State. The plaintiffs before the lower court (hereinafter described as plaintiffs/respondents) had sought five declaratory and two injunctive reliefs against the 1st to 3rd respondents and the 4th defendant/appellant, (all the four being defendants).

D The parties filed and exchanged pleadings. But before the suit proceeded to hearing the 4th defendant/appellant brought an application that the plaintiffs/respondents' suit be dismissed on the grounds that (1) the plaintiffs/respondents had no standing to institute the suit; (2) the suit disclosed no cause of action and (3) the court had no jurisdiction to entertain E the suit. The trial Judge acceded to the 4th defendant/appellant's prayers and the suit was dismissed.

Dissatisfied, the plaintiffs/respondents brought an appeal before the Court of Appeal sitting at Benin (hereinafter referred to as the court below). F The court below allowed the appeal and ordered that the case be heard on its merits. It is important to mention that before the court below, the 1st to 3rd respondents (who were the 1st to 3rd defendants before the trial court) raised the issue that the court had no jurisdiction to hear the suit. That contention was anchored on the provisions of Section 5 of Decree No. 1 of 1984 and G Section 1 (2)(b)(i) of Decree No. 13 of 1984.

The court below in dismissing the objection as to jurisdiction observed that the 1st to 3rd respondents had not filed a respondent's notice as they should do pursuant to Order 3 rule 14(2) of the Court of Appeal Rules. It H therefore refrained from considering the objection.

The 4th defendant/appellant has brought a further appeal to this court. Although he had not himself raised the issue of absence of jurisdiction in the court to hear the suit, which issue, was premised upon .Section 5 of Decree

No.1 of 1984 and Section 1 (2)(b)(i) of Decree No.13 of 1984, the 4th defendant/appellant's appeal to this court was based solely on the failure of the court below to respond to the issue concerning absence of jurisdiction which 1st to 3rd respondents had raised before the court below. The two issues formulated for determination in the appeal are:

“(a) Has the lower court jurisdiction to entertain the appeal in view of Section 5 of Decree No. 1 of 1984.

(b) Was the lower court right when it held in its judgment that “in fact the issue of ouster of jurisdiction does not arise and learned counsel has not followed the laid down procedure for raising such issues. It is contained in Order 3 Rule 14(2) of the Court of Appeal Rules which stipulates that a respondent who decides to contend on appeal that the decision of the court below should be affirmed on grounds other than those relied upon by the court must give notice to that effect specifying the grounds of the contention.”

The plaintiffs/respondents in their brief before this court, have raised an objection to the above two issues. It was contended that since it was the 1st to 3rd respondents who had raised before the court below the issue of absence of jurisdiction premised on Section 5 of Decree No.1 of 1984 and Section 1(2)(b)(i) of Decree No. 13 of 1984, the 4th defendant/appellant could not base his appeal on the said objection which he had not himself raised before the court below.

I think that the objection by the plaintiffs/respondents is misconceived. Section 233 (5) of the 1999 Constitution of the Federal Republic of Nigeria provides;

“5. Any right of appeal to the Supreme Court from the decisions of the Court of Appeal conferred by this section shall be exercisable in the case of civil proceedings at the instance of a party thereto or.....”

The 4th defendant/appellant was a party to the proceedings before the court below and therefore possesses the right to appeal against decisions made by the court below in the proceedings. It suffices to add that if the court below had entertained the objection by 1st to 3rd respondents and struck out the case, the 4th defendant would have benefited from the order. On plain commonsense it seems to me that reciprocally, the 4th defendant/

appellant must possess the right to challenge a decision made in the case with which he was dissatisfied.

Now to the issues raised for determination. I think the court below was in error to have dismissively waived aside the objection raised by the 1st B to 3rd respondents on jurisdiction founded on the provisions of Section 5 of Decree No.1 of 1984 and Section 1 (2)(b)(i) of Decree No. 13 of 1984. The issue of the jurisdiction of a court to entertain a matter is very important in all forms of litigation. It is a threshold issue. It can be raised at any state C of the proceedings and even for the first time on appeal. See *Adesanya V, President* (1981) 5 S.C. (Reprint) 69 (1981) 2 NCLR 388; and *FRN v. Ifegwu* (2003) 5 S.C. 252; (2003) 15 NWLR (Pt.812) 113. In *Gaji v. Paye* (2003) 5 S.C. 53; (2003) 8 NWLR (Pt.823) 583 at 599 this court observed:

D *“The general principle is that when a party seeks to file and argue in this court any fresh issue not canvassed in the lower court whether that issue pertains to land or otherwise, leave to file and argue the issue must be heard and obtained first. But where the point or issue sought to be raised relates to the issue of jurisdiction, the point or issue can properly be filed E and argued with or without the leave of the court even if it is being raised for the first time. See Obiakor v. The State (2002) 6 S.C. (Pt. II) 33; (2002)10 NWLR (Pt.776) 61 2 at 626.”*

I think that the lower court should have heard the arguments of the F parties on the issue of jurisdiction and decided the point. But having said the above, I must bear in mind that the final order made by the court below was that the case be heard on its merits. Was this order appropriate in the circumstances having regard to the issue of jurisdiction raised but which was G not considered by the court below? I think the order was right Section 5 of Decree No.1 of 1984 provides.

“No question as to the validity of this or any other Decree or any Edict shall be entertained by any court of law in Nigeria.”

And Section 1 (2)(b)(i) Decree No. 13 of 1984 provides:

H *“No court proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict and if any such proceedings are instituted before or after the commencement of the Decree, the proceed-*

ings shall abate, be discharged and made void.”

With respect to Section 5 of Decree No.1 of 1984, the plaintiffs/respondents did not by their suit challenge or question the validity of any Decree or Edict. It was, therefore, irrelevant for the 4th defendant/appellant to place reliance on the provision. And with regard to Section 1 (2)(b)(i) of Decree No.13 of 1984, it is to be said that the plaintiffs/respondents did not in their Statement of Claim plead or place reliance on the Chieftaincy Declarations Edict of Edo State. The 4th defendant/appellant however pleaded in paragraphs 4 and 16 of his Statement of Defence thus:

“4. *The defendant shall aver that in respect of succession to the stool of Ovie of Otuo there is in existence a valid Registered Declaration of 1979 upon which the defendant shall at the trial of this suit rely.*

16. *The defendant shall aver that sometimes in 1974 following dispute (sic) succession to the stool of Ovie of Otuo there was an enquiry into inter alia the customary law of succession to the throne of Ovie of Otuo sequel to which the then Bendel Government issued a White Paper and later a Registered Declaration copies of which the defendant shall at the trial rely.”* (Underlining mine)

It is apparent that the final order made by the court below which was for a trial on the merit, has enabled the 4th defendant/appellant to agitate anew the issue whether or not there was jurisdiction in the court to hear the dispute. Until evidence is led and the Registered Declaration pleaded by the 4th defendant/appellant is tendered before the court, the question whether or not the provisions of Section 1 (2)(b)(i) ousted the jurisdiction of the court could not be decided.

The conclusion I arrive at is that notwithstanding the failure of the court below to consider and rule upon the issue of jurisdiction raised by the 1st to 3rd respondents, the court below still came to the right decision in the matter. I, therefore, agree with the lead judgment of my learned brother, Katsina-Alu, JSC. I would also dismiss this appeal and affirm the order for a retrial made by the court below. I award damages in favour of the plaintiffs/respondents against the 4th defendant/appellant which I assess at N 10,000.00.