

**SUPREME COURT OF NIGERIA**  
27TH FEBRUARY, 2004. SC. 230/2000  
**CORAM:- S. U. ONU, A. I. IGUH, N. TOBI, D. MUSDAPHER,**  
**I. C. PATS-ACHOLONU, JJSC.**

1. OBA RUFUS A. ADEJUGBE ..... APPELLANT  
2. JAMES BAMIDELE  
AND  
ENGR. JOSEPH AKANBI OLOGUNJA ..... RESPONDENT

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AFFIDAVITS - Dispute as to material facts - There existed a dispute in the material facts - Contrary to the holding of the lower court (H1)

APPEALS - Issues - Suo motu summarizing of the issues to be determined - By the Court of Appeal - Within the precincts of the grounds of Appeal - Occasioned no miscarriage of justice (H2)

CONSTITUTIONAL LAW - Fundamental Rights - Freedom from discrimination - Concept of slavery can no longer be tolerated in our modern society - It is the duty of the court to strike down any attempt to practice such discrimination (H3)

JUDICIAL PRECEDENTS - Distinguishing - The case of Ekpendu v. Erika does not apply to the circumstances of this case (H4)

CHIEFTAINCY MATTERS - Jurisdiction - To settle disputes arising from appointment of persons - Into minor chieftaincy, s. 13(4) Chiefs Law of Ekiti State - The Ewi of Ado Ekiti did not exceed his jurisdiction - By intervening to settle the dispute (H5)

CHIEFTAINCY MATTERS - Disputes - S. 13(4) Chiefs Law of Ekiti State - Jurisdiction to settle disputes arising from the appointment of a person into common chieftaincy - The Ewi of Ado Ekiti rightly conducted an election to settle the dispute (H6)

CHIEFTAINCY MATTERS - Chiefs Law of Ekiti State - Appointment of Edemo of Ado Ekiti - The Elerebi was a mere messenger and adviser to the Ewi of Ado Ekiti - Who could ignore his advice and act on his own (H7)

### **FACTS**

The main points in contention in the case are who of the 2<sup>nd</sup> Appellant and the Respondent should occupy the relatively minor chieftaincy stool of Edemo of Ado-Ekiti. Following the procedure of appointment by way of election conducted by the 1<sup>st</sup> Appellant as against the advice of Elerebi the eldest of their people the 2<sup>nd</sup> Appellant won the contest and was duly recognized as Edemo, the two contestants having come from the same ruling house. The respondent then applied to the High court and sought for an order of certiorari and prohibition against the appellants. He equally claimed other reliefs and injunction restraining the 1<sup>st</sup> Appellant from appointing the 2<sup>nd</sup> Appellant. The gravamen of his complaint was that the procedure used in the presentation of the 2<sup>nd</sup> appellant as Edemo was not in accord with their tradition. In the affidavit in support of his prayers in the High court, he indicted the 1<sup>st</sup> appellant for refusing to recognise him in spite of all entreaties by the members of the Aduloju ruling house. Evidence revealed that the 1<sup>st</sup> appellant took umbrage at the fact that the Aduloju family had rejected the candidature of the 2<sup>nd</sup> appellant because he was said to be a descendant of a slave. The respondent has queried the procedure of making the appointment by way of election which he lampooned as being contrary to the tradition and custom of appointing or nominating an Edemo.

In the High court, the learned trial judge dismissed the application stating that the procedure by way of conducting an election to determine the preference of the candidate of the ruling house was in order and that the appointment of the 2<sup>nd</sup> appellant was sequel to the majority votes he garnered in the ruling house. On appeal the Court of Appeal allowed the appeal and set aside the judgment of the High court. The appellants here therefore appealed to the supreme court.

**ISSUES FOR DETERMINATION**

*"1. Whether the misconstruing of the Appellants' case by the lower Court did not occasion a miscarriage of justice when the facts stated to be undisputed between the parties which were disputed formed the kernel of the decision of the lower court to the detriment of the Appellants' case.*

*2. Whether the lower Court was right to have totally abandoned the relevant, pungent and straight forward issues formulated by the parties but instead raised new issues suo motu that were not covered or circumscribed by the grounds of appeal filed in the case.*

*3. Whether the lower Court was right in the way it applied the decision in the case of Ekpendu v. Erika when the decision was totality irrelevant to the case put forward by the parties and this led to a miscarriage of justice against the Appellants.*

*4. Whether the Court below was right in the view it took of the provisions of section 13(4) of the Chiefs Law of Ondo State applicable to Ekiti State when it held that there was no dispute on the Edemo stool to warrant the invocation of the said sub section and when it held that there was valid nomination and presentation of the Respondent to the 1<sup>st</sup> Appellant by the Aduloju family when this was not so.*

*5. Whether the lower Court was right to have allowed the appeal before it by granting all the reliefs claimed in the originating process by the Respondent when many of the reliefs had been abandoned by the Respondent and whether from the totality of the facts of the case the respondent was entitled to judgment."*

**HELD** (Unanimously allowing the appeal per lead judgment of **PATS-ACHOLONU JSC**)

***AFFIDAVITS - Dispute as to material facts***

1. There was a dispute as to who was really the nominee of the family. From the contents of the two affidavits by the contending or feuding parties it cannot be said that there was not a dispute in respect of the factual situation. It is therefore not correct to state that the parties were ad idem in respect of the material facts. The issues in controversy are;  
(a) *Which of the two was the nominee of the family i.e. representing the*

*opinion or view of the ruling house.*

*(b) Whether the method finally adopted by the Ewi to know the true opinion of the ruling house by conducting election to know the real view of the majority of the ruling house is correct.*

B There existed a controversy - nay a dispute. I do not subscribe to the opinion expressed by the Court of Appeal in its holding that there was no dispute. In the event I hold there existed a dispute in the material facts. (p. 571 B/ 572 D)

### C **APPEALS - Issues**

2. To the submission that the reframing or summarizing of the issues made by the lower Court fell outside the mainstay of the grounds of Appeal, my answer to that is in the negative. That issue framed by the court is on the nature of the question in controversy, to wit whether there was dispute to the extent that the 1<sup>st</sup> Appellant had to conduct an election within the precincts of the Ruling House to determine who was the choice. I do not think that the issue framed by the Court below fell outside the grounds of Appeal. In the recent case of Neka B. B. Manufacturing Co. Ltd. V. African Continental Bank Ltd. Appeal No. SC.32/1997 (unreported) and decided on 16<sup>th</sup> February, 2004 this Court held thus;

*"It is not in all occasions that a Court must inevitably accept the issues framed by the Appellant as though they are immutable particularly when the issues formulated by the Respondent address the points in consideration or in controversy much more squarely. Indeed the Court may decide in an appropriate case to suo motu frame issues which though do not and ought not in any way depart from the contents or purport and ramifications of the issues already framed by the parties, and distilled from the grounds of appeal, but are much more succinct, precise and readily understandable".*

I do not subscribe to the view that the Court of Appeal in summarizing or putting in a precis form the issue to be determined which to my mind is within the precincts of the grounds of Appeal, was wrong or has occasioned a denial of justice. (p. 575 C/H)

***Fundamental Rights - Freedom from discrimination***

3. This stand cannot obviously be tolerated bearing in mind the position of Chapter 4 of the 1979 Constitution then extant, and the African Charter on Human Rights. In this day and age I believe that the only way the 1<sup>st</sup> Appellant could arrive at the truth of the matter is by way of election. B  
 It will be a travesty of justice for the 1<sup>st</sup> Appellant to be swayed by a puerile or primordial concept or practice that pervaded the society in the past in influencing him in making an appointment. The sole reason advanced by the respondent in the candidature of the 2<sup>nd</sup> Appellant is that C  
 he was a descendant of a slave. No sane person in our society having regards to the provision against discrimination made patently clear in the 1979 and 1999 Constitutions would support the nihilistic and obtuse stand of the Respondent that the Appellant was ineligible to contest because of the stigma attached to his name. Such insipid and cruel utterance is D  
 negativistic and abhorrent in a modern society. This Court should strike down any attempt by anybody or institution to deny anyone of his rights, interest, privileges or benefits on the altar of any concept or practice that tends to consign a fellow citizen to a second class position or make him E  
 a non person. (p. 575 F/ 579 G)

***JUDICIAL PRECEDENTS - Distinguishing***

4. There is no way this case can in anyway be likened to Ekpendu v. F  
 Erika Supra. In this case the Elerebi is a mere messenger to the 1<sup>st</sup> Appellant. I had earlier on referred to the supplicative nature of his writings to the 1<sup>st</sup> Appellant. His letters show to my mind, that it is the decision of the 1<sup>st</sup> Appellant that held sway and that is the authority. G  
 Elerebi's duty was merely to convey to the 1<sup>st</sup> appellant whoever the ruling house had chosen. He was powerless beyond that. In respect to alienation of family land, any sale is void without the consent of the head of the family. Why is this so? Because, in a land matter the head of the family holds the land in trust for the other members. In this case he is not H  
 a trustee. He was merely the eldest member of the family whose duty was to convey to the 1<sup>st</sup> Appellant who ever was selected or nominated by the ruling house. (p. 577 A)

**CHIEFTAINCY MATTERS - Jurisdiction**

5. With greatest respect to the opinion held by the Court of Appeal on this matter I beg to disagree. The Elerebi had not been able really to resolve  
 B the dispute as to who was chosen. Certain letters as the one supposedly written by the so called Aduloju Descendants to the 1<sup>st</sup> Appellants on 5/1/93 and contained at P. 18 of the Record and signed by Mr. Ojo Aduloju and Madam Felicia Omolusi naturally were distractions that would make it difficult to have a fair dealing. In the letter under reference, the allegation  
 C that the 1<sup>st</sup> Appellant is a son of a slave was made the main issue. It was manifestly evident that something must give, i.e. that the 1<sup>st</sup> Appellant had to intervene to settle the imbroglio once and for all. The circumstances that were in existence warranted an intervention. He did not meddle  
 D unduly in the matter. I do not agree that in this instance the 1<sup>st</sup> Appellant exceeded his jurisdiction. (p. 577 G)

**CHIEFTAINCY MATTERS - Disputes**

E 6. To emphasize the fact that the first Appellant did not exceed his power, my view is strengthened by the provision of section 13(4) of the Chiefs Edict, which states as follows:

*“Where there is a dispute as to whether a person has been appointed in accordance with customary law to a minor chieftaincy the prescribed authority may determine the dispute and the person concerned shall be notified of the decision”.*  
 F

Every conceivable effort as indeed adumbrated by the Appellants was made to settle the matter but all efforts proved futile. The Court of  
 G Appeal appears to me to have given a skewed interpretation to section 13(4) supra. I hold that the words are manifestly clear and explicit in their intendment; that the authorized body could in an appropriate case hold an election. In that way the spirit of the law would be made manifest.  
 H In my view nothing can be more demonstrably fair, honest and above reproach than subjecting the selection of the contestants to the peers of the ruling house by way of election. (p. 578 B)

***CHIEFTAINCY MATTERS - Chiefs Law of Ekiti State***

7. In his cross-appeal the Respondent submitted that the right route to the prescribed authority was the Elerebi. I have shown that the Elerebi was a mere messenger, a harbinger. He was an adviser but when his advice went awry then the 1<sup>st</sup> Appellant had to step in. There is no way the cross-appeal could make any dent in the case as presented and argued and as finally considered by this court. (p. 580 C)

**REPRESENTATION**

Yusuf O. Ali (S.A.N.), with him Adebayo Adelodun and S.A. Oke for the Appellant.

O. O. Akeredolu (S.A.N.), with him Eka Udo-Inyang (Mrs), for the Respondent.

**CASES REFERRED TO**

Jimoh Akani Oyewale v. Zuberu Agboola Oyesoro (1998) 2 NWLR (Part 539) 679

Nwagboso v Ejiogu (1997) 11 N W L R (Part 527) 173

Oro v. Falade (1995) 5 N.W.L.R. (Pt. 396) 385 at 402,(1995) 5 KLR 1201

Irom v. Okimba (1998) 3 N.W.L.R. (Pt. 540) 19 at 25,(1998) 1 KLR (pt 58) 301

Fabiyi v. Adeniyi (2000) 6 N.W.L.R. (Pt. 662) 532 at 546

Ununmwangbo V Okojie An. (1989) 5 N.W.L.R. (Pt. 122) 470 at P. 490

Ojokolobo and Ors. V. Alamu and Ors. (1987) 3 N.W.L.R. (Pt. 61) 377

Ajomale v. Yaduat (No.2) (1991) 5 N W L R (Part 191)266

Oladipo v. Oluwasegun & Anor (1974) 4 UILR (Part 2) 160

**STATUTE REFERRED TO**

Chiefs Law Of Ekiti State S. 13(4).

**LEAD JUDGMENT BY PATS-ACHOLONU JSC**

The main points in contention in the case are who of the 2<sup>nd</sup> Appellant and the Respondent should occupy the relatively minor

Chieftaincy stool of Edemo of Ado-Ekiti. Following the procedure of appointment by way of election conducted by the 1<sup>st</sup> Appellant as against the advice of Elerebi the Eldest of their people the 2<sup>nd</sup> Appellant won the contest and was duly recognized as Edemo, the two contestants having  
B come from the same Aduloju Ruling House.

The Respondent then applied to the High Court and sought for an order of certiorari and prohibition against the Appellants. He equally claimed other reliefs and injunction restraining the 1<sup>st</sup> Appellant from appointing the 2<sup>nd</sup> Appellant. The gravamen of his complaint was that the procedure  
C used in the presentation of the 2<sup>nd</sup> Appellant as Edemo was not in accord with their tradition. In the affidavit in support of his prayers in the High Court, he indicted the 1<sup>st</sup> Appellant for refusing to recognize him in spite of all entreaties by the members of the Aduloju Ruling House, and re-  
D ferred to a letter from the four people who had hitherto vied the position with him but who later withdrew and canvassed for his appointment. Evidence revealed that the 1st Appellant took umbrage at the fact that the Aduloju family had rejected the candidature of the 2<sup>nd</sup> Appellant because  
E he was said to be a descendant of a slave, one late Opokiti. His anger against the 1<sup>st</sup> Appellant the Ewi of Ado Ekiti in particular was that in his palace the Ewi himself had pleaded with the ruling house of the Aduloju not to refer the 2<sup>nd</sup> Appellant as a son of a slave. The Respondent had  
F queried the procedure of making the appointment by way of election which the lampooned as being contrary to the tradition and custom of appointing or nominating an Edemo.

In the High Court, the learned trial Judge dismissed the application stating that the procedure by way of conducting an election to determine  
G the preference of the candidate of the ruling house was in order and that the appointment of the 2<sup>nd</sup> Appellant was sequel to the majority votes he garnered in the ruling house.

On appeal, the Court below allowed the appeal and set aside the  
H judgment of the Court of Appeal, Ilorin Division. The Appellants now on record appealed to this Court by filing 12 grounds of Appeal from which they framed 5 issues for determination. These issues distilled from the grounds of Appeal are as follows:-



*"1. Whether the misconstruing of the Appellants' case by the lower Court did not occasion a miscarriage of justice when the facts stated to be undisputed between the parties which were disputed formed the kernel of the decision of the lower court to the detriment of the Appellants' case.*

*2. Whether the lower Court was right to have totally abandoned the relevant, pungent and straight forward issues formulated by the parties but instead raised new issues suo motu that were not covered or circumscribed by the grounds of appeal filed in the case.*

*3. Whether the lower Court was right in the way it applied the decision in the case of Ekpendu v. Erika when the decision was totality irrelevant to the case put forward by the parties and this led to a miscarriage of justice against the Appellants.*

*4. Whether the Court below was right in the view it took of the provisions of section 13(4) of the Chiefs Laws of Ondo State applicable to Ekiti State when it held that there was no dispute on the Edemo stool to warrant the invocation of the said sub section and when it held that there was valid nomination and presentation of the Respondent to the 1<sup>st</sup> Appellant by the Aduloju family when this was not so.*

*5. Whether the lower Court was right to have allowed the appeal before it by granting all the relieves claimed in the originating process by the Respondent when many of the reliefs had been abandoned by the Respondent and whether from the totality of the facts of the case the respondent was entitled to judgment."*

The Respondent who cross-appealed framed 5 issues in his brief which apparently took care of the main brief and the cross-appeal as well: to wit

*1. Whether the lower Court's view that the material facts in this case are not in dispute is a proper inference from the evidence on record.*

*2. Whether the principal and the sub-issues formulated by the Court of Appeal properly arose from the grounds of appeal before the Court.*

*3. Whether reference to the principle in Ekpendu v Erika by the Court of Appeal on the importance of the concurrence of the family head in the sale of family land as an analogy in defining the importance of the role of the family head in the nomination exercise by a ruling house has not occasioned a miscarriage of justice.*

4. Whether the lower Court was right in its conclusion that the 1<sup>st</sup> Appellant exceeded his jurisdiction under Section 13(4) of the Chiefs Law of Ondo State.

5. Whether the lower Court was right in allowing the Respondents' appeal and granting the reliefs sought by the Respondent.

B On the 1st issue the learned Counsel for the Appellants submitted that contrary to the holding by the Court of Appeal that the material facts in the case are not disputed, there is abundant evidence that much was disputed. He referred to the letters by Elerebi to the 1<sup>st</sup> Appellant dated C 30<sup>th</sup> November, 1992 and 24<sup>th</sup> February, 1993 one of which the Court of Appeal described as a nomination when in fact it was not one of that, it was a letter "*written by the Elerebi in which he explained his roles in the selection of a successor to the Edemo Stool*", They further argued D that the facts which the learned Justices of the Court of Appeal said were not in dispute are the very kernel of the case between the parties. The Respondent in his contra argument as reflected in his brief contended that what the Appellate Court stated in its judgment as to facts not in E dispute was the correct statement of the matter.

Indeed a careful reading and understanding of the import of the letter by the Elerebi, Pa Matthew Faje shows that he was informing the Ewi of Ado-Ekiti of the name submitted. In the 2<sup>nd</sup> letter of 24<sup>th</sup> February, 1993 he stated among other things;

F "*You will only permit your royal Highness to repeat that Engr. Joseph Akanbi Ologunja is the choice of his people and would wish you to give his appointment due consideration*".

In this first letter that was dated 30<sup>th</sup> November, 1992 the Elerebi ended G the letter in this manner;

"*I have also the opinion that I have exhausted all avenues necessary to carry out the assignment given by your Royal Highness and to say that Engr. Akanbi Ologunja is the choice of Adeloju Ruling house and is H hereby recommended for your consent and consequent appointment... It is in your wisdom and God's guidance that you gave me the privilege as Elerebi to advice you on this issue and pray that you would live long enough to enjoy good things of the world*".

My understanding of these letters is that they represent the advice given by the Elerebi who merely was requested to make a representation to the Ewi of Ado-Ekiti who may or may not accept the recommendation. It was not and did not mean a final representation by the Ruling house. It must be understood that the Respondent had alluded to a statement credited to the 1<sup>st</sup> Appellant that the respondent and his supporters should cease describing the 2<sup>nd</sup> Appellant as a son of a slave. **There was a dispute as to who was really the nominee of the family.** B

In the affidavit sworn on 21<sup>st</sup> March, 1994 the Respondent deposed as follows:- C

1. That at the meeting there were six contestants and four of them withdrew in my favour while the 2<sup>nd</sup> Respondent (the 2<sup>nd</sup> Appellant of course) insisted on contesting.

2. That as a result of the unwieldy nature of the general meeting of D the ruling house it was agreed to delegate to a committee of nine the task of selecting a candidate.

3. That nobody raised any objection to this procedure.

4. That six members of the nine-member committee nominated E me while three supported the 2<sup>nd</sup> Respondent.

5. That the head of Aduloju family then presented me to the Elerebi who in turn presented me to the 1<sup>st</sup> Respondent.

6. That the 2<sup>nd</sup> Respondent's faction also presented him to the 1<sup>st</sup> F Respondent.

7. That as a result of this the 1<sup>st</sup> Respondent directed the Elerebi to go back home to resolve the matter and present him with only one candidate.

Further down in that affidavit he deposed at paragraph 21; G

*"That the basis of the objection of Aduloju ruling house to the candidature of the 2<sup>nd</sup> Respondent is that he is only the descendent of late Opokiti one of the slaves of Aduloju the ancestor of Aduloju ruling house who was a great warrior"* H

In reaction to some portions of the affidavit sworn to by the Respondent the 2<sup>nd</sup> Appellant, countered with these facts;

1. *That I know as a fact that the committee of nine set up by the*

family compromised its position by accepting gratification from the applicant who gave to the committee five hundred naira, two cartons of beer and one bottle of schnapps before the committee took any decision at all.

B 2. That I know as a fact that when the other members of the Aduloju family heard this, the committee was immediately dissolved and disbanded and the whole house resumed its duty of picking a candidate.

3. That I know as a fact that the membership of the committee was factionalised due to the bribe offered by the Applicant and accepted by some of the members of the committee.

4. That I know as a fact that at the resumed sittings of the family, I was selected by majority of the members and my name was forwarded to the kingmakers who also ratified my selection.

D From the contents of the two affidavits by the contending or feuding parties it cannot be said that there was not a dispute in respect of the factual situation. It is therefore not correct to state that the parties were ad idem in respect of the material facts. The issues in controversy are;

(a) Which of the two was the nominee of the family i.e. representing the opinion or view of the ruling house.

F (b) Whether the method finally adopted by the Ewi to know the true opinion of the ruling house by conducting election to know the real view of the majority of the ruling house is correct.

G There existed a controversy – nay a dispute. I do not subscribe to the opinion expressed by the Court of Appeal in its holding that there was no dispute. In the event I hold there existed a dispute in the material facts.

On the second question to be answered by this Court, the grouse of the Appellants is that the lower Court sort of abandoned its former stand that it would rely on the issues formulated by the Appellants, (Otherwise the Respondents in the Court below) and suo motu framed an issue which tended to crystallise the issues hitherto formulated and indeed made a summary of what it conceived as the issues to be determined by that Court. The Appellants argued that the Court below thereaf-

ter based its decisions on its own issues, and this they contended led to the miscarriage of justice.

The learned Counsel for the Appellants submitted that the Appellate Court cannot formulate issues “*suo motu*” outside the grounds of appeal filed, adding further that where the appellate Court assumes the duty of framing its own issues such issues must be related to the grounds of appeal. In this connection it is his contention that issues formulated by the Court below fell outside the purview, contemplation or intendment of the grounds. He cited *Oro v. Falade* (1995) 5 N.W.L.R. (Pt. 396) 385 at 402, *Irom v. Okimba* (1998) 3 N.W.L.R. (Pt. 540) 19 at 25 and *Fabiya v. Adeniyi* (2000) 6 N.W.L.R. (Pt. 662) 532 at 546. C

The Respondent replicando submitted that the dispute in which the first Appellant intervened was over nomination at the ruling house level. The main point said to have been the bulwark or the plank on which the Court below relied to take a decision was as to whether there was a dispute as to who ought to be nominated and therefore appointed. Customarily and traditionally the road or the channel to the Ewi who was to make the ultimate appointment was the Elerebi who incidentally must be eldest person in that place. The supplication of Elerebi clearly made manifest in his letters to the 1<sup>st</sup> Appellant showed him as a humbled subject given the onerous duty to present to the Ewi whoever was the choice of the ruling house for the appointment. It is evident from the facts that the 1<sup>st</sup> Appellant did not put all his reliance on the Elerebi to ascertain who should be the Edemo. This might not be unconnected with reference to the 2<sup>nd</sup> Appellant as the son of a slave Elerebi’s duty appeared merely advisory which may or may not be taken by the 1<sup>st</sup> Appellant. Let us consider this extract from the letter dated 30<sup>th</sup> November, 1992. D E F G

*“Your Royal Highness with all above and with the support of the Ruling House and its head – Mr. Joseph Ojo Aduloju and in serious consideration of the fact that the major supporters of Mr. Bamidele William do not belong to Aduloju Ruling House, I have no doubt in my mind that the choice of Engineer Akanbi Ologunja is more than proper.* H

*I have also the opinion that I have exhausted all avenues necessary to carry out the assignment given by your Royal Highness and to say*

*that Engr. Akanbi Ologunja is the choice of Aduloju Ruling House and he is hereby recommended for your consent and consequent appointment. It is in your wisdom and God's guidance that you gave me the privilege as Elerebi to advise you (italics is mine) on this issue and pray that you would live long enough to enjoy good things of this world."*

*Long may you reign over us*

*Your obedient citizen,*

*PA MATTHEW FAJE*

*THE ELEREBI IDEMO"*

Indeed, from the letter dated 24<sup>th</sup> February, 1993, and set down below the impression gained is that the 1<sup>st</sup> Appellant is the all and all in determining who would be the Edemo.

The Elerebi

Idemo Quarters

Ado-Ekiti

24<sup>th</sup> February, 1993.

*"His Royal Highness,*

*Oba Rufus Adejugbe Aladesanmi*

*The Ewi of Ado-Ekiti.*

EDEMO CHIEFTAINCY TUSSLE MATTERS OF THE MOMENT

*I wish to refer to my letter dated 30<sup>th</sup> November, 1992 to which your Highness has not reacted. This comes to remind you on the need to have a second look at my submissions which in essence would assist you in giving your must valuable consent to the right choice of the Ruling House.*

*I recall your invitation when you asked if the letter was written by me and my reply confirming, same. It was at that invitation you gave your decision not to use the Nine-man committee. This is very welcome. Equally was your decision that day not to use the purported Chiefs was out of great wisdom. I remember you went further to say that Engr. J. A. Ologunja has greater support of the people in consideration of those that came to you on behalf of the two contestants. This comment is definitely not misplaced.*

*I have since called on you to know when you would invite me to again present Engr. J. A. Ologunja, if that was still necessary, but had not been lucky enough to meet you.*

*You will only permit me your Highness to repeat that Engr. Joseph Akanbi Ologunja is the choice of his people and would wish you to give his appointment due consideration. I am making this plea as the Elerebi who is of age and could pass away any time. I cannot mislead you.*

*Thank you and God bless.*

*Your obedient citizen,*

*Pa Mathew Faje,*

*“The Elerebi Idemo”.*

**To the submission that the reframing or summarizing of the issues made by the lower Court fell outside the mainstay of the grounds of Appeal, my answer to that is in the negative. That issue framed by the court is on the nature of the question in controversy, to wit whether there was dispute to the extent that the 1<sup>st</sup> Appellant had to conduct an election within the precincts of the Ruling House to determine who was the choice. It should be borne in mind that the Respondent and his supporters had sought to exclude the 2<sup>nd</sup> Appellant from calculation on the ground that he was a descendant of a slave. To the 1<sup>st</sup> Appellant this smacked of discrimination which can no longer be tolerated in a decent society. In other words the Respondents’ supporters had sought to disqualify the 2<sup>nd</sup> Appellant. This stand cannot obviously be tolerated bearing in mind the position of Chapter 4 of the 1979 Constitution then extant, and the African Charter on Human Rights. In this day and age I believe that the only way the 1<sup>st</sup> Appellant could arrive at the truth of matter is by way of election. It will be a travesty of justice for the 1<sup>st</sup> Appellant to be swayed by a puerile or primordial concept or practice that pervaded the society in the past in influencing him in making an appointment. I do not think that the issue framed by the Court below fell outside the grounds of Appeal. In the recent case of Neka B. B. Manufacturing Co. Ltd. V. African Continental Bank Ltd. Appeal No. SC.32/1997 (unreported)**

and decided on 16<sup>th</sup> February, 2004 this Court held thus;

*"It is not in all occasions that a Court must inevitably accept the issues framed by the Appellant as though they are immutable particularly when the issues formulated by the Respondent address the points in consideration or in controversy much more squarely. Indeed the Court may decide in an appropriate case to suo motu frame issues which though do not and ought not in any way depart from the contents or purport and ramifications of the issues already framed by the parties, and distilled from the grounds of appeal, but are much more succinct, precise and readily understandable".*

I do not subscribe to the view that the Court of Appeal in summarizing or putting in a precis form the issue to be determined which to my mind is within the precincts of the grounds of Appeal, was wrong or has occasioned a denial of justice.

In respect of issues No. 3 and 4 which I take together, the Appellants had referred to the observation of the Court below that the nomination of the 2<sup>nd</sup> Appellant was not in consonance with the decision in *E Ekpendu v. Erika* (1959) 4 S.C. 79. To this the Respondent countered that there is no merit in that submission. The Court of Appeal had opined thus:

*"The situation in my view is akin to the position of the law relating to disposition or alienation of Family property where an act of sale carried out by the Family head without the concurrence of the principal members is not void but only voidable while an act of sale carried out by the principal members of the family without the concurrence of the family head is void ab initio. See Ekpendu v. Erika supra cited by learned counsel to the Appellant".*

Now in the judgment of the Court below the learned Justices held as follows:

*"The first Respondent ought to have approved the candidate duly nominated by the family with concurrence of the Elerebi and not otherwise and I so hold. The 1<sup>st</sup> Respondent by doing otherwise created non-existing dispute which he purported to settle. In the circumstance I hold that the 1<sup>st</sup> Respondent exceeded his jurisdiction by approving the ap-*



pointment of the 2<sup>nd</sup> Respondent... (See Ekpendu v. Erika).

**There is no way this case can in anyway be likened to Ekpendu v. Erika Supra. In this case the Elerebi is a mere messenger to the 1<sup>st</sup> Appellant. I had earlier on referred to the supplicative nature of his writings to the 1<sup>st</sup> Appellant. His letters show to my mind, that it is the decision of the 1<sup>st</sup> Appellant that held sway and that is the authority. Elerebi's duty was merely to convey to the 1<sup>st</sup> appellant whoever the ruling house had chosen. He was powerless beyond that. In respect to alienation of family land, any sale is void without the consent of the head of the family. Why is this so? Because, in a land matter the head of the family holds the land in trust for the other members. In this case he is not a trustee. He was merely the eldest member of the family whose duty was to convey to the 1<sup>st</sup> Appellant who ever was selected or nominated by the ruling house.** I must point out that when the Ewi was of the opinion that an attempt was being made to exclude a potential contestant unjustly, he used his awesome powers even recognized and acknowledged by the Elerebi to effect a more appropriate method that was in accord with fairness and rationality barring other eventualities to find who was the true choice of the people.

In their judgment the learned Justices of the court of Appeal said:

*“Section 13(4) of the Chiefs Law of Ekiti State as amended gave the 1<sup>st</sup> Respondents a discretion and power to determine any dispute arising from the appointment of person into a minor chieftaincy like that of Edemo. From the above provision of the Chiefs Law the 1<sup>st</sup> Respondent as the prescribed authority for the Edemo Chieftaincy would seem to be quite aware that the condition precedent to the exercise of his power under section 13(4) of the Chief's Law Supra had not arisen”.*

**With greatest respect to the opinion held by the Court of Appeal on this matter I beg to disagree. The Elerebi had not been able really to resolve the dispute as to who was chosen. Certain letters as the one supposedly written by the so called Aduloju Descendants to the 1<sup>st</sup> Appellants on 5/1/93 and contained at P. 18 of the Record and signed by Mr. Ojo Aduloju and Madam Felicia**

Omolusi naturally were distractions that would make it difficult to have a fair dealing. In the letter under reference, the allegation that the 1<sup>st</sup> Appellant is a son of a slave was made the main issue. It was manifestly evident that something must give, i.e. that the 1<sup>st</sup> Appellant had to intervene to settle the imbroglio once and for all. The circumstances that were in existence warranted an intervention. He did not meddle unduly in the matter. I do not agree that in this instance the 1<sup>st</sup> Appellant exceeded his jurisdiction. To emphasize the fact that the first Appellant did not exceed his power, my view is strengthened by the provision of section 13(4) of the Chiefs Edict, which states as follows:

*“Where there is a dispute as to whether a person has been appointed in accordance with customary law to a minor chieftaincy the prescribed authority may determine the dispute and the person concerned shall be notified of the decision”.*

Every conceivable effort as indeed adumbrated by the Appellants was made to settle the matter but all efforts proved futile. The Court of Appeal appears to me to have given a skewed interpretation to section 13(4) *supra*. I hold that the words are manifestly clear and explicit in their intendment; that the authorized body could in an appropriate case hold an election. In that way the spirit of the law would be made manifest. See *Ununmwangbo V Okojie An.* (1989) 5 N.W.L.R. (Pt. 122) 470 at P. 490, *Ojokolobo and Ors. V. Alamu and Ors.* (1987) 3 N.W.L.R. (Pt. 61) 377. In my view nothing can be more demonstrably fair, honest and above reproach than subjecting the selection of the contestants to the peers of the ruling house by way of election.

This court was equally referred to the case of *Adefulu V Oyesile* (1989) 5 N.W.L.R. (Pt. 122) 377 at 421 to the effect that the nomination or the selection of a candidate was at the ruling house level while appointment should be by king makers. The case of *Adefulu V. Oyesile supra* is a chieftaincy matter. There was a chieftaincy vacancy on the death of the Olofin of Ilishan Remo. At the meeting of the ruling house 4 people were nominated and 2 were mentioned. The all six people were presented to

the kingmakers who selected the 1<sup>st</sup> defendant. The plaintiff and the supporters went to court to nullify the appointment. The High Court dismissed their case. On appeal to the Court of Appeal, The judgment of the High Court was reversed. On further appeal to the Supreme Court, the Court in considering the case commented as follows amongst other things:

*“The king makers of Ilishan Remo considered other candidates not nominated by the Agaigi Ruling house and not only that, they (king makers) went further to select one of the nominated candidates to be appointed and was appointed as the Olofin”.*

In his Judgment in respect of the manner of the choice as to who would be the Olofin, Uwais JSC (as he then was) reading the lead Judgment said:

*“The Agaigi Ruling House as a body entitled to nominate candidates for appointment to the stool of Olofin of Ilishan – Remo can in my opinion only act or Perform that function through a majority of its members ..... Our society being a democratic society, it cannot be said that a legislation requiring such a body to perform an act is complied with if a minority of the members of the body performs the act ..... In a democratic society it is the intention or will of the majority that prevails”.*

We would be regressing into the past if we should allow ourselves to spurn the beautiful and edifying philosophy and ethos underlying the concept of democratic ideals and principles only to take refuge or shelter in archaic tradition that seeks to emasculate or disenfranchise or discriminate the majority of the right thinking members of a community or for that matter any society.

I really wonder whether the 5<sup>th</sup> issue is any issue at all but assuming it is, the resolving of the 4<sup>th</sup> issue hitherto attended, makes the 5<sup>th</sup> issue an academic exercise or at least “*ex abundancia Cautela*”. **The sole reason advanced by the respondent in the candidature of the 2<sup>nd</sup> Appellant is that he was a descendant of a slave. No sane person in our society having regards to the provision against discrimination made patently clear in the 1979 and 1999 constitutions would**

**support the nihilistic and obtuse stand of the Respondent that the Appellant was ineligible to contest because of the stigma attached to his name. Such insipid and cruel utterance is negativistic and abhorrent in a modern society. This Court should strike down any attempt by anybody or institution to deny anyone of his rights, interest, privileges or benefits on the altar of any concept or practice that tends to consign a fellow citizen to a second class position or make him a non person.**

I once again reinforce the method adopted by the 1<sup>st</sup> Appellant to find a solution to the problem that tasked the aged Elerebi and seemed to have given him sleepless nights and as Shakespeare said;

*“Makes his seated heart knock at his ribs against the use of nature”*

**In his cross-appeal the Respondent submitted that the right route to the prescribed authority was the Elerebi. I have shown that the Elerebi was a mere messenger, a harbinger. He was an adviser but when his advice went away then the 1<sup>st</sup> Appellant had to step in. There is no way the cross-appeal could make any dent in the case as presented and argued and as finally considered by this court. As I said this has been effectively covered in considering issues 3 and 4.**

In the final analysis the appeal succeeds and is allowed. The cross-appeal fails and is dismissed and the judgment of the Court of Appeal is set aside. There shall be costs to the Appellants assessed at N10,000.00 in this court, and N5,000.00 in the court below.

## G **ONU JSC**

Having had the opportunity of a preview of the judgment of my learned brother Pats-Acholonu, JSC just delivered. I am in agreement with him that the appeal succeeds and it is accordingly allowed by me.

H In adding a few words of mine to the leading judgment in expatiation, I wish only to briefly treat issue 1 out of the five issues distilled from the twelve grounds of appeal as being enough to dispose of those issues formulated therefrom at the appellants’ instance, to wit;

1. Whether the misconstruing of appellants' case by the lower Court did not occasion a miscarriage of justice when the facts stated to be undisputed formed the kernel of the decision of the lower Court to the detriment of the appellants' case.

It is pertinent to point out that since the respondent cross – ap- B  
pealed, I shall in my consideration of the appeal, bear same in mine.

It is the appellants' contention that the court below took the view that the material facts in dispute between the parties are not disputed. Some of those facts, the Appellant have argued, include:

- (a) The nomination of the respondent by the family. C
- (b) The presentation of the respondent to the 'Elerebi'
- (c) The consent of the 'Elerebi' to the nomination
- (d) The purported forwarding of the 1<sup>st</sup> respondent's name to D  
the appellant by the Elerebi.
- (e) That it was a faction within the Aduloju family that  
nominated the 2<sup>nd</sup> appellant to the 1<sup>st</sup> appellant.

This submission cannot be correct, for a careful reading of the affidavit in support of the originating process at pages 5 – 10 of the E  
record, the further affidavit at pages 35 – 39, the counter affidavit at  
pages 62 – 67, read in conjunction with the documents attached thereto,  
will reveal beyond peradventure that the material facts which the court  
below said the parties agreed on, are in fact not borne out by those affi- F  
davits and exhibits. For instance, at page 224 of the record the Court  
below stated that the respondent's name was forwarded by the 'Elerebi'  
to the 1<sup>st</sup> Appellant after the former's nomination through a letter dated  
30/11/92. A careful perusal of that letter reveals that it is not a letter of  
nomination as stated by the Court below. Rather, it is a letter purportedly G  
written by the 'Elerebi' in which he explained his role in the selection of  
a successor to the Edemo stool. To demonstrate beyond doubt that that  
letter of 30/11/92 constitutes no letter of nomination, the self same 'Elerebi'  
in his letter of 24/2/93 vide Exhibit "C" speaks of representation of the H  
respondent to 1<sup>st</sup> Appellant. A careful appraisal of the evidence on record  
exemplifies that the court below misapprehended as well as misunder-  
stood the cases of the parties, thus leading it into error in stating that

some material facts were not in dispute between the parties when this was not so. As a matter of fact, the facts which were said not to be in dispute indeed constituted the kernel of the case of the parties and it was because those facts were in dispute that led to the action before the trial court. For example, whether or not the presentation of a candidate for the Edemo stool by the 'Elerebi' to the Ewi of Ado Ekiti validated such presentation was clearly a matter in dispute between the parties in the peculiar circumstances of the case which required evidence thereof to be adduced.

Also whether or not the nomination of the other party by a faction was also in dispute could only be resolved if only evidence is adduced or an explanation thereof is made.

Where a Court misapprehends a party's case like in the case in hand and it goes on to decide the case as misrepresented, its decision will not be right and it will be liable to be set aside.

The facts misrepresented by the Court below in the instant case are crucial and material and their decision would have been different had the facts been correctly appraised and understood. Thus, the misunderstanding of the case submitted by the parties is, according to law, a fundamental vice liable to render that decision indefensible and unsustainable. It is in my judgment a serious error that attaches to the judgment. See Oladipo v. Oluwasegun & Anor (1974) 4 UILR (Part 2) 160 and Jimoh Akani Oyewale v. Zuberu Agboola Oyesoro (1998) 2 NWLR (Part 539) 679.

Besides, for the court below to have held that the material facts set out in the counter affidavit before the trial court of review were not in dispute is preposterous and palpably untrue, more so that at paragraph 8 thereof it was untruthfully deposed:-

*"That I know as a fact that at the resumed sittings of the family, I was selected by majority of the members and my name was forwarded to the Kingmakers who also ratified my selection".*

The respondent in paragraphs 7.5, 7.6, 7.7 and 7.8 has stated that paragraphs 5, 6, 7, 8, 10, 13, 14 and 17 of the affidavit in support of the application for judicial review were not denied by the appellants in their

counter affidavit. Further, that those paragraphs are deemed admitted. I take the firm view that should the depositions be read together in their totality and not piece-meal, an equal and commensurate reading of paragraphs 5, 6 and 7 of the counter affidavit at page 63 of the record are adequate denials of the supporting affidavit set out above. B

I therefore agree with the appellants' submission that the totality of the facts deposed to in the counter affidavit show beyond doubt that the appellants never intended to admit the facts deposed to in paragraphs 5, 6, 7, 8, 10, 13, 14 and 17 respectively of the supporting affidavit to the application for judicial review. A denial can be express or by necessary C implication. Once facts are deposed to, in order to negate the general drift of the depositions in the supporting affidavit, then such are deemed denied. See Ajomale v. Yaduat (No.2) (1991) 5 N W L R (Part 191)266; Nwagboso v Ejiogu (1997) 11 N W L R (Part 527) 173. D

In the result, issue 1 is answered in the affirmative.

For the reasons given by me and the fuller ones set out in the judgment of my learned brother, Pats Acholonu, JSC I too allow the appeal. I make similar consequential orders as therein contained. E

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### IGUH JSC

I have had the privilege of reading in draft the judgment of my F learned brother, Pats Acholonu, J.S.C. just delivered and I entirely agree with the reasoning and conclusion therein.

Accordingly, I, too, allow the main appeal and dismiss the cross-appeal. I subscribe to the rest of the orders contained in the leading judgment. G

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### TOBI JSC

The matter concerns a chieftaincy in Ado-Ekiti. The dispute arose H over the nomination of a candidate for the filling of the vacancy in the Edemo Chieftaincy. There are two ruling houses. Fajemilue is one. Aduloju is the other. It was the turn of Aduloju ruling house to fill the vacancy in

the chieftaincy. There was a disagreement within the Adeloju ruling house over the candidate to be presented to the Elerebi (the joint head of the two ruling houses).

Nominations were made to fill the vacant chieftaincy stool of Edemo. The respondent was nominated by a faction within his family. His name was forwarded by the Elerebi to the 1<sup>st</sup> appellant, the prescribed authority who did not approve the nomination. 2<sup>nd</sup> appellant was also a candidate for the chieftaincy. 1<sup>st</sup> appellant appointed him as Edemo of Ado-Ekiti. And so the dispute arose.

The respondent, Engr. J.A. Olugunja, as applicant took out an application for judicial review before the trial court. The matter was heard through affidavits. The learned trial judge dismissed the claim of the respondent. His appeal to the Court of Appeal succeeded. The appellants, being aggrieved, have appealed to this court. Briefs were filed and duly exchanged.

The major complaint of the appellants is that the Court of Appeal misconstrued their case by adopting the issue formulated by the respondent, which did not reflect their case. It is the argument of the appellants that, contrary to the decision of the Court of Appeal, the material facts in the case are in dispute. Understandably, the respondent takes a contrary position. To him, the material facts, in the case, are not in dispute.

Who is correct? The answer will be obtained by reference to the affidavit evidence. But before I go to the affidavit evidence, I should take the findings of the Court of Appeal in respect of the material facts which the Court held are not in dispute. The court said at page 214.

*“From the affidavit evidence of both parties it appears the material fact of the case are not in dispute. It is not in dispute that there are two ruling houses, Fajemilua and Aduloju, entitled to present candidates for the chieftaincy and that it was the turn of Aduloju ruling house to fill the vacancy of the chieftaincy. The Adeloju ruling house after series of meetings nominated the Appellant whose name was forwarded to the Elerebi (the joint head of the two ruling houses). The Elerebi consented to the Appellant’s candidature and forwarded his name to the 1<sup>st</sup> Respondent for his approval and installation”.*



Apart from the finding that the Elerebi consented to the appellant's candidature and forwarded his name to the 1<sup>st</sup> respondent for approval and installation, all other findings are clearly borne out from the affidavit evidence, as deposed in paragraphs 5,6,7 and 8 of the affidavit in support. As the counter affidavit denied paragraphs 4 and 9 of the affidavit in support in paragraph 2 of the counter affidavit, the Court of Appeal, in my humble view, was wrong in coming to the conclusion that the Elerebi consented to the appellant's candidature. B

In paragraph 2 of the counter affidavit, the 2<sup>nd</sup> appellant also denied paragraphs 11,12,16, 18, 19, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 35, 36, 37, 38, 39 and 40 of the affidavit in support. I think there is need to reproduce the above paragraphs in order to appreciate the point made by the appellants: C

*"11. That nobody raised any objection to the procedure."* D

*12. That six members of the nine member committee nominated me while three supported the 2<sup>nd</sup> respondent."*

*16. That in compliance with the directive the Elerebi held several meetings of the ruling house and still found that the majority was in my support."* E

*18. That the Elerebi sent a reminder dated 24<sup>th</sup> February, 1993 to the 1<sup>st</sup> respondent regarding Exhibit 'B' and requested to know when he should re-present me but still there was no reaction from the 1<sup>st</sup> respondent. A copy of the reminder is attached as Exhibit 'C'."* F

*19. That the descendants of Aduloju also by letters and personal visits to the 1<sup>st</sup> respondent pleaded for the 1<sup>st</sup> respondent to recognise my nomination by the ruling house but still the 1<sup>st</sup> respondent refused."* G

*21. That the basis of the objection of Aduloju ruling house to the candidature of the 2<sup>nd</sup> respondent is that he is only the descendant of late Opokiti one of the slaves of Aduloju the ancestor of Aduloju ruling house who was a great warrior."* H

*23. That from the various meetings held in the Palace of the 1<sup>st</sup> respondent it was clear he was biased in favour of the 2<sup>nd</sup> respondent as he specifically pleaded with my ruling house not to refer to the 2<sup>nd</sup>*

respondent as the son of a slave again and insisted that as far as he was concerned the 2<sup>nd</sup> respondent is a member of the ruling house.

24. That even long after this dispute over the Edemo chieftaincy had blown into the open the people of Ijesa-Isu had in fact become aware of the controversy, the 1<sup>st</sup> respondent set up a smokescreen committee to carry out private investigation for him at Ijesa-Isu.

25. That I was not represented on the committee and so had no way of knowing the various sources the committee consulted and also I could not therefore ask questions from such sources.

26. That the 1<sup>st</sup> respondent furnished the Aduloju ruling house with a copy of the report of the smokescreen committee and the ruling house communicated its views on the report to the 1<sup>st</sup> respondent as shown in Exhibit D1 herewith.

27. That apart from the committee the 1<sup>st</sup> respondent also on 17<sup>th</sup> September, 1992 made written contact with the Oba of Ijesa-Isu Ekiti on Opokiti, the late slave grandfather of the 2<sup>nd</sup> respondent. A copy of the letter is attached as Exhibit 'E'.

28. That the 1<sup>st</sup> respondent did not afford me or Aduloju ruling house the opportunity of seeing and commenting on the response from the Oba of Ijesa-Isu.

29. That the descendants of Aduloju continued to pay visits and write to the 1<sup>st</sup> respondent to plead with him to give his blessings to my selection but he kept promising that justice would be done. A copy of such letters dated 8<sup>th</sup> February, 1994 is attached as Exhibit 'F'.

30. That while still waiting patiently for the reaction of the 1<sup>st</sup> respondent to the various appeals lodged with him on this matter by Aduloju descendants I became aware on Friday 18<sup>th</sup> March, 1994 that the 1<sup>st</sup> respondent had commenced the rites or rituals for the installation of the 2<sup>nd</sup> respondent as Edemo of Ado-Ekiti.

31. That I know as a fact that the kingmakers for the Edemo chieftaincy have not made any appointment yet.

33. That contrary to the custom of the chieftaincy the 1<sup>st</sup> respondent is bent on installing the 2<sup>nd</sup> respondent who is not a son of the Aduloju ruling house.

35. *That traditionally there should be at least eight clear days between the 1<sup>st</sup> and the second stage but the 1<sup>st</sup> respondent has fixed the 2<sup>nd</sup> stage for Monday 21<sup>st</sup> March, 1993.*

36. *That I verily believe that the 1<sup>st</sup> respondent is rushing the installation process to avoid legal intervention.*

37. *That prior to the 3<sup>rd</sup> stage the Edemo elect will spend three months in the house of the 3<sup>rd</sup> respondent where he will perform further rites.*

38. *That I hereby undertake to pay any damages the respondents may prove to have suffered as a result of the granting of the interim reliefs claimed herein and provided I ultimately lose this action.*

39. *That it is in the interest of justice to grant this application.”*

In view of the fact that some of the above paragraphs deal with material facts, it is difficult to agree with the Court of Appeal that the material facts are not in dispute.

That is not all. In addition to paragraph 2 of the counter affidavit, paragraphs 3,4,7,8, 29, 34, 35, 36 and 37 state a contrary case. Let me read them.

“3. *That I know as a fact that I have since completed all the traditional rites pertaining to the Edemo Chieftaincy.*

4. *That I know as a fact that most of the documents attached to the motion paper in particular Exhibits B, D, C, and D1 were made purposely for this case and were not made with a view to setting any record straight as deposed.*

7. *That I know as a fact that the membership of the committee was factionalised due to the bribe offered by the applicant and accepted by some of the members of the committee.*

8. *That I know as a fact that at the resumed sittings of the family, I was selected by majority of the members and my name was forwarded to the kingmakers who also ratified my selection.*

29. *That I know as a fact that in spite of the overwhelming support for me the applicant still was not satisfied and he had been going round spreading the falsehood that I am a descendant of a slave.*

34. *That I have also seen the copy of a memorandum submitted to*

*the 1<sup>st</sup> respondent by eminent sons and daughters of Aduloju and same attached as Exhibit ADU IV.*

*35. That I know as a fact that the interest of Justice will be better served if the application is refused.*

B *36. That I know as a fact that I will suffer irreparable damages if the application is granted.*

*37. That I know as a fact that the 1<sup>st</sup> respondent did all the things expected of an impartial and respected traditional ruler in resolving the dispute on the Edemo stool before he consented to my appointment as the*  
C *Edemo.”*

Again, I come to the conclusion that in the light of the above contrary depositions, the Court of Appeal was wrong in coming to the conclusion that the material facts in the case were not in dispute. They  
D were clearly in dispute and I so hold. Can any paragraph show dispute more than paragraph 8 of the counter affidavit which I repeat here at the expense of prolixity.

*“That I know as a fact that at the resumed sittings of the family, I*  
E *was selected by majority of the members and my name was forwarded to the kingmakers who also ratified my selection”.*

To me, paragraph 8 of the counter affidavit clearly joined issues with paragraphs 12 and 16 of the affidavit in support.

F It is the duty of a court of law to take the case of the parties, dispassionately and evenly. It must examine and analyse the case of both parties as in the Record. Where a court of law, trial or appellate, misconceives the case as contained in the Record and reaches a conclusion in that misconception, this court will certainly set aside the judgment which  
G is a product of the misconception. This is clearly such a case. See Oyewale v. Oyesoro (1998) 2 NWLR (Pt. 539) 663.

I am clearly of the view that the Court of Appeal misconceived the case of the appellants as deposed to in the counter affidavit, a miscon-  
H ception which resulted in its adoption of the issues for determination formulated by the respondent in that Court. And it is that misconception that resulted in the judgment given in favour of the respondent. That misconception is enough for me to determine this appeal. I do not think I

will take other issues canvassed by the parties.

It is in the light of the above reasons and the more detailed reasons given by my learned brother, Pats-Acholonu, JSC in the leading judgment that I allow the appeal and dismiss the cross appeal. The judgment of the Court of Appeal is set aside. I abide by my learned brother's orders as to cost.

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**MUSDAPHER JSC**

I have read before now, the judgment of my Lord Pats-Acholonu JSC, just delivered. For the same reasons contained in the aforesaid judgment, which I adopt as mine, I too, allow the appeal and set aside the decision of the Court of Appeal and restore the decision of the trial Court. The Cross-appeal is dismissed. The appellants are entitled to costs both in the Court below and this Court assessed on N5,000.00 and N10,000.00 respectively.

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