

SUPREME COURT OF NIGERIA

28TH MAY, 2004. SC. 106/2000

**CORAM:- I.L. KUTIGI, U. MOHAMMED, A.I. KATSINA-ALU,
U.A. KALGO, S.O. UWAIFO, JJSC**

1. JACOB A. JOLAYEMI

2. EZEKIEL A. AJAYI

3. OYEDELE AJIBOYE

..... APPELLANTS

(For themselves and other members
of Imoji compound Arandun)

AND

1. ALHAJIRAJI ALAOYE

2. OBA AMOS BABATUNDE

..... RESPONDENTS

(Alarun of Arandun)

**PLEADINGS - Relevance of - Evidence - Must be given in support of
pleadings - And a party is bound - By his pleadings (H1)**

**CHIEFTAINCY MATTERS - Evidence - Production of candidates - For
a chieftaincy stool - Is exclusive for appellants' family - As proved by
pleadings and evidence (H2)**

**EVIDENCE - Minutes of meeting - Weight of - Failure to prove that
appellants attended the meeting - Makes the minutes, Exhibit D1, weight-
less (H3)**

**CHIEFTAINCY MATTERS - Tradition - Appointment of Chief - Where a
particular family - Has produced the chief for past 63 years - Any at-
tempt to change the tradition - Will disturb the peace - Given the circum-
stances of this case (H4)**

**APPEALS - Concurrent findings - Perverse findings of the two lower
courts - Will be disturbed by the Supreme Court (H5)**

FACTS

This case is a chieftaincy dispute concerning the stool of Ejemu Alaran of Arandun in Irepodun Local Government of Kwara State. Plaintiffs/appellants filed an action against the defendants/respondents claiming 5 declarations, an order and a perpetual injunction in respect of the said chieftaincy. Their main claim is that their family, Imoji, is entitled to the said chieftaincy stool to the exclusion of defendants' Imode family. From 1931 when Alaran people moved to a new settlement called Arandun, plaintiffs' compound have been producing the Ejemu up till 1994 when the last chief died. And the Alaran people are made up of 6 compounds in all. In 1994, the defendants protested claiming that it is the turn of their Imode compound to provide the next Ejemu according to native law and custom.

The parties filed their pleadings and called witnesses. In a considered ruling, the trial court dismissed the plaintiffs' claim, holding that they failed to satisfy the court from the evidence adduced that they have exclusive right to the stool of Ejemu Alaran chieftaincy. Plaintiffs' appeal to the Court of Appeal was dismissed as it affirmed the trial court's decision. Still dissatisfied, they have further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

"1. Which of the traditional histories should the courts below have believed having regard to the pleadings and evidence led at the trial of this action.

2. Were the High Court and the Court of Appeal right in considering pre-1931 history when determining which family was entitled to produce the chieftaincy title Ejemu-Alaran of Arandun.

3. Was proper consideration given to the contents of Exhibit D".

HELD (Unanimously allowing the appeal per **KALGO JSC**)

PLEADINGS - Relevance of

1. Pleadings are the body and soul of any case in a skeleton form and are built up and solidified by the evidence in support thereof. They are never

regarded as evidence by itself and if not followed by any supporting evidence, they are deemed abandoned. See Ajao v. Alao (1986) 5 NWLR (Pt.45) 802; Ebueku v. Amola (1988) 2 NWLR (Pt. 75) 128. A party is bound by his pleadings and cannot give evidence outside what was pleaded. If he does, it goes to no issue and is irrelevant. If a party's pleadings are relevant to his claim in court and he produces evidence in support of the pleadings, the court is bound to consider and decide his claim on the evidence. See Overseas Construction Ltd v. Creek Enterprises Ltd (1985) 3 NWLR (Pt. 13) 407 at 414. (p. 1523 G)

CHIEFTAINCY MATTERS - Evidence - Production of candidates

2. In the circumstances, it is my respectful view that the Court of Appeal was wrong when it held-

"I am of the considered opinion that the learned trial Judge was very right in considering the pre-1931 history of Arandun people so as to arrive at a just resolution of the issues in controversy between the parties".

There was no scintilla or iota of evidence to support the view that Arandun was established or settled before 1931, and so the question of resolving a controversy did not arise. The evidence of the appellants as per pleadings that Arandun was established in 1931 was not challenged at all.

It is also very clear from the evidence of the appellant's witnesses elicited above, that members of their family did reign in Arandun as Ejemu alaran since 1931 unchallenged. I therefore have no hesitation in deciding issues 1 and 2 against the respondents and in favour of the appellants. (p.1525 F)

Minutes of meeting - Weight of

3. As I stated earlier there was no evidence to show that any member of the Imoji family compound was present or represented at the meeting, and the belief or disbelief of the learned trial Judge does not assist in the circumstances. See Bozin v. The State (1985) 2 NWLR (Pt. 8) 465. There was also no evidence, even in cross-examination, or any sugges-

tion to the effect that both parties agreed on the contents of Exhibit D1.

The Court of Appeal also considering the effect of Exhibit D1 said:-

“That agreement or understanding as evidence in Exhibit D1 is therefore very important in this case particularly as it offers a clear link between pre-1931 and post 1931 Ejemu Alaran stool. It confirms the contention by the respondents that they had been producing Ejemu – Alaran prior to 1931 jointly with the appellants”.

With due respect to the Court of Appeal, the above quoted statements are only extracted or found in the document Exhibit D1, which I explained earlier to be weightless in this case, as the respondents have failed to link it with evidence of any witness or to prove that the appellants or any member of their family compound attended that meeting as evidenced in Exhibit D1. The Court of Appeal was therefore wrong to treat Exhibit D1 as “very important in this case” and for the same reason to affirm the decision of the trial court. From all what I have said in this issue I find that Exhibit D1 was not properly considered by the lower courts and I resolve it in favour of the appellants. (p. 1527 F)

Tradition - Appointment of Chief

4. It is pertinent to observe that since the establishment of Arandun in 1931 up till 1994, when the last Ejemu died a period of 63 years, the Ejemu who ruled Arandun were only chosen from the Imoji family compound. And when attempt was made to change this to the Imode family, there was a big disturbance which led to the interference of the Sole Administrator of the area and finally the dethroning of the person chosen from the Imode family. This period of 63 years to me, has clearly shown that the people of Arandun community have fully established and accepted the tradition of appointing the Ejemu for themselves and any attempt to change it will further disturb the peace there. This is in accordance with the evidence adduced by the appellants at the trial on their pleadings. The respondents have not established anything to the contrary sufficient to tilt the scale of justice in their favour. (p. 1528 D)

APPEALS - Concurrent findings

5. Having resolved all the appellants three issues in their favour, I find that there is merit in this appeal. I accordingly allow it and set aside the decision of the Court of Appeal which affirmed that of the trial court. I am not unaware of the well settled principle of law that this court does not interfere with the concurrent findings of facts of two lower courts as in this case except where special circumstances are shown. In this case, it is my view that the said findings are perverse having been supported by evidence. See Ogunbiyi v. Adewunmi (1988) 12 S.C. (Pt. III) 144, (1988) 5 NWLR (Pt. 93) 217. (p. 1528 G)

NOTABLE POINTS OF INTEREST

UWAIFO.JSC

1. The evidence in this case is that of recent events

The evidence relied on is not based on traditional history as may have been generally erroneously referred to in these proceedings. It was evidence of recent events whose credibility must be considered in the normal process of evaluating legally admissible direct evidence. (p. 1532 A)

2. Proof - Responsibility of a defendant

I realise that a defendant need not prove anything if the plaintiff has not succeeded in establishing his case, at least prima facie, in order that the necessity of the defendant to confront the case so made may arise: see Aromire v. Awoyemi (1972) 2 S.C. 1 at 10 – 11; Adeleke v. Iyanda (2001) 6 S.C. 18, (2001) 13 NWLR (Pt. 729) 1 at 21-22. But in the present case, the plaintiffs adduced evidence which, if not sufficiently contradicted, will entitle them to judgment. (p. 1532 H)

3. Perverse findings cannot sustain a judgment

With due respect to the learned trial Judge, these are findings not supported by evidence at all. They are therefore patently perverse. It is the law that perverse findings cannot sustain a judgment even if upheld on appeal by the Court of Appeal. The court below was in error to have upheld the said perverse findings of fact. This court has a duty to set

them aside. The reliance on Exhibit D1 by the two courts below to defeat the plaintiffs' case led to a miscarriage of justice. (p. 1537 D)

REPRESENTATION

- B F.R.A. William Jnr. Esq., (with him Femi Abifarin Esq., and Miss K.T. Adedeji), for the Appellants.
Chief P.A.O. Olorunnisola, SAN, (with him, B.S. Jibril Esq.), for the Respondents.

CASES REFERRED TO

- Aguocha v. Aguocha (1986) 4 NWLR (Pt. 37) 566.
Owoade Onitola (1988) 2 NWLR (Pt. 77) 413.
Adekeye v. Akin-Olugbade (1987) 3 NWLR (Pt. 60) 214.
D Fashanu v. Adekoya (1974) 6 S.C. 83 at 91.
Oko v. Ntukidem (1993) 2 NWLR (Pt. 274) 124 at 135.
Ajao v. Alao (1986) 5 NWLR (Pt.45) 802.
Ebueku v. Amola (1988) 2 NWLR (Pt. 75) 128.
E Adebayo v. Ighodalo (1996) 5 NWLR (Pt. 450) 507
Oladele v. Anibi (1998) 7 S.C. (Pt.1) 1, (1998) 9 NWLR (Pt. 567) 559.
Ogunbiyi v. Adewunmi (1988) 12 S.C. (Pt. III) 144.

LEAD JUDGMENT BY KALGO JSC

- F This is an appeal from the decision of the Court of Appeal, Ilorin Division, Ilorin, in which it affirmed the judgment of the trial High Court Holden at Omu-Aran, in the Omu-Aran Judicial Division of Kwara State.
According to paragraph 31 of the Statement of Claim, the Appellants
G who were the plaintiffs at the trial, claimed against the respondents, jointly and severally for:-

- "i. DECLARATION that under the applicable native law and custom at Arandun, it is only the family compound of the Plaintiffs by name
H IMOJI compound that is entitled to present candidate(s) to fill any vacancy in the Ejemu Alaran Chieftaincy Stool of Arandun.*
ii. DECLARATION that the family/compound of the 1st defendant that is: Imode compound has no right to present any candidate to fill any

vacancy in the Ejemu Alaran Chieftaincy Stool.

iii. *DECLARATION that the 1st defendant is ineligible and not qualified to be selected, appointed and installed as the Ejemu Alaran of Arandun nor to perform the functions of the office or collect the perquisites attached thereto.* B

iv. *DECLARATION that the 2nd defendant has no power under the applicable Arandun native law and customs pertaining to the Ejemu Alaran Stool to approve the appointment of any persons that is not from the Imoji compound at Arandun.* C

v. *DECLARATION that the 3rd plaintiff having been chosen and selected by the Imoji compound and presented traditionally to the 2nd defendant is the rightful person to occupy the vacant Ejemu Alaran stool of Arandun.*

vi. *ORDER setting aside any purported selection, nomination appointment, approval and installation of the 1st defendant or any other person from his Imode compound/family.* D

vii. *PERPETUAL INJUNCTION restraining the 1st defendant from continuing henceforth to hold himself out or under any form of ceremony in pursuance of his purported ambition of becoming the Ejemu Alaran and restraining the 2nd defendant or any other person for the time being acting for him from recognizing the 1st defendant as the Ejemu Alaran. Perpetual injunction restraining the defendants jointly and severally from holding out, presenting, parading or in any other manner put the 1st defendant forward as the Ejemu Alaran.* E F

viii. *ORDER directing the 2nd defendant to appoint, approve and install the 3rd plaintiff as the rightful Ejemu Alaran forthwith".* G

The action was a chieftaincy dispute concerning the stool of Ejemu Alaran of Arandun in Irepodun Local Government of Kwara State. It all started with the movement of people from Omu Aran to a new settlement called Arandun. This was in or about 1931 and before then, the people were under the Ejemu Alaran. When the people were moving, it is alleged that the Ejemu Alaran told them that whenever they settle at new found land, they should maintain their chieftaincy to avoid any controversy. The appellants, together with others, moved and settled at Arandun in or H

about 1931. There were 6 compounds in Arandun and the appellants belonged to the Moji or Imoji compound and the respondents belonged to Mode or Imode compound. At Arandun the people maintained the stool of Ejemu Alaran and up till 1994 when the last Ejemu Jimoh Oyebanji died, the compound of Imoji produced all the Ejemus of Arandun from 1931 when the settlement was founded. In 1994, the respondents, from the Imode compound protested the appointment of any member of the Imoji family on the ground that according to native law and custom, the post of Ejemu Alaran of Arandun should be rotated between the Imoji and the Imode compounds and that this time it was their turn. This briefly is the substance of the dispute in this case.

The parties filed their pleadings and called witnesses to support their case on pleadings. The learned counsel for the parties also addressed the court at length both in writing and orally after their witnesses' evidence. The learned trial Judge considered all these and came to the conclusion in her judgment that:-

"The plaintiffs have failed to satisfy this court from the evidence adduced that they have exclusive right to the stool of Ejemu Alaran chieftaincy and as such all the reliefs sought by them have failed and are accordingly dismissed".

The appellants were dissatisfied and appealed to the Court of Appeal. The appeal was dismissed as being without merit and the decision of the trial court was affirmed.

The appellants have now appealed to this court. The appellants and the 1st respondent filed their written briefs in court as required by the court rules and exchanged them between themselves. The 2nd respondent did not file any brief.

In the appellants' brief, the following issues were formulated for the determination of this court:-

"1. Which of the traditional histories should the courts below have believed having regard to the pleadings and evidence led at the trial of this action.

2. Were the High Court and the Court of Appeal right in considering pre-1931 history when determining which family was entitled to pro-

duce the chieftaincy title Ejemu-Alaran of Arandun.

3. Was proper consideration given to the contents of Exhibit D”.

The 1st respondent also raised 3 issues which read:-

“1. Whether the Court of Appeal is right when it held that the Defendants/Respondents adequately proved that the family of the appellants were adequately represented at the meeting reflected in Exhibit D. B

2. Whether the Court of Appeal was right in holding that the respondents have produced Ejemus prior to 1931 and whether non pleading of the names of the Ejemus vitiates the finding. C

3. Which of the traditional histories should the courts below have believed having regard to the pleadings and evidence led at the trial of this action”.

I have examined the grounds of appeal and the issues filed by both parties and I am of the view that the appellants’ issues are apt and germane to this appeal and the issues raised by the 1st respondent can properly be argued or considered in the appellants’ issues. I shall therefore consider the appellants’ issues. D

The appellants, as plaintiffs, pleaded in their Statement of Claim as E follows:-

“1. The plaintiffs are important and principal members of Imoji compound of Arandun and they brought this action for themselves and the other members of Imoji compound of Arandun. F

2. The 3rd plaintiff was the person selected and chosen by the Imoji compound to succeed to the Ejemu Alaran stool that became vacant on the demise of Chief Oyebanji Jimoh on 12th August 1994.

3. The plaintiffs aver that there are six large compounds/families at Arandun with each compound having a particular chieftaincy title exclusively to itself. G

4. The plaintiffs aver that Arandun was established in or about 1931 by people families and compounds that migrated from Omu Aran. The plaintiffs shall lead evidence oral and documentary of the settlement at Arandun. H

5. The plaintiffs aver that the Ejemu Alaran Chieftaincy title is a ruling house title that belongs exclusively to male members of Imoji com-

pound.

6. The plaintiffs aver further that any Ejemu Alaran once installed also doubles as the Baale of Omiririn, a neighbouring village near Arandun.

B 7. The plaintiffs aver that under the relevant native law and custom pertaining to the Ejemu Alaran Chieftaincy Stool (oral and documentary evidence of which will be led at the trial) it is the responsibility of the members of Imoji compound to select and nominate a candidate to fill any vacancy in the Ejemu Alaran stool.

C 8. The plaintiffs aver that since the establishment of Arandun over 65 years ago there had been 3 Ejemu Alarans all from the Imoji compound and they are as follows:-

a. Idowu Ebijareole

D b. Dada Jolayemi Ewedunmoye.

c. Oyebanji Jimoh Inawole.

9. The plaintiffs aver that after the demise of Ejemu Dada Jolayemi Ewedunmoye

E sometime in 1971 the 2nd defendant as the Oba of Arandun attempted to put an usurper from Imode compound by name Eshorun Adeoti on the Ejemu Alaran stool.

10. The plaintiffs aver that members of their compound protested vehemently to the then District Officer Mr. Ameh Adaji who set up an Ad F hoc Committee to look into the matter.

11. The plaintiffs aver that when the ad hoc committee completed its assignment sometime in 1972, it found in favour of the claims of the plaintiffs compound and the District Officer ordered the 2nd defendant to G remove Eshorun Adeoti and to install Ejemu Oyebanji Jimoh.

12. The plaintiffs aver that as a result of the averments in paragraphs 10 and 11 above, the 2nd defendant installed Ejemu Oyebanji Jimoh as the rightful Ejemu Alaran sometime in 1972.

H 13. The plaintiff aver that the 1st defendant is from Imode compound and is not in any way related to the plaintiffs at Imoji compound and is therefore not entitled to the Ejemu Alaran stool.

14. The plaintiffs aver that when the component units or com-

pound were leaving Omu Aran for Arandun to settle, it was agreed that each compound should keep its traditional chieftaincy.

15. *The plaintiffs aver that there are some chieftaincies rotated between some compounds but the Ejemu Alaran is not one of such chieftaincies. Only the members of Imoji compound of the male line could occupy the stool.* B

16. *The plaintiffs aver that the last Ejemu Alaran was Chief Oyeibanji Jimoh for short and he was from Imoji compound and he passed on 12th August, 1994".*

At the trial the appellants called 3 witnesses to prove their claims. C
P.W.1 testified that:-

"In Arandun we have six family compounds. They are, Oke-Isan, Moji, Mode Ajaa, Oke Apa, Isedo. Arandun was founded about 65 years ago. The people of Arandun came from Omu Aran to settle there. The families that are entitled to produce the Ejemu Alaran is Moji compound. I know a village called Omirinrin. It is my father's farm. Ejemu Moji owns Omirinrin. Idowu Ebi-Jareole is known to me. Idowu Ebijare-Ole was Ejemu Alaran Moji. There was no Ejemu before him. He was the 1st Ejemu, after him there was another Ejemu called Ejemu Dada Jolayemi Ewedunmoye. After Ewedunmoye there was Jimoh Oyeibanji. After the death of Ewedunmoye when Ejemu Oyeibanji was to be installed as Ejemu, the Oba then installed one Adeoti Surmount who was from Mode compound. Oyeibanji was from Moji compound. As a result of this we informed the whole town that, that was strange. The report was lodged with the District Officer in Omu-Aran. What the Oba did was within my personal knowledge. Esorun Adeoti was removed and Oyeibanji was made the Ejemu of Alarandun. All the three past Ejemus were from Moji compound in Arandun. The 1st defendant is not related to Moji compound and is not entitled to be made the Ejemu Alaran. Before the people of Arandun left Omu Aran, I heard through history that when the Alaran was leaving to found his own town, he appealed to all the chiefs to maintain their chieftaincy whenever they got to a new found land as he did not want any fight over the land or chieftaincy. Ejemu chieftaincy has never rotated between our compound and any other compound in F
G
H

Arandun”.

P.W. 2 also said:-

“Arandun is made up of six large units or families comprising smaller units in some cases. The compounds are Oke Isan, Imoji, Imode, Ajaah, Apai and Iluro or Isedo. Apart from Alaran of Arandun chieftaincy, there are 9(nine) other chieftaincies in Arandun. Alaran, Odofin, Esa, Jemu Apa, Aro, Asanlu, Ejemu Aran, Elemo and Oloo. Imoji compound or family has exclusive right to nominate and select Ejemu-Aran. It is exclusively the right of Imode to fill Edemo chieftaincy. The 1st defendant is from Imode. According to history, Arandun was founded in 1931. The people of Arandun were from Omu Aran. It is the sole responsibility of Moji to fill the Ejemu Alaran chieftaincy title. Three Ijemu Alarans have reigned since Arandun was founded, they are: Idowu Ebijare Ole, Dada Jolayemi (Ewedunmoye) and the 3rd is Jimoh Oyebanji. In 1971, the present Alaran – 2nd Defendant, attempted to install one Esarun Adeoti from Imode compound who is not related to Moji compound as Ejemu Alaran. The appointment is a misnornce. (sic)

Imoji people petitioned the Alaran and the then sole Administrator Ahmed Adaji. An enquiry was then set up to look into the tussle and the result was that it was wrong of Alaran based on history and facts, to have appointed the said Esarun Adeoti. The Sole Administrator then advised Alaran to install Jimoh Oyebanji as the rightful Ejemu Alaran of Arandun. The Alaran complied with the directive. Ejemu Jimoh Oyebanji is from Imoji family. The two other previous Ejemu Alaran were bonafide sons of Imoji. Ejemu Alaran chieftaincy is rotated only within Imoji family”.

And in cross-examination he added:-

“According to history when Arandun known as Aran were moving to Arandun, it was agreed that each family was carrying to Arandun, the chieftaincy title which was exclusive to that family and that has not changed and that agreement has been complied with ever since. It is not true that my family attended any meeting to the effect that Ejemu title would be rotated between our family and any other family. It is not true that I rushed to the court because we knew that our petition to the Local

Government would not be successful”.

The evidence of P.W.s 1, 2 and 3 of the appellants have proved conclusively that:-

“1. the appellants belonged to the Imoji family compound and the respondents belonged to the Imode family compound.

B

2. the Imoji compound have since 1931 – 1994 occupied the chieftaincy title of Ejemu Alaran of Arandun and the Imode compound was entitled to the Edemo chieftaincy;

3. Arandun was founded in 1931.

C

4. Ejemu chieftaincy title has never rotated between Ejemu compound and any compound in Arandun.

5. All the three past Ejemus were from Imoji compound in Arandun.

6. An attempt by the Alaran to appoint one Esarun Adeoti from Imode compound

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was successfully resisted by Imoji compound and reversed by the then Sole Administrator.

7. The last installed Ejemu Alaran Jimoh Oyebanji died in August 1994”.

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There is no doubt that most of the evidence from which the above are proved was based on direct evidence. It is pertinent to observe that of the 3 witnesses of the appellants, only P.W.2 is 51 years of age in 1995 when he testified in the trial court; the others, P.W.s 1 and 3, were 63 and 65 years of age respectively at the material time. The learned trial Judge did not anywhere in her judgment disbelieve their evidence. I shall consider this in more detail later.

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The respondents as defendants pleaded in paragraphs 1, 5, 10, 13, 14 and 17 of their amended Statement of Defence thus:-

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“1. The defendants admit paragraphs 1, 10, 16, 18, 19, 25, 28 and 29 of the Statement of Claim.

5. Contrary to the averment in paragraph 4 of the Statement of Claim. Arandun was not established in or about 1931. Arandun existed before 1931 and before moving to Omu to form together with Aran Orin what became Omu-Aran. They all moved to Ajo and back to Omu-Aran before Aran Orin moved its present site and Arandun moved to its present

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site. The identity of each component of Arandun, Aran Orin, Omu was distinct and the remnants of those left behind at Omu Aran are still distinct and hold chieftaincy title peculiar to the Arans. Arandun was formerly called Aran Odun and was named after Odun river at the site.

B 10. The defendants aver that paragraphs 9, 10 and 11 of the statement of claim are false when they state that the 2nd defendant attempted to install an usurper from Imode compound in 1971 or at any other time.

C 13. Before moving back to present Arandun, Imode compound had produced many Ejemus both at Arandun and Omu-Aran. This will be demonstrated by evidence in court.

14. It is true that the last 3 immediate ejemus came from Imoji as averred in paragraph 8 of Statement of Claim but not as of right and evidence will be led to show the circumstances which made that possible.

D The conclusion reached in 1973 by the Sole Administrator Igbomina/Ekiti and Arandun people was that after Oyebanji Jimoh from Imoji it should be the turn of Imode. The minute of the meeting shall be tendered at the hearing.

E 16. With respect to paragraph 20 of the Statement of Claim the defendants aver that the 1st defendant being a descendant of an Ejemu from Imode is qualified and has been duly accepted and announced by the Alaran-in-council as the successor to the late Ejemu Oyebanji Jimoh.

F The defendants shall tender document of the Alaran –in-council and or king makers to this effect”.

They also called 3 witnesses and tendered a document Exhibit D1, at the trial. The evidence of D.W.1 in part reads:-

G “I am aware that in 1973, there was a case which involved a chieftaincy title involving Ejemu. On 21st August 1973, the Sole Administrator in person of Mallam A. Yusuf invited the kingmakers of Arandun Community over the Chieftaincy tussle with a view to settling the case amicably between the two displeased parties. During the time two com-
H pounds from Arandun were invited. These are Imoji and Imode compound. I was also at the meeting. I was the Council Secretary who took down the minutes at that meeting. I have the minutes of the meeting here with me.”

In cross examination he said:-

“At the meeting we were told that both Imoji and Imode were producing Ejemu in rotation at Arandun.... Moji compound succeeded to the throne three times at the expense of Imode at Arandun.”

D.W.2 also testified for the respondents and in his cross examination had this to say:-

“The 1st Ejemu at Aran Odun was from Mode compound. After Akehinlere was Otundebomoye. Idowu Ebijareole was not the 1st Ejemu at Arandun instead he was Ejemu at Omu Aran who was transferred to Arandun with that title. I do not know when we went to settle at Arandun. After Ebijareole his son Dada became Ejemu because his father was too old hence it was pleaded that his son Dada should be allowed to succeed him..... Since we settled at Arandun, the three Ejemus that reigned at Arandun are Idowu Ebijareole, Dada Joleyemi and Oyebanji Jimoh Inawole” (Underlining mine)

D.W.3 in his examination-in-Chief had this to say:-

“The title of Ejemu did not come into being for the first time at the present Arandu after moving from Omu-Aran. Moji compound are entitled to the chieftaincy title of Ejemu. When we were at Omu Aran, three families were entitled to the title i.e., Moji, Mode and Adinkun compounds.....”

In his cross examination, he added:-

“I know Idowu Ebijareole. I also know Dada Jolayemi Ewedunoye. I know Oyebanji Jimoh Inawole. Since we got to Arandun, these are the three people who had been Ejemus. The three of them are from Imoji compound.”

(Underlining mine)

I have taken the trouble to set out the material evidence supporting the pleadings of the parties at the trial. **Pleadings are the body and soul of any case in a skeleton form and are built up and solidified by the evidence in support thereof. They are never regarded as evidence by itself and if not followed by any supporting evidence, they are deemed abandoned.** See Ajao v. Alao (1986) 5 NWLR (Pt.45) 802; Ebueku v. Amola (1988) 2 NWLR (Pt. 75) 128. A party is bound by

his pleadings and cannot give evidence outside what was pleaded. If he does, it goes to no issue and is irrelevant. See Aguocha v. Aguocha (1986) 4 NWLR (Pt. 37) 566; Owoade Onitola (1988) 2 NWLR (Pt. 77) 413; Adekeye v. Akin-Olughade (1987) 3 NWLR (Pt. 60) 214. If a party's pleadings are relevant to his claim in court and he produces evidence in support of the pleadings, the court is bound to consider and decide his claim on the evidence. See Overseas Construction Ltd v. Creek Enterprises Ltd (1985) 3 NWLR (Pt. 13) 407 at 414; African Continental Seaways Ltd v. Nigerian Dredging roads & General Works (1977) 5 S.C. 235 at 250; H.I.O. Adeniji v. T.A. Adeniji (1972) 4 S.C. 10 at 17.

Having said this, let me stop here to consider the appellants' issues. I shall take issues 1 and 2 together. To my humble understanding, the two issues are asking which evidence of as narrated by the parties at the trial should be believed by the lower courts in determining which family is entitle to produce the Ejemu Alaran of Arandun. I have earlier in this judgment set out the summary of the material evidence given by the parties' witnesses in support of their respective pleadings. None of the witnesses was successfully challenged or destroyed in cross-examination at the trial, and the learned trial Judge, in her judgment did not say that she disbelieved any witness who testified before her. All she said was that she preferred the evidence of the defendants/respondents to that of the plaintiffs/appellants.

Let me now recall briefly the evidence of the parties at the trial. The 3 witnesses of the appellants were ad idem in their evidence that –

- (a) the people of Arandun were from Omu Aran.
- (b) Arandun was founded in 1931;
- (c) Imoji compound or family have reigned since Arandun was founded in 1931;
- (d) the three Ejemu Alarans who reigned in succession from 1931

are: Idowu
Ebijareole, Dada Jolayemi (Ewedunmoye) and Jimoh Oyebanji, all from Imoji compound.

- (e) The respondents are from Imode compound or family.

(f) Effort to install one Esahun Adeoti from Imode compound was successfully

resisted in 1972 and he was replaced by Jimoh Oyebanji from Imoji compound

The 3 witnesses of the respondents gave divergent stories but all agreed B that

(i) Imoji compound succeeded to the throne of Ejemu Alaran three times at Arandun;

(ii) the respondents are from Imode compound or family of C Arandun;

(iii) the people of Arandun originally moved from Omu Aran to settle at Arandun;

Items (i) – (iii) are in full agreement with items (a)(c)-(f) in the summary of evidence of the appellants’ witnesses. But D.W.1 in his testimony said that at the meeting he attended in 1972, “we were told that both Imoji and Imode were producing Ejemu in rotation at Arandun”. This is ordinary hear-say as he was not talking from personal knowledge. D E

The respondents also pleaded that Arandun was not established in or about 1931, and that it existed before 1931. But at the trial, they did not produce any specific evidence to prove it. Their witnesses only testified that the Arans settled at Odun, Omu Aran and Ajo and they each had their head chiefs, before settling in Arandun. They did not call any evidence to prove when Arandun was established or settled by the Arans in disagreement with what the appellants pleaded and proved by evidence. **In the circumstances, it is my respectful view that the Court of Appeal was wrong when it held-** F G

“I am of the considered opinion that the learned trial Judge was very right in considering the pre-1931 history of Arandun people so as to arrive at a just resolution of the issues in controversy between the parties”. H

There was no scintilla or iota of evidence to support the view that Arandun was established or settled before 1931, and so the question of resolving a controversy did not arise. The evidence of

the appellants as per pleadings that Arandun was established in 1931 was not challenged at all.

It is also very clear from the evidence of the appellant's witnesses elicited above, that members of their family did reign in Arandun as Ejemu alaran since 1931 unchallenged. I therefore have no hesitation in deciding issues 1 and 2 against the respondents and in favour of the appellants.

Issue 3, questions whether the lower courts have given proper consideration to the contents of Exhibit D or D1. Exhibit D1 is the minutes of the meeting in 1973 between the Sole Administrator Igbomina/Ekiti Division, M.A. Yusuf and Arandun people to settle the dispute which arose after the installation of one esarun Adeoti from Imode compound as Ejemu Alaran of Arandun. At the trial, the appellants maintained that they were not bound by whatever was decided at the meeting because they were neither present there nor represented by anybody. None of their witnesses attended the meeting and no member of the Imoji family attended the meeting or proved to be present there. It is important for the respondents to prove that Exhibit D1 is binding on the appellants because it was alleged that the meeting agreed that the stool of Ejemu Alaran of Arandun should from then be taken in rotation between the Imoji and the Imode family compounds. If they are to be bound by this, it must be shown that either the members of the Imoji family including the appellants attended the meeting where the resolution was reached or the family was formally notified of this resolution. There was no evidence to this effect, and nowhere can it be inferred.

In fact the reaction of the appellants after the death of Jimoh Oyebanji in 1994 and the attempted installation of the 1st respondent as Ejemu, leading to the petition per Exhibit 1, seemed to confirm that the resolution was not communicated to the appellants, their family or even the principal members thereof. I have also carefully studied Exhibit D1 and find that nowhere in it was any member of Imoji family compound, even among the kingmakers mentioned as being present or represented at the meeting. And although D.W. 1 in his testimony said that the two compounds of Imoji and Imode were invited to the meeting, nothing to

show that the former actually attended the meeting. In fact P.W.2 a member of Imoji family stated clearly in his evidence in cross-examination that:-

“It is not true that my family attended any meeting to the effect that Ejemu title would be rotated between our family and any other family”.

Exhibit D1, (would) appear to be a record of discussion only held between the Sole Administrator and the community of Arandun excluding the appellants and the decisions or resolutions reached there were not communicated to those affected therewith, i.e, the Imoji family members, who were not shown to be present at the meeting. This is clearly shown by the title of Exhibit D1 which reads:-

“Notes on the discussion held on Tuesday 21st August, 1973, between the Sole Administrator (Igbomina/Ekiti) and the Community of Arandun in town Hall Omu-aran on the disputed title of Ejemu of Arandun”.

In the circumstances, it is my respectful view that no weight should be attached to Exhibit D1 as was done by the trial court and the Court of Appeal.

The learned trial Judge in her judgment merely said:

“I do not believe that the plaintiffs side was not represented at the meeting”

And later added:-

“I hold that both parties agreed on contents of Exhibit D1”.

As I stated earlier there was no evidence to show that any member of the Imoji family compound was present or represented at the meeting, and the belief or disbelief of the learned trial Judge does not assist in the circumstances. See Bozin v. The State (1985) 2 NWLR (Pt. 8) 465. There was also no evidence, even in cross-examination, or any suggestion to the effect that both parties agreed on the contents of Exhibit D1.

The Court of Appeal also considering the effect of Exhibit D1 said:-

“That agreement or understanding as evidence in Exhibit D1 is therefore very important in this case particularly as it offers a clear link

between pre-1931 and post 1931 Ejemu Alaran stool. It confirms the contention by the respondents that they had been producing Ejemu – Alaran prior to 1931 jointly with the appellants”.

With due respect to the Court of Appeal, the above quoted
 B statements are only extracted or found in the document Exhibit
 D1, which I explained earlier to be weightless in this case, as the
 respondents have failed to link it with evidence of any witness or to
 prove that the appellants or any member of their family compound
 C attended that meeting as evidenced in Exhibit D1. The Court of
 Appeal was therefore wrong to treat Exhibit D1 as “very important
 in this case” and for the same reason to affirm the decision of the
 trial court. From all what I have said in this issue I find that Exhibit
 D1 was not properly considered by the lower courts and I resolve it
 D in favour of the appellants.

It is pertinent to observe that since the establishment of
 Arandun in 1931 up till 1994, when the last Ejemu died a period of
 63 years, the Ejemu who ruled Arandun were only chosen from the
 E Imoji family compound. And when attempt was made to change
 this to the Imode family, there was a big disturbance which led to
 the interference of the Sole Administrator of the area and finally
 the dethroning of the person chosen from the Imode family. This
 F period of 63 years to me, has clearly shown that the people of
 Arandun community have fully established and accepted the tradi-
 tion of appointing the Ejemu for themselves and any attempt to
 change it will further disturb the peace there. This is in accordance
 with the evidence adduced by the appellants at the trial on their
 G pleadings. The respondents have not established anything to the
 contrary sufficient to tilt the scale of justice in their favour.

Having resolved all the appellants three issues in their favour,
 I find that there is merit in this appeal. I accordingly allow it and
 H set aside the decision of the Court of Appeal which affirmed that of
 the trial court. I am not unaware of the well settled principle of law
 that this court does not interfere with the concurrent findings of
 facts of two lower courts as in this case except where special cir-

cumstances are shown. In this case, it is my view that the said findings are perverse having been supported by evidence. See Ogunbiyi v. Adewunmi (1988) 12 S.C. (Pt. III) 144, (1988) 5 NWLR (Pt. 93) 217; Akeredolu v. Akinremi (1989) 5 S.C. 102, (1989) 3 NWLR (Pt. 108) 164; Kale v. Coker (1982) 12 SC 252; Karibo v. Grend (1992) 3 NWLR (Pt. 230) 426. Achinora v. Ajufo (1988) 3 NWLR (Pt. 80) 1.

In sum, this appeal succeeds and is hereby allowed. The decisions of the trial court and the Court of Appeal are hereby set aside and for the avoidance of any doubt, I hereby enter judgment for the appellants on their claim before the trial court. I award to the appellants the costs of N2,000.00, N3,000.00 and N10,000.00 in the trial court, Court of Appeal and this Court respectively against the respondents.

KUTIGI JSC

I read in advance the judgment just delivered by my learned brother, Kalgo, JSC. I agree with his conclusion to allow the appeal. The evidence is clearly to the effect that since the establishment of Arandun town in 1931, the Plaintiffs from inception had produced all the three (3) previous successive Chiefs (the Ejemu), thus showing the exclusivity of the Chieftaincy to the Imoji compound of the Plaintiffs only. Both the trial High Court and the Court of Appeal agreed, but opted to demolish the plaintiffs' claim on reliance they placed on certain "*minutes of a meeting*" allegedly summoned by the Sole Administrator on 21st August, 1973 to which it was claimed that the two compounds, Imoji and Imode, respectively of the Plaintiffs and Defendants, were invited. D.W.1 (Mr. James Adekeye), a Local government employee, acted as the Secretary. D.W.1, who was the only signatory to Exhibit D.1 asserted that it was agreed at the "*meeting*"

"to allow the present Ejemu to be on the throne but they should note when he (the present Ejemu from Imoji) dies, it will be Imode's turn."

The Ejemu referred to in the quotation above died on 12th August 1994. The defendants sought to enforce the "*agreement*" by nominating

an Ejemu. Their action gave rise to the present suit between the parties.

The plaintiffs vehemently disputed the defendants' claim that there was an agreement between them to rotate the Chieftaincy. They said the Imoji compound was never represented at the meeting, if one was held at all, and that the 'minutes' were not signed by any member of their family. It was not even signed by anybody from the defendants' compound. Exhibit D.1 was again not signed by the Sole Administrator who allegedly convened the meeting. Only D.W.1 who claimed to have recorded the minutes, signed it. My view is that if Exhibit D.1 was intended to be an agreement between the Imoji and the Imode compounds on the rotation of the Chieftaincy between the two compounds, it (exhibit D. 1) should at least have been signed by the representatives of the two compounds.

This omission which was never explained is fatal to the whole exercise. Exhibit D.1 in the circumstances loses its binding effect. It cannot be held to be binding on the plaintiffs. The lower courts were clearly wrong to have relied on Exhibit D.1, herein, to resolve the claims against the Plaintiffs.

The appeal therefore succeeds and it is hereby allowed. I also set aside the judgments of the two lower courts and substitute in their places an order entering judgment in favour of the plaintiffs as per their claims as contained in paragraph 31 of their Statement of Claim.

The Plaintiffs are awarded costs of N2,000.00, N3,000.00 and N10,000.00 respectively in the High Court, Court of Appeal and in this Court.

MOHAMMED JSC

I have had the advantage of reading, in draft, the judgment of my learned brother, Kalgo, JSC., and I agree with his opinion that the decisions of the High Court and the Court of Appeal, in this case were wrong.

I quite agree that the minutes of the discussion between the Sole Administrator of Igbomina/Ekiti division and the community of Arandun (Exhibit D1) cannot stand as an agreement reached by the contending families that the Ejemu title would be rotated between Imoji and Imode

compounds of Arandun. There is no evidence showing that members of the Imoji family took part in that decision.

Exhibit D1 is a suspicious document. No wonder it could not be traced when we asked for its production for our perusal during the hearing of this appeal. From the evidence before the trial High Court which my learned brother, Kalgo, JSC., reproduced in his judgment, it is abundantly clear that the issue of rotating the chieftaincy title between the compounds of Imoji and Imode had not been proved by the respondents who asserted it. The two courts below were therefore in error to hold that the families had agreed to rotate the chieftaincy title between their two compounds.

I too will allow this appeal and set aside the judgments of both the High Court and the Court of Appeal. I enter judgment in favour of the appellants and grant all the reliefs claimed in their Statement of Claim. I also make no order as to costs.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother, Kalgo, JSC., in this appeal. I agree with it and for the reasons he has given. I also allow the appeal and set aside the decisions of the trial High court and the Court of Appeal. Judgment is accordingly entered for the plaintiffs in terms of their claim before the High Court. I abide by the order for costs.

UWAIFO JSC

I had the opportunity of reading in advance the judgment of my learned brother, Kalgo, JSC. I agree with it for the reasons he has given.

The plaintiffs asked for eight reliefs comprising five declarations, two orders and one perpetual injunction to protect their exclusive claim to the stool of Ejemu Alaran Chieftaincy of Arandun. I need not reproduce the said reliefs (already contained in the leading judgment) but it is enough to set out the first relief thus:

“A declaration that under the applicable native law and custom at Arandun, it is only the family compound of the plaintiffs by name Imoji compound that is entitled to present candidate(s) to fill any vacancy in the Ejemu Alaran Chieftaincy stool of Arandun.”

B The evidence relied on is not based on traditional history as may have been generally erroneously referred to in these proceedings. It was evidence of recent events whose credibility must be considered in the normal process of evaluating legally admissible direct evidence.

C The case of the plaintiffs is that some families moved from a place called Omu-Aran in or about 1931 to settle in what is now Arandun. The chieftaincy stool of the new place is known as Ejemu Alaran. Since 1931 the family compound of Imoji has selected the candidate to occupy that stool. Three such persons have reigned, namely: (a) Idowu Ebijareole.
D (b) Dada Jolayemi Ewedunmoye and (c) Oyebanji Jimoh Inawole. The plaintiffs maintain that no other compound is entitled to present candidates for the stool.

The defendants on the other hand dispute that Arandun was established in 1931. As pleaded by them in paragraph. 5 of the Amended Statement of Defence, *“Arandun was not established in or about 1931. Arandun existed before 1931 and before moving to Omu to form together with Aran Orin what became Omu-Aran. They all moved to Ajo and back to*
F *Omu-Aran before Aran Orin moved to its present site and Arandun moved to its present site.”* The defendants maintain that the Ejemu Alaran stool alternates between Imoji and Imode compounds. They rely on the minutes of an alleged meeting which was admitted as Exhibit D1.

G The plaintiffs gave evidence along the same lines as the facts pleaded in their Statement of Claim. It must be observed that the defendants did not plead the names of any Ejemu appointed from Imode compound wither at Arandun or Omu-Aran other than what they pleaded in paragraph 13 of their Amended Statement of Defence thus:

H *“13. Before moving back to present Arandun, Imode compound had produced many Ejemus both at Arandun and Omu-Aran. This will be demonstrated by evidence in court.”*

I realise that a defendant need not prove anything if the plaintiff

has not succeeded in establishing his case, at least prima facie, in order that the necessity of the defendant to confront the case so made may arise: see Aromire v. Awoyemi (1972) 2 S.C. 1 at 10 – 11; Adeleke v. Iyanda (2001) 6 S.C. 18, (2001) 13 NWLR (Pt. 729) 1 at 21-22. But in the present case, the plaintiffs adduced evidence which, if not sufficiently contradicted, will entitle them to judgment. The second witness for the defendants (D.W.2), Raphael Oyewole Awoniyi, attempted to give evidence upon facts not pleaded in regard to one Ejemu Akehinlere who allegedly reigned at a place called Ajo. He said he was succeeded by Otundebomoye. This is not evidence that can be considered because it is inadmissible. It is necessary to note, however, how this witness managed in cross-examination to support the case of plaintiff when he said inter alia:

“Idowu Ebijareole was not the 1st Ejemu at Arandun instead he was Ejemu at Omu Aran who was transferred to Arandun with that title..... After Ebijareole his son Dada became Ejemu because his father was too old..... Since we settled at Arandun, the three Ejemus that reigned at Arandun are Idowu Ebijareole, Dada Jolayemi, and Oyebanji Jimoh Inawole.”

These last three were the names pleaded by the plaintiffs and given in evidence by them as having reigned as Ejemu Alaran from Imoji compound. The third witness for the defendants (D.W.3), Emmanuel Adeniyi Obanla, was even more damning in his evidence-in-chief when he said:-

“Moji compound are entitled to the chieftaincy title of Ejemu.”

When cross-examined, he admitted that he had no idea how Omu Aran people appointed the Ejemu nor where Ejemu is elected at Aran Orin. In the course of that cross-examination, he said:

“I know Idowu Ebijareole. I also know Dada Jolayemi Ewedunmoye. I know Oyebanji Jimoh Inawole. Since we got to Arandun, these are the three people who had been Ejemus. The three of them are from Imoji compound.”

It is plain to me that the evidence regarding the pre- 1931 customary practice of the people of Omu Aran to elect their chief is without any clear direction. The evidence of D.W.2 and D.W.3 who tended to testify

in regard to that period was completely lacking in substance. It would appear that the learned trial Judge, (O. Ajayi, J.), with due respect, failed to understand the case of the plaintiffs. Their case is simply that the Ejemu Alaran Chieftaincy started in or about 1931. They have no burden
 B to prove what happened in Omu Aran. The defendants who brought in the pre-1931 history were obliged to establish what it was. They were unable to do so. Rather they confused the situation in the manner they pleaded in paragraph 5 of their amended Statement of Defence. In fact
 C the defendants did not draw a comparison between the chieftaincy in Omu Aran and that in Arandun but rather a contrast when they pleaded in part of the said paragraph 5 as follows:

*“The identity of each component of Arandun, Aran Orin Omu was distinct and the remnants of those left behind at Omu Aran are still
 D distinct and hold chieftaincy title peculiar to the Arans.”*

In the face of the evidence of the d.w. 2 and d.w.3 which clearly supported the case of the plaintiffs and notwithstanding the portion of the plaintiffs’ pleading reproduced above, the learned trial Judge said:
 E *“In order to determine whether or not the Ejemu chieftaincy is the exclusive right of the Imojis, I must not fail to examine their traditional background. The plaintiffs’ claim is based on their 1931 settlement at Arandun. According to the 1931 settlement, there have been three succes-
 F sive Ejemus at their present day Arandun. In order to examine accurately their historical background, I feel, one should go beyond their 1931 settle-ment as it is essential to know the situation before then. This in my view is the crux of the whole matter. The plaintiffs have avoided leading evi-
 G dence to show their pre 1931 stay at Omu Aran. The defendants on the other hand had led evidence to show their stay at Omu Aran before 1931 and that Alaran existed before they moved to Arandun and their eventual movement to Arandun in 1931... It is clear that there was Ejemu Aran before the people moved from Ile Aran to their present day Arandun. It
 H has also been admitted that Arandun people left some of their people behind at Omu Aran who still held the title Ejemu. Having thus admitted these facts, would it be right to base the tradition and custom of the people of Arandun on their 1931 settlement?”* (Emphasis mine)

It is difficult to understand where the learned trial Judge found the said admission in the evidence of the plaintiffs. Joel Abidoye Abolarin (P.W.1) denied any knowledge of Ejemu at Omu Aran when he was asked in cross-examination. He said: *"I don't know where the Arans came to settle at Omu Aran. I don't know who was the Oba of Aran before Sogbodile. I don't know of Ejemu at Omu Aran."* Oyedele Ajibare (P.W.2) made no such admission but rather comprehensively denied all questions in cross-examination intended for the purpose of extracting an admission. Finally, Simeon Olatunji (P.W.3), following a series of questions in cross-examination, ended by saying, *"I don't know whether there was an Ejemu before we moved to our present site."* There is nothing in the evidence of D.W.2 and D.W.3 upon which any proper finding can be made about the institution of Ejemu at Omu Aran. It follows, in my view, that the learned trial Judge's finding on this issue is perverse. The court below was accordingly wrong to have upheld that finding.

In support of their case, the defendants produced at document, Exhibit D1, which was tendered through one James Abiodun Adekeye. Mr. Adekeye testified as D.W.1. The exhibit was presented as a record of what transpired at a meeting called by the Sole Administrator of Irepodun Local Government in connection with the Ejemu Alaran Chieftaincy, Mr. Adekeye claimed that he recorded Exhibit D1 and signed it. The learned trial Judge regarded Exhibit D1 as very important. She said: *"Exhibit D1 is very vital document which is very necessary to the determination of this suit."* Later, after setting out the contents of that exhibit, she said: *"I hold that both parties agreed on the contents of Exhibit D1. It is clear from Exhibit D1 that although there had been three successive Ejemus from Imoji at the present day Arandun, the facts contained in Exhibit D1 has (sic) added a new dimension to their claim, more so when it was placed on record that it should be the turn of Imode Compound after the death of the Ejemu Imoji."*

Exhibit D1 upon which the learned trial Judge placed much reliance to decide the case was recorded thus:

On the face of the discussions and the evidence being given, the following resolutions were made:-

(a) *That the people of Arandun should bear in mind that the Traditional post of Ejemu was rotational between Mode and Moji compounds.*

(b) *That the people of Arandun should note that any imposed chief or Oloye would not get the support of the people and as a result they should sink their differences.*

(c) *That the people should pull their resources together in order to improve their lots and if this advice is ignored, there would be a cog in the wheel of their progress and they would end nowhere.*

(d) *That Lagos Representatives should appeal to their people to exercise patience over the issue in order to allow the present Ejemu to be on the throne but they should note that when he (the present Ejemu from Imoji) dies; it will be Imode's turn."*

The plaintiffs denied any knowledge of such a meeting which gave rise to Exhibit D1. As already indicated, the document was tendered through D.W.1. He said he was the Secretary of the Council then. He testified thus:

"I am aware that in 1973, there was a case which involved a chieftaincy title involving Ejemu. On 21st August, 1973, the Sole Administrator in person of Mallam A. Yusuf invited the kingmakers of Arandun Community over the chieftaincy tussle with a view to settling the case amicably between the two displeased parties..... I was the Counsel (sic) Secretary who took down the minutes at that meeting."

When cross-examined, he said.

"The discussion that led to the making of Exh. D1 was heard in August 1973. The chairman of that discussion was Mallam A. Yusuf... It is not stated on Exh. D1 that the Sole Administrator was the chairman at the meeting. On page 5 of the minutes, Exh. D1, I was the sole signatory to the exhibit."

The obvious questions that must be asked in respect of such a document which was intended to undermine the assertion of Imoji compound that they have the sole right to the stool of Ejemu Alaran are: (1) Why was the document (allegedly reflecting the minutes of an important meeting) not signed by the Sole Administrator of the Council who allegedly called the meeting and chaired it? (2) Why was the document not

signed by both compounds if it was meant to be a memo of understanding reached by them? (3) Why is it that there is no evidence that any member of Imoji compound was at the said meeting? (4) Why is it that none of those who were allegedly present or were in attendance at the meeting was called to testify? At the trial, learned counsel for the plaintiffs opposed the admission for the document in question but the court overruled. He later addressed the court on the effect of the absence of members of Imoji compound at the meeting where the resolutions therein contained were allegedly taken. In her judgment, the learned trial Judge held:

“I do not agree with Mr. Alli because the document had been admitted in evidence and I cannot allow oral evidence to vary the contents of the exhibit already before the court. I do not believe that the plaintiffs’ side was not represented at the meeting..... I hold that both parities agreed on the contents of exhibit D1.”

With due respect to the learned trial Judge, these are findings not supported by evidence at all. They are therefore patently perverse. It is the law that perverse findings cannot sustain a judgment even if upheld on appeal by the Court of Appeal: See Fashanu v. Adekoya (1974) 6 S.C. 83 at 91; Oko v. Ntukidem (1993) 2 NWLR (Pt. 274) 124 at 135. The court below was in error to have upheld the said perverse findings of fact. This court has a duty to set them aside: see Adebayo v. Ighodalo (1996) 5 NWLR (Pt. 450) 507; Oladele v. Anibi (1998) 7 S.C. (Pt.1) 1, (1998) 9 NWLR (Pt. 567) 559. The reliance on Exhibit D1 by the two courts below to defeat the plaintiffs’ case led to a miscarriage of justice.

Let me add here that in paragraphs 9-12, 20-23 of the Statement of Claim, the plaintiffs made damning allegations of partisanship against the 2nd defendant and gave evidence in support. The summary of the averments in paragraph 9-12 is that in 1971, the 2nd defendant tried to impose a man from Imode compound, one Eshorun Adeoti, on Arandun as the Ejemu Alaran. The plaintiffs protested vehemently and the District Officer intervened to remove the said Eshorun Adeotu and to install Ejemu Oyebanji Jimoh Inawole of Imoji compound. Again, in paragraphs 20-23, the plaintiffs allege that the 2nd defendant announced at a later period

his desire to install the 1st defendant from Imode compound. The reason is that 2nd defendant wanted to honour the memory of his own mother who belonged to Imode compound. It was this plan and reliance on Exhibit D1 by the defendants that gave rise to this action. The defendants B led no evidence to deny or contest the evidence of the plaintiffs in proof of these major allegations. It would therefore appear that the plaintiffs' claim of their exclusive right to the stool has much validity.

For the reasons given in this judgment and those contained in the C judgment of my learned brother, Kalgo, JSC., I too allow this appeal and set aside the judgments of the two courts below together with the orders for costs. I enter judgment for the plaintiffs/appellants upon their claim at the trial court. I abide by the order for costs made in the leading judgment. D

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