

**SUPREME COURT OF NIGERIA**  
4TH FEBRUARY, 2005. SC 273/2000  
**CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU, U. A. KALGO, I.**  
**C. PATS-ACHOLONU, G. A. OGUNTADE, JJSC**

1. CHIEF ISRAEL ARIBISALA ..... PLAINTIFFS/APPELLANTS  
2. CHIEF GABRIEL OLUWATOBA  
AND  
1. TALABI OGUNYEMI ..... DEFENDANTS/RESPONDENTS  
2. CHIEF JOSHUA OGUNMILUYI  
3. SECRETARY, IKOLE LOCAL GOVT.
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APPEALS - Jurisdiction - Evidence - Contention that case be sent back to trial court - On an account of wrongful handling of an exhibit - Cannot advance a case that failed on ground of jurisdiction (H1)

APPEALS - Jurisdiction - Issues - Raised by appellants - Are only valid as they relate to the question of jurisdiction - Being the only thing considered by trial court (H2)

CHIEFTAINCY MATTERS - Court's jurisdiction - Remedies or procedure prescribed by Statute - Must be exhausted - Before court action can become proper (H3)

CHIEFTAINCY MATTERS - Statutes - Chieftaincy question - Definition of - Under Ondo State Chiefs Law - Includes dispute about eligibility (H4)

**FACTS**

The dispute between the parties arose out of succession to a minor chieftaincy in the Old Ondo State (now Ekiti State). Before the Ikole-Ekiti High Court, plaintiffs/appellants claimed against the defendants/respondents inter alia, an order that 1st respondent stops parading himself as the Onisemo of Ikoyi-Ekiti. That the 2nd and 3rd respondents be

ordered not to recognize him in that chieftaincy capacity. Appellants claimed that only a member of their Inisemo family could be appointed the Onisemo of Ikoyi-Ekiti. 1st respondent not being from their family is not eligible for appointment. 1st respondent averred that there are two Inisemos, that of the appellants' and that of his own family. He sought to establish that his appointment to that chieftaincy stool was valid.

The trial court held that it has no jurisdiction to determine the suit. It only evaluated a part of the evidence called as to enable it decide the issue of jurisdiction. The court reasoned that appellants needed to have followed the procedure prescribed under s. 22 of Chiefs Law of Ondo State before resorting to litigation. Appellants' appeal to the Court of Appeal was dismissed, though that Court found that the trial court's manner of handling an exhibit sought to be tendered was wrongful. Being dissatisfied, appellants have further appealed to the Supreme Court.

#### **ISSUES FOR DETERMINATION**

*“(A) Whether or not the claim before the trial court is a Chieftaincy Matter not justiciable under the 1963 Constitution.*

*(B) Whether or not the claim of the appellants should first have been referred to the Commissioner for Chieftaincy Affairs before making a resort to court under Section 22 of the Chiefs Law of 1978.*

*(C) After holding that the trial court should have allowed appellants to withdraw the document they wanted to tender to perfect the condition for admissibility and then re-present same, whether or not it accords with justice for the lower court to allow appellants to do the necessary things to the document, re-tender it for the trial court to admit it and use it in coming to judgment.*

**HELD** (Unanimously dismissing the appeal per **OGUNTADE JSC**)

***Contention that case be sent back to trial court***

1. I do not see therefore that the plaintiffs' case would have been anymore enhanced even if the letter was received in evidence. In this regard, I call to mind the observation of Bello, CJN., in *Utih v. Onoyivbe* (1991) 1 NWLR (Pt. 166) 166 at 241:

*“Moreover, jurisdiction is blood that gives life to the survival of an*

*action in a court of law, and without jurisdiction the action will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise. Since the Court of Appeal had held that the courts including the Court of Appeal have no jurisdiction to entertain the suit and it was right in so holding, hearing the submission of counsel on the cross-appeal by that court would not only be abortive and unfruitful academic exercise but it would also have unnecessarily wasted the valuable time of the court.”*

The position is the same here. Since the court below had agreed with the High Court that courts had no jurisdiction in the matter, I think the court below was right as it would amount to a futile exercise to order that the document wrongly disallowed in evidence be readmitted. The only reason which could justify such a course, was, if the document when re-admitted could reverse the conclusion earlier made that the court had no jurisdiction. (p. 403 B)

### ***Issues - Raised by appellants***

2. I observed earlier in this judgment that the trial court only considered and evaluated such aspects of the evidence as enabled it to determine whether or not it had jurisdiction. Judgment was not given on the merit but rather on the narrow issue of absence of jurisdiction in the court. The two issues raised by the appellants before the court below were therefore, only raised for the purpose of the reversal of the finding by the trial court that it had no jurisdiction. Indeed, the appeal of the appellants to the court below was only competent to the extent that the two issues raised were a challenge to the finding of the trial court that it had no jurisdiction. Were it not so, the court below would not have been able to consider the appeal at all upon any other issue if the finding on jurisdiction remained unimpugned. The argument of appellants' counsel on this score is akin to the case of a man who attempts to cut off his nose just to spite his face. It is plainly disingenuous. If the two issues raised before the court below did not amount to a challenge of the trial court's order as to jurisdiction, the court below and indeed this court would have no basis to hear this appeal. This is because the finding by the trial court that it had no juris-

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 diction would remain extant and valid and thus effectively shut the doors against both the court below and this court in considering any other issue in the case. I am satisfied that having regard to the fact that the trial court only considered the issue of jurisdiction in the case, the appellants' two issues for determination were in fact a challenge to the trial court's finding as to jurisdiction and that the court below correctly considered the issue. (p. 404 G)

***C Remedies or procedure prescribed by Statute***

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 3. The court per Belgore, JSC., observed:  
       *“Where a statute prescribes a legal line of action for determination of an issue, be that issue an administrative matter, chieftaincy matter or matter of taxation, the aggrieved party must exhaust all the remedies in that law before going to court. The provisions of Section 21 and Section 22(1) - (6) of the Traditional Rulers and Chiefs Edict (No. 16) 1979 (Bendel State) are clear as to steps to take. The plaintiff seemed to have jumped the stile as he avoided all avenues that availed him and went to the High Court. I am of the view that he did a wrong thing indeed.... The provisions of Section 236 of the 1979 Constitution is not an open gate for all High Courts to assume jurisdiction in all subjects. All the local remedies in the statute on every subject must be exhausted before embarking on actual litigation in court.”*
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F

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 The position of the law therefore, is that in a chieftaincy dispute as this, an aggrieved person who brings a suit must show that he brought his suit only after he had exhausted the remedies provided or followed the procedure prescribed under the applicable law. Why did not the plaintiffs in this case first take their grievance to the prescribed authority and later to the Commissioner in charge of Chieftaincy matters as laid down in Section 22(3) and (5) of the Chiefs Law of Ondo State Cap. 20?

H
 The prescribed authority only approves the appointment of a minor chief made by those entitled by customary law so to appoint. The plaintiffs' argument that they had not taken their case to the prescribed authority because such prescribed authority had not approved the appointment is therefore untenable. The representations, which plaintiffs claimed

they made in their letter in 1979 to the Ondo State government, ought to have been made to the prescribed authority; and later to the Commissioner for Chieftaincy matters. (p. 407 F/ 408 F)

***Statutes - Chieftaincy question - Definition of***

4. Under Section 161(3) of the 1963 Constitution, no chieftaincy question could be entertained by any court of law in Nigeria. Under Section 165 of the said 1963 Constitution, “*Chieftaincy question*” is defined as “*any question as to the validity of the selection, appointment, approval of appointment, recognition, installation, grading, deposition or abdication of a chief.*”

On the other hand, the Chiefs Law, 1978, Ondo State, Section 22(3) speaks of “*a dispute whether a person has been appointed in accordance with customary law to a minor chieftaincy.*”

On a first look, it would appear that the definition of a Chieftaincy question” under Section 165 under the 1963 Constitution is quite wide, but when it is compared with Section 22 (3) of the Chiefs Law 1978, Ondo State, it is seen that the definition in the 1963 Constitution is narrower in scope. Under Section 22 (3) of Ondo State Chiefs Law, any dispute, even if it touches only the question of eligibility as the plaintiffs/appellants contended must be submitted first to the prescribed authority for settlement and later to the commissioner for chieftaincy matters. The attempt made by the plaintiffs/appellants’ counsel to convince me that a dispute about eligibility of the 1st defendant to the Oisemo Chieftaincy, which was the subject matter of plaintiffs/appellants’ suit, was not a chieftaincy dispute within Section 22(3) of the Ondo State Chiefs Law is misconceived and must be rejected. (p. 409 B)

**REPRESENTATION**

Mr. A. O. Akanle, SAN., (with him, R. Adegbola (Miss)), for the Appellants.

Respondents not represented.

**CASES REFERRED TO**

- Utih v. Onoyivbe (1991) 1 NWLR (Pt. 166) 166 at 241  
Idika v. Erisi (1988) 2 NWLR (Pt. 78) 563 at 580  
Oloba v. Akereja (1988) 7 S.C. (Pt.I) 1; (1988) 3 NWLR (Pt. 84) 508 at  
B 523  
Gbokoyi v. Minister of Chieftaincy Affairs [1965] NMLR 7 at 8  
Eguamwense v. Amaghizenwen [1993] 9 NWLR (Pt. 315) 1 at 25  
Olowosago v. Adebamiyo (1998) 3 S.C. 41; (1998) 4 NWLR (Pt.88) 275  
at 283  
C Garba v. State (2000) 4 S.C. (Pt.II) 157; (2000) 6 NWLR (Pt.661) 378  
at 386  
Omo v. J.S.C. (2000) 7 S.C. (Pt.II) 1; (2000)12 NWLR (Pt. 682) 444  
Dielu v. Iwuno (1996) 4 NWLR (Pt.445) 622 at 633  
D O. A. Akintemi & Ors. v. Prof. C. A. Onwuchili & Ors. [1985] 1 NSCC  
p.46.

**STATUTES REFERRED TO**

- E Constitution of Federal Republic of Nigeria, 1963 ss. 161(3), 165  
Evidence Act s. 111(1)  
Chiefs Law of Ondo State s. 22

**LEAD JUDGMENT BY OGUNTADE JSC**

- F The dispute leading to this appeal arose out of succession to a minor  
chieftaincy in the old Ondo State (now Ekiti State). The present appellants  
(who are hereinafter described as the plaintiffs) commenced the suit on  
20-6-90 at the Ikole-Ekiti High Court where they claimed against the three  
G respondents ( hereinafter described as the defendants) for the following:  
"(a) A declaration that the first defendant is not and cannot ever  
be the Onisemo of Ikoyi-Ekiti under the native law and custom of Ikoyi-  
Ekiti.  
H (b) An order on the first defendant never to parade or hold himself  
out as the Onisemo of Ikoyi-Ekiti and on the second and third defendants  
never to recognize first defendant as the Onisemo of Ikoyi-Ekiti or allow  
him to function in that post in any manner whatsoever."

The parties filed and exchanged pleadings after which Akinyede, J., heard the case. The plaintiffs called four witnesses. Each of the 1st and 2nd defendants testified in support of the defence case. The trial Judge on 21-9-94 gave judgment in the matter. In the judgment, the trial Judge held that his court had no jurisdiction to hear the suit. He had only evaluated a part of the evidence called as to enable him to decide the issue of jurisdiction. The trial court reasoned that the plaintiffs needed to have followed the procedure prescribed under Section 22 of the Chiefs law of Ondo State before resorting to litigation. Plaintiffs' suit was accordingly struck out.

The plaintiffs were dissatisfied with the judgment. They brought an appeal against it before the Court of Appeal sitting at Ilorin. That court (Coram: Okunola, Amaizu and Onnoghen, JJCA.), in a unanimous decision given on 6-7-2000 dismissed the plaintiffs' appeal. The plaintiffs have now come on a further appeal to this court. In their appellants' brief, the issues for determination in the appeal were identified by their counsel as the following:

*“(A) Whether or not the claim before the trial court is a Chieftaincy Matter not justiciable under the 1963 Constitution.*

*(B) Whether or not the claim of the appellants should first have been referred to the Commissioner for Chieftaincy Affairs before making a resort to court under Section 22 of the Chiefs Law of 1978.*

*(C) After holding that the trial court should have allowed appellants to withdraw the document they wanted to tender to perfect the condition for admissibility and then re-present same, whether or not it accords with justice for the lower court to allow appellants to do the necessary things to the document, re-tender it for the trial court to admit it and use it in coming to judgment.*

**OR ALTERNATIVELY**

*Send the matter back to the trial (court) to perform the retrial of admitting the document and thereafter send the case back to the lower court for completion.*

**OR ALTERNATIVELY**

*Send the whole matter back to the lower court to be tried De Novo*

*before another Judge.*

*(D) Whether or not the decision of the lower court accords with the evidence led.”*

In the respondents’ brief filed by counsel for the 1st and 2nd  
B defendants the issues for determination in the appeal as formulated by  
plaintiffs/appellants’ counsel were adopted. The 3rd respondent who was  
the 3rd defendant before the trial court did not file a brief.

I intend to discuss briefly the case made by parties on their  
C respective pleadings. This will immensely assist an understanding of the  
issues discussed in this judgment.

The plaintiffs’ case in a nutshell was that only a member of the  
plaintiffs’ Inisemo family could be appointed the Onisemo of Ikoyi-Ekiti.  
It was pleaded that the 1st defendant was from Iteta family and also an in-  
D law to the plaintiffs’ family; and therefore not eligible for appointment as  
the Onisemo of Ikoyi-Ekiti It was further pleaded that some years before  
the suit was brought, the 1st defendant manifested his interest in the said  
chieftaincy. In reaction, the plaintiffs sent a letter of protest to the Ondo  
E State Government. The Ondo State Government by letter dated 6/11/79  
directed Oba Onikoyi of Ikoyi not to fill the chieftaincy until (it) the  
Government had looked into the matter. As a result, the chieftaincy  
position was not filled. The 1st defendant was subsequently observed to  
F be holding himself out as the Onisemo. It was also observed that the 2nd  
and 3rd defendants had been recognizing him as such. In these circum-  
stances, the plaintiffs brought their suit claiming as earlier stated in this  
judgment.

The 1st and 2nd defendants, in the Statement of Defence which  
G they jointly filed, pleaded that there were two Inisemos, namely Inisemo  
Iteta of the 1st defendant and Inisemo Odo of the plaintiffs. They pleaded  
that on 1/6/79, the Onikoyi of Ikoyi wrote a letter to the 1st defendant’s  
family to present a candidate for the Oisemo chieftaincy as it was the turn  
H of the 1st defendant’s Inisemo Iteta family to present a candidate. On 20-  
6-79, the 1st defendant family in writing presented him for the chieftaincy  
position. The Onikoyi of Ikoyi and his chiefs on 1-8-79, in writing  
confirmed the 1st defendants’ selection. On 30/11/79, the late Onikoyi of



Ikoyi wrote a letter to that effect to the Secretary, Ekiti North Local Government. It was finally pleaded that the 1st defendant was installed the Oisemo before the demise of the Onikoyi of Ikoyi.

The 3rd defendant in paragraphs 5-9 of its Statement of Defence pleaded thus:

*“5. The 3rd defendant further avers that the late Onikoyi of Ikoyi in Ikole-Ekiti called for nomination for the filling of the Chieftaincy sometime in 1979.*

*6. The then Onikoyi of Ikoyi and the existing kingmakers in town called on the family whose turn it was to fill the vacancy to present a suitable and acceptable candidate for the filling of the vacancy.*

*7. The 3rd defendant further avers that the 1st defendant was presented to the late Onikoyi of Ikoyi by the Iteta Inisemo Family whose turn it was to present the new Oisemo.*

*8. The late Onikoyi of Ikoyi and the Kingmakers in Ikoyi installed the 1st defendant as the Oisemo of Inisemo in accordance with the tradition of Ikoyi in 1979.*

*9. The 3rd defendant avers that the 1st defendant had already been installed the Oisemo of Ikoyi by the appropriate authority since 1979 and has been acting in that capacity unhindered.”*

The trial court heard the case on the basis of the parties’ pleadings as discussed and reproduced above. The pleadings reveal the areas of conflict or disagreement between the parties. The plaintiffs made the case that only a member of their Inisemo family could take the Oisemo Chieftaincy and that since the 1st defendant was from Iteta family, he was not eligible for the title. The plaintiffs further made the point that the 1st defendant was only showing interest in the title and that the purpose of their suit was to stop him from actually taking the title. The defendants on the other hand contended that it was the turn of the 1st defendants Iteta Inisemo to take the chieftaincy and that the defendant was actually selected and installed as the Oisemo in 1979.

It is convenient for me to start a consideration of the issues with issue C. I observed earlier that the plaintiffs pleaded that they sent a letter to the Ondo State Government in 1979. Specifically, the plaintiffs pleaded

in paragraphs 17 to 19 of their Statement of Claim thus:

“17. Some years ago first defendant began angling for the title of Oisemo.

18. The Inisemo Family sent a petition to the government of Ondo State. The said petition will be relied upon at the trial.

19. The said government, in answer to the said petition requested Oba Onikoyi of Ikoyi not to fill the vacant title of Oisemo until the government had looked into the matter stressing that any appointment before then was null and void, letter reference Number ENLG -198A/ Vol.II/122 of 6th November, 1979 is hereby pleaded.”

In the course of the proceedings before the trial court, on 1-6-94, P.W.4 tried to tender in evidence the letter pleaded above which was said to have been written by the Ondo State Government. The letter was however rejected in evidence by the trial Judge on the ground that it was not certified as a public document in line with Section 111(1) of the Evidence Act, 1990. The plaintiffs’ counsel asked to withdraw the letter. But the trial Judge asked that the letter be retained in court and marked “tendered but rejected.” In the appeal to the court below, the plaintiffs’ counsel contended that he should have been allowed to withdraw the letter and to later re-tender it after due certification. The court below decided the point in favour of the plaintiffs when at page 187 of the record, it held:

“In that spirit it is my view that the appellants should have been allowed to take back the document to add the missing signature and tender same thereafter.”

The plaintiffs/appellants’ counsel has argued that, the court below, having made the above observation, should have made a consequential order that the case be remitted to the trial court for re-hearing so that the plaintiffs would have the opportunity of properly tendering the document in evidence. But I think, with respect to plaintiffs/appellants’ counsel that his argument overlooks the fact that the trial court had held that it had no jurisdiction to entertain the suit; and this was for reason completely unconnected with the contents of the letter rejected in evidence. Even if the court below itself accepted the letter in evidence, the finding that the trial court had no jurisdiction to hear the case, which the court below

accepted, would not have been displaced. This is because, even if it was true that the Ondo State Government had in 1979 directed that the Onikoyi of Ikoyi should not fill the Oisemo Chieftaincy position, the evidence available, which the trial court accepted, was that the 1st defendant was installed before 1984. This might have amounted to a defiance of the authority of the Ondo State Government, but it would not remove the fact of such installation. **I do not see therefore that the plaintiffs' case would have been anymore enhanced even if the letter was received in evidence. In this regard, I call to mind the observation of Bello, CJN., in Utih v. Onoyivbe (1991) 1 NWLR (Pt. 166) 166 at 241:**

*“Moreover, jurisdiction is blood that gives life to the survival of an action in a court of law, and without jurisdiction the action will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise. Since the Court of Appeal had held that the courts including the Court of Appeal have no jurisdiction to entertain the suit and it was right in so holding, hearing the submission of counsel on the cross-appeal by that court would not only be abortive and unfruitful academic exercise but it would also have unnecessarily wasted the valuable time of the court.”*

The position is the same here. Since the court below had agreed with the High Court that courts had no jurisdiction in the matter, I think the court below was right as it would amount to a futile exercise to order that the document wrongly disallowed in evidence be readmitted. The only reason which could justify such a course, was, if the document when re-admitted could reverse the conclusion earlier made that the court had no jurisdiction.

I now consider together issues A, B and D. Under issue “A”, the appellants' counsel has argued that the question of justiciability did not arise from any of the grounds of appeal filed before the court below and that the court was wrong to have considered the question. Counsel relied on *Idika v. Erisi* (1988) 2 NWLR (Pt. 78) 563 at 580; *Olowosago v. Adebamiyo* (1998) 3 S.C. 41; (1998) 4 NWLR (Pt.88) 275 at 283; *Garba v. State* (2000) 4 S.C. (Pt.II) 157; (2000) 6 NWLR (Pt.661) 378 at 386;

Omo v. J.S.C. (2000) 7 S.C. (Pt.II) 1; (2000)12 NWLR (Pt. 682) 444; Dieli v. Iwuno (1996) 4 NWLR (Pt.445) 622 at 633; Ogoyi v. Umagba [1995] 9 NWLR (Pt.419) 283 at 297. It was further argued that as the respondents did not have a cross-appeal before the court below, they ought not have been allowed to raise issues not arising from the appellants' grounds of appeal. It was argued that if on the evidence available, the court below was not sure of the date the 1st defendant was installed, it should have leaned on the side of giving the court jurisdiction - Oloba v. Akereja (1988) 7 S.C. (Pt.I) 1; (1988) 3 NWLR (Pt. 84) 508 at 523: A-G Lagos v. Dosumu (1989) 6 S.C. (Pt.II) 1 ; (1989) 3 NWLR (Part 111) 552 at 580 and Utih v. Onoyivbe [1991] 1 NWLR (Pt. 166) 166 at 241. Finally, the appellants' counsel submitted that the issue in contest related to eligibility for a chieftaincy and not a chieftaincy dispute -Gbokoyi v. Minister of Chieftaincy Affairs (1965) NMLR at 8 and Utih v. Onoyivbe (supra).

The complaint made against the court below is to the effect that the judgment of the court below was premised upon an issue not submitted to it for adjudication by the appellants. Now, before the court below, the appellants raised two issues for determination at page 136 of the record of proceedings. The issues read:

(a) Whether or not the lower court was right in rejecting letter reference number ENLG 198A/Vol.II/123 of 6th November, 1979 just because the name of the certifying officer was not inserted and when the appellant sought to withdraw it with a view to regularizing the irregularity if any, and tendering it later.

(b) Whether from the evidence led it could be said that first respondent was ever validly or legitimately made a chief making it necessary to petition the prescribed Authority and the Commissioner for Chieftaincy Affairs before making a resort to court.

**I observed earlier in this judgment that the trial court only considered and evaluated such aspects of the evidence as enabled it to determine whether or not it had jurisdiction. Judgment was not given on the merit but rather on the narrow issue of absence of jurisdiction in the court. The two issues raised by the appellants before the court below were therefore, only raised for the purpose**

of the reversal of the finding by the trial court that it had no jurisdiction. Indeed, the appeal of the appellants to the court below was only competent to the extent that the two issues raised were a challenge to the finding of the trial court that it had no jurisdiction. Were it not so, the court below would not have been able to consider the appeal at all upon any other issue if the finding on jurisdiction remained unimpugned. The argument of appellants' counsel on this score is akin to the case of a man who attempts to cut off his nose just to spite his face. It is plainly disingenuous. If the two issues raised before the court below did not amount to a challenge of the trial court's order as to jurisdiction, the court below and indeed this court would have no basis to hear this appeal. This is because the finding by the trial court that it had no jurisdiction would remain extant and valid and thus effectively shut the doors against both the court below and this court in considering any other issue in the case. I am satisfied that having regard to the fact that the trial court only considered the issue of jurisdiction in the case, the appellants' two issues for determination were in fact a challenge to the trial court's finding as to jurisdiction and that the court below correctly considered the issue.

A close perusal of the judgments of the trial court and the court below reveal that neither of the two courts declined jurisdiction on the basis of any provisions under the 1963 Constitution of Nigeria. Both courts realized that the 1963 Constitution was not applicable. This was because the trial court was not able to find on the evidence that the 1st defendant was in stalled before 1st October, 1979. At page 118 of the record, the trial Judge said:

*“From the hazy pleadings before me and the evidence of the first defendant that he was appointed the Oisemo on 3-9-79 (though denied by the plaintiffs) it will appear that the appointment was allegedly made in 1979 but certainly very much earlier than 1984- before the promulgation of the Chiefs Edict. In my view, it is Cap. 20 - Chiefs Law of 1978 - that therefore applies to it, being the law in force in 1979. The Chiefs Edict of 1984 (as amended) is not.”*

And at page 119, the trial Judge said:

*“I decline to exercise my jurisdiction to consider the case on the merits. The plaintiffs’ case is, therefore, hereby struck out for lack of jurisdiction.”*

B The trial court in the above passage clearly expressed the view that the court had no jurisdiction; what the trial court was in fact saying was that having regard to the provision of Section 22 (2) to (5) of the Chiefs Law, 1978, Ondo State, the plaintiffs’ suit was not justiciable. The court below more explicitly said:

C *“Even if the contention is accepted, the judgment is still valid under the 1979 Constitution of Nigeria. The reasons are as follows-*

(a) *The provisions of Section 22 of the Chieftaincy Law 1978 are saved by the fact that an aggrieved person has still recourse to the Commissioner in charge of Chieftaincy Affairs. The decision of the*  
D *Commissioner’ in such a matter is not stated to be final.*

(b) *It has been established even under the 1979 Constitution that where a law stipulates the procedure to be followed by an aggrieved*  
E *person, the provision without more does not oust the jurisdiction of the court. In that case, until the remedies available in that law are exhausted, any resort to court action would be premature - O. A. Akintemi & Ors. v. Prof. C. A. Onwuchili & Ors. [1985] 1 NSCC p.46.”*

F It is apparent therefore, that the trial court and the court below held that the plaintiffs’ suit was not justiciable only by reason of Section 22 of the Chiefs Law of Ondo State, 1978. Section 22 (2) to (7) of the Chiefs Law of Ondo State, Cap. 20 provides:

(2) *Where a person is appointed, whether before or after the*  
G *commencement of this Law, to fill a vacancy in the office of a minor chief by those entitled by customary law so to appoint and in accordance with customary law, the prescribed authority may determine the appointment.*

(3) *Where there is a dispute whether a person has been appointed*  
H *in accordance with customary law to a minor chieftaincy the prescribed authority may determine the dispute.*

(4) *The decision of the prescribed authority -*

(a) *to approve or not to approve an appointment to a minor*

chieftaincy; or

(b) determining a dispute in accordance with subsection (3) of this section, shall be final and shall not be questioned in any court.

(5) Any person aggrieved by the decision of the prescribed authority in exercise of the powers conferred on the prescribed authority by subsections (2), (3) and (4) of this section may, within twenty-one days from the date of the decision of the prescribed authority, make representations to the commissioner to whom responsibility for chieftaincy affairs is assigned that the decision be set aside and the commissioner may, after considering the representations, confirm or set aside the decision.

(6) Before exercising the powers conferred by subsection (5) of this section, the commissioner may cause such inquiries to be held in accordance with Section 21 as appear to him necessary or desirable.

(7) Where the commissioner, in his determination under subsection (5) of this section sets aside an appointment to a chieftaincy, he shall require the persons responsible under customary law for the appointment of the person to fill the vacancy in that chieftaincy to appoint another person in accordance with the customary law within such time as he may specify."

This court in *Eguamwense v. Amaghizenwen* [1993] 9 NWLR (Pt. 315) 1 at 25 had occasion to consider the provisions of Section 21 and 22(1)-(6) of the Traditional Rulers and Chiefs Edict No. (16) 1979 (Bendel State) which are similar to Section 22(2) to (7) of the Chiefs Law 1978 Ondo State Cap. 20. **The court per Belgore, JSC., observed:**

***"Where a statute prescribes a legal line of action for determination of an issue, be that issue an administrative matter, chieftaincy matter or matter of taxation, the aggrieved party must exhaust all the remedies in that law before going to court. The provisions of Section 21 and Section 22(1) - (6) of the Traditional Rulers and Chiefs Edict (No. 16) 1979 (Bendel State) are clear as to steps to take. The plaintiff seemed to have jumped the stile as he avoided all avenues that availed him and went to the High Court. I am of the view that he did a wrong thing indeed.... The provisions of Section 236 of the 1979 Constitution is not an open gate for all High Courts to assume jurisdiction in all subjects.***

*All the local remedies in the statute on every subject must be exhausted before embarking on actual litigation in court.”*

The position of the law therefore, is that in a chieftaincy dispute as this, an aggrieved person who brings a suit must show that he brought his suit only after he had exhausted the remedies provided or followed the procedure prescribed under the applicable law. Why did not the plaintiffs in this case first take their grievance to the prescribed authority and later to the Commissioner in charge of Chieftaincy matters as laid down in Section 22(3) and (5) of the Chiefs Law of Ondo State Cap. 20? The answers given by the plaintiffs/appellants, which are to be garnered from their brief, are twofold:

(1) That the defendants pleaded that they wrote to the Elekole who is the prescribed authority for the Oisemo Chieftaincy; and that the defendants stopped at that without pleading that an approval came; and that this conveyed that the 1st defendant had not yet been installed.

(2) That the plaintiffs suit was as to the eligibility of the 1st defendant and not a chieftaincy dispute.

In support of their contention under the second complaint above, the plaintiffs relied on *Gbokoyi v. Minister of Chieftaincy Affairs* [1965] NMLR 7 at 8 and *Utih v. Omoyivbe* (supra). The facts of this case however amply reveal that the plaintiffs/appellants were wrong on both scores. The trial court, upon the evidence before it, held that the 1st defendant had been appointed before 1984. Section 22 (2) of Ondo State Chiefs Law, 1978 does not prescribe that it is the prescribed authority that should make the appointment of a minor chief. **The prescribed authority only approves the appointment of a minor chief made by those entitled by customary law so to appoint. The plaintiffs’ argument that they had not taken their case to the prescribed authority because such prescribed authority had not approved the appointment is therefore untenable.** The representations, which plaintiffs claimed they made in their letter in 1979 to the Ondo State government, ought to have been made to the prescribed authority; and later to the Commissioner for Chieftaincy matters. The two cases, which the plaintiffs/appellants counsel, relied upon in his brief - *Gbokoyi v. Minister etc.* and *Utih v.*



Omoyivbe (supra) do not advance the cause of the plaintiffs/appellants. Both cases were decided as to what is a “*Chieftaincy question*” as defined under the 1963 Constitution of Nigeria. Under Section 161(3) of the 1963 Constitution, no chieftaincy question could be entertained by any court of law in Nigeria. **Under Section 165 of the said 1963 Constitution, “*Chieftaincy question*” is defined as “any question as to the validity of the selection, appointment, approval of appointment, recognition, installation, grading, deposition or abdication of a chief.”**

On the other hand, the Chiefs Law, 1978, Ondo State, Section 22(3) speaks of “*a dispute whether a person has been appointed in accordance with customary law to a minor chieftaincy.*”

On a first look, it would appear that the definition of a “*Chieftaincy question*” under Section 165 under the 1963 Constitution is quite wide, but when it is compared with Section 22 (3) of the Chiefs Law 1978, Ondo State, it is seen that the definition in the 1963 Constitution is narrower in scope. Under Section 22 (3) of Ondo State Chiefs Law, any dispute, even if it touches only the question of eligibility as the plaintiffs/appellants contended must be submitted first to the prescribed authority for settlement and later to the commissioner for chieftaincy matters. The attempt made by the plaintiffs/appellants’ counsel to convince me that a dispute about eligibility of the 1st defendant to the Oisemo Chieftaincy, which was the subject matter of plaintiffs/appellants’ suit, was not a chieftaincy dispute within Section 22(3) of the Ondo State Chiefs Law is misconceived and must be rejected.

On the whole, it is observed that the trial court and the court below only declined jurisdiction to entertain plaintiffs suit by reason of Section 22 of the Ondo State Chiefs Law. In fairness to the plaintiffs/appellants, they did not before me challenge the applicability of the Chiefs Law Cap. 20 1978 (Ondo State). All they tried to do was wriggle out of the embrace of the law. They have not succeeded in doing that. The consequence is that their appeal must fail.

In the final conclusion, the appeal fails. It is dismissed. I affirm the judgments of the two courts below. There will be N10,000.00 costs in

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favour of 1st and 2nd respondents against the plaintiffs/appellants.

**KUTIGIJSC**

I read in advance the judgment just delivered by my learned brother,  
B Oguntade, JSC., I agree with his reasoning and conclusions. The appeal  
lacks merit and it is accordingly dismissed. I endorse the order for cost.

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**KATSINA-ALUJSC**

C I have had the advantage of reading in draft the judgment delivered  
by my learned brother, Oguntade, JSC., I agree with it and, for the reasons  
he gives I, too, dismiss the appeal. I abide by the order for costs.

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D

**KALGO JSC**

I have had the opportunity of reading in advance the judgment just  
delivered by my learned brother, Oguntade, JSC., and I entirely agree with  
E his consideration and treatment of the issues raised by the appellant and the  
conclusions reached thereon. I therefore find no merit in the appeal and I  
accordingly dismiss it with costs as assessed in the leading judgment.

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F

**PATS-ACHOLONUJSC**

I have read in draft the judgment of my noble Lord, Oguntade, JSC.,  
and I agree with him. I have nothing more to add. I too dismiss the appeal  
and I abide by the consequential order made in the leading judgment.  
G

H