

SUPREME COURT OF NIGERIA

15TH APRIL, 2005. SC. 3/2001

**CORAM:- I. L. KUTIGI, A. O. EJIWUNMI, D. MUSDAPHER, I.
C. PATS-ACHOLONU, S. A. AKINTAN, JJSC**

CHIEF JOSHUA ALAO APPELLANT
AND

1. ALFAISSAAKANO

2. ILORIN EMIRATE COUNCIL RESPONDENTS

3. ATTORNEY-GENERAL OF KWARA STATE

APPEALS - Issues - Grounds of appeal - Success of an appeal - Does not depend on the prolixity of the issues - Supreme Court is not bound to consider all raised issues (H1)

ACTIONS - Judgments - Declaratory claims - What a plaintiff must do - In order to succeed - Includes establishing a right (H2)

CHIEFTAINCY MATTERS - Appointment of chief - Proof - Averment by appellant - That he was appointed by the Kingmakers - Was not proved (H3)

EVIDENCE - Admissibility - Documents - Where a document is declared inadmissible - By the law - It cannot be admitted in evidence at all (H4)

CHIEFTAINCY MATTERS - Declaration - Evidence - Where appellant failed to establish by credible evidence - Facts pleaded by him - His claims will be dismissed (H5)

FACTS

Before the Kwara State High Court Ilorin, the plaintiff/appellant instituted this action against the three defendants/respondents. He claimed inter alia, a declaration that he is the Oluo (Bale) of Oke-Oyi having been so appointed by the Kingmakers and approved by the Governor of Kwara State. And a perpetual injunction prohibiting the 1st defendant from pa-

rating himself as the Oluo of Oke-Oyi. Pleadings were exchanged between the parties. At the hearing, appellant testified and called no other witness. 1st respondent testified and called one witness while for the 3rd respondent a witness testified. This case is a prolonged and protracted chieftaincy dispute that started since 1972. This present suit is its 4th orbit in the Supreme Court. After 1st defendant was appointed the Bale of Oke-Oyi and turbaned by the Emir of Ilorin on 20-11-1990, a letter was written from the office of the Deputy Governor of Kwara State on 27-9-1993. The letter directed that the plaintiff was approved to be appointed the Bale of Oke-Oyi with effect from 1-9-1993. On 28-9-1993 the secretary to the State Government wrote a letter to Ilorin Emirate Council that the contents of the letter from office of the Deputy Governor should be disregarded as directed by His Excellency. Plaintiff's claim is based on the recommendation contained in the Deputy Governor's said letter. His claim that he was nominated by a majority of the King makers was not substantiated as he called non of the Kingmakers to testify on his behalf. The trial court found partly in favour of the plaintiff. 1st defendant's appeal to the Court of Appeal was allowed as the plaintiff's claim was dismissed. Being dissatisfied, plaintiff has now appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether appellant had proved his case in accordance with his pleadings.

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

APPEALS - Issues - Prolivity of

1. It has been stated many times that the success of an appeal does not depend on the number of grounds of appeal filed nor on the prolivity of the issues formulated and submitted for the determination of an appeal. It is only the substance not the number that matters. It is incumbent for an intermediate appellate court to determine all the issues canvassed by the parties before it. It has been held that where an appellate court such as the Supreme Court, is of the view that a consideration of an issue is enough to dispose of the appeal it is not under any obligation to consider all the other issues posed. (p. 825 G)

Judgments - Declaratory claims

2. It is of importance to bear in mind that the claims of the appellant before the trial court were essentially declaratory, hence the duty was on him to succeed on the strength of his own case and not on the weakness of the defendant's case. A declaratory judgment is also discretionary. It is the form of judgment which should be granted only in circumstances in which the court is of the opinion that the party seeking it, is, when all facts are taken into consideration, fully entitled to the exercise of the court's discretion in his favour. A plaintiff who seeks a declaratory relief must show that he has an interest or right which forms the foundation for that right. The plaintiff must establish a right in relation to which the declaration can be made. (p. 826 G)

Appointment of chief - Proof

3. On the first leg of his reasons for the claims, the appellant averred in his pleadings that he was appointed by the kingmakers who are entitled under the customary law to appoint the village head whenever a vacancy occurred. The appellant failed to call any of the kingmakers to testify on the appointment. The learned trial Judge was manifestly in error to have found the appointment by the kingmakers. There was no evidence whatever adduced in proof of such appointment by the kingmakers. The result of the inquiry conducted by the Emirate Council found that not only was the appellant not suitable for appointment, but also he was rejected by the majority of the kingmakers. I accordingly agree with the Court of Appeal that the learned trial Judge was in error to have found the appointment proved. (p. 828 B)

Where a document is declared inadmissible

4. I entirely agree with the decision of the Court of Appeal that Exhibit D17 upon which Exhibit 1 was anchored is of no evidential value. It is a draft White Paper and cannot be said to represent the views of the Kwara State Government. I agree with the court below that both Exhibits D. 17 and 1 were inadmissible as evidence of the proof of the contents thereof.

Where the law declares a document inadmissible, the document cannot be admitted in evidence even where there was no objection or even where the parties consent to its admission. See *Etim v. Ekpe* (1983) 1 SCNLR 120. In any event, the Secretary to Government of Kwara State on behalf of the Governor wrote and directed that the Emirate Council and the Local Government should ignore the letter written by the Deputy Governor. Again, in any event, the stool of the village head of Oke-Oyi was not vacant when the appellant was purportedly recommended to be appointed by the Deputy Governor in Exhibit I in 1993, when the 1st respondent was appointed and turbaned since 1990 and was not removed.
(p. 828 F)

CHIEFTAINCY MATTERS - Declaration - Evidence

5. Thus, the appellant as the plaintiff had failed to establish by credible and acceptable evidence that he was entitled to the declarations sought by him. The material facts pleaded that require to be established by evidence were (i) the appointment of the appellant as the village head of Oke-Oyi by the traditional kingmakers and (ii) the recommendation of such appointment by the Deputy Governor. These two issues remain unsubstantiated according to law.

Thus, the claims of the appellant were not established and he was not entitled to the declaratory relief claimed by him. I entirely agree with the decision of the court below, that the appellant's claims be and are hereby dismissed in their entirety. (p. 829 B)

NOTABLE POINTS OF INTEREST

EJIWUNMIJSC

1. Burden was on appellant to prove his averments

As parties are bound by their pleadings and as issues were joined with the appellant on these matters, it became the burden of the appellant to lead evidence to prove his averments on a balance of probabilities. In this regard, it is necessary to observe that the onus of proof in a civil proceedings must be related to issues raised in the pleadings and the strength of the totalities of evidence adduced by the contesting parties at the trial.

There can be no absolute standard. The degree of probability depends on the subject matter and varies from case to case and the burden of the issues is divided, each party having one or more cast upon him and is fixed either on the substantive law or on the pleadings. (p. 831 D)

B

2. Witnesses - Documents - When oral evidence will be necessary

Now the fact that only one witness, namely, the plaintiff was called in support of his case is not to be regarded as the reason for setting aside the judgment of the trial court. In this regard, it must be borne in mind that Section 179(1) of the Evidence Act (1990), Laws of the Federation, Nigeria, Cap. 112, provides that no particular number of witnesses shall be required to prove any fact except in some special circumstances. It bears repetition to say that the case for the appellant failed because the evidence led at the trial did not prove what was alleged in the Statement of Claim. It must also be noted that several documents were tendered pursuant to the claim. But it must be borne in mind that admitted documents useful as they could be would not be of much assistance to the court in the absence of admissible oral evidence by persons who can explain their purport. (p. 832 A)

C

D

E

AKINTAN JSC

3. Averment not supported by evidence will be struck out or dismissed

F

The law is settled that where issues are joined on any averment in the pleadings but no evidence is led to support such averment, the result is that such averment in the pleadings is either to be struck out or be dismissed. In other words, such averment could be treated as having been abandoned.

G

In the instant case, the onus was on the plaintiff to establish that he was not only qualified and entitled to be selected for the chieftaincy stool by the kingmakers, but that he was in fact selected. To do that, he should have called as witnesses some of the kingmakers who selected him and show which of the chieftaincy ruling houses nominated him. The appellant failed to do all these. It was therefore wrong of the trial court to have entered judgment for him. (p. 834 D)

H

REPRESENTATION

J. O. Ijaodola, for the Appellant.

O. I. Olomndare, (with him, A. F. Yakubu), for the 1st Respondent.

B 2nd and 3rd Respondents are not represented.

CASES REFERRED TO

Etim v. Ekpe (1983) 1 SCNLR 120

C Balogun v. UBA (1992) 6 NWLR (Pt. 247) 336 at 344

Omoboriowo v. Ajasin (1984) 1 SCNLR 108 at 113

Adah v. N.Y.S.C. (2004) 7 S.C (Pt. II) 139

7 Up Bottling Co. Ltd. v. Abiola And Sons Ltd. (2001) 6 S.C. 73; (2001)

13 NWLR (Pt. 730) 469

D Anyaduba v. Nigerian Renowned Trading Co. Ltd. (1992) 5 NWLR (Pt. 243) 535 at 561

Okonji v. Njokanma (1991) 7 NWLR (Pt. 202) 131

Ebba v. Ogodo (1984) 1 SCNLR 72

E Kate Enterprises Ltd. v. Daewo Nig. Ltd. (1985) 2 NSCC 842

Mogaji & Ors. v. Madam R. Odofin (1978) 4 S.C. (Reprint) 53, 65;
(1978) 4 S.C. 91, 93

STATUTE REFERRED TO

F Evidence Act (1990), Laws of Nigeria, Cap 112 s. 179(1)

LEAD JUDGMENT BY MUSDAPHER JSC

G Chief Joshua Alao, the appellant herein, instituted this action in the High Court of Kwara State and in the Ilorin Judicial Division against the three respondents herein as the defendants seeking the following reliefs jointly and/or severally:-

H “1. A declaration that the plaintiff is the Oluo of Oke-Oyi having been so appointed by the Oke-Oyi King makers and approved by the Kwara State Governor under Section 3(1) of the Chiefs (Appointment and Deposition) Law.

2. A declaration that the second defendant has no power to ap-

point an Oluo for the Oke-Oyi in view of Section 78(1) (J) of the Local Government Edict (Law) No. 8 of 1976 and Section 13 of Chiefs (Appointment And Deposition) [Amendment] Edict No. 8 of 1985.

3. *A perpetual injunction prohibiting the first defendant from parading himself as the Oluo of Oke-Oyi and prohibiting the second defendant from so treating him.* B

4. *A declaration that Edict No.3 of 1988 is unconstitutional null and void and inapplicable to this suit; and*

5. *An Order to compel the Kwara State Government to refund the N10,000.00 paid by the plaintiff before filing this suit.”* C

Pleadings were delivered and exchanged. At the hearing before the trial court, the plaintiff testified and called no other witness. The first respondent gave evidence and called one witness, while for the 3rd defendant, a witness testified. With the consent of the parties, learned counsel tendered about twenty documents from the bar as exhibits. In addition to the written addresses filed by the parties after the conclusion of evidence, learned counsel also proffered oral addresses. In his judgment delivered on the 24/11/1995, Gbadeyan, J., partially found for the plaintiff and granted him prayers 1, 2 and 3 and refused reliefs 4 and 5. The first defendant felt aggrieved with the decision and appealed to the Court of Appeal. The plaintiff also felt unhappy with part of the judgment refusing his prayers and also cross-appealed. The Court of Appeal allowed the appeal of the first defendant, it set aside the decision of the High Court and held that the plaintiff had failed to prove his case and ordered the dismissal of his claims. The Court of Appeal also dismissed the cross-appeal. This is an appeal by the plaintiff. The amended Notice of Appeal filed with the leave of this court contains 15 grounds of appeal. In compliance with the Rules of this court, briefs of argument were filed and exchanged and at the hearing of the appeal, learned counsel relied on the arguments canvassed in their respective written briefs, except for the learned counsel for the 2nd and 3rd respondents who was absent from court but filed a brief and by the provisions of the Rules of this court, he was deemed to have argued the appeal. Before I discuss the issues submitted for the determination of the appeal, it is convenient at this stage to D
E
F
G
H

set out the facts of the case.

This is a prolonged and protracted chieftaincy dispute concerning the Baleship or the village head of Oke-Oyi or as the plaintiff christened it, the Oluo of Oke-Oyi. The controversy has gone through all the courts on three occasions, this is its fourth orbit in the Supreme Court. It started in 1972 when the erstwhile Bale Yusuf died while performing pilgrimage in Saudi Arabia. Mallam Gbadamosi Akano, the father of the present first defendant and the plaintiff contested for the position of the village head to succeed the deceased Bale Yusuf. Mallam Gbadamosi Akano was eventually appointed and turbaned as the village head by the Emir of Ilorin. The appellant herein disagreed with the appointment and went to the courts. The dispute culminated in Suit No. SC 143/1/1986 in which this court affirmed the appointment and the turbaning of the said Gbadamosi Akano as the Bale or village head Oke-Oyi. Mallam Gbadamosi Akano died in 1988 and his son, the first defendant herein manifested his desire to succeed his father as the village head of Oke-Oyi. The appellant also resolved unrelentingly once again to claim the stool for himself. Attempts were made by both the Ilorin East/West Local Government Councils and the Ilorin Emirate Council to resolve the dispute all to no avail. The Ilorin Emirate Council in 1989, set up a committee under the chairmanship of Balogun Alanamu to investigate the chieftaincy dispute and to recommend to the Emirate Council the person to be appointed as Bale of Oke-Oyi between the plaintiff and the first defendant. The committee completed its task and the Emirate Council in a letter, informed the first defendant of his appointment as the Bale of Oke-Oyi. The first defendant was eventually and at a ceremony witnessed by many people including the plaintiff was presented and turbaned before the people of Oke-Oyi by the Emir of Ilorin on the 20/11/1990.

Suddenly, on the 27/9/1993, a letter emanating from the Office of the Deputy Governor of Kwara State, addressed to the chairman, Ilorin East Local Government Council and the secretary, Ilorin Emirate Council directed that the plaintiff “*Mr. Joshua Alao and not Alfa Akano*” was approved to be appointed “*as the Oluo (Bale) of Oke-Oyi with effect from 1st September, 1993.*” A day later, to be precise on the 28/9/1993,

the secretary to the State Government of Kwara State wrote a letter to Ilorin Emirate Council that the contents of the letter from the office of the Deputy Governor should be disregarded as directed by “*His Excellency, the Executive Governor of Kwara State xxxxx.*” The Ilorin Emirate Council in a Press Release issued to the media reacted to the letter by the Deputy Governor in this way:-

“The Ilorin Emirate Council had a long time ago deliberated on the appointment and has already appointed Mallam Alfa Issa Akano as the Village head Oke-Oyi.

The appointment of Mallam Issa Akano still stands as the authentic, accredited and recognized Village head of Oke-Oyi.”

It was when the directives by the Deputy Governor of Kwara State was ignored, that the plaintiff instituted this fresh action claiming to be the rightful village head of Oke-Oyi by virtue of the recommendation as contained in the letter from the Deputy Governor, and also, as claimed by him, because “*he was nominated by the majority of the Kingmakers.*”

As mentioned above, the trial Judge, Gbadeyan, J., found partially in favour of the plaintiff and the Court of Appeal allowed the first respondent’s appeal and set aside the decision of the trial court and ordered the dismissal of the plaintiff’s claims. Now, in this judgment the plaintiff shall hereinafter be referred to as the appellant and the defendants as the respondents.

In the appellant’s brief, eight issues have been identified, formulated and submitted to this court for the determination of the appeal. The learned counsel for the respondent, on the other hand, after objecting to grounds 1, 4, 5, 6 and 12 as incompetent for one reason or the other, (I shall deal with the competency of these grounds anon) formulated 4 issues for the determination of the appeal. **It has been stated many times that the success of an appeal does not depend on the number of grounds of appeal filed nor on the prolixity of the issues formulated and submitted for the determination of an appeal. It is only the substance not the number that matters. It is incumbent for an intermediate appellate court to determine all the issues canvassed by the parties before it,** see *Adah v. N.Y.S.C.* (2004) 7 S.C (Pt. II) 139;

7 Up Bottling Co. Ltd. v. Abiola And Sons Ltd. (2001) 6 S.C. 73; (2001) 13 NWLR (Pt. 730) 469, in the instant case, the Court of Appeal arrived at the view that the appellant did not prove his case before the trial court. So the “live” and fundamental issue is whether the appellant had indeed proved his case in accordance with his pleadings and a secondary issue is also whether the pleadings of the appellant is sufficient for him to sustain his claims. **It has been held that where an appellate court such as the Supreme Court, is of the view that a consideration of an issue is enough to dispose of the appeal it is not under any obligation to consider all the other issues posed.** See Anyaduba v. Nigerian Renowned Trading Co. Ltd. (1992) 5 NWLR (Pt. 243) 535 at 561; Okonji v. Njokanma (1991) 7 NWLR (Pt. 202) 131; Ebba v. Ogododo (1984) 1 SCNLR 72.

Applying the above principles, it appears to me, that issue No. 2 as contained in the respondent’s brief and issues 1 and 4 of the appellant’s brief, cover most adequately the “live wire” whether the appellant proved his case before the trial court. They also cover the issue whether the appellant has sufficiently pleaded the facts which if proved by him would entitle him to judgment.

Now, I have above alluded to the objection raised by the respondent on some of the grounds of appeal filed by the appellant. I have seen that the objection to the competency of the grounds of appeal did not concern the grounds of appeal on which the issue 2 of the respondent and issues 1 and 4 of the appellant were based and premised. Thus, the issues can be discussed without discussing the preliminary objection as to the competency of the grounds of appeal.

Issue No. 2

The issue as mentioned above is concerned with the crucial question of whether the appellant had proved his case in accordance with his pleadings. **It is of importance to bear in mind that the claims of the appellant before the trial court were essentially declaratory, hence the duty was on him to succeed on the strength of his own case and not on the weakness of the defendant’s case.** See Owoade v. Omitola (1988) 2 NWLR (Pt. 77) 413; Ndayako v. Dantoro (2004) 13 NWLR

(Pt. 889) 187 at 214. **A declaratory judgment is also discretionary. It is the form of judgment which should be granted only in circumstances in which the court is of the opinion that the party seeking it, is, when all facts are taken into consideration, fully entitled to the exercise of the court's discretion in his favour.** See Egbonike v. Muonweokwu (1962) All NLR 46. **A plaintiff who seeks a declaratory relief must show that he has an interest or right which forms the foundation for that right. The plaintiff must establish a right in relation to which the declaration can be made.** See Chukwuma v. Shell (1993) 4 SCNJ 1 at 42, P.T.I. v. Aderemi (1999) 6 SCNJ. 46 at 73.

In the instant case, the foundation of the appellant's claims is anchored in paragraphs 1, 2, 3 and 4 of the Statement of Claim which read thus:-

"1. The plaintiff was appointed the Oluo of Oke-Oyi by the Oke-Oyi kingmakers who are the traditional appointers for the office of Oluo.

2. There has been a long drawn legal battle as to the proper holder of the office of Oluo and the Government of Kwara State had to appoint an administrative panel to inquire into it.

3. The plaintiff pleads the F. OYE COMMITTEE REPORT and the Government Decisions thereon.

4. That as a result of the said Government Decisions thereon the Deputy Governor of Kwara State wrote a letter Ref. No. MLG/S/CH.1/ GEN/320/S.4/340 of 27/9/93 to the Chairman Ilorin East Local Government and the secretary, Ilorin Emirate Council etc."

Now, in relation to these averments, the Court of Appeal found:-

"In spite of the defences of the defendants denying most vehemently the averments of the plaintiff's Statement of Claim, it is interesting to observe that the plaintiff did not deem it fit to call any of the Kingmakers whom he claimed appointed him. He gave evidence on his own behalf and no more. That is not all, contrary to the allegations in his reply but in accordance with the defendant's pleadings, he admitted appearing before a panel of inquiry where he was found not suitable for the stool, subject matter of this suit."

With reference to the letter recommending his appointment by the

behalf of the Governor wrote and directed that the Emirate Council and the Local Government should ignore the letter written by the Deputy Governor. Again, in any event, the stool of the village head of Oke-Oyi was not vacant when the appellant was purportedly recommended to be appointed by the Deputy Governor in Exhibit I in 1993, when the 1st respondent was appointed and turbaned since 1990 and was not removed. B

Thus, the appellant as the plaintiff had failed to establish by credible and acceptable evidence that he was entitled to the declarations sought by him. The material facts pleaded that require to be established by evidence were (i) the appointment of the appellant as the village head of Oke-Oyi by the traditional kingmakers and (ii) the recommendation of such appointment by the Deputy Governor. These two issues remain unsubstantiated according to law. C D

Thus, the claims of the appellant were not established and he was not entitled to the declaratory relief claimed by him. I entirely agree with the decision of the court below, that the appellant's claims be and are hereby dismissed in their entirety. E

Now, having found that the appellant had failed to establish his claims and in that there was no counter-claim by the respondents, all the other issues raised in this appeal, including the issues raised on the competency of some of the grounds of appeal, are not important or relevant to the determination of the appeal. Limiting myself to the issue discussed above, I dismiss this appeal as it is devoid of any substance. I affirm the decision of the court below and confirm the dismissal of the appellant's claims. I decline to discuss all the other issues as to discuss them will serve no meaningful purpose. The 1st respondent is entitled to costs which I assess at N10,000.00 only. F G

KUTIGIJSC

I read in advance the judgment just delivered by my learned brother, Musdapher, JSC. I agree with him that there is no merit in this appeal. It was just not possible for the plaintiff/appellant to have proved or estab- H

lished that he was appointed the Chief or Oluo of Oke-Oyi by the Oke-Oyi king-makers without calling any of the kingmakers to testify as to how he was so appointed being a matter of customary law of the area. The omission was fatal. The plaintiff's claims were therefore rightly dismissed by the Court of Appeal. The appeal consequently fails. It is accordingly dismissed. I endorse the order for costs.

EJIWUNMI JSC

I have had the opportunity of reading before now the draft of the judgment just delivered by my learned brother, Musdapher JSC. In that judgment, the facts to this appeal have been duly reviewed and also in the light of the only issue relevant to this appeal.

It is manifest that the question raised in this appeal is, whether the Court of Appeal was right to have allowed the appeal before it. The premise of the court below for upholding the appeal being that the appellant (plaintiff) was not entitled to the judgment of the trial court as the appellant had failed to prove his claim before that court. The simple issue then is, whether the appellant led sufficient evidence to prove his claims, which in essence are as pleaded in paragraphs 1, 2, 3 and 4 of the Statement of Claim.

These are:-

"1. The plaintiff was appointed the Oluo of Oke-Oyi by the Oke-Oyi kingmakers who are the traditional appointees of the office of Oluo.

2. There has been a long drawn legal battle as to the proper holder of the office of Oluo and the Government of Kwara State had to appoint an administrative panel to enquire into it.

3. The plaintiff pleads the F. Oye Committee Report and the Government Decisions thereon.

4. That as a result of the said Government Decision thereon the Deputy Governor of Kwara State wrote a letter Ref. No. MLG/S/CH. 1/H Gen/320/S.4/340 of 27/9/93 to the Chairman Ilorin East Local Government and the Secretary, Ilorin Emirate Council etc."

The above averments were effectively challenged by the respondents by their pleadings at paragraphs 14, 18, 20, 22 and 25 thus:-

“14. The 1st defendant avers that there are 4 ruling houses to the stool of Bale of Oke-Oyi, viz: Ile Baale Isale, Ile Tuntun, Ile Bale Oke and the Odebode all hailing from Oluo (the 1st settler of Oke-Oyi).

18. The 1st defendant hails from the Olukuewu (i.e. Ile Tuntun) ruling house.

20. The 1st defendant states that the 5 king-makers in Oke-Oyi, namely: Elemoso, Akogun Jagun, Baba Gbogbo and the Balogun recommended him to the 2nd defendant as the Bale of Oke-Oyi.

22. The 1st defendant states that the plaintiff is not a member of any of the ruling houses to the Baleship of Oke-Oyi. He is from Okuta-Ila village in Moro Local Government, Kwara State.

25. The 1st defendant states that on 20/11/90, the 2nd defendant invited all the people of Oke-Oyi to the Emir's palace and the 1st defendant was in the presence of all present (including the plaintiff) appointed, presented and turbaned before the people of Oke-Oyi by the then Emir as the new Baale of Oke-Oyi.”

As parties are bound by their pleadings and as issues were joined with the appellant on these matters, it became the burden of the appellant to lead evidence to prove his averments on a balance of probabilities. In this regard, it is necessary to observe that the onus of proof in a civil proceedings must be related to issues raised in the pleadings and the strength of the totalities of evidence adduced by the contesting parties at the trial. There can be no absolute standard. The degree of probability depends on the subject matter and varies from case to case and the burden of the issues is divided, each party having one or more cast upon him and is fixed either on the substantive law or on the pleadings. See *Kate Enterprises Ltd. v. Daewo Nig. Ltd.* (1985) 2 NSCC 842; *Mogaji & Ors. v. Madam R. Odojin* (1978) 4 S.C. (Reprint) 53, 65; (1978) 4 S.C. 91, 93.

For that purpose, appellant was the sole witness who gave evidence and also tendered several documents in proof of his claim. The trial court affirmed some of his claims, but the court below upon a calm review of the evidence led by the appellant overturned the decision of the trial court. This is because the court below considered that the appellant

failed to discharge the burden placed upon him to prove his claim in the light of the evidence before the court. Now the fact that only one witness, namely, the plaintiff was called in support of his case is not to be regarded as the reason for setting aside the judgment of the trial court. In this regard, it must be borne in mind that Section 179(1) of the Evidence Act (1990), Laws of the Federation, Nigeria, Cap. 112, provides that no particular number of witnesses shall be required to prove any fact except in some special circumstances. It bears repetition to say that the case for the appellant failed because the evidence led at the trial did not prove what was alleged in the Statement of Claim. It must also be noted that several documents were tendered pursuant to the claim. But it must be borne in mind that admitted documents useful as they could be would not be of much assistance to the court in the absence of admissible oral evidence by persons who can explain their purport.

For all the above reasons, it is therefore my view that the appellant has not satisfied me that the court below was wrong to have set aside the judgment of the trial court. It follows that I will also dismiss this appeal and also for the fuller reasons given in the leading judgment. The respondent is awarded costs in the sum of N10,000.00 only.

PATS-ACHOLONU JSC

I have read the judgment in draft of my learned and noble Lord, Musdapher, JSC., and I agree with him. There is really no substance or merit in the case given the facts assiduously canvassed and agitated. To my mind this appeal stands dismissed and is hereby dismissed.

I abide by the consequential orders in the lead judgment.

AKINTAN JSC

The appellant instituted this action at Ilorin High Court against the respondents. His claim was, inter alia, for declaration that the plaintiff was the Oluo of Oke-Oyi having been so appointed by the king-makers and approved by the Kwara State Government; declaration that the 2nd defendant (now 2nd respondent) had no power to appoint an Oluo for the Oke-Oyi; injunction prohibiting the 1st defendant (now 1st respondent-

ent) from parading himself as the Oluo of Oke-Oyi. The dispute was in respect of a chieftaincy stool. The trial court granted the declarations sought. But on appeal, the Court of Appeal set aside the judgment on the ground that the plaintiff failed to lead sufficient evidence in support of his claim. The present appeal is against the decision of the Court of Appeal. B

The plaintiff had pleaded, inter alia in paragraph 1 of his Statement of Claim that:

“The plaintiff was appointed the Oluo of Oke-Oyi by the Oke-Oyi kingmakers who are the traditional appointers for the office of Oluo”. C

The above averment was denied by the 1st defendant in paragraph 1 of the 1st defendant’s Statement of Defence. The 1st defendant (now 1st respondent) was the person selected and installed as the holder of the disputed chieftaincy. Apart from denying the facts pleaded by the plaintiff in paragraph 1 of the Statement of Claim, the 1st defendant also D pleaded as follows in paragraphs 14, 18, 20, 22 and 25 of the 1st defendant’s Statement of Claim:

“14. The 1st defendant avers that there are 4 ruling houses to the stool of Bale of Oke-Oyi, viz: Ile Baale Isale, Ile Tuntun, Ile Bale Oke, E and the Odebode all hailing from Oluo (the 1st settler of Oke-Oyi).

18. The 1st defendant hails from the Olukuewu (i.e. Ile Tuntun) ruling house.

20. The 1st defendant states that the 5 king-makers in Oke-Oyi, F namely: Elemoso, Akogun Jagun, Baba Gbogbo and the Balogun recommended him to the 2nd defendant as the Bale of Oke-Oyi.

22. The 1st defendant states that the plaintiff is not a member of any of the ruling houses to the Baaleship of Oke-Oyi. He is from Okuta- G Ila village in Moro Local Government, Kwara State.

25. The 1st defendant states that on 20/11/90, the 2nd defendant invited all the people of Oke-Oyi to the Emir’s palace and the 1st defendant was in the presence of all present (including the plaintiff) appointed, presented and turbaned before the people of Oke-Oyi by the H then Emir as the new Bale of Oke-Oyi.”

It is quite clear from the above averments of the 1st defendant that the 1st defendant not only denied the plaintiff’s averment that he (plain-

tiff) was appointed the Oluo of Oke-Oyi. He (the 1st defendant) went further to plead that the plaintiff was not a member of any of the 4 ruling houses from where the Baale could be selected. But surprisingly, the only evidence led by the plaintiff in support of his claim was from him alone.

B It is as follows:

“I was the appointed Oluo or Bale of Oke-Oyi by the kingmakers of Oke-Oyi and that body of kingmakers has never appointed Issa Akano as Bale or Oluo of Oke-Oyi.”

C The plaintiff failed to plead the names of the Kingmakers that appointed him and call any of them as witnesses in support of his case. In fact, he called no other witness apart from himself.

D There is no doubt that at the close of pleadings, the parties joined issues on the very important questions whether the plaintiff was entitled to be selected as the Bale of Oke-Oyi and whether he was in fact selected by the king makers. The law is settled that where issues are joined on any averment in the pleadings but no evidence is led to support such averment, the result is that such averment in the pleadings is either to be E struck out or be dismissed. In other words, such averment could be treated as having been abandoned: See Balogun v. UBA (1992) 6 NWLR (Pt. 247) 336 at 344; and Omoboriowo v. Ajasin (1984) 1 SCNLR 108 at 113.

F In the instant case, the onus was on the plaintiff to establish that he was not only qualified and entitled to be selected for the chieftaincy stool by the kingmakers, but that he was in fact selected. To do that, he should have called as witnesses some of the kingmakers who selected him and show which of the chieftaincy ruling houses nominated him. G The appellant failed to do all these. It was therefore wrong of the trial court to have entered judgment for him.

I was privileged to have read the leading judgment prepared by my learned brother, Musdapher, JSC. I entirely agree with his reasoning and H conclusion that there is no merit in the appeal. For the reasons I have given above and the fuller reasons given in the leading judgment, I also dismiss the appeal with costs as assessed in the leading judgment.