

SUPREME COURT OF NIGERIA

15TH JULY, 2005. SC. 204/2000

**CORAM:- M. L. UWAI CJN, S. M. A. BELGORE, A. O.
EJIWUNMI, D. MUSDAPHER, S. A. AKINTAN, JJSC**

1. OTUU OGOGOLO
 2. OKO CHUKWU PLAINTIFFS/APPELLANTS
 3. IGNATIUS NWACHI
AND
 1. EKUMA UCHE
 2. OTI ABALI
 3. GABRIEL ANIGO AGWOR
 4. EWA IKWO DEFENDANTS/ RESPONDENTS
 5. OTU OKORO UKA
 6. THE ATTORNEY GENERAL &
COMMISSIONER FOR JUSTICE
ABIA STATE (NOW EBONYI
STATE)
 7. THE MILITARY ADMINISTRATOR
OF ABIA STATE (NOW THE
GOVERNOR, EBONYI STATE)
-
-

ADMINISTRATIVE LAW - Constitution - Of a community - Amendment
of - Is not a judicial function - But administrative (H1)

ADMINISTRATIVE LAW - Constitution - Amendment of - In an auton-
omous community - Is by government - After the community has passed
a resolution lawfully - Requiring the amendment (H2)

ADMINISTRATIVE LAW - Power - Exercise of - Courts - Where the
law gives a body exclusive prior power to determine some issues - Court
cannot come in before that body - Has exercised that power (H3)

FACTS

Before the Imo State High Court holden at Afikpo Judicial Division, the plaintiffs/appellants made claims against the defendants/respondents. The statement of claim was amended on several occasions. The issue that led to the case was a chieftaincy tussle. The plaintiffs claimed that 1st plaintiff is the person entitled to be presented to and recognized by the 9th defendant as the traditional ruler or Eze of Afikpo, that an order setting aside the purported Ehugbo (Afikpo) Eze/Chieftaincy Constitution dated 28th October, 1979, be made since it was not made in accordance with the custom of Afikpo Autonomous Community and Imo State of Nigeria Laws on Chieftaincy.

The trial court held that there was no merit in the plaintiffs' claim. The claim was therefore dismissed. Dissatisfied with the judgment, the plaintiffs appealed to the Court of Appeal which also dismissed the appeal. They have further appealed to the Supreme Court.

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

Constitution - Of a community

1. Exhibit 'K', the constitution of the Afikpo autonomous community on centralized rulership was therefore made in accordance with Section 15 quoted above. To say the constitution was not forwarded as required was begging the Issue. How then did 7th and 8th respondents approve and ratify the nomination for appointment of the Eze Afikpo? The presumption certainly is in favour of the constitution having been accepted and acted upon by Government of former Imo State. Perhaps the grouse of the appellants is that they would like the constitution to be amended; but that is not their case. At any rate, amendment of that constitution is not a judicial function, it is administrative as rightly pointed out by their Lordships of the Court of Appeal. (p. 2196 D)

Constitution - Amendment of

2. Once the constitution of these autonomous communities is accepted by the government under the relevant law, it can only be amended by the government after the community has passed a resolution lawfully requiring the amendment. In the instant case, there was no proposal for such amendment much less being rejected to afford a litigation. (p. 2196 G)

Power - Exercise of

3. Where a Law has given exclusive power to a body to decide, the court cannot come in before that body has exercised that power. Court can come in only where there is exhaustion of all remedies before that body and court will then be able to decide whether that power had been exercised lawfully. (p. 2197 A)

REPRESENTATION

Mr. E. N. Nnamani, for the Appellants.

Respondents not represented.

CASES REFERRED TO

WAEC v. Mbamalu (1992) 9 NWLR (Pt.315) 1
 Ajakaiye v. Idehai (1994) 8 NWLR (Pt.364) 504
 Macaulay v. Tukur 1 NLR 36 at 40; Akinlove v. Evivola (1968) NMLR 92 at 95
 Obisanya v. Nwoko (1974) 6 S.C. (Reprint) 61; (1974) 6 S.C.69 at 80
 Woluchem v. Gudi (1981) 5 S.C. (Reprint) 178; (1981) 5 S.C. 291
 Obodo v. Egba (1987) 1 NSCC (Vol. 18) 416 at 421
 Lokoyi v. Dole (1980) 2 SCNLR 127
 Chinwendu v. Mbamali (1980)3-4 S.C. (Reprint) 81
 Akinsanva v. U.B.A (1989)3 NWLR(Pt.107) 101
 Odonigi v. Oyeleke (2001) 2 S.C194;(2001)6NWLR(Pt.708) 12 at 32

STATUTE REFERRED TO

Traditional Rulers and Autonomous Communities Law of Imo State, 1981 ss. 5(1) & (2), 15(1) - (4)

LEAD JUDGMENT BY BELGORE JSC

The appellants were plaintiffs at the High Court of former Imo State holden at Afikpo Judicial Division. Their Statement of Claim concluded as follows in paragraph 32 thereof:

“(a) *A declaration that the 1st plaintiff is entitled to be presented to and recognized by the 9th defendant as the traditional ruler or Eze of Afikpo having been selected by the Traditional Council Afikpo autonomous community.*

“(b) *A declaration that the plaintiffs are the persons entitled in accordance with the customary law of Afikpo to select a traditional ruler/ Eze of Afikpo and present same for recognition to the 9th defendant as required by law.*

“(c) *Perpetual injunction restraining the 1st, 2nd, 3rd, 4th and 5th defendants from presenting anyone for recognition as Eze or as Traditional Ruler of Afikpo and the 6th, 7th, 8th and 9th defendants or their agents and privies from ever accepting the presentation of or recognizing any of the defendants or anybody else not selected and presented by the plaintiffs as Eze or Traditional Ruler of Afikpo.*

“(d) *An order setting aside the purported Ehugbo (Afikpo) Eze/ Chieftaincy Constitution dated 28th day of October, 1979, as not made in accordance with the custom of Afikpo Autonomous Community and Imo State of Nigeria Laws on Chieftaincy.*”

The Statement of Claim was amended several times and this greatly protracted the trial of the case. Similarly, the defendants had to amend their respective Statements of Defence. Thus, the suit filed in 1987 was delayed by motions, counter-motions and objections with several rulings before the first witness for the plaintiffs started giving evidence on 8th January, 1990. Even during the taking of evidence, there were still motions and objections to file amended pleadings. However, as the plaintiffs called only two witnesses the hearing was expeditious despite the preliminary skirmishes on procedure. After the evidence of D.W.5, Secretary to Afikpo Local Government on 14th June, 1990, the case closed for addresses by counsel, but not without another motion to amend Statement of Claim which was not opposed and was granted, and of course the 8th and 9th

defendants also filed Amended Statements of Defence, judgment was delivered by Anyanwu, J., on 4th day of September, 1990.

The claim of the plaintiffs in a representative capacity is anchored on their paragraphs 4, 5, 6, 7, 13, 15, 17 and 18 of their Statement of Claim and of course on paragraph 32 above quoted. For convenience of apprehending the claim, I quote hereunder the said paragraphs 4, 5, 6, 7, 13, 15, 17 and 18:

“4. *By the existing custom and tradition, the Traditional Ruler of Afikpo Community is selected from the descendants of the founding fathers of Afikpo. The said founding fathers were Igbo Ikwu, Ataja, Urobo Chiali and Ukwu Anyi Njaka. All the plaintiffs on record are descendants of these founding fathers.*

5. *The said four founding fathers came from Aro and founded many settlements/villages which today are collectively called Afikpo. Igbo Ikwu founded Ndibe settlement. Urobo Chali founded and settled in a place called Ngodo. Ataja founded and settled in Amaizu while Ukwu Anyi Njaka founded and settled in a place called Ezi Agbo Mgbom.*

6. *Ndibe, Ngodo, Amaizu and Exi Agbo Mgbom settlements because of their cultural and religious affinity as migrants from Aro decided to unite as one political entity. Consequently, they came together under the leadership of Igbo Ukwu and thenceforth called themselves Eho-Igbo (Ehugbo or Afikpo).*

7. *Apart from the above four villages originally founded by the aforesaid four founding fathers each one of them expanded and founded more settlements/villages which remained under his domain and which he ruled from his original settlement.*

13. *The plaintiffs are called Umu Otosi in Afikpo. Otosi is a juju reputed for its magical powers. At the time the plaintiffs' ancestors migrated from Aro, some of them took along with them, the Otosi juju and settling on their respective villages, established and installed the juju for their direct descendants who in turn established and installed for their own direct descendants till now the same is in the possession of the plaintiffs. The Obu houses of the four founding fathers have Otosi which is a symbol of power and authority. The possessors and non-possessors*

of Otosi are called “Amadis” and “Umumbeyi” or strangers elements respectively in Afikpo. By custom the judicial and executive powers rest on those who possesses the Otosi. The plaintiffs will found in the 1931 Intelligence Report of Afikpo group by R. Waddington B. The plaintiffs will also found on a letter reference No. OG.317/A/81 of 14th October, 1935 on Afikpo Clan Intelligence Report from the Resident Ogoja Province to the Hon. Secretary Southern Provinces to show that the plaintiffs are and have always been the governing class in Afikpo.

15. Igbo Ukwu/ ruled the entire Ehugbo or Afikpo assisted by the other three founding fathers

17. The appointment and selection of the above-named traditional rulers were made after the elders who were above the ages of 65 years and who were direct descendants of the said four founding fathers had had due consultations with Otosi

18 The Otosi is usually consulted at the shrine in Ndibe section-the elder section by the Chief Priest of the Obu Ezenwachi called “Ome Erusi”. The Ome Erusi communicates the decision of the Otosi to the elders who go to the shrine with him. The elders then announce the persons selected to all the sections and villages and coronation is then fixed.”

Learned trial Judge held that the above paragraphs of the Statement of Claim substantially represented what the plaintiffs claim to be “custom and practice” of the people of Afikpo which had been governing identifications, selection and coronation of the traditional rulers of Afikpo. This finding as to what the plaintiffs now appellants (as they were in Court of Appeal) claim is correct. The other parts of Statement of Claim averred to the application of the custom and tradition of Afikpo people until 1978 when according to them the first to fifth defendants took advantage of “Chieftaincy Edict of 1978” and selected one Otuu Oyim as a traditional ruler. It was further contended by the plaintiffs that when the said Otuu Oyim died in 1985, the Sole Administrator of Afikpo Local Government, the Imo State Commissioner for Local Government and Chieftaincy Affairs, the Attorney-General of Imo State and Military Governor of Imo State (i.e. 6th - 9th defendants/respondents respectively) accorded recognition

to one Igarinwe Nnachi Enwo was selected by 1st to 5th defendants as the traditional ruler of Afikpo. The said Igarinwe Nnachi Enwo died in 1987 and first to fifth defendants again selected one Michael Akpuchukwu as successor for 6th to 9th defendants to accord recognition contrary to custom and tradition.

In their Statement of Defence, the 1st to 5th defendants jointly traversal the most pertinent paragraph of Statement of Claim. It is highly important to set out their paragraphs 2,4,5,9,10 and 33 reading as follows:-

“2. With regard to paragraph 1 of the Amended Statement of Claim the defendants deny the representative capacity in which the plaintiffs are suing and the existence of the Traditional Council Afikpo they purport to represent; the defendants further aver the existence of the well - known Traditional Council of Elders Afikpo whose members have not authorized the plaintiffs to bring this action.

4. The defendants deny paragraph 4 of the Amended Statement of Claim and put the plaintiffs to the strict proof of the allegations of fact therein; in further answer the defendants aver that there had never been a sole traditional ruler for the entire Afikpo community either by custom or otherwise until 1976 when Chief Otuu Oyim 1 was identified and selected as the 1st traditional ruler of Afikpo (or Ehugbo) with the title Omaka Ejali Ehugbo; Chief Otuu Oyim 1 was later presented to and eventually recognized by the Government of Imo State and was issued with a Certificate of Recognition dated 18th July, 1979, which is hereby pleaded.

5. The defendants deny paragraphs 6,7, 8,9,10,11 and 12 of the amended statement of claim and put the plaintiffs to strict proof. Generally, the defendants aver that Afikpo is an aggregate of 25 villages most of which claim to be separately founded and these founders could not be limited to only four as claimed by the plaintiffs; the said villages are grouped into 5 groups of villages

9. With regard to paragraph 13 of the Amended Statement of Claim the defendants admit that those villages that purchased the Otosi juju had their members called “Amadi” while the rest whose villages did not purchase the juju were called “Umumbeyi” or non-Amadi were strangers or regarded as such or that the Amadis wielded judicial and/or

executive powers at all by virtue of possessing the Otosi; it is averred that the Intelligence Report pleaded by the plaintiffs show that certain devilish or satanic privileges claimed by the Amadis were resisted or denied by the Umumbeyi and that, in any event, those privileges claimed ever included any right of an Amadi to head Afikpo as a whole or the right to select such a head or leader.

10. The defendants plead the following facts which are recorded in the 1931 Intelligence Report on Afikpo village group by H. Waddington (D. O.) being statements in the course of duty with personal knowledge of the facts by the maker now dead or beyond the seas and not reasonably practicable to secure attendance:-

“(i) *The distinction between Amadi and Umumbeyi created problem.*

(ii) *A meeting was called at which the Amadi villages were well represented and it was agreed without opposition that administrative authority should be exercised by Amadi and Umumbeyi working together on equal terms.*

(iii) *Each village (in Afikpo) recognized an Onyisi, as does each family, and the Ndisi of Ndibe, Ngodo and Ameka were regarded as the senior Ndisi of Imeogo although none of them was acknowledged to have any powers outside his own village. No person was recognized as the senior of the Ndisi of all Afikpo ”*

33. *The defendants also plead illegality and incompatibility in respect of the selection or purported selection of the 1st plaintiff as traditional ruler with the use, aid, consultation and/or decision of Otosi, a juju with alleged magical powers, including power to delay the plaintiffs and their principal (the so-called Afikpo Traditional Council) from selecting their traditional ruler until consulted, contrary to Section 210(c) of the Criminal Code applicable in Imo State of Nigeria.”*

The 6th and 7th defendants filed no Statement of Defence but the Attorney-General and Governor of Imo State (8th and 9th defendants) filed a joint Statement of Defence. Their Statement of Defence averred that the plaintiffs lacked capacity to bring the action and were unknown under

Afikpo custom and constitution governing the identification, selection and prosecution of a traditional ruler.

From the pleadings, what is clear is that 1-5th defendants and several others live within the geographical area previously known as Ehugbo but now called Afikpo. Their ancestors migrated long ago to the area and founded several villages of Afikpo (or Ehugbo). Their most revered shrines housed Otosi juju which still exists. Those who housed the Otosi juju were classified as Amadis, and so were their descendants. Those who had no Otosi juju were classified as Umumbeyi. Those facts were clearly set out by British Colonial Officers in their Intelligence Reports as far back as 1931 and 1935. Reports by H. Waddington of 14th October, 1935, is one in point and a letter by the Resident of Ogoja Province to Secretary of State for Southern Provinces set out clearly the custom and traditions of the inhabitants.

The contention of the plaintiffs all along is that they are the Amadis and defendants 1-5 are of Umumbeyi and that by custom and tradition only plaintiffs could select and appoint traditional rulers being descendants of founding fathers of Afikpo i.e. Igbo Ukwu, Ataja, Urobo Chiali, and Ukwu Enyi Njaka. These founding fathers expanded and found more towns and villages that were ruled from their original settlements. Plaintiffs claimed Umuotosi is their joint appellation, Otosi being the juju their ancestors brought from Aro and installed in their various settlements. Those not in possession of Otosi are the Umumbeyi or “*stranger elements*”. They each claimed exclusive right to appoint the Eze.

As I said earlier, the Intelligence Report on Afikpo, Exhibit ‘F’ and letter of Intelligence Report Exhibit ‘G’ were admitted in evidence by trial Judge as both sides pleaded Intelligence Reports of colonial administrators. Also tendered by the defendants is a letter of official recognition of Otuu Oyim as traditional ruler of Afikpo (Exhibit J). The general evidence before trial court is that Afikpo never had a centralized traditional rulership but each village had its own village head and no more. That was before 1985.

At the end of a thorough review of the evidence before him, learned trial Judge concluded that Afikpo as an autonomous community had no custom or tradition of being ever ruled by one person selected by

the community as alleged by the plaintiffs. He further held that it was significant that neither in their pleadings nor in their evidence had a period in time been assigned to the rulership of Igbo Ukwu as sole traditional ruler of Afikpo. Neither any of the successors to Igbo Ukwu in their Statement of Claim in paragraph 16 thereof was sole ruler of Afikpo - except for the claim of power.

Exhibit “G” even clearly bears this out in its paragraph 3 when it says:

“3. Paragraph 83 and the paragraphs dealing with the functions of the Onyeisi and the Nze Nze seem to be contradicted by the later paragraphs dealing with the Umu Otosi and the distinction there drawn between the Amadi and Umumbeyi, as for instance, the statement in paragraph 122 that the executive and judicial power lay with the Amadi only. His Honour discussed this matter with the district officer who assured him that not only was the privileged position of the Amadi passing away but that they were willing to admit the Umumbeyi on to an equal footing with themselves and had agreed that their own powers should no longer be exercised and that the decisions of the Onyeisi and Nze Nze should be subjected to no restrictions by the Otosi fetish. The District Officer did not consider that this change would in fact be very revolutionary, as a recently acquired possession of the Otosi fetish, while conferring a title and prestige does not carry with it any administrative or judicial authority placing its holder in much the same footing as the possessor of the Ozo title elsewhere. For while it is clear that a system of administrative based on the Otosi fetish would be doomed sooner or later to failure. His Honour considers that the immediate success or failure of the present proposals would appear to depend in no small degree on the measure in which these views can be said to be correct.”

The plaintiffs relied heavily on Otosi juju. The defendants insist that the juju was brought by a leper from Aro who sold it to whoever liked to buy. From the evidence, whether the belief was in Otosi juju in selecting any ruler, it could affect only village heads’ appointments, not overall ruler for Afikpo.

Learned trial Judge, referring to recent laws on autonomous communities in Imo State e.g. Traditional Rulers and Autonomous Communities

Law 1981 (Now Law), came to the conclusion that rulership for Afikpo autonomous community is a creation of law not custom and tradition and cited Section 51(1) and (2) of that law and found no merit in the case of the plaintiffs and dismissed it in its entirety.

Dissatisfied, the plaintiffs appealed to the Court of Appeal, Port Harcourt Division. There, the appellants (plaintiffs) set out four issues for determination as follows:

“1. In view of the admission of D.W.4 that the appellants and not the respondents are the descendants of Afikpo (Ehugbo) was the learned trial Judge entitled to dismiss the case of the appellants.

2. Was the trial court correct in not setting aside Exhibit ‘K’ when it found that it failed to comply with legal requirements.

3. Was the learned trial Judge entitled to make a case which the parties did not make and base his decision on matters not canvassed at the trial.

4. Was the learned trial Judge right in the absence of any evidence on oath challenging the appellants’ authority to hold that appellants have no competence to bring this action in any capacity.”

The issues raised for 1st to 5th respondents were more of answers to questions but nonetheless Court of Appeal allowed it for what it was worth. At any rate, those issues were merely on facts. But the issues for determination by 7th and 8th respondents dealt strictly with the applicable law and its effect on the trial Judge’s decision. The Court of Appeal in a judgment quoting extensively the Intelligence Report, Exhibit ‘F’ and its being queried for clarification set out brilliantly what the situation as to Chieftaincy in Afikpo was. Waddington’s Report and Lt.-Governors letter of demanding clarification (Exhibits ‘F’ and ‘G’ respectively are hereby set out as carefully done by Katsina-Alu, JCA., (as he then was):-

“93. As the head of the Nzenze was the Onyisi (which is the only title the holder of this office ever bore) who acquired his rank by a mixed process of heredity and selection, the element of heredity consisting in the qualification of belonging to the Ezi (‘House’ in the sense of family) of the founder; and that of selection in the fact that in certain circumstances, the candidate may be rejected and another chosen. Accession to office falls short of being automatic by this measure of control which the system

places in the hands of the representatives of the people.

94. An interval of one year must elapse after the death of an Onyisi before steps are taken to replace him. Ordinarily the successor is the oldest man in the founder's Ezi, but before he can succeed his appointment must be ratified by the Nzenze of the village. A preliminary discussion of the candidate's merit takes place between what is known as the Umu Otosi, a small body of Elders who possesses a special status and whose number varies in the different villages. The Umo Otosi then summon a meeting of the Nzenze in the Obu house of the senior Ezi, and the acceptance or rejection of the candidate is finally decided. If he is rejected, the next claimant is considered similarly.

3. Paragraph 83 and the paragraphs dealing with the function of the Onyeisi and the Nzenze seem to be contradicted by the later paragraphs dealing with the Umu Otosi and the distinction there drawn between the Amadi and the Umumbeyi, as for instance, the statement in paragraph 122 that the executive and judicial power lay with the Amadi only. His Honour discussed this matter with the District Officer who assured him that not only was the privileged position of the Amadi passing away but that they were willing to admit the Umumbeyi on to an equal footing with themselves and had agreed that their own powers should no longer be exercised and that the decisions of the Onyeisi and Nzenze should be subjected to no restrictions by the Otosi fetish. The District Officer did not consider that this change would in fact be very revolutionary, as a recently acquired possession of the Otosi fetish, while conferring a title and prestige, does not carry with it any administrative or judicial authority placing its holder in much the same footing as the possessor of the Ozo title elsewhere. His Honour would be glad, however, if the District Officer would confirm these impressions and if he could give more details as to the Otosi juju and say how many of the former prerogatives of its holders have passed away.

4. The tendency has for long been towards the weakening of their hold on their ancient privileges. The objects we had in view were fully explained to them before the formulation of a scheme of reorganization was proceeded with, and although I hardly expected it, they agreed unan-

imously that all the Nzenze should work together on an equal footing. The Umumbeyi are strong enough to put up very serious opposition to any insistence on Amadi privileges (their strength was well demonstrated during the Afikpo trouble in October) and the Amadis are under no delusions on this point. In my opinion, no scheme which embodied differentiation between the two classes would have any chance of success. In fact, I do not consider it would be possible to devise such a scheme in face of the opposition it would arouse, let alone put it into operation. The success of the present proposals will undoubtedly depend on the loyal co-operation of the Amadi, and they clearly expressed their willingness to co-operate on the basis proposed.

5. The question of which of the Amadi privileges have completely died out is one to which the Amadi and the Umumbeyi give different answers But any prerogative connected with the conduct of village affairs which the Amadi claim that by ancient right they can still exercise, is vigorously denied to them by the Umumbeyi who are a sufficiently influential body - and by no means without adherents among the Amadi themselves - to render such pretensions ineffective.

The history of these prerogatives suggests that in the past they could only be maintained by force majeure and therefore, having regard to the strength of the opposition, I take the view that in present circumstances they must be regarded as having passed away."

The further Intelligence Reports factually concentrated on the individual nature of Afikpo communities rather than a centralized one. They brought out clearly gradual and almost total disappearance of distinction between Amadis and Umumbeyis. This can be found in Exhibit 'G'. The Court of Appeal entirely agreed with the trial Judge that nowhere was it ever suggested in years before 1981 and in the Intelligence Reports that Afikpo Autonomous Community ever had a well-established form of central traditional rulership and that all that existed were several units of village headships. Exhibit 'F', another Intelligence Report is instructive when inter alia, it says:

"79. Consideration of the successive age-grades and their place in the life of the community leads to the subject of administration which was the function of the last effective grade, the akpo uke asa, the class of

Elders (Nzenze).

In Afikpo, the discovery of the true position occupied by the Nzenze in former times is attended by complications not met with in the ordinary cases. These arise out of the fact that the villages do not trace their origin from the same source so that the criterion of order of descent from the founder by which precedence among villages of a clan is often determined, does not exist. The result is that where a village claims priority of rank for itself and peculiar powers for its principal Nzenze, the claim is elsewhere denied either wholly or in part, and the ground upon which it is based ridiculed. Alien control has inevitably brought about drastic changes in the old order; and indications of what that really was, for which one looks in the present-day state of things, have become so overlaid and obscured as to be of little assistance.

The great majority of factors which bore upon the welfare of the people were in their nature such as could best be regulated by the authorities of the individual villages, or at most by those of Imogo, Oghisu or Ozizza according to the group the village belonged to. The need for concerted action by the Nzenze of the whole of Afikpo was never, apparently, of very frequent occurrence and would perhaps be less so in the case of a more or less loosely-knit village-group than in a clan where closer relationship would create stronger inter-village sympathies and a broader communal life. The changes of modern times too have had the effect of reducing the occasions on which the Nzenze of all groups might usefully confer, eliminating as they have done the need for union as means of self-defence.

Meetings of all the Nzenze are still held, and although that assembly as an instrument of administration may not be of more than occasional utility, the infrequency of the meetings is the measure of the importance of the business they deal with.

89. A few examples were given of the types of objects for which a general meeting would be convened. The principal among them were matters concerning intercourse with other people. The question of war was naturally one which affected all villages equally; and negotiations generally with 'foreign' administrations were only within the competence of a council of all the Nzenze."

The Court of Appeal reviewed all the evidence adduced before

the trial court and the applicable laws and came to a clear conclusion that the appeal had no merit and dismissed it.

On a further appeal to the Supreme Court, none of the respondents filed any brief. But the appellants filed a brief. Their issues for determination are as follows:

"1. In view of the admission of D.W.4 that the appellants and not the respondents are the descendants of Afikpo (Ehugbo), was the court below right to have affirmed the learned trial Judge's dismissal of the case of the appellants?"

2. Was the Court of Appeal correct to have affirmed the trial court's decision not to set aside Exhibit 'K' when the same trial court found that it failed to comply with legal requirements.

3. Was the Court of Appeal correct to have held that the appellants did not make out a case in support of issue 3 for determination at the Court of Appeal?"

It is clear in the overwhelming evidence before the trial court and which learned trial Judge believed and upheld by the Court of Appeal, that the distinction between the Amadis and Umumbeyis had long disappeared and the autonomous Afikpo community had lived in peace from before the Second World War i.e., before 1940. The first issue mentioning admission by D.W.4 that the plaintiffs were descendants of Ehugbo (not so clearly admitted in evidence of D.W.4, however) has no bearing on the situation of law as it is at present exists and also no time had Afikpo before 1981 had anything like a central traditional ruler. That came about by law.

On issue 2, it is pertinent the Edict of 1981 No. 11 of Imo State be referred to. In trying to bring together traditional institutions all over the former Imo State (broken into present Abia and Imo States, with Afikpo now forming part of Ebonyi State) the Governor, in order to have some centrality, promulgated the edict. Section 15 of the Edict provides:

"(1) After a copy of the Constitution of an autonomous community has been forwarded to the Chief Executive of the Local Government in accordance with the provisions of Section 4 (sic: Section 5) of this Law, it shall not be amended unless the Governor is satisfied that there is good reason or cause for the amendment.

(2) The Constitution so forwarded to the Chief Executive of

the Local Government or as amended shall be deemed to have stated or embodied the customary law of the community in relation to matters specifically dealt with therein.

(3) *The Commissioner shall have the custody of all the community (sic: communities) constitutions forwarded or as amended in compliance with the provisions of this Law.*

(4) *Any amendment to the Constitution of an autonomous community must be by the autonomous community or its authorised agent or agents or traditional representatives.”*

Exhibit ‘K’, the constitution of the Afikpo autonomous community on centralized rulership was therefore made in accordance with Section 15 quoted above. To say the constitution was not forwarded as required was begging the Issue. How then did 7th and 8th respondents approve and ratify the nomination for appointment of the Eze Afikpo? The presumption certainly is in favour of the constitution having been accepted and acted upon by Government of former Imo State. Perhaps the grouse of the appellants is that they would like the constitution to be amended; but that is not their case. At any rate amendment of that constitution is not a judicial function, it is administrative as rightly pointed out by their Lordships of the Court of Appeal (WAEC v. MBAMALU (1992) 9 NWLR (Pt.35). 1; Ajakaiye v. Idehai (1994) 8 NWLR (Pt.364) 504).

Once the constitution of these autonomous communities is accepted by the government under the relevant law, it can only be amended by the government after the community has passed a resolution lawfully requiring the amendment. In the instant case, there was no proposal for such amendment much less being rejected to afford a litigation.

Where a Law has given exclusive power to a body to decide, the court cannot come in before that body has exercised that power. Court can come in only where there is exhaustion of all remedies before that body and court will then be able to decide whether that power had been exercised lawfully.

Certainly, on the facts of this case and in the face of the laws applicable to Afikpo autonomous community, this appeal has no merit.

I dismiss the appeal and uphold the judgment of Court of Appeal which affirmed the decision of trial High Court, As the issues are resolved against the appellants I award no costs as none of the respondents appeared in this court.

UWAIS CJN

I have had the advantage of reading in draft the judgment read by my learned brother, Belgore, JSC, I agree with him that the appeal lacks merit.

Accordingly, I too hereby dismiss it and adopt the order as to costs as contained in the said judgment.

EJIWUNMI JSC

I have had the privilege of reading the draft of the judgment just delivered by my learned brother, Belgore, JSC. From the review of the facts of this case in the said judgment and my own reading of same in the Printed Record, it is manifest that the dispute in this appeal concerns whether the appellants have established their claim as pleaded. Furthermore, it is also not in doubt that for them to establish their claim, they have to contend with the provisions of Edict No. 11 of 1981, which in a large measure has regulated appointments to the title that is the subject of their claim.

Now, it is pertinent to note that their claims have been rejected by the two courts below. And for this court to set aside the findings of these courts, the onus lies on the appellant to satisfy the appellate court that the decision was wrong. If he fails to do this, the decision cannot stand: *Macaulay v. Tukur* 1 NLR36 at 40; *Akinloye v. Eyiola* (1968) H NMLR 92 at 95; *Obisanya v. Nwoko* (1974) 6 S.C. (Reprint) 61; (1974) 6 S.C. 69 at 80; *Woluchem v. Gudi* (1981) 5 S.C. (Reprint) 178; (1981) 5 S.C. 291 at 326-330; *Obodo v. Egba* (1987) 1 NSCC (Vol. 18) 416 at

421. And as the appellant had failed to satisfy me that the courts below were wrong in law or in their application of the facts to the prevailing and applicable law, their appeal fails. It is accordingly dismissed by me for the above reasons and the fuller reasons given in the judgment of my learned brother, Belgore, JSC. I also made no order as to costs.

MUSDAPHER JSC

I have had the honour to read in advance the judgment of my Lord, Belgore, JSC., just delivered with which I entirely agree. This is an appeal against concurrent and consistent findings of facts by the two lower courts and the appellant has failed to convince me that the findings are perverse. It is for this and the fuller reasons contained in the aforesaid judgment that I too find the appeal lacking in merit. I dismiss it. I abide by the order for costs contained in the aforesaid judgment.

AKINTAN JSC

The dispute that led to the institution of this action at the Afikpo High Court of Imo State by the appellants as plaintiffs, against the respondents, as defendants, was over a chieftaincy tussle. The plaintiffs' claim before the trial High Court was, inter alia, for a declaration that the 1st plaintiff is the person entitled to be presented to and recognized by the 9th defendant as the traditional ruler or Eze of Afikpo having been selected by the Traditional Council of Afikpo; declaration that the plaintiffs are the persons entitled, in accordance with the customary law of Afikpo to select a traditional ruler or Eze of Afikpo; perpetual injunction restraining the 1st to 5th defendants from presenting anyone for recognition as Eze or as traditional ruler of Afikpo and the 6th to 9th defendants or their agents and privies from ever accepting the presentation or anyone else not selected and presented by the plaintiffs as Eze or traditional ruler of Afikpo; and an order setting aside the purported Ehugbo (Afikpo) Eze/Chieftaincy

Constitution dated 28th October, 1979, as not made in accordance with the custom of Afikpo Autonomous Community and Imo State of Nigeria Laws of Chieftaincy.

After the parties had finally settled their respective pleadings, the trial eventually took place before Anyanwu, J. In his reserved judgment delivered in the case on 24/9/90, the learned trial Judge held that there was no merit in the plaintiffs' claim. He accordingly dismissed it with costs in favour of the defendants. The defendants were dissatisfied with the judgment and their appeal to the Court of Appeal was dismissed. The present appeal is against the judgment of the Court of Appeal.

It may be mentioned at this stage that the main finding of fact made by the learned trial Judge and which formed the principal reason why the plaintiffs' claim was dismissed is that the learned trial Judge found, inter alia, that Afikpo, as an autonomous community, had no custom or tradition of being ever ruled by one person selected by the community as alleged by the plaintiffs. This finding of fact made by the learned trial Judge was affirmed by the Court of Appeal. In other words, there was a concurrent finding of fact by the two lower courts on the vital question as to whether the plaintiffs were in fact entitled to present the candidate for the chieftaincy stool in dispute and a claim on which their entire action was premised.

The position of the law is that ordinarily, this court will not interfere with the concurrent findings of fact made by the two lower courts. But where it is manifest that those concurrent findings are based on a wrong perspective or wrong principles of law, or are not supported by the evidence led at the trial, or it is clearly shown that the findings are glaringly wrong and will perverse the course of justice, then this court has the duty to tamper with such findings of fact and put right the situation. See *Balogun v. Agboola* (1974) 10 S.C (Reprint) 83; (1974) 10 S.C 111; *Lokoyi v. Olojo* (1980) 2 SCNLR 127; *Chinwendu v. Mbamali* (1980) 3-4 S.C. (Reprint) 81; (1980) 3-4 S.C 31; *Ibhafidon v. Igbinosi* (2001) 4 S.C H (Pt. 1) 96; (2001) 8 NWLR (Pt. 716) 653 at 660; *Akinsanva v. U.B.A* (1989) 3 NWLR (Pt.107) 101; and *Odonigi v. Oyeleke* (2001) 2 S.C 194; (2001) 6 NWLR (Pt.708) 12 at 32. There is no doubt that the appellants have failed to establish in this court any of the conditions I have set above

which must exist before the concurrent findings of fact made by the two lower courts to warrant or justify interfering with that very vital findings of fact.

For the above reasons and the fuller reasons given in the leading judgment just delivered by my learned brother, Belgore, JSC., which I had the privilege of reading before now and which I entirely agree with, I also hold that there is no merit in the appeal. I accordingly dismiss it and abide by the order on costs made in the leading judgment.

C

D

E

F

G

H