

SUPREME COURT OF NIGERIA
8TH JULY, 2005. SC. 25/2001
CORAM:- S. U. ONU, A. I. KATSINA-ALU, U. A. KALGO,
D. MUSDAPHER, G. A. OGUNTADE, JJSC

T. O. OWOSENI APPELLANT
(For and on behalf of Oniseri Family of Iju)

AND

1. JOSHUA IBIOWOTISI FALOYE

2. OBA AMOS A. FARUKANMI RESPONDENTS
(Okiti of Iju)

PRACTICE & PROCEDURE - Right to sue - Statutes - Where statute prescribes a legal line of action - In administrative, chieftaincy or taxation matters - Aggrieved party must exhaust all remedies in the law before going to court (H1)

CHIEFTAINCY MATTERS - Access to court - Where appellant has satisfied prescribed steps - In determination of minor dispute - And prescribed authority does not do what is required of them - Then appellant has no option than to go to court (H2)

ACTIONS - Chieftaincy matters - Right to sue - An appellant is entitled to sue - And seek declarations - Where the prescribed authority in charge of Chieftaincy matters - Neglects to exercise power (H3)

APPEALS - Cross Appeal - Dismissal of - Is wrong - Where court did not consider it on the merits - On the ground that the trial of the matter was premature (H4)

FACTS

Before the High Court of Ondo State, Akure, the plaintiffs/appellants on behalf of themselves and the Oniseri family of Iju made claims against the defendants/respondents. Their claim was for a declaration that the 1st defendant is not entitled to be appointed as Chief Oniseri of Iseri quarter of Iju in Akure Local Government of Ondo State, that his purported appointment was illegal and void, that the 2nd defendant acted ultra vires and was in fundamental breach of his traditional role by taking part in the appointment of 1st defendant as the Oniseri, and an order of perpetual injunction restraining the 1st defendant from parading himself as chief Oniseri Chieftaincy of Iju.

The trial court granted the 2nd, 3rd and 4th reliefs but dismissed the 1st. Both the plaintiffs and defendants being dissatisfied with the decision of the trial court, appealed and cross-appealed to the Court of Appeal. The appeal of the defendants was allowed and the cross appeal of the plaintiffs was dismissed. The plaintiffs being dissatisfied, have further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Did the appellant comply with the procedural steps stipulated in the Chiefs Edict, 1984 of Ondo State before instituting action at the trial court?”

2. Was the Court of Appeal right to dismiss the cross-appeal, when it did not find it necessary to consider and determine the only issue identified by the cross-appellant in the cross appeal.”

HELD (Unanimously allowing the appeal **MUSDAPHER JSC**)

Where statute prescribes a legal line of action

1. Now, in my view, the Court of Appeal is perfectly right in the statement of the law to the effect that where a statute prescribes a legal line of action for the determination of an issue, be it an administrative matter, chieftaincy matter, such as this, or a matter for taxation, the aggrieved party must exhaust all the remedies in that law before going to court. The provisions of Section 13(4), (5), (6) and (7) of the Chiefs Edict 1984, of Ondo State are clear as to the steps to take. The provisions amply provide redress for

the plaintiff/appellant herein. He should follow the steps rather than embark on going to court. (p. 2345 E)

CHIEFTAINCY MATTERS - Access to court

2. Another point worthy of consideration is the fact that it was the commissioner for Chieftaincy Affairs that advised the plaintiffs to file the action. The commissioner became aware of the circumstances of the matter and his failure to resolve the dispute one way or the other could not be attributed to the appellant.

The other point I wish to address my mind to is that in an action of this nature, the precondition of access to the court in respect of the dispute arising from the determination of a minor dispute by the prescribed authority in Ondo State are:-

(a) The prescribed authority must have made a determination;

(b) The aggrieved party makes a representation to the Commissioner for Chieftaincy Matters within 21 days of the giving of the decision; and

(c) The Commissioner for Chieftaincy Affairs should determine the dispute after due inquiry.

These steps exhaust the remedy available to persons aggrieved under the exercise of the powers vested in the prescribed authority. In the instant case, the appellant had satisfied the above steps. It is not his fault that both the prescribed authority, the 2nd respondent herein, and the Commissioner in charge of Chieftaincy Matters did not do what was required of them. The appellant had no option but to go to court.

(p. 2346 H)

Chieftaincy matters - Right to sue

3. Before I part with this issue, it is also necessary to discuss the point whether a claim of declarations can be made in the High Court after decision of the prescribed authority and the determination after due inquiry by the Commissioner in charge of Chieftaincy Matters. The law is that, where a particular statute has prescribed a particular remedy, an aggrieved party must exhaust the remedy provided and the jurisdiction of the courts

to grant declaration is generally ousted.

In other words, the form of the court action to take is not a claim for declaratory relief but are the prerogative writs for judicial review. But in the instant case, the prescribed authority, the 2nd respondent, clearly made no determination nor did the Commissioner in charge of the Chieftaincy Matters “confirm or reject” the “determination” made by the 2nd respondent. That is why both the trial court and the Court of Appeal wrongly came to the conclusion that the appellant was precluded from making representation. It was only the 2nd respondent and the Commissioner who failed to make “determination” and “confirm” or “set aside” the determination respectively. See *Eleso v. Governor of Ogun State* (1990) 21 NSCC (Pt.2) 11.

In my view, the appellant was entitled to sue and seek the declarations as he did since the prescribed authority and the Commissioner in charge of the Chieftaincy Matters had neglected or refused to exercise the power.³ Indeed, it was the Commissioner who advised the appellant to sue. I accordingly resolve issue No. 1 in favour of the appellant. The Court of Appeal was clearly in error to have allowed the appeal of the respondents. (pp. 2347 F & 2348 E)

Cross Appeal - Dismissal of

4. This is concerned with the decision of the Court of Appeal to dismiss the cross-appeal when it did not even consider it on the merits on the ground that the trial of the matter was premature and accordingly without jurisdiction. The Court of Appeal was clearly in error to have dismissed the cross-appeal without considering it on the merits. I resolve this issue also against the respondents in favour of the appellant.

In the Court of Appeal issues 2-6 were submitted by the respondents but were not properly considered on the grounds as aforesaid, that the appellant as one of the plaintiffs, did not fully exhaust the remedy provided by the Chiefs Edict. As shown above, the appellant had done all what was required of him under the statute. The fact that the Commissioner for Chieftaincy Affairs failed to do his duties should not be counted against the appellant. In the circumstances. I allow the appeal and set aside

the decision of the Court of Appeal when it decided that the suit filed by the appellant was premature and that the trial court lacked the jurisdiction to entertain the matter. (p. 2349 A)

NOTABLE POINTS OF INTEREST

B

OGUNTADEJSC

1. Laws that prescribe some steps before actual litigation

It is important to stress that Laws which prescribe that some procedural steps be taken to resolve a dispute before embarking on actual litigation are not and cannot be treated or categorized as ousting the jurisdiction of the court. Indeed if such laws attempt to do so, they would be in conflict with the provisions of the Constitution. Such laws only afford the body to which such disputes must be referred to in the first instance an opportunity to resolve the dispute if it can before a recourse is had to the court. In other words, they serve the purpose of preventing actual litigation in court where it is possible or desirable to resolve the dispute. In relation to chieftaincy matters, were such laws not in existence, the courts would be inundated with suits on chieftaincy matters, given the bitterness with which chieftaincy disputes are pursued and the regularity with which such disputes occur. (p. 2361 H)

2. Question of absence of jurisdiction - How raised

F

I agree that the question of absence of jurisdiction in a court to adjudicate on a matter can be raised at any stage of the proceedings and indeed for the first time on appeal. But before a defendant can raise the matter before evidence is led, the material giving rise to the complaint of absence of jurisdiction in the court before which the suit is brought must be apparent on the face of the Statement of Claim. Alternatively, the defendant may plead the issue himself. A defendant is not entitled to rely upon a defence which is based on facts not stated in the statement of claim unless he alleges such facts specifically in his pleadings by way of special defence. (p. 2363 B)

REPRESENTATION

Mr. J. O Adesida, for the Appellant.

Mr. K. Esan, for the respondent.

B

CASES REFERRED TO

Aribisala v. Ogunyemi (2005) 6 NWLR (Pt. 921) 212.

Ariori v. Memo (1983) 2 SCNLR 1

C Shitta-Bey v. A. G. Federation (1998) 7 S.C. (Pt. II) 121; (1998) 10 NWLR (Pt.570) 392.

Eleso v. Governor of Ogun State (1990) 21 NSCC (Pt.2) 11

N.I.P.C Ltd. v. Bank of West Africa Ltd. (1962) 1 All NLR 556

D Sketch Publishing Company Ltd. v. Ajagbemokeferi (1989) 2 S.C. (Pt.II) 73; (1989) 1 NWLR (Pt.100) 678.

Eguamwense v. Amaghizenwen (1993) 9 NWLR (Pt.315) at 25

A-G Oyo v. Fairlakes Hotel Ltd. (1988) 12 S.C. (Pt. 1) I; (1988) 5 NWLR (Pt.92) I at 58

E Akilu v. Fawehinmi (No.2) (1989) 3 S.C (Pt.II); (1989) 2 NWLR (Pt.102) 122

Biariko v. Edeh-Ogwuile (2001) 4 S.C. (Pt.II) 96; (2001) 12 NWLR (pt. 726) 235

F

STATUTE REFERRED TO

Chiefs Law of Ondo State, 1984 s. 13(4), (5), (6) & (7)

G

LEAD JUDGMENT MUSDAPHER JSC

H In the High Court of Justice of Ondo State of Nigeria, in the Akure Judicial Division and in Suit No. AK/143/90, the appellant herein and one other now deceased on behalf of themselves and the ONISERI family of Iju claimed against the respondents herein as the defendants as follows:

“1. Declaration that the first defendant is not entitled to be appointed as CHIEF ONISERI of ISERI Quarter of Iju in Akure Local Government of Ondo State;

2. Declaration that the purported appointment and installation of the said first defendant as the Chief of Iseri Quarter of Iju in Akure Local Government of Ondo State by the second defendant is most irregular, illegal, void and of no legal effect;

3. Declaration that the second defendant acted ultra vires and was in fundamental breach of his traditional role as the OKITI of IJU by taking active part in the nomination and appointment of the first defendant as the ONISERI of ISERI Quarter of Iju in Akure Local Government of Ondo State:

4. An Order of perpetual injunction restraining the first defendant from parading himself as Chief Oniseri Chieftaincy of Iju in Akure Local Government of Ondo State.

After the delivery and the exchange of pleadings, the parties led evidence in support of the positions they took in the matter. After the address of counsel, in his judgment delivered on the 16th day of February, 1995, the learned trial Judge allowed the 2nd, 3rd and 4th reliefs recited above. The learned trial Judge however dismissed the first relief. Both parties, the defendants and the plaintiffs, felt unhappy with part of the decision of the trial court and respectively appealed and cross-appealed to the Court of Appeal. In its judgment delivered on the 13th day of July, 2000, the Court of Appeal, per Ibiyeye, JCA., who read the lead judgment which was concurred to by Akintan, JCA., (as he then was), and Akaahs, JCA., said at page 299 of the record, thus:-

“The main issue for consideration in issue No. 1, whether or not the respondent complied with the relevant statute on the resolution of disputes in minor chieftaincy tussles in Ondo State. It is common ground that there was a dispute between the parties on the rightful successor to the vacant stool of Oniseri of Iseri Quarter of Iju. It is the bounden duty of the trial court to resolve the issue in accordance with the prescribed legislation which is the Chiefs Edict 1984.”

The learned Justice referred to Section 13(4) to (7) of the Chiefs Edict, 1984, and after due consideration of the relevant provisions came to this conclusion at page 303 in the aforesaid records:-

“He, in effect, (the plaintiff) failed to exhaust all the remedies

provided by the statute in his attempt to seek redress against the decision of the 2nd appellant. Thus, it is crystal clear that he did not make a representation to the Hon. Commissioner for Chieftaincy Affairs in Ondo State. In retrospect, I hold that since Section 13 of the Chiefs Edict, 1984, B has prescribed a particular remedy in dealing with minor chieftaincy disputes and such remedy has not been exhausted by the respondent, it was hasty on his part to recourse to the High Court to seek declarations of which to some extent have been made by the 2nd appellant (the prescribed authority). The action of the respondent in the lower court was premature C and it did not give rise to a cognizable cause of action, xxxxxxxxxxxxxxxxxxxx”

The Court of Appeal was, in the main, of the view, that having resolved this issue against the appellant herein, it has comprehensively and D completely disposed of all the other issues submitted to the court for the determination of the main appeal. With respect to the cross-appeal, the learned Justice at page 304 of the printed record stated:-

The is only issue raised by the cross-appellant in the cross-appeal E reads:-

“Whether there is sufficient evidence before the learned trial Judge to establish the fact, defendant/ appellant is not a member of Oniseri family of Iseri Quarter Iju in Akure Local Government of Ondo State.”

F “It will be recalled that the main appeal was decided on the ground of jurisdiction in the court of trial. It is therefore not necessary to consider and determine the only issue identified by the cross-appellant as that issue concerns the merit of the claim before the lower court.”

Thus, the appeal was allowed and the cross-appeal was apparently G dismissed. Even though the Court of Appeal decided not to consider and determine it on the merit. It is against the decision of the Court of Appeal, that the plaintiff has now appealed to this court. The Notice of Appeal filed with the leave of this court contains three grounds of appeal which read H thus:-

“1. The Court of Appeal erred in law in holding that:

“I agree with the learned counsel for the appellants that what the respondent did by seeking for declarations from the trial court is a flagrant

disregard of Section 13(5) of the Chiefs Edict, 1984."

PARTICULARS:-

(a) *There was no evidence before the court to support this finding.*

(b) *Exhibits I, J, K and the evidence for P.W.1 (page 59, lines 26-35 page 60 lines 1-2) are ample evidence to the contrary.*

(c) *The fact that the appellant complied with Section 13(5) of the Chiefs Edict was duly pleaded by the respondent in paragraphs 34-37 of the Amended Statement of Defence (page 71) which paragraphs constitute an admission against interest."*

2. The Court of Appeal erred in law in holding that:-

"In the instant case, the respondent omitted to comply with the provisions which set out the procedural steps for venting his grievance and he therefore acted prematurely in instituting his action in the lower court."

PARTICULARS

1. *"There is no iota of evidence to support this finding.*

2. *The evidence of P.W.1 (pages 57-61) shows that the appellant duly complied with the procedural steps stipulated in the Chiefs Edict, 1984, by complaining to the Chairman of the Local Government and thereafter to the commissioner in charge of Chieftaincy matters."*

3. *'The finding clearly overlooked facts duly admitted in evidence at the lower court."*

3. The Court of Appeal erred in law when after holding that:-

"The main appeal was decided on the ground of jurisdiction in the court of trial, it is therefore not necessary to consider and determine the only issue identified by the cross-appellant in the cross-appeal as that issue concerned the merit of the claim before the lower court."

He proceeded to order that "the cross-appeal lacks merit and it is dismissed."

The reliefs sought by the appellant from this court is for an order-

"(i) setting aside the judgment of the Court of Appeal delivered on the 13/7/2000.

(ii) An order allowing the cross-appeal and entering judgment in favour of the appellant."

Before the examination and the consideration of the issues submit-

ted to this court for determination of this appeal, it is convenient at this stage to sketch out the facts of this case. This is another prolonged and protracted chieftaincy dispute. A minor chieftaincy stool of Oniseri of Iseri became vacant in 1978 following the demise of the erstwhile incumbent, late Chief Fagbemigun. The plaintiffs alleged that only members of the Oniseri chieftaincy family of Iju have the exclusive right to aspire to the stool of the Oniseri. They alleged that the first defendant, as Oniseri elect was not a member of the chieftaincy family and was therefore not qualified to vie for the stool. The military administrator set up a commission of inquiry to investigate the matter. While the investigation was in progress, the Okiti died in the same year 1978. Whereupon the selection and the process of the installation of the Oniseri was set aside to await the appointment to the stool for the prescribed authority, the new D Okiti of Iju.

In the meanwhile the first plaintiff, (now deceased), Chief G. O. Falebita, declined the offer made to him by the Oniseri family to vie for the stool. The 2nd plaintiff, Y. O. Awoseni, (the appellant herein), was nominated by the family to vie for the stool. The 1st defendant all along claimed to be a member of the same family with the appellant and was qualified to vie for the vacant stool, and as mentioned above was nominated by another faction.

In December, 1987 a new Okiti of Iju, Oba Amos A. Farukanmi, the 2nd respondent herein, was appointed and installed as the paramount ruler and the prescribed authority. In its letter dated the 19/3/1990, (Exhibit F) the Ondo State Government decided and directed that fresh attempts be made to fill the vacancy of the Oniseri Chieftaincy in accordance with the traditions and customs of Iseri quarter of Iju.

In the meanwhile numerous letters by the people interested, the local government and the 2nd defendant pertaining to the Oniseri Chieftaincy were written and despatched. It was at this stage that the 2nd respondent, like his predecessor, the plaintiff alleged, had decided on installing the 1st defendant as the new Oniseri. The plaintiffs in a letter of 10th September, 1990, protested to the Commissioner in charge of Chieftaincy - Affairs about the intention of the 2nd defendant.

The defendants on the other hand alleged that on the 13/9/1990 at a meeting the three branches of the Oniseri chieftaincy family attended and presented candidates for installation as the Oniseri of Iseri. The three branches that participated at the meeting were Akerele who presented the 2nd plaintiff, Faloye, who presented the 1st defendant and the other family branch who presented another candidate. At the end of the deliberations before the prescribed authority, the 1st defendant representing the Faloye branch became victorious and was installed the Oniseri of Iseri by the 2nd defendant as the paramount ruler and the prescribed authority under the provisions of the Chiefs Edict, 1984.

Now, the 2nd plaintiff shall hereinafter be referred to as the appellant and the defendants as the 1st and 2nd respondents as the case may be. Distilled from the three grounds of appeal recited above, the appellant has formulated and submitted to this court, in the appellant's brief, two issues for the determination of the appeal. The issues are:-

"1. Did the appellant comply with the procedural steps stipulated in the Chiefs Edict, 1984 of Ondo State before instituting action at the trial court?"

2. Was the Court of Appeal right to dismiss the cross-appeal, when it did not find it necessary to consider and determine the only issue identified by the cross-appellant in the cross appeal."

The learned counsel for the respondents in the respondents' brief has adopted the issues the appellant has formulated and submitted for the determination of the appeal.

Issue One

The question for consideration under this issue is whether the appellant had complied with the provisions of the relevant statutory provisions on the resolution of disputes in minor chieftaincy tussles before he embarked on the legal battle in the courts. Now Section 13(4)-(7) of the Chiefs Edict. 1984 of Ondo State provides:-

"13(4) Where there is a dispute as to whether a person has been appointed in accordance with customary law to a minor chieftaincy the prescribed authority may determine the dispute and the person concerned shall be notified of the decision."

(5) *Any person who is not satisfied with decision of the prescribed authority may within twenty one days from the receipt of the notification make representation to such member of the Executive Council to whom responsibility for Chieftaincy Affairs is assigned that the decision be set aside and he may after consideration of the representation confirm or set aside the decision.*

(6) *Before exercising the powers conferred by subsection (5) of this section, the member of the Executive Council responsible for Chieftaincy Affairs may make inquiries to be held as appear to him to be necessary or desirable.*

(7) *Where the member of the Executive Council responsible for Chieftaincy Affairs in his determination under subsection (6) 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 in accordance with the customary law within such time as he may specify.”*

In its interpretation of these provisions, the Court of Appeal held E that:-

“It is apparent from the foregoing provisions that they have set out the procedural steps to be taken by an aggrieved contestant in respect of disputes arising from the decision of the prescribed authority which is the 2nd respondent in this case. These provisions do not make provision for access to court in respect of the said disputes.”

In its consideration of the evidence adduced, the Court of Appeal opined that the appellant had failed to comply with the statutory provisions referred to above and therefore the action of the appellant was premature and that the decision arrived at by the trial court was done without jurisdiction. Now, did the appellant comply with the provisions of the statute referred to and recited above?

The appellant’s counsel argued forcefully in his brief that:

(1) On finding that the Okiti had approved the appointment of the first respondent as the Oniseri of Iseri, the appellant forwarded a complaint to the chairman of the Akure Local Government and thereafter to the Commissioner for Special Duties in the Military Administrator’s Office in

charge of Chieftaincy Matters. Evidence of P.W.1 (pages 59-60) and D.W.2 (page 152).

(2) Learned counsel also referred to Exhibits J and K., as evidence of the fact that after the purported appointment of the 1st respondent as the Oniseri of Iseri, the appellant took the matter to the Commissioner in charge of Chieftaincy Matters. Thus the appellant had complied with the provisions of Section 13(5) of the Chiefs Edict, 1984. B

(3) It is again argued that the lower court was in error to have ignored these facts vide *Adesoye v. Olagunju* (1998) 6 NWLR (Pt. 552) 65 at 69; *Pan African Bank Ltd. v. Ede* (1998) 7 NWLR (pt.558) 422 at 432; *Ivienagbor v. Bazuaye* (1999) 9 NWLR (Pt.620) 552. C

It is again submitted that the respondents in their pleadings admitted that the appellant took the matter to the Local Government and to Commissioner for Chieftaincy Matters. What is admitted need not be proved. See *Kamalu v. Umuna* (1997) 5 NWLR (Pt.505) 321. It is further submitted that since the Commissioner for Chieftaincy Matters advised parties to go to court, there was no basis for the complaint that the procedure statutorily laid down was not followed. Learned counsel referred to *Adesola v. Abidoye* (1999) 10-12 S.C. 109; (1999) 14 NWLR (Pt.637) 28; *Obalajo v. Etikan* (1998) 6 NWLR (Pt.553) 320. The respondents are also bound by their pleadings where they categorically admitted that the appellant complained to the government vide *Ekpezu v. Ndem* (1991) 6 NWLR (Pt.196) 229; *Jiaza v. Bangbose* (1999) 5 S.C. (Pt.1) 58; (1999) 7 NWLR (Pt.610) 182. D E F

It is again submitted that by upholding the appeal, the respondents were allowed to put up a different case from their pleadings. See paragraphs 34 and 35 of the respondents' Statement of Defence where the respondents admitted that the appellant complained and protested to the Commissioner in charge of Chieftaincy Affairs. See *B. O. N. Ltd. v. Akintoye* (1999) 12 NWLR (Pt. 631) 592; *Edebiri v. Edebiri* (1997) 4 NWLR (Pt.498) 165; *Godwin v. C.A.C.* (1998) 12 S.C. 1; (1998) 13 H NWLR (Pt.584) 162. G

It is further submitted that the issue of non-compliance with Section 13(5) of the Chiefs Edict. 1984 was not raised or canvassed at the

trial court. The respondents raised the issue for the first time at the Court of Appeal and no leave was sought or obtained before raising this new issue. Learned counsel submitted finally that the judgment of the Court of Appeal based on this fresh issue raised without leave is incompetent.

B Learned council referred to *Godwin v. C.A.C. (Supra)* and *Obatoyinbo v. Ashatoba* (1996) 5 SCNJ 1 at 21.

For the respondents the learned counsel representing them submitted that the appellant did not formally comply with the provisions of the Chiefs Edict, 1984, and therefore the Court of Appeal was right to have set aside the decision of the trial court. It is again argued that no part of the pleadings nor the evidence tendered by the appellant showed any representation made to the Commissioner in charge of Chieftaincy Affairs to set aside the decision of the 2nd respondent in respect of the appointment of the 1st respondent as the Oniseri of Iseri. Exhibits J and K did not also show such representation. It is again argued that Exhibit K written on the 13/9/1990 the same day the 1st respondent was installed as the Oniseri of Iseri could not be said to be issued in protest against the installation of the 1st respondent on the same 13/9/1990. And Exhibit J was dated 12/9/1990 a day earlier before the 2nd respondent installed the 1st respondent as the Oniseri of Iseri. It is submitted that though there were a lot of agitation before the prescribed authority, the 2nd respondent who determined and resolved the dispute, the appellant did not thereafter formally protest or complain to the Commissioner for Chieftaincy Affairs under Section 13(5) of the Chiefs Edict, 1984.

It is again argued, that even if the appellant had properly protested to the Commissioner in charge of Chieftaincy Affairs, declaratory relief, the appellant sought from the High Court, was inappropriate, in the circumstances. The proper action would have been for a judicial review of the Commissioner's decision. Learned counsel referred to *Eguamwense v. Amaghizenwen* (1993) II SCNJ 27; *Abidoeye v. Babalola* (1999) 14 H NWLR (Pt.637) 28.

It is again argued that the trial court found as a fact that the appellant did not formally complain to the Commissioner in charge of Chieftaincy Matters in accordance with Section 13(5) of the Chiefs Edict, 1984,

because “the plaintiffs were xxxx deprived xxxx (of) the opportunity of exploring the avenue open to them for ventilating their objection to selection of the first defendant as provided under Section 13(5) of the Chiefs Edict xxxx.” It is submitted that the Court of Appeal also confirmed this. See page 303 of the record.

It is again further argued that the respondents did not admit that the appellant made a complaint in terms of Section 13(5) aforesaid, but only admitted writing to the Local Government. The issue of the respondents putting up a case different from their pleadings at the trial was not an issue before the Court of Appeal and there is no ground of appeal covering the point argued. The issue of the non-compliance being a fresh issue before the Court of Appeal, was not raised at the time and there was no ground of appeal covering the complaint in the appeal before the Supreme Court. Learned counsel for the respondents for these propositions relies on the following cases. *Igboho v. Boundary Settlement Commission* (1998)1 NWLR (Pt.69) 198; *A-G Oyo v. Fairlakes Hotel Ltd.* (1988) 12 S.C. (Pt. 1) I; (1988) 5 NWLR (Pt.92) I at 58; *Akilu v. Fawehinmi* (No.2) (1989) 3 S.C (Pt.II); (1989) 2 NWLR (Pt.102) 122. *Biariko v. Edeh-Ogwuile* (2001) 4 S.C. (Pt.II) 96; (2001) 12 NWLR (pt. 726) 235.

Now, in my view, the Court of Appeal is perfectly right in the statement of the law to the effect that where a statute prescribes a legal line of action for the determination of an issue, be it an administrative matter, chieftaincy matter, such as this, or a matter for taxation, the aggrieved party must exhaust all the remedies in that law before going to court. The provisions of Section 13(4), (5), (6) and (7) of the Chiefs Edict 1984, of Ondo State are clear as to the steps to take. The provisions amply provide redress for the plaintiff/appellant herein. He should follow the steps rather than embark on going to court. See the recent case of *Aribisala v. Ogunyemi* (2005) 6 NWLR (Pt. 921)212.

The first issue to consider is whether by the pleadings and the evidence the appellant as the plaintiff had complied with the provisions of the Chiefs Edict aforesaid before embarking on the legal battle in court. Now there is no doubt that the Okiti of Iju, the 2nd respondent herein, is

the prescribed authority within the meaning of the Chiefs Edict. Now, from the evidence of P.W.1, the appellant herein, there was no doubt that since 1978 when the stool became vacant, there had been protracted controversy in filling the stool. When Chief Ajana purported to install the 1st respondent as the Oniseri, the action led to protest to the Government of Ondo State which set up a 20 commission of inquiry to investigate the matter. It was while the inquiry was in progress that the then Okiti of Iju passed away. The government wrote that all actions in the matter be stayed until a new Okiti of Iju is appointed. The 2nd respondent was appointed as the Okiti of Iju in December, 1987. The appellant caused a number of letters to be written to the 2nd respondent as the prescribed authority for the appointment of the Oniseri. After due inquiry made by the new Okiti, the 2nd respondent herein, approved the appointment of the 1st respondent. In my view, there is no dispute whatever, that the appellant had clearly complied with the provisions of the Chiefs Edict. The second respondent was aware of the controversy and the protests of the appellant and particularly the late 2nd plaintiff, who wrote to the 2nd respondent. It was after the approval given by the 2nd respondent to appoint the 1st respondent, that the appellant complained to the Commissioner for Chieftaincy Affairs by a letter dated 12/9/1990 (Exhibit J) that the 2nd respondent was bent on installing the 1st respondent to the vacant stool. It is 35 patently clear that the appellant had done all what was required of him to do under the Chiefs Edict. The law does not prescribe the mode of the complaint and it is clearly common ground that the earlier approval of the appointment of the 1st respondent was cancelled due to the protest of the plaintiffs now-represented by the appellant. The Court of Appeal was clearly in error to 40 have held that the appellant did not comply with the provisions of the Chiefs Edict. Indeed the trial court had found as a fact that the appellant had complied with the provisions of the Chiefs Edict aforesaid

H **Another point worthy of consideration is the fact that it was the commissioner for Chieftaincy Affairs that advised the plaintiffs to file the action. The commissioner became aware of the circumstances of the matter and his failure to resolve the dispute one way**

or the other could not be attributed to the appellant.

The other point I wish to address my mind to is that in an action of this nature, the precondition of access to the court in respect of the dispute arising from the determination of a minor dispute by the prescribed authority in Ondo State are:- B

(a) The prescribed authority must have made a determination;

(b) The aggrieved party makes a representation to the Commissioner for Chieftaincy Matters within 21 days of the giving of the decision; and C

(c) The Commissioner for Chieftaincy Affairs should determine the dispute after due inquiry.

These steps exhaust the remedy available to persons aggrieved under the exercise of the powers vested in the prescribed authority. In the instant case, the appellant had satisfied the above steps. It is not his fault that both the prescribed authority, the 2nd respondent herein, and the Commissioner in charge of Chieftaincy Matters did not do what was required of them. The appellant had no option but to go to court. See Adesola v. Abidoeye (1999) 10-12 S.C. 109; (1999) 14 NWLR (Pt.637) 28, Eguamwense v. Amaghizenwen (Supra); Ariori v. Memo (1983) 2 SCNLR 1; Shitta-Bey v. A. G. Federation (1998) 7 S.C. (Pt. II) 121; (1998) 10 NWLR (Pt.570) 392. D E F

Before I part with this issue, it is also necessary to discuss the point whether a claim of declarations can be made in the High Court after decision of the prescribed authority and the determination after due inquiry by the Commissioner in charge of Chieftaincy Matters. The law is that, where a particular statute has prescribed a particular remedy, an aggrieved party must exhaust the remedy provided and the jurisdiction of the courts to grant declaration is generally ousted. See Eguamwense case (supra). Onu, JSC., said at page 41:- G H

“It is in this regard that the dicta of Omololu-Thomas, JCA., in case No. CA/1/154/84 (another chieftaincy appeal decided on the December, 1985, in relation to Chiefs Law, 1978 Cap. 21, applicable in Oyo State,

provisions of which are in pari materia with those of Bendel State Edict (bid) and quoted with approval by this court in Adigun and Ords. v. A-G Oyo (1987) 1 NWLR .(pt.53) 678 at 694 remedies itself apposite and to the effect that:-

B *"It is not the business of the court to make declarations of customary law relating to the selection of chiefs under the law. The exercise of functions is not directly related to the general jurisdiction of the courts under Section 236 of the federal Constitution of 1979. So long as the powers exercised under the law is within its four corners and is*
 C *exercised in good faith as being a power lawfully conferred by the legislature (Caltona Ltd v. Commissioner of Works (1943) 1 All ER 560 at 564 per Lord Green, MR.) In the exercise of the court's judicial function under Section 236 of the Constitution, orders declaratory of the function*
 D *or power under the law can be made, for example, with a view to determine the validity or otherwise of the existence of a particular custom, in contradiction from making of "Declaration" as a form of sub-legislation under the law."*

E **In other words, the form of the court action to take is not a claim for declaratory relief but are the prerogative writs for judicial review. But in the instant case, the prescribed authority, the 2nd respondent, clearly made no determination nor did the Commis-**
 F **sioner in charge of the Chieftaincy Matters "confirm or reject" the "determination" made by the 2nd respondent. That is why both the trial court and the Court of Appeal wrongly came to the conclusion that the appellant was precluded from making representation. It was only the 2nd respondent and the Commissioner who failed to make**
 G **"determination" and "confirm" or "set aside" the determination respectively. See Eleso v. Governor of Ogun State (1990) 21 NSCC (Pt.2) 11.**

H **In my view, the appellant was entitled to sue and seek the declarations as he did since the prescribed authority and the Commissioner in charge of the Chieftaincy Matters had neglected or refused to exercise the power. ³ Indeed, it was the Commissioner who advised the appellant to sue. I accordingly resolve issue No. 1 in**

favour of the appellant. The Court of Appeal was clearly in error to have allowed the appeal of the respondents.

Issue Two

This is concerned with the decision of the Court of Appeal to dismiss the cross-appeal when it did not even consider it on the merits on the ground that the trial of the matter was premature and accordingly without jurisdiction. The Court of Appeal was clearly in error to have dismissed the cross-appeal without considering it on the merits. I resolve this issue also against the respondents in favour of the appellant.

In the Court of Appeal issues 2-6 were submitted by the respondents but were not properly considered on the grounds as aforesaid, that the appellant as one of the plaintiffs, did not fully exhaust the remedy provided by the Chiefs Edict. As shown above, the appellant had done all what was required of him under the statute. The fact that the Commissioner for Chieftaincy Affairs failed to do his duties should not be counted against the appellant. In the circumstances. I allow the appeal and set aside the decision of the Court of Appeal when it decided that the suit filed by the appellant was premature and that the trial court lacked the jurisdiction to entertain the matter. In place of it, I remit the case back to the Court of Appeal for the court to properly deal with issues 2-6 as contained in the brief of respondents herein, as the appellants in that court. The court should also consider and determine the cross-appeal on its merits. I award the appellant herein costs assessed at N10,000.00 against the respondents.

ONUJSC

I have been privileged to read in draft the judgment of my learned brother, Musdapher, JSC., just delivered. I agree with his reasoning and conclusion that the appeal succeeds. Accordingly. I agree that the matter be remitted to the Court of Appeal for it to consider issues 2 - 6 which it did not consider and to deal with the cross-appeal on the merit, with N10,000.00 costs in favour of the appellant.

KATSINA-ALUJSC

I have had the advantage of reading in draft the judgment delivered by my learned brother, Musdapher, JSC. I am in complete agreement with its reasoning and conclusion.

I also would allow the appeal. I set aside the decision of the court below on the issue of jurisdiction based on non-compliance with section 13 of Ondo State Chiefs Law. The court below is now to consider the subsisting issues in the appellant's appeal and also the cross-appeal.

KALGO JSC

I have read in draft the judgment just delivered by my learned brother, Musdapher, JSC., in this appeal. I entirely agree with the reasoning and conclusion reached therein which I adopt as mine. I therefore find merit in the appeal which I hereby also allow. I accordingly set aside the decision of the Court of Appeal and abide by the consequential orders made in respect of the cross-appeal and the order as to costs.

OGUNTADEJSC

The suit out of which this appeal arose was initiated at the Akure High Court of Ondo State by the appellant (as 2nd plaintiff) and one Chief G. O. Falebita, now deceased (as 1st plaintiff). The suit was brought by the two plaintiffs for and on behalf of Oniseri family of Iju against the present respondents, as the defendants. The plaintiffs claimed the following reliefs:

- 1. Declaration that the 1st defendant is not entitled to be appointed as Chief Oniseri of Isheri Quarter of Iju in Akure Local Government of Ondo State.*
- 2. Declaration that the purported appointment and installation of the said 1st defendant as the Chief Oniseri of Isheri Quarter of Iju in Akure Local Government of Ondo State by the 2nd defendant is most irregular, illegal, void and of no legal effect.*

3. *Declaration that the 2nd defendant acted ultra vires and was in fundamental breach of his traditional role as the Okiti of Iju by taking active part in the nomination and appointment of the 1st defendant as the Oniseri of Isheri Quarters of Iju in Akure Local Government of Ondo - State*

4. *An order of perpetual injunction restraining the 1st defendant from parading himself as Chief Oniseri of Isheri Quarter of Iju and or performing any traditional functions pertaining to Oniseri chieftaincy of Iju in Akure Local Government of Ondo State.*”

The parties filed and exchanged pleadings after which the suit was tried by Olateru-Olagbegi, J., (as she then was). On 16-2-95, the trial Judge in her judgment refused plaintiffs’ 1st claim but granted claims 2. 3 and 4. “The defendants before the trial court were dissatisfied with the judgment. They brought an appeal against it before the Court of Appeal sitting at Benin (hereinafter referred to as “the court below”). The plaintiffs were also dissatisfied with the dismissal of their claim 1. They brought a cross-appeal.

On the 13th July, 2000, the court below in its judgment allowed the main appeal on the ground that the trial court had no jurisdiction to entertain the suit. As a result of the finding that the trial court had no jurisdiction to entertain plaintiffs’ suit, the court below declined a consideration of the cross-appeal brought by the plaintiffs.

The surviving plaintiff, (i.e. 2nd plaintiff), is the appellant before this court. He has raised three grounds of appeal, against the judgment of the court below. From the three grounds of appeal, the counsel for plaintiff/ appellant has formulated three issues for determination. The issues are:

“1. *Did the appellant comply with the procedural steps stipulated in the Chiefs Edict 1984 of Ondo State before instituting action at the trial court?*

2. *Was the Court of Appeal right to dismiss the cross-appeal when it did not find it necessary to consider and determine the only issue identified by the cross-appellant in the cross-appeal?”*

It is necessary that the facts pleaded by parties in their respective

pleadings be closely examined for an appreciation of the cause and nature of the dispute leading to this appeal. The dispute arose in the course of an attempt to fill a minor chieftaincy in Ondo State called Oniseri of Isheri Quarters, Iju via Akure. It was plaintiffs' case that only the descendants of 1st Oniseri of Isheri could succeed to the chieftaincy and that the said chieftaincy became vacant in 1978 when the last holder died. In 1978, the plaintiffs' family selected one S. O. Falebita as the successor to the deceased Oniseri and forwarded his name in accordance with native law and custom to the then Okiti of Iju, the prescribed authority for the Chieftaincy for his formal assent. However, two children of the 1st defendant surprisingly presented him as a rival candidate for the chieftaincy. The Okiti of Iju gave his formal assent to the appointment of Mr. S. O. Falebita as the next Oniseri of Iju. Another chief in Iju however purported to install the 1st defendant on the same stool. As a result, a riot ensued. Following a protest by the plaintiffs to the then Military Governor, an inquiry was set up to examine the cause of the dispute. In the course of the inquiry, the incumbent Okiti of Iju died. Further action on the succession was suspended until 1988 when the 2nd defendant was appointed as the new Okiti of Iju.

Mr. S. O. Falebita sent a letter to the new Okiti and got a reply thereto. The plaintiff discovered in 1989 that there was a plan to install the 1st defendant as the Oniseri of Isheri Quarter. A letter was sent by the plaintiffs to the Ondo State Government. The Ondo State Government decided to set up another inquiry into the dispute. The outcome of the enquiry was communicated to the plaintiffs. On 9/9/90, the 2nd plaintiff was presented to the 2nd defendant as the Oniseri elect. The 2nd defendant insisted contrary to native law and custom that he wanted more candidates to be nominated for the Chieftaincy. To other persons were so nominated. Later the plaintiffs heard that the 2nd defendant wanted to install the 1st defendant secretly as the Chief Oniseri. The plaintiffs sent a protest letter to Akure Local Government Council. The Military Governor of Ondo State sent a letter to the 2nd defendant on the matter. The plaintiffs pleaded further that the 1st defendant was not a member of the Oniseri chieftaincy family. The plaintiffs pleaded the procedure according to native law and

custom for filling the vacancy of the Oniseri Chieftaincy. It was finally pleaded that the 1st defendant did not follow the requisite procedure.

The defendants' case was that the 2nd defendant was not only the Okiti of Iju but also the prescribed authority and custodian of customary law governing the appointment and installation of minor chiefs in Iju. It was pleaded that the Oniseri of Isheri chieftaincy family consisted of four branches. Three of these four had in succession occupied the position of Oniseri leaving only the 1st defendant's Faloye branch. The branches of the Oniseri Chieftaincy Family met in 1978 following the death of the last Oniseri. They wanted a highly educated candidate. They therefore settled for the 1st defendant. Against the 1st defendant, the 1st plaintiff presented his nephew the 2nd plaintiff. The 2nd defendant consulted his chiefs and later decided to appoint the 1st defendant. The 2nd defendant in exercise of his power as the prescribed authority later presented the 1st defendant publicly as the new Oniseri. The Military Governor of Ondo State in writing invited the 2nd defendant for an interview. The State Commissioner after hearing the true facts stated that anyone who was aggrieved by the decision could go to court.

On this state of pleadings, the trial Judge tried the suit and gave judgment as earlier stated above. The court below however reversed the said judgment on the ground that the plaintiff/appellant had not exhausted the procedure prescribed under Section 13 of the Chiefs Law 1984 before initiating the suit at the Akure High Court. Section 13(4) to (7) of the said Law provides:

"13(4) Where there is a dispute as to whether a person has been appointed in accordance with customary law to a minor chieftaincy the prescribed authority may determine the dispute and the person concerned shall be notified of the decision.

(5) Any person who is not satisfied with the decision of the prescribed authority may within twenty one days from the receipt of the notification make representation to such members of the Executive Council to whom responsibility for chieftaincy affairs is assigned that the decision be set aside and he may after considering the representations confirm or set aside the decisions.

(6) *Before exercising the powers conferred by subsection (5) of this section, the member of the Executive Council responsible for Chieftaincy Affairs may cause such inquiries to be held as appear to him necessary or desirable.*

B (7) *Where the member of the Executive Council or chieftaincy affairs in his determination under sub-section (6) 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*
C *customary law within such time as he may specify.*”

The court below at pages 300-302 of the record placed reliance on the above provisions of Section 13 of Ondo State Chiefs Law. It then reasoned thus:

D “*It is apparent from the foregoing provisions that they have set out the procedural steps to be taken by an aggrieved contestant in respect of disputes arising from the decision of the prescribed authority which is the 2nd respondent in this case. These provisions do not make provision for*
E *access to court in respect of the said disputes. Subsection (5) of Section 13 (supra) instead provides that an aggrieved contestant should make representation to such member of the Executive Council to whom responsibility for Chieftaincy Affairs are assigned for consideration of the representation. Such members after due consideration by way of necessary*
F *inquiries may either confirm or set aside the decision of the prescribed authority. The member of the Executive Council in point vested with the power referred to is the Commissioner for Chieftaincy Affairs.*

G *It is in evidence that the decision of late Okiti Fakuwa as the prescribed authority who approved the appointment of the 1st appellant was set aside by the Government of Ondo State which in keeping with subsection (7) of Section 13 (supra) directed the current Okiti (the 2nd appellant) to conduct another selection for the vacant stool of the Oniseri*
H *in accordance with the customary law. The respondents were not satisfied with the mode of selection of the Oniseri by members of the Oniseri family and the subsequent approval by the 2nd appellant without communicating the decision to the respondents before installing the 1st appellant as the*

Oniseri of Iseri Iju. What has come to the fore from the foregoing is that there was a dispute on the selection and installation of the 1st appellant as the Oniseri of Iseri. The respondent, now one respondent in view of the demise of the 1st respondent and subsequent striking out of his name by this court, reacted to the alleged irregularities by instituting an action in court seeking a number of declarations against the decision of the 1st appellant. The question is: is the step taken by the respondent in accordance with the enabling statute, that is to say, the Chiefs Edict of 1984? I agree with the learned counsel for the appellants that what the respondent did by seeking declarations from the trial court is a flagrant disregard of Section 13(5) of the Chiefs Edict of 1984. Thus, the determination of the disputed minor chieftaincy is a jurisdiction by statute vested in the prescribed authority. Therefore, no High Court has the jurisdiction to exercise that power which is vested in a certain authority (the 2nd appellant). It is settled law that where the legislature clearly stipulates the procedure to be followed when an act or decision of an authority is challenged, the party aggrieved can only challenge the decision successfully in the manner laid down in the enabling statute. See Eguamwense v. Amaghizemwen (supra) at pages 45 and 51. Furthermore, where an aggrieved party has not resorted to the remedies statutorily available to him on the infringement of his alleged right by the prescribed authority, such a party has therefore not exhausted the remedies available to him and has in consequence not satisfied the preconditions for access to court. See Adesola v. Abidoye (supra) at page 58. In the instant case, the respondent omitted to comply with the provisions which set out the procedural steps for venting his grievance and he therefore acted prematurely in instituting his action in the lower court."

Did the plaintiff/appellant not comply with the Chiefs Law? It is necessary to consider the pleadings of the parties on the point. In paragraphs 33, 34, 35, 36, 41, 44, 45, 46, 47 and 48 of the statement of claim, the plaintiffs pleaded thus:

"33. The plaintiffs aver that when it was discovered that the 1st defendant was about to be installed as Oniseri of Iju contrary to the native law, customs and tradition of Iseri Quarter of Iju, the plaintiffs sent

petition to Ondo State Government in a letter dated 2/6/89 which the Ondo State Government replied in the letter dated 13/6/89 Ref. CD/ C.239 Vol.11/591. The letters are pleaded.

B 34. *The plaintiffs aver that in the letter of 13/6/89 the Ondo State Government decided to set up an enquiry in respect of the Oniseri Chieftaincy Family of Iju.*

C 35. *The plaintiffs aver that the outcome of the said enquiry was communicated to the plaintiffs and defendants in a letter dated 19/3/90 Ref. CD/C/239/Vo.II/89. The letter is pleaded.*

C 36. *The plaintiffs aver that pursuant to the letter of 19/3/90, the 2nd defendant sent a letter to the plaintiffs dated 27/3/90, to which the plaintiffs replied on 30/3/90. The letters are pleaded.*

D 41. *The plaintiffs aver that the 1st plaintiff as the head of Oniseri Chieftaincy Family of Isheri Quarter of Iju presented the 2nd plaintiff as Oniseri-elect to the 2nd defendant.*

E 44. *The plaintiffs aver that Chief Ausi sought to address the 2nd defendant on the illegal way that the 2nd defendant embarked upon on nominations of Oniseri-elect in his palace but the 2nd defendant would not listen.*

45. *The plaintiffs aver that the 2nd defendant promised to send to the plaintiffs' family later about the selection of Oniseri-elect.*

F 46. *The plaintiffs aver that later the plaintiffs heard rumour that the 2nd defendant wanted to install secretly the 1st defendant as the Oniseri of Isheri Quarter of Iju.*

G 47. *The plaintiffs aver that following the rumour the plaintiffs sent a petition to the Akure Local Government Council dated 10/9/90 and received a reply in a letter dated 12/9/90 Ref. No. AKLG/50/10A/27. The letters are pleaded.*

H 48. *The plaintiffs aver that the Office of the Military Governor of Ondo State wrote a letter to the 2nd defendant dated 13/9/90 ref. CDC 239 Vol. III/211 about purported installation of 1st defendant as Oniseri of Isheri Quarter of Iju by the 2nd defendant. The plaintiffs pleaded the letter."*

The defendants in paragraphs 18, 23, 24, 27, 30, 31, 32, 33, 34 and

35 pleaded thus:

“18. *The defendants aver that the Ondo State Government in its letter dated 19/3/90, set aside the appointment made in 1978 and asked the 2nd defendant to embark on a fresh exercise of appointing a new Oniseri.*

23. *By a majority vote the 3 branches decided to select the 1st defendant for presentation to the Okiti.* B

24. *When it was learnt that 1st plaintiff was going to present the 2nd plaintiff at the back of the other 3 branches of the family, the 3 branches also decided to go to the Afin and present the 1st defendant as the favoured choice of majority of members of the family.* C

27. *The 2nd defendant said he would announce his decision to the parties in due course after he should have consulted his traditional advisers - the High Chiefs of Iju - and he dispersed the crowd.*

30. *The 2nd defendant thereupon sent a message to the 1st plaintiff to come with members of the chieftaincy family on the 13th of September, 1990, to know the outcome of the matter.* D

31. *The 1st plaintiff apparently sensing defeat refused to show up but the 1st defendant with majority of the Oniseri Family did so.* E

32. *In the presence of a large crowd numbering about 3000 persons, a contingent of policemen and members of the State Security Service the 2nd defendant in exercise of his powers under the law as the prescribed authority announced his approval of the 1st defendant as the new Oniseri. The installation rites then began and have since been concluded and 1st defendant had taken his seat in the Ajo-Elu the Traditional Council of Chiefs at Iju.* F

33. *In an unprecedented display of partiality the Military Governor's Office on the very same day 13/9/90, at the behest of the plaintiffs addressed a letter to the 2nd defendant as 'purported' and inviting the 2nd defendant for an interview. This is the letter referred to in paragraph 48 of the statement of claim.* G

34. *The 2nd defendant nevertheless went to the Ministry at Akure H and in the presence of the plaintiffs explained the steps taken leading to the installation of the defendant.*

35. *The State Commissioner after having been seised of the true*

facts of the situation felt satisfied and asked any one who was aggrieved to go to court if he so desired.”

The pleadings of the parties and the evidence led by them show that the dispute concerning the Oniseri Chieftaincy has been on for a very long time. It would appear to have started in 1978 when the previous incumbent died. The dispute was pursued to the highest level of government in Ondo State and twice the Military Government of the State set up Commissions of Inquiry. Several letters were also exchanged. On 20/2/79, the Office of the Military Governor of Ondo State sent a letter Exhibit “L” to the parties involved in the chieftaincy dispute. The letter Exhibit “L” reads”:

“Ref. No. CD/C239/204 Dated: 20th February, 1979.

Mr. Joshua Ibiowotisi Faloye,

9A, Iseri Street,

Iju,

Via Akure.

Mr. Simeon Obafemi Falebita,

Ondo State Sports Council,

Akure.

Iseri Quarter Chiefs,

C/o Chief Ausi of Iseri,

Oke-Agunla Street,

Iju.

Via Akure,

The Oniseri Family,

C/o Chief G. Falebita,

Iseri Quarters,

Iju.

Via Akure.

Oniseri Chieftaincy Iju: Matters Affecting

I am to refer you to the previous correspondence on the subject matter mentioned above. Having considered the various petitions received in respect of the dispute that arose from the appointment exercise to fill the vacant Oniseri Chieftaincy and the various discussions that took place at the meetings held in connection with the dispute, I am to convey to you

the Military Administrator's decision that all actions connected with the appointment to the Oniseri Chieftaincy should be suspended until a new Okiti of Iju is appointed.

2. On appointment and as the Prescribed Authority for the Chieftaincy, the new Okiti will then be in a position to look into those fundamental issues that surfaced during the recent attempt to fill the vacant Oniseri Chieftaincy before a valid appointment is made. B

3. I am to request you therefore to keep the peace and not to do anything that could disturb the existing quietness in Iju. C

(Sgd)

(D. A. Jegde).

for: Secretary to the Military Government
and Head of Service."

Again, on 13/06/89, the Commissioner for Special Duties in the Office of the Military Governor of Ondo State wrote Exhibit 'E' to the Secretary of the Oniseri Ruling House. The letter Exhibit 'E' reads: D

"Ref. No. CD/C239 Vol. 11/591 Dated 13th June, June 1989.

The Secretary, E

Oniseri Ruling House,

C/o Mr. Nisomo Owoseni,

Ondo State Housing Corporation,

Akure. F

Oniseri Chieftaincy Dispute

I am directed to refer to your letter of 2nd June. 1989, on the above subject and to inform you that the Commissioner for Special Duties has set up a panel to investigate the dispute.

2. *In view of the foregoing, you are therefore advised to seize the opportunity to state your case before the panel.* G

(Sgd.)

(A. J. Ogunsusi)

*For State Commissioner for
Special Duties."* H

On 19/3/1990, the Ondo State Commissioner in charge of Special Duties wrote Exhibit 'K' to the prescribed authority for the chieftaincy, the

Okiti of Iju. A copy of the letter was sent to plaintiffs' family. The letter reads:

“HOME AFFAIRS

CD/C 239 Vol. III/211

13th September, 1990.

B His Highness Oba Farunkanmi,
The Okiti of Iju,
Iju.

Purported Installation of Mr. Ibiowotisi Faloye As the Oniseri of Iju

C Information reaching this office indicates that in spite of the advice that Kabiyesi should not install anybody as the Oniseri of Iju pending the time when the dispute over it will be resolved, this office has been informed that Kabiyesi has unilaterally installed one Mr. Ibiowotisi as the Oniseri of Iju.

D 1. Consequent upon this I am directed to inform Kabiyesi to meet the Honourable State Commissioner for Special Duties in his Office at 3 p.m. today 13th September, 1990.

E 2. Kabiyesi is advised in his own interest to attend this meeting personally and punctually too.

(Sgd.)

Taiwo Bamisile.

For: Commissioner.”

F Our Ref. No. CD/C239/Vol. III/211A
Department of Special Duties,
Office of the Military Governor,
Akure.

G Copy to: 13th September, 1990.
Chief G. O. Falebita,
Ifonfin Street,
Iju.

H For your information and attendance please.

(Sgd.)

Taiwo Bamisile,

For: State Commissioner.”

It is apparent from these letters that the Commissioner for Special

Duties in Ondo State and the Military Governor of the State had in several ways intervened to settle the dispute. It is similarly apparent that in spite of these efforts, the dispute was not resolved. The defendants themselves pleaded that at some stage, the State Commissioner said that whoever of the parties was not satisfied could go to court. In determining whether or not the court below was right to strike out plaintiff/appellant's case on the ground that he did not exhaust the remedies provided under the Chiefs Law of Ondo State, it is important to bear in mind the nature and effect of Section 13 of Ondo State Chiefs Law.

This case was initiated on 19/9/90. At the time the relevant Constitution in Nigeria was the 1979 Constitution under which the High Court in Nigeria had jurisdiction to adjudicate on Chieftaincy disputes. A litigant who was involved in a chieftaincy dispute had an unhindered right of access to the court.

In Eguamwense v. Amaghizenwen (1993) 9 NWLR (Pt.315) at 25, this court while considering the effect of Sections 21 and 22(1) to (6) of the Traditional Rulers and Chiefs Edict No. (16) 1979 Bendel State which are similar to Section 13(4) to (7) of the Chiefs Law of Ondo State had this to say:

“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 Sections 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 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.”

It is important to stress that Laws which prescribe that some procedural steps be taken /to resolve a dispute before embarking on actual litigation are not and cannot be treated or categorized as ousting the

jurisdiction of the court. Indeed if such laws attempt to do so, they would be in conflict with the provisions of the Constitution. Such laws only afford the body to which such disputes must be referred to in the first instance an opportunity to resolve the dispute if it can before a recourse
B is had to the court. In other words, they serve the purpose of preventing actual litigation in court where it is possible or desirable to resolve the dispute. In relation to chieftaincy matters, were such laws not in existence, the courts would be inundated with suits on chieftaincy matters, given the
C bitterness with which chieftaincy disputes are pursued and the regularity with which such disputes occur.

Having said the above, it seems to me that the court below was mistaken in its conclusion that the plaintiff/appellant had not pursued the prescribed procedure under Section 13 of Ondo State Chiefs Law. The law
D itself has not prescribed the form in which representations to the Commissioner in charge of Chieftaincy matters should take. It may therefore be formal or informal, that is, oral or written. Indeed, it seems to me sufficient if the relevant Commissioner has been afforded an
E opportunity through any medium to resolve the matter. In the instant case, Commissions of Inquiry were set up under the authority of the relevant Commissioner. But they proved unable to resolve the dispute. If a dispute is referred to a Commissioner, it is not to be assumed that at all events, the
F Commissioner will be able to resolve it. In such a case, the dispute should go to the court which is the body created by the Constitution to resolve disputes.

The letter Exhibit “K” is eye-opening. It shows that the 2nd
G defendant in spite of the entreaty brought to bear on him, installed one of the disputants to the chieftaincy, it seems to me unfair to expect the plaintiff/appellant to wail endlessly since 1978 for the beneficial intervention of the relevant Commissioner which has proved elusive. I therefore agree with my learned brother. Musdapher, JSC., that the court below was
H wrong in its conclusion on the matter.

One other remarkable occurrence in this appeal is that none of the parties when they were before the trial court raised the issue of non-compliance by the plaintiffs/appellants with Section 13(4) of the Chiefs

Law. Ondo State 1984. The issue surfaced for the first time in the court below when the respondents in their brief (as appellants in the court below) formulated as their first issue the following:

“1. Whether in view of provisions of Section 13(5) of the Chiefs Edict (as amended) which requires the plaintiffs to lodge their complaints against the approval of a candidate to a minor chieftaincy with the Executive Council of Ondo State, the plaintiff/respondent’s suit was premature.”

I agree that the question of absence of jurisdiction in a court to adjudicate on a matter can be raised at any stage of the proceedings and indeed for the first time on appeal. But before a defendant can raise the matter before evidence is led, the material giving rise to the complaint of absence of jurisdiction in the court before which the suit is brought must be apparent on the face of the Statement of Claim. Alternatively, the defendant may plead the issue himself. A defendant is not entitled to rely upon a defence which is based on facts not stated in the statement of claim unless he alleges such facts specifically in his pleadings by way of special defence. See *N.I.P.C Ltd. v. Bank of West Africa Ltd.* (1962) 1 All NLR 556 and *Sketch Publishing Company Ltd. v. Ajagbemokeferi* (1989) 2 S.C. (Pt.II) 73; (1989) 1 NWLR (Pt.100) 678.

In this case the plaintiffs/appellants did not plead that they did not comply with Section 13 of the Ondo State Chiefs Law. The defendant did not plead such non-compliance. On the contrary, the defendants in paragraph 35 of their statement of defence pleaded that the relevant Commissioner had said that any party who was dissatisfied should go to court. It was not the argument of counsel that compliance with Section 13 of Ondo State Chiefs Law was a constituent element of the suit brought by the plaintiffs/ appellants. In that setting, the court below should have refused to consider the issue as it was raised before the trial court and could not be taken as a jurisdictional matter without evidence on the issue. In this case there was no such evidence.

The court below declined to consider the issues raised by the appellant before it in the main appeal. It also dismissed the cross-appeal. The court below was in error to have dismissed the cross-appeal, which

it did not hear on the merit as a result of its conclusion that the trial court did not have jurisdiction to hear the case. The order dismissing the cross-appeal ought to be set aside. The court below must in the event now hear fully the other issues raised by the appellants before it and respondent in
B this court in their appeal.

It is for the above and more elaborate reasons in the lead judgment of my learned brother, Musdapher, JSC., that I would also allow the appeal. The decision of the court below on the issue of jurisdiction based
C on non-compliance with Section 13 of Ondo State Chiefs Law is set aside. The court below is now to consider the subsisting issues in the appellant's appeal and also the cross-appeal. I subscribe to the orders on costs.

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