

SUPREME COURT OF NIGERIA
14TH JULY, 2006. SC. 200/2003
CORAM:- S. U. ONU, U. A. KALGO, A. M. MUKHTAR,
W. S. N. ONNOGHEN, F. F. TABAI, JJSC

ALHAJI JIMOH AROWOLO APPELLANT/ APPLICANT
AND
1. JIMOH OLU WOLE AKAPO RESPONDENTS
2. GOVERNOR OF OGUN STATE
3. ADO/ODO OTA LOCAL GOVT.

CHIEFTAINCY MATTERS - Substitution of parties - Where original party is dead - Where judgment will affect rights of whole family - Application for substitution - Will be granted in the interest of justice (H1)

FACTS

This is a chieftaincy dispute over the traditional stool of Oba of Itele. The Plaintiffs/Respondents had sued the original Defendant/Appellant who was de facto incumbent on the stool, seeking a declaration and an order to remove and restrain him from acting as Oba of Itele. On the face of the processes filed and exchanged, it would appear that Appellant was sued, and was defending in his personal capacity. None the less, the main issue before the trial court is whether or not the Olaforikanre family being the Ruling House that presented the Appellant for the stool forms part of the four Ruling Houses of the Adogun - Atele family so as to be eligible to hold the title of Oba of Itele. For it is on the basis that the Olaforikanre family was not part of the four Ruling Houses that the Respondents are contesting the right of the Appellant to the stool.

Having gone through the trial High court and the Court of Appeal, the case came on a final appeal to the Supreme Court. But in the course of the preparation of the Brief of Argument, the Appellant died. Consequently, by way of Motion on Notice before the Supreme court and pursuant to O. 8, r. 9(2) of the Supreme Court Rules, the Olaforikanre family sought to substitute another of their member, on their behalf, in

place of the original appellant. But the Respondents contend that from the inception of the action at the High Court to the appeal to Supreme Court, the original Appellant was sued and defended in a personal capacity. And that in view of that, the action died with the death of the Appellant.

ISSUE FOR DETERMINATION

Whether with the death of the appellant, the case died.

HELD (Unanimously granting the application per **ONU JSC**)

CHIEFTAINCY MATTERS - Substitution of parties

1. In the instant case which is clearly distinguishable from the Mbanu case (supra), it having been demonstrated that the judgment on appeal affected the rights of the family and the interest of justice demands that a member of appellant's family be put forward in the place of late Oba Jimoh Arowolo, it will be inequitable to refuse the appellant's application as couched and argued.

Accordingly, I am of the view that the application be granted as prayed and an order is hereby made to substitute Chief Gafaru Arowolo in place of Alhaji Jimoh Arowolo, now deceased vide Order 8 Rule 9(2) Supreme Court Rules. (p. 2800 B)

NOTABLE POINT OF INTEREST

ONNOGHEN.JSC

1. Membership of ruling family - Entitles one to contest for chieftaincy

In a chieftaincy matter, particularly when the dispute is as to the proper person to occupy a chieftaincy stool as in the instant case, the history of the origin of the town and the chieftaincy concerned are usually interwoven and very relevant. In telling the history of the origin of the chieftaincy, therefore, the history of the Ruling House or Houses entitled to the chieftaincy is inevitable. Once one talks of membership or non-membership of a Ruling House as in the instant case, it is not simply a personal affair of the person concerned as the 1st respondent to the application under consideration would want us agree, but a substantial family matter.

It follows that before a person is selected or elected by the king makers to be a holder of or entitled to a chieftaincy title e.g. Oba, he must

first and foremost be presented by his family or the Ruling House or Houses concerned to represent it or them in the contest for the stool. Though he enters the contest as an individual, he is in effect representing the family that puts him up because it is his membership of that family that qualifies him to contest for the chieftaincy or stool in the first place. (p. 2802 B)

REPRESENTATION

Professor A.B. Kasunmu, SAN., (with him, Tunde Osadare, Esq.), for the Applicant.

Demola Bakare, (with him, W.T. Iorshe, Esq., and S.I. Enilolobo, Esq.), for the Respondents.

CASES REFERRED TO

Mbanu, v. Mbanu (1961) All NLR 679

Osanugha v. Military Gov. of Ekiti State (2001) 18 WRN 1

Aderogba v. Olaopa (1961) All NLR 679

RULES REFERRED TO

Supreme Court Rules, O. 8, rr. 9 and 11

LEAD JUDGMENT BY ONUJSC

By way of a Motion on Notice dated 19th July and filed on 27th July, 2005, the 1st respondent/applicant prayed this court for the following reliefs:

“An order that Chief Gafaru Arowolo be substituted as appellant in this suit for and on behalf of the Oloforikanre Ruling House of Itele in place of Alhaji Jimoh Arowolo now deceased.

And for such further and other order as the court may deem fit to make.”

On 19th June, 2006 when the motion came before this court for argument, learned counsel for the applicant, Professor A.B. Kasunmu, SAN., moved in terms of his motion which he submitted was brought pursuant to Order 8 Rule 9(2) of the Supreme Court Rules which pro-

vides:

“If it is necessary to add or substitute a new party for the deceased, an application shall, subject to the provisions of rule 11 of this Order, be made in that behalf to the court either by any existing party to the appeal or by any person who wishes to be added or substituted.”

Learned Senior Advocate supported his application with an 8 paragraph affidavit deposed to by one Taofiki Musa, salient among which are:

*“ 1. That I am a member of the Abidogun Atele Family.
2. That I am the Secretary of Abidogun Atele Family.
3. That my Family has been adjudged by the High Court of Justice, Sagamu and the Court of Appeal, Ibadan as the Family that is competent to produce Onitele of Itele from Imidawo Branch, Osa Branch, Ogunrombi Branch and Alagbeji Branch.”*

Learned Senior Advocate after advertng our attention to a copy of the Court of Appeal judgment attached to his application marked Exhibit CC finally urged us to grant the applicant his application.

Learned counsel for the respondent, Mr. Eghobamien in reply, submitted that the deceased was first sued in the High Court and with the death of the appellant, the case died.

Learned counsel for the 1st respondent after urging us to dismiss the application cited in support of his submission the cases of Mbanu v. Mbanu (1961) All NLR 679 and Osanugha v. Military Governor of Ekiti State (2001) 18 WRN 1 and urged us in conclusion to refuse the application.

In reply, learned counsel for the 1st respondent referred us first to a 14 paragraph counter-affidavit sworn to by one Mr. Monday Akapo, the relevant paragraphs in which he deposed as follows:

“(1) That I am a member of Adogun-Atele family and I have the authority of the 1st respondent to swear to this affidavit.

(2) That Alhaji Jimoh Arowolo was sued as a defendant in suit HCT/137/92 and defended the suit in that capacity and not in a representative capacity.

(3) That Alhaji Jimoh Arowolo appealed to the Court of Appeal,

Ibadan as an appellant against the judgment of the Sagamu High Court and not in a representative capacity. The Court of Appeal Ibadan suit was Suit CA/1/160/95.

(4) *That judgment was given against the appellant by the Court of Appeal Ibadan in Appeal No.CA/1/ 160/95 which was not an appeal in a representative capacity.*

(5) *That the 2nd and 3rd respondents had withdrawn from the appeal before judgment was delivered by the Court of Appeal, Ibadan on 21st November, 2002.*

(6) *That the Court of Appeal, Ibadan stated on 27th April, 2004 that it had no jurisdiction on the Motion filed by the appellant for Stay of Execution on Interlocutory Injunction*

(7)

(8)

(9) *That the suit starting from HCT/137/92 in the High Court Ota to CA/1/160/95 in the Court of Appeal, Ibadan was fought by Alhaji Arowolo as unrepresentative suit.*

(10) *That the applicant's application to turn the suit into a family suit on behalf of Olafori-Kanre Ruling House is not proper having been fought as a personal suit by Alhaji Arowolo.*

(11) *That the High Court and the Court of Appeal have decided that the Adogun-Atele descendants namely: Imidawo, Ogunrombi, Osa and Alagbeji constitute the ailing houses in Itele and that conclusion excludes the appellant. On the same basis, the applicant who is the brother of Alhaji Arowolo cannot contest for the stool of Itele.*

(12) *That Alhaji Arowolo died on 1st April, 2005.*

(13) *That paragraphs 4, 5,6,7 & 8 of the affidavit are misconceived, untrue, and should be struck out."*

In reply to the counter - affidavit, Chief Gafaru Arowolo deposed in the following paragraphs:

"(1) That I am a Brother to the appellant (now deceased) in this matter by virtue of which I am conversant with the facts of this matter.

(2) That the facts deposed to herein are facts within my own personal knowledge and that given to me by Miss O. F. Salami, counsel

in Chambers assigned to this matter and I verily believe same to be true.

(3) *That at the High Court of Ogun State, Ota, in suit No.HCT/137/92, the respondents to this appeal (as plaintiffs) sued Alhaji Jimoh Arowolo (as 1st defendant) and sought a declaration and an order to*
 B *remove and restrain the said Jimoh Arowolo from acting as Oba of Itele.*

(4) *That although the said Jimoh Arowolo was sued in his personal capacity, the main issue before the trial court was -*

(a) *Whether or not the Olaforikanre Family (the Ruling House that presented the defendant/appellant for the stool of Oba of Itele) forms*
 C *part of the Four Ruling Houses (carved out of the Adogun Atele family) to wit: Imidawo, Ogunrombi, Osa and Alabejo ruling houses eligible to hold the title of Oba of Itele.*

(b) *The appellant (defendant therein) not being a descendant of*
 D *the Adogun Itele family within the Four Ruling Houses ineligible to hold the title of the Oba of Itele. Attached and marked Exhibit AA is a copy of the Writ of Summons filed in the said matter.*

(5) *That on the 16th day of June, 1995, the High Court sitting in*
 E *Ota Ogun State gave judgment of the High Court on the above issue. Attached and marked Exhibit BB is a copy of the said judgment of the High Court.*

(6) *That on the 21st day of November, 2002, the Court of Ap-*
 F *peal sitting in Ibadan confirmed the judgment of the High Court on the above issue. Attached and marked Exhibit CC is a copy of the said judgment of the Court of Appeal.*

(7) *That the defendant being dissatisfied with the above men-*
 G *tioned judgment filed an appeal to this court.*

(8) *That it was in the course of the preparation of the Brief of*
 Argument in this appeal that the appellant died.

(9) *That the appellant in his defence of the matter equally rul-*
 H *ing house and members of the family gave evidence in support of defence.*

(10) *That although the said Oba Jimoh Arowolo was sued per-*
 sonally, he defended the action for and on behalf of the family.

(11) *That the said judgment now on appeal affects the rights of*

the family to claim entitlement to the stool of Itele and it is therefore in the interest of justice to allow the family put forward a member as appellant in place of the late Oba Jimoh Arowolo.

(12) That am informed by Miss O. F. Salami (Counsel in Chambers) and I verily believe same to be true that it will therefore be in the interest of justice and the final determination of the issues in controversy between the parties if this application is granted and the name of the appellant substituted. (Underlining is mine for emphasis.)

Learned Senior Advocate finally referred us to this court's decision in *Aderogba v. Olaopa* (1961) All NLR 679. C

Having carefully considered the arguments proffered by both sides and having examined the documents tendered in support thereof, most especially the writ tendered and marked Exhibit AA; the judgment of the High Court of Ogun State sitting at Ota vide Exhibit BB, the Court of Appeal, Ibadan judgment, to wit: Exhibit CC and the decision of *Aderogba v. Olaopa* (supra), this application in my view, merits to be granted. D

In the case of *Mbanu v. Mbanu* (supra), an application for leave to be substituted as a party, the action originated before the High Court, Eastern Region.

An appeal to the Supreme Court was perfected; but before the appeal could be heard, the appellant died. Ephraim Nnabugwu brought this application to the Federal Supreme Court for leave to be substituted as appellant. F

The pleadings showed that the applicant had such an interest in the subject matter of the action as might have entitled him to be added as a party to the action, and might also have entitled him to bring an appeal under subsection (6)(a) of Section 110 of the Constitution of the Federation, 1960. G

The applicant did not apply to be made a party to the action; and, at the time of the appellant's death, the time for appeal had expired; so that that course was then closed to him. H

There was no transmission of the appellant's interest in the subject matter to the applicant upon the appellant's death.

HELD:

A person to whom a deceased party's interest in the subject-matter of proceedings has not been transmitted on the death of the party, will not, on his own motion, be substituted as a party to the proceedings
B in the place and stead of the deceased.

In the instant case which is clearly distinguishable from the Mbanu case (supra), it having been demonstrated that the judgment on appeal affected the rights of the family and the interest of justice demands that a member of appellant's family be put forward in the place of late Oba Jimoh Arowolo, it will be inequitable to refuse the appellant's application as couched and argued.
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Accordingly, I am of the view that the application be granted as prayed and an order is hereby made to substitute Chief Gafaru
D Arowolo in place of Alhaji Jimoh Arowolo, now deceased vide Order 8 Rule 9(2) Supreme Court Rules.

E **KALGO JSC**

I have had the benefit of reading in advance the ruling of my learned brother, Onu, JSC., just delivered. I agree with him that for the reasons given in the said ruling which I adopt as mine, I find merit in the
F application of the appellant. I accordingly grant the application as prayed and make the same order as in the leading ruling.

G **MUKHTAR JSC**

I have had the advantage of reading in advance the leading ruling delivered by my learned brother, Onu, JSC. I agree entirely that the application for substitution has merit, and deserves to be allowed.

H **ONNOGHEN JSC**

I have had the benefit of reading in draft, the leading ruling of my learned brother, Onu, JSC., just delivered. I agree with his reasoning

and conclusion that the application has merit and should be granted.

By a Writ of Summons issued on 20/4/93, the 1st respondent, as plaintiff, claimed against the original appellant, then defendant, as follows:-

"The plaintiff(s) claim against the defendants jointly and severally as for and on behalf of Adogun-Atele family are as follows:-

(a) Declaration that under the hereditary customs and traditions of Itele Town, Ota, Ogun State, only the Adogun-Atele family comprising four ruling houses namely: Imidawo Ruling House, Ogunrombi Ruling House, Osa Ruling House and Alagbeji Ruling House is eligible to hold the chieftaincy title of Oba of Itele first held by the plaintiff's ancestor i .e. Adogun-Atele the founder of the town and which title is now classified as part n title under the Chiefs Law of Ogun State, 1978.

(b) Declaration that the 1st defendant not being a descendant of Adogun-Atele within any of the four ruling houses is ineligible to hold the title of Oba of Itele.

(c) Declaration that the Ado-Odo/Ota Local Government was not designated by an order to be the competent council for the Oba Itele chieftaincy title and all acts of the council pertaining to the appointment without a registered declaration and installation of the 1st defendant as Oba of Itele was illegal, null and void.

(d) Declaration that the letter CHM.2/27/172 of 25th March, 1992 addressed to the Chairman of Ado-Odo/Ota Local Government by the 2nd defendant to process appointment papers into the Oba of Itele title and all steps taken pursuant thereto including selection, appointment, approval of appointment and installation of 1st defendant as Oba of Itele were illegal, null and void under Sections 3,4,5,6,7 and of the Chiefs Law Cap.20 Laws of Ogun State, 1978 and have violated the customary hereditary rights of over one hundred years of the plaintiffs family.

(e) Order that the installation of the 1st defendant as the Oba of Itele carried out by the 2nd defendant on 29th August, 1992 the next day that previous suit..... was struck out, without a valid selection, appointment and approval and without holding the customary three months Ipebi

ceremony was illegal, null and void.

(f) Injunction restraining the 1st defendant from occupying the stool of Oba of Itele and from exercising the powers or performing the duties attached to the chieftaincy title of Oba of Itele.”

B J., granted the reliefs except relief (c) supra. An appeal to the Court of Appeal was dismissed by that court resulting in the present further appeal.

C In a chieftaincy matter, particularly when the dispute is as to the proper person to occupy a chieftaincy stool as in the instant case, the history of the origin of the town and the chieftaincy concerned are usually interwoven and very relevant. In telling the history of the origin of the chieftaincy, therefore, the history of the Ruling House or Houses D entitled to the chieftaincy is inevitable. Once one talks of membership or non-membership of a Ruling House as in the instant case, it is not simply a personal affair of the person concerned as the 1st respondent to the application under consideration would want us agree, but a substantial E family matter.

It follows that before a person is selected or elected by the king makers to be a holder of or entitled to a chieftaincy title e.g. Oba, he must first and foremost be presented by his family or the Ruling House or Houses concerned to represent it or them in the contest for the stool. F Though he enters the contest as an individual, he is in effect representing the family that puts him up because it is his membership of that family that qualifies him to contest for the chieftaincy or stool in the first place. In the instant case, it is the case of the 1st respondent that there are four G Ruling Houses in respect of the chieftaincy in issue namely: Imidawo Ruling House (sometimes called Isunba Ruling House); Osa Ruling House (sometimes called Isunba Ruling House); Ogunronbi Ruling House (sometimes called Idotele Ruling House, and Alagbeji Ruling House (sometimes H called Ipotobo/Ologun Ruling House). 1st respondent also contended that there is no Olaforikanre Ruling House, which is the Ruling House the original 15 appellant is said to originate from and that the said original appellant is not a descendant of Adogun-Atele family nor is any member

of his said family eligible for consideration for appointment as Oba of Itele- see paragraphs 13,14 and 15 of the Amended Statement of Claim. It is very clear from the above that however hard one may try to make it appear that a claim for chieftaincy stool is a personal action, the reality of the situation will always reveal its true nature, a family dispute either inter se or between families which affects the rights of members of the family or families concerned extending to those yet unborn. From the facts of the case, I am of the firm view that though Jimoh Arowolo appears to have been sued in his personal capacity, the main issue before the court of trial as revealed by the pleadings is whether or not the Olaforikanre family being the Ruling House that presented the original appellant for the stool of Oba of Itele forms part of the four Ruling Houses earlier carved out of the Adogun Atele family so as to be eligible to hold the title of Oba of Itele.

It is therefore clear, and I hereby hold that this is a proper case for substitution so as to protect the interest of the family or Ruling House that presented the original appellant for the Obaship of Itele particularly as the 35 interest of that family in the dispute survives the death of the original appellant. I therefore agree with the conclusions of my learned brother, Onu, JSC., in the lead ruling and order accordingly.

Application granted as prayed.

TABAI JSC

I have my learned brother, Onu, JSC., and I agree that the application should be granted. The substance of the averments in the affidavit in support of the application and the further affidavit in reply to the counter affidavit alleged that although the late Oba Jimoh Arowolo was sued in his personal capacity, he defended the action for and on behalf of their family and that it will be in the interest of the family to grant the application.

The respondents in opposing the application asserted that with the death of the appellant, the suit dies and relied on Mbanu, v. Mbanu (1961) All NLR 679 and Osanugha v. Military Gov. of Ekiti State (2001)

18 WRN 1.

I am also of the view that having regard to their alleged interest in the matter, the substitution sought should be allowed to enable the appeal to be heard on the merit. A refusal of this application for substitution means that the appeal is terminated at this stage. The point being canvassed in this application by the respondents can be raised in the main appeal.

For the foregoing and other reasons detailed in the Ruling of Onu, JSC., I shall also allow the application. Chief Gafaru Arowolo be now substituted as the appellant in this suit in place of Alhaji Jimoh Arowolo now deceased.

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