

SUPREME COURT OF NIGERIA

4TH MAY, 2007. SC. 8/2006

**CORAM:- S. U. ONU, D. MUSDAPHER, S.A. AKINTAN,
M. MOHAMMED, W. S. N. ONNOGHEN, JJSC**

1. MILITARY ADMINISTRATOR [EKITI STATE]
2. THE A.G. AND COMM. OF JUSTICE [EKITI STATE]
3. THE SEC. EKITI SOUTH WEST LOCAL GOV.
4. EKITI SOUTH WEST LOCAL GOVERNMENT
CHIEFTAINCY COMMITTEE

5. JOHN OYEDELE DEFENDANTS/
6. EDWARD JAIYEOLA APPELLANTS

[For and on behalf of the Agungun
Ruling House of Igbara-Odo Ekiti]

7. J. ADU

[For and on behalf of the Odigede
Ruling House of Igbara-Odo]

AND

1. PRINCE BENJAMIN ADENIYI ALADEYELU
2. PRINCE LAWRENCE ABALA PLAINTIFFS/
3. PRINCE RAPHAEL OWOEYE RESPONDENTS
4. PRINCE LAWRENCE AMIRE

[For and on behalf of the Odundun Ruling
Family of Igbara-Odo, Ekiti State]

ACTIONS - Limitation - Chieftaincy matters - Statute bar - Where main case in not against a 1981 White Paper - But against attempt to register the new declaration in 1995 - Present action filed in 1995 is not Statute barred (H1)

ACTIONS - Appeals - Interlocutory applications - Chieftaincy matters - Where a matter comes before the Court of Appeal as interlocutory - And it ordered a retrial on the merits - It should not determine issue raised in the main trial (H2)

JURISDICTION - Appeals - Chieftaincy matters - Orders of Court of Appeal - On issues not raised before the trial court will be set aside for want of jurisdiction (H3)

FACTS

The dispute in this case is in respect of the Arajaka of Igbara Odo Chieftaincy. By a Chieftaincy Declaration registered in may, 1958, the Odundun Ruling House was solely created for succession to the Arajaka Chieftaincy stool. Plaintiffs/Respondents are members of that ruling House. Following a widespread displeasure with the existing Chieftaincy declarations in Ondo State, the then Military Government appointed a four man Commission of Inquiry under the Chairmanship of Justice Adeyinka Morgan (the Morgan Commission), to conduct an inquiry and suggest guidelines for effecting necessary changes. The Morgan Commission in its 1980 report recommended three Ruling Houses namely, Odundun, Agungun and Odigede for the Arajaka Chieftaincy of Igbara Odo. In July 1981, the Government published a White Paper accepting the recommendation. Move to register a new Chieftaincy Declaration after the Chieftaincy Committee Meeting of 20-1-1983, with the incumbent Arajaka present was not finalized. It was after the death of the incumbent Oba in 1995 that fresh moves began unto registration of the Declaration on the 3-11-1995. By the promulgation of a 1999 Edict, the 1958 Chieftaincy Declaration became repealed.

On 2-11-1995, plaintiffs filed this action against the defendants/appellants claiming *inter alia*, an order declaring null and void the Chieftaincy Declaration dated 3-11-1995 relating to Arajaka of Igbara-Odo Ekiti Chieftaincy for contradicting their custom and for being repugnant to natural justice, equity and good conscience. The defendants filed applications protesting that the plaintiffs' claims were statute barred. The trial court upheld the objection on the ground that the cause of action arose in 1981, when Government accepted the Morgan Commission's recommendations so that this action instituted in 1995 was for more than 6 years period, and struck out the action. Plaintiffs' appeal to the Court of Appeal was upheld as the case was remitted for *de novo* hearing. But that

Court wrongfully proceeded to give final orders setting aside the appointment of 6th defendant as the Arajaka, and also set aside the Registration of the new Declaration made on 3-11-1995. Being aggrieved, the defendants have now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether or not the lower court was not in error when it held that the plaintiffs action was not caught by the statute of limitations.

2. Whether or not-the lower court was not in grave error to have held that the plaintiffs’ cause of action accrued 19/9/1995.

3. Whether or not the lower court was not in grave error to have set aside on its own volition and without jurisdiction the appointment and installation of the 6th defendant, appellant, and for setting aside also Edict No. 1 of 4th of February 1999.

4. Whether or not the lower court was not in error to have overruled the trial court considering the weight of the evidence.”

HELD (Unanimously allowing the appeal in part per **MUSDAPHER JSC**)
Chieftaincy matters - Statute bar

1. The main case of the respondents was clearly not based on the challenge to me recommendations of the Review Commission or the acceptance of the recommendations by the Government in its White Paper in 1981, which as shown would not adversely affect the rights of the respondents but their crucial claims were based on the attempt to register the new Declaration in 1995. So without much ado, the Issue of the application of the limitation law, even if it affected prayers 1, 2 and 3, the other crucial and fundamental prayers all arose in 1995 and therefore not subject to the limitation law when the action was filed.

That, in my view is sufficient to sustain the fundamental and crucial claims of the respondents. It is of no moment even if reliefs Nos. 1, 2 and 3 as recited above were caught by the limitation law. I am accordingly of the view that all the arguments of counsel are hardly relevant to the main claims of the respondents which clearly accrue only when the Government commenced to register the amended Declaration in 1995. Accordingly I do not see the need to discuss all the arguments of counsel

on issues 1, 2 and 4 suffice it for me only to resolve them against the appellants. I affirm that the crucial claims and prayers of the respondents were not caught by the limitation law as adjudged by the court below.
(p. 2352 F)

B

Appeals - Interlocutory applications

2. It is a curious situation, the Court of Appeal ordered the remitting of the case to the trial court for trial on the merits, it is apparent that the matter went to the Court of Appeal only as interlocutory matter, whether the claims of the plaintiffs were statute barred or not, and the court held the claims were not statute, barred and sent the case back to the trial court for trial on the merits. I agree with the appellants' counsel, that the Court of Appeal has no business whatsoever of deciding the issues raised in the main trial, in claims 6, 7, 8, 9 and 10, by setting aside the appointment of 6th appellant and also by setting aside the Declaration registered in 1995. These issues should wait the decision of the trial court when it considers all the claims on the basis of the evidence to be called by the parties. As mentioned above, the issue before the Court of Appeal was an interlocutory appeal and the matter was not heard or decided on the merits. (p. 2353 E)

F ***Chieftaincy matters - Orders of Court of Appeal***

3. There was no order, of the trial court concerning the appointment of the 6th appellant nor was there any decision in respect of the new Declaration for the Court of Appeal to assume jurisdiction to intervene. There was also no prayer nor application placed before the trial court for the setting aside of either the appointment of the 6th appellant or the setting aside of the new Declaration which has since been embodied in a law Edict No. 1 of 1999. In any event there were no prayers before the trial High Court grounding the orders made by the Court of Appeal. The jurisdiction of the Court of Appeal is appellate and in the circumstances of this case, the Court of Appeal has no original jurisdiction to make the orders it made. As a matter of fact, the orders cannot be legitimate on the face of Edict No. 1 of 1999 titled "ARAJAKA OF IGBARA-ODO EKITI

(CHIEFTAINCY DECLARATION) ORDER 1998” which clearly the legality of which was not the subject of the case and upon which the 6th appellant was appointed. For the various reasons stated above, I agree with all the learned counsel appearing in this matter, that the Court of Appeal was in error to have made the orders of setting aside (1) the appointment and the installation of the 6th appellant as the Arajaka of Igbara-Odo Ekiti, and (2) the new Declaration as embodied under the Edict of 1999. I accordingly resolve issue 3 in favour of the appellants I set aside the orders made by the Court below. (p. 2354 A)

C

NOTABLE POINTS OF INTEREST

ONNOGHEN JSC

1. Ascertaining whether an action is statute barred

In the case of *Wohevem vs Emereuwa* (2004) 13 NWLR (pt. 890) 398 at 417, this Court decided that for the purpose of determining whether or not an action is statute barred, the period of limitation is determined by looking at the writ of summons and the Statement of Claim only. I will however add, where one has been filed. It is from either or both of these processes that one can ascertain the alleged date when the wrong in question is said to have occurred or been committed thereby giving rise to the plaintiff’s cause of action. When that ascertained date is compared with the date the writ of summons or originating process was filed in court it can then be determined whether the action was instituted within the period allowed by law or outside it. When it is found that the action was instituted within the period allowed by law, the action is said to be competent and the court has the jurisdiction to entertain same but where it is found to have been instituted outside the period allowed by law, the action is said to be statute barred and consequently the court is without jurisdiction to entertain same. (p. 2364 D)

G

2. Effect of limitation law - Cause of action defined

H

It is settled law that limitation Act or Law removes the right of action of a plaintiff, his right of enforcement and the right of judicial relief leaving the plaintiff with a bare and empty cause of action which he cannot

enforce if such a cause of action is found to be statute barred.

The relevant question that follows is: what is a cause of action? A cause of action has been defined by this Court in various cases to mean a factual situation existence of which entitles one person to obtain from
B the court a remedy against another person. (p. 2365 A)

CASES REFERRED TO

- Adekanye (2002) 2 NWLR (pt. 644) 257 at 271
C Apaka vs Ejiegwu (2000) 15 NWLR (pt.692) 684 at 710
Obiefuna vs Okoye (1961) 1 SCNLR 144
Araka vs Ejicagwu (2000)15 NWLR (pt. 692) 684 at 710
Egbe vs Adefurasin (1987) 1 NWLR (pt. 47) 1
Ibrahim vs Judicial Service Commission (1998) 14 NWLR (pt. 584) 1
D Owodunmi vs Registered Trustees of C.C.C. (2000) 10 NWLR (pt. 675) 315 at 365
Ogbimi vs Owlo (1993) 7 NWLR (pt. 304)128 at 136
Akilu vs Fawehinmi (No. 2) (1989) 2 NWLR (pt 102) 122

E

STATUTES REFERRED TO

Limitation Law of Ondo State s. 4(1) and (2)
Chiefs Edict of Ondo State 1984 s. 4(1)

F

REPRESENTATION

- Gboyega Oyewola Attorney-General Ekiti State
with him L.B. Ojo DPP for the 1st -4th Appellants.
Chief Wole Olanipekun, SAN, with him Gbenga Adeyemi,
G Enbena Amedu and Abedikun for 5th– 7th defendants/Appellants.
M.A. Owoyemi with him Ikotun Kayode, Asami Bakare and S.A. Ayesa
for the Respondents for 4th Plaintiff.

H

LEAD JUDGMENT BY MUSDAPHER JSC

This is an appeal against the judgment of the Court of Appeal, Ilorin Division delivered on the 29th of November, 2004 whereby the appeal to that court filed by the plaintiffs, the respondents herein, was

allowed. The Court of Appeal set aside the ruling of the trial court striking out the case of the plaintiffs by upholding the preliminary objection raised by the defendants, the appellants herein, challenging the competence of the plaintiffs' action on the ground that it was statute barred.

I think it is desirable at this stage in order to appreciate the issues canvassed in this appeal by the parties to look at the facts that gave rise to the dispute between the parties leading to the present litigation. On the 17/1/1958, the Chieftaincy Committee of Ekiti Southern District Council, which was the designated authority, at that time, made a Declaration of Customary Law regulating the nomination and the selection of the ARAJAKA OF IGBARA ODO Chieftaincy. This Declaration was approved by Minister of Local Government, Western Region of Nigeria, on the 22nd day of May, 1958 and was registered on the 28th day of May, 1958. One of the main features of the Declaration was contained in paragraph (i) which declared that "There is only one Ruling House and the identity of the Ruling House is ODUNDUN RULING HOUSE." The plaintiffs, the respondents herein are members of that Ruling House.

Following widespread displeasure with the existing chieftaincy declarations in ONDO STATE, the then Military Government appointed a four-man Commission of Inquiry under the Chairmanship of Mr. Justice Adeyinka Morgan, hereinafter simply referred to as the Morgan Commission or the Commission, to conduct an inquiry, into all the recognized chieftaincies in Ondo State including the Arajaka of Igbara-Odo chieftaincy and also to suggest guidelines for effecting the necessary changes in the chieftaincy declarations of the recognized chieftaincies in Ondo State. The Morgan Commission submitted its report on the 5th of June 1980. Specifically concerning the Arajaka of Igbara-Odo, the Commission recommended three Ruling Houses instead of one. The Ruling Houses recommended are ODUNDUN, AGUNGUN and ODIGEDE. In July 1981, the Government published White Paper accepting the recommendations. It also set up the necessary machinery for the eventual registration of the new Chieftaincy Declaration.

At the Chieftaincy Committee Meeting of Ekiti South West Local Government held on 20/1/1983 in which OBA ALADEYELU II the in-

cumbent Arajaka, was present as well as representatives from the three Ruling Houses, the White Paper, on Morgan Commission was approved and the Chieftaincy Declaration of Arajaka of Igbara-Odo was signed by both the Chairman and Secretary of the Chieftaincy Committee. The forms were sent to State Government for the approval and registration of the Declaration, but somehow the forms got missing and the new Declaration was not registered.

It was after the death of Oba Aladeyelu II in 1995 that it was discovered that the forms sent to State Government were not returned to the Local Government for registration and when the attention of the government was drawn to this fact another process of ratification of the Declaration began on the 19/9/1995. This was to enable the nomination and the selection of a new Arajaka to fill the vacant stool. The process culminated into the registration of the Declaration on the 3/11/1995. By the promulgation of Edict No. 1 of 1999 entitled "AJARAKA OF IGBARA-ODO, EKITI [CHIEFTAINCY DECLARATION] the chieftaincy Declaration of 1958 became repealed. Thus by the new Declaration and the law, there are now 3 Ruling Houses in Igbara-Odo Ekiti Chieftaincy.

On the meanwhile, when on the 19/9/1995 at the meeting held aforesaid, the plaintiffs' family denied all knowledge of the Commission, its recommendations and the acceptance of the recommendation as contained in the White Paper, and walked out of the meeting. On the 2/11/1995, the plaintiffs filed this action claiming against the first set of the appellants that is the first 4 defendants/appellants as follows:-

"1. A Declaration that the recommendation of the Ondo State chieftaincy Review Commission presided over by Honourable Justice Adeyinka Morgan in respect of the Arajaka of Igbara-Odo Ekiti chieftaincy is contrary to the custom and tradition governing the selection of the Arajaka of Igbara-Odo, Ekiti.

2. A Declaration that the Ondo State Government White Paper accepting the recommendation of the Ondo State chieftaincy Review Commission presided over by Honourable Justice Adeyinka Morgan in respect of the Arajaka of Igbara-Odo chieftaincy is contrary to the custom and tradition governing the selection of the Arajaka of Igbara-Odo

Ekiti.

3. *A Declaration that the Ondo State Government White Paper accepting the recommendations of the Ondo State Chieftaincy Review Commission presided by Honourable Justice Adeyinka Morgan in respect of the Arajaka of Igbara-Odo Ekiti-chieftaincy is repugnant to natural justice, equity and good conscience.* B

4. *A Declaration that the 1958 chieftaincy Declaration registered in respect of the Arajaka of Igbara-Odo Ekiti Chieftaincy is in consonance with the custom and tradition governing the selection of the Arajaka of Igbara-Odo Ekiti.* C

5. *A mandatory injunction compelling the defendants to call upon the ODUNDUN Ruling House to present a candidate to fill the vacancy in the Arajaka of Igbara-Odo Ekiti Chieftaincy.*

6. *An Order restraining the defendants, their agents servants, privies or anybody whatsoever from considering, approving, registering or taking any steps whatsoever to give effect to the draft Declaration contained in the Ondo State Government White Paper accepting the recommendations of the Morgan Chieftaincy Review Commission in respect of the Arajaka of Igbara-Odo, Ekiti chieftaincy.* D

7. *An Order restraining the defendants, their agents, servants, privies or anybody whatsoever from registering any declaration relating to the Arajaka of Igbara-Odo Ekiti chieftaincy.”* F

By leave of court, the claims were amended by, amongst other matters, the addition of three other reliefs:-

“8. *An Order declaring, invalid, null and void the Chieftaincy Declaration dated 3/11/1995 relating to Arajaka of Igbara-Odo Ekiti chieftaincy for contradicting the Native Law and custom of Igbara-Odo Ekiti Chieftaincy and or for being repugnant to natural justice, equity and good conscience.* G

9. *An Order declaring invalid null and void the Chieftaincy Declaration dated 3/11/1995 relating to the Arajaka of Igbara-Odo Ekiti Chieftaincy for contravening the chiefs Edict of Ondo State.* H

10. *An Order restraining the defendants, their servants, agents, privies or anybody whatsoever from registering any Declaration relating*

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to the Arajaka of Igbara-Odo Ekiti chieftaincy.”

I think it is important to stress the point that the government felt the dissatisfaction of the people with the then existing declaration, that the government instituted the Morgan Commission of Inquiry to have another look at the various customary Law declarations in relation to chieftaincy matters in 1977. In its White Paper and accepting the recommendation and with reference to Arajaka of IGBARA-ODO chieftaincy, the Government stated:-

“Government accepts the Commission’s Recommendation as contained at pages 20 - 21 of volume 1 of its Report. The approved Chieftaincy Declaration for the Arajaka Chieftaincy shall be as set out below:-

ARAJAKA OF IGBARA-ODO CHIEFTAINCY DECLARATION

A. Number of Ruling Houses-three.

B. Names of Ruling Houses

1. ODUNDUN

2. AGUNGUN

3. ODIGEDE xxxxxxxxxxxx”

It should also be remembered that OBAADEWUNMI ALADEYELU II when appointed as Arajaka, it was only the Odundun house that was recognized as the Ruling House. When he died on the 3/6/1995, the Government had already accepted the recommendations of the Morgan Commission in July 1981 when the White Paper was published and the attempt to register the new Declaration was somehow not done, it was only after the death of the Oba in 1995, that another attempt was made to register the new Declaration. As mentioned above, that was why the plaintiffs instituted this action challenging the recommendation to amend the Chieftaincy Declaration.

In the meanwhile the new Declaration was registered on 3/11/1995. Specifically by Edict No. 1 of 1999, entitled “Arajaka of Igbara-Odo Ekiti (Chieftaincy Declaration), the Ekiti State Government repealed the 1958 Chieftaincy Declaration and the Morgan recommendations had acquired the status of a statute. The number of Ruling Houses were increased to 3.

Also in the meanwhile the 5th – 7th defendants, the 5th – 7th appellants herein were joined in the suit on 1/6/1998 as co-defendants. After series of adjournments, the trial commenced before Daramola J on the 28/2/2001.

By separate applications the two sets of defendants filed applications protesting that the claims of the plaintiffs were statute barred. The reasons given by 5th – 7th defendants to prematurely terminate the proceedings were two (1) that the suit attacked the recommendations of the Morgan Commission which had been accepted by the Government some 14 years prior to the institution of action, and (2) the suit attacked the acts done by Public Officers more than 3 months prior to the institution of the action. The learned trial judge heard arguments on the applications by the two sets of the defendants. While he rejected the application of the Public Officers protection Law to the facts, he upheld the objection on the competency of the action in that the cause of action arose in 1981 when the Government, accepted the Morgan Commission recommendations while the plaintiffs instituted the action in 1995, which was more than the 6 years period after the accrual of the cause of action and therefore the suit was caught by the statute of limitations and the action was accordingly struck out.

The plaintiffs felt unhappy with the Ruling and appealed to the Court of Appeal. The Notice of appeal contained 7 grounds of appeal. After consideration of the issues placed before it, the Court of Appeal held in its judgment thus:-

“The long and short of it all is that this appeal succeeds in its entirety. It is accordingly allowed. The ruling of the learned trial judge striking out the Appellants’ action is set aside. The case is remitted to the Ekiti State High Court for hearing de novo by another judge.”

The learned justice who read the lead judgment proceeded to give another “final order.” He made a further order setting aside, the appointment and installation of the 6th defendant as the Arajaka and also set aside the Registration of the new Declaration made on 3/11/1995.

Both sets of the defendants felt aggrieved with the decision and have separately now appealed to this court. Now in this judgment the

first set of the defendants are referred to as the 1st - 4th appellants while the 2nd set of the defendants are referred to as the 5th to 7th appellants and the plaintiffs are referred to as the respondents. Now in his brief for the 1st to 4th appellants the learned counsel for the appellants has formulated, identified, and submitted the following issues for the determination of the appeal.

- “1. Whether or not the lower court was not in error when it held that the plaintiffs action was not caught by the statute of limitations.
2. Whether or not the lower court was not in grave error to have held that the plaintiffs’ cause of action accrued 19/9/1995.
3. Whether or not the lower court was not in grave error to have set aside on its own volition and without jurisdiction the appointment and installation of the 6th defendant, appellant, and for setting aside also Edict No. 1 of 4th of February 1999.

4. Whether or not the lower court was not in error to have over-ruled the trial court considering the weight of the evidence.”

The learned counsel for the 5th to the 7th appellants has submitted almost identical issues formulated by the 1st - 4th appellants. The learned counsel for the respondents has also formulated similar issues for the determination of the appeal. I shall in this judgment deal with the issues as formulated by the 1st to 4th appellants.

Issues 1 and 2 and 4

I will deal with issues 1, 2 and 4 together since they are interrelated and it is convenient to deal with them together as the resolution of any of them as formulated would result in the same conclusion. The applicable Limitation Law of Ondo State provides as per section 4(1) (a) thus:-

“The following action shall not be brought after the expiration of six years the cause of action accrued, that is to say

(a) actions founded on simple contract or on tort. xxxxxxxx.”

As pointed out above, the appellants took a preliminary objection on the competency of the respondent’s suit that, it being in a nature of a tort was caught by the provisions of the Limitation Law recited above. The trial judge upheld the objection. The Court of Appeal per the lead

judgment of Ikongbeh J.C.A. of blessed memory, held that the claims of the respondent are not in the nature of a tort and therefore, the provisions of the Limitation Law are inapplicable. The learned justice further stated, even if the provisions of the Limitation apply. He held thus:-

“After carefully considering the contentions on behalf of the parties, I have come to conclusion that the learned trial judge erred in holding that the plaintiffs’ cause of action arose in 1981. All that happened in 1981 was that Government took a decision in that year, based on the recommendations of the Justice Morgan chieftaincy Review Commission, to amend existing Chieftaincy Declaration by increasing the number of the Ruling Houses in Igbara-Odo from one to three in view of the express provisions of section 4 of Chiefs Edict 1984 applicable to Ekiti State, the mere taking of such decision by Government does not oblige any body to take the matter to court at the time it is taken. A decision by Government in this regard is totally in effectual unless and until the provisions of the section are carried out. The section provides:-

“4(1) Every declaration of the committee approved by the Executive Council and every declaration made by the Executive Council shall be registered and kept in safe custody by such officer as the Military Governor may direct.

(2) No declaration shall come in to effect until it is so registered.”

The learned justice proceeded to hold that it was only after the resetting up of the machinery for the registration of the Declaration in 1995, when the cause of action may be said to accrue and not in 1981 when the government accepted the-Morgan Commission of Inquiry. Therefore the decision of the learned trial judge was erroneous.

Now, the crucial question under these issues is to find first the cause of action of the respondents and secondly when that cause of action accrued. The learned trial judge in his judgment said:-

“The pith and substance of the plaintiffs’ action, in my view is a direct challenge to the findings and recommendations of the Morgan chieftaincy Review. It was the approval of the recommendations by the Government which accorded recognition to two additional ruling houses for the Arajaka chieftaincy of Igbara-Odo Ekiti in July, 1981, the recogni-

tion so accorded is the crux of this action.”

While that may be true of the first 3 prayers of the respondents as contained in their amended Statement of Claim, but clearly in my view, the crux of the claims of the respondents- is the challenge to the attempt
 B in 1995 to give effect to the recommendations and the acceptance of the recommendations by the Government. These clearly are the fundamental claims of the respondents as contained in prayers 6 and 7 of the Original claim and more importantly in the Amended Claim as per prayers 8, 9 and
 C 10. This is more particularly apparent having regard to the provisions of section 4(2) of the Chiefs’ Edict of 1984. From the language of subsection (2) a chieftaincy Declaration cannot affect the rights of persons subject to it unless and until it has been registered. As far as the respondents as the plaintiffs were concerned, the first and real time when the
 D recommendations and their acceptance by the Government would adversely affect them was in 1995, when the Government attempted to register the new declaration, all along from 1981, when the recommendations were accepted, the Government merely formed the intention of
 E amending the particular Declaration of 1958. It set up unnecessary machinery, but unfortunately for no apparent reason, the registration was not effected and nothing was done. It was only when a new Arajaka was to be appointed, it was discovered that the accepted recommendations
 F were not registered and fresh arrangement were initiated in 1995 to effect the registration and that in my view is the main complaints of the plaintiffs/respondents. **The main case of the respondents was clearly not based on the challenge to me recommendations of the Review Commission or the acceptance of the recommendations by the Gov-**
 G **ernment in its White Paper in 1981, which as shown would not adversely affect the rights of the respondents but their crucial claims were based on the attempt to register the new Declaration in 1995. So without much ado, the Issue of the application of the limitation**
 H **law, even if it affected prayers 1, 2 and 3, the other crucial and fundamental prayers all arose in 1995 and therefore not subject to the limitation law when the action was filed.**

That, in my view is sufficient to sustain the fundamental and

crucial claims of the respondents. It is of no moment even if reliefs Nos. 1, 2 and 3 as recited above were caught by the limitation law. I am accordingly of the view that all the arguments of counsel are hardly relevant to the main claims of the respondents which clearly accrue only when the Government commenced to register the amended Declaration in 1995. Accordingly I do not see the need to discuss all the arguments of counsel on issues 1, 2 and 4 suffice it for me only to resolve them against the appellants. I affirm that the crucial claims and prayers of the respondents were not caught by the limitation law as adjudged by the court below.

Issue No. 3

Now, in its consideration of this interlocutory appeal, to wit: Whether the trial court was right or wrong, in striking out the claims of the respondents for being statute barred, the Court of Appeal after holding that the trial court acted erroneously in holding that the limitation law applied to bar the claims of the respondents, the court below after sending the case back to the trial court for determination on the merits yet proceeded to set aside the appointment and installation of the 6th defendant 6th appellant herein as the Arajaka of Igbara-Odo, and also To set aside the Chieftaincy Declaration registered in 1995. It should be mentioned that the registered Declaration has been embodied as a statute in Edict No. 1 of 1999. **It is a curious situation, the Court of Appeal ordered the remitting of the case to the trial court for trial on the merits, it is apparent that the matter went to the Court of Appeal only as interlocutory matter, whether the claims of the plaintiffs were statute barred or not, and the court held the claims were not statute, barred and sent the case back to the trial court for trial on the merits. I agree with the appellants' counsel, that the Court of Appeal has no business whatsoever of deciding the issues raised in the main trial, in claims 6 ,7, 8, 9 and 10, by setting aside the appointment of 6th appellant and also by setting aside the Declaration registered in 1995. These issues should wait the decision of the trial court when it considers all the claims on the basis of the evidence to be called by the parties. As mentioned above, the issue before**

the Court of Appeal was an interlocutory appeal and the matter was not heard or decided on the merits. There was no order, of .the trial court concerning the appointment of the 6th appellant nor was there any decision in respect of the new Declaration for the Court of Appeal to assume jurisdiction to intervene. There was also no prayer nor application placed before the trial court for the setting aside of either the appointment of the 6th appellant or the setting aside of the new Declaration which has since been embodied in a law Edict No. 1 of 1999. In any event there were no prayers before the trial High Court grounding the orders made by the Court of Appeal. The jurisdiction of the Court of Appeal is appellate and in the circumstances of this case, the Court of Appeal has no original jurisdiction to make the orders it made. As a matter of fact, the orders cannot be legitimate on the face of Edict No. 1 of 1999 titled “ARAJAKA OF IGBARA-ODO EKITI (CHIEFTAINCY DECLARATION) ORDER 1998” which clearly the legality of which was not the subject of the case and upon which the 6th appellant was appointed. For the various reasons stated above, I agree with all the learned counsel appearing in this matter, that the Court of Appeal was in error to have made the orders of setting aside (1) the appointment and the installation of the 6th appellant as the Arajaka of Igbara-Odo Ekiti, and (2) the new Declaration as embodied under the Edict of 1999. I accordingly resolve issue 3 in favour of the appellants I set aside the orders made by the Court below.

In the result this appeal partially succeeds, I affirm the order of the Court below remitting the case back to the trial court for the determination of the various issues on the merit. I, however set aside the so called “final orders” of the court below. I make no order as to costs.

Case remitted to the trial court for trial de novo before another judge.

H

ONU JSC

Having been privileged to read the judgment of my learned brother Dahiru Musdapher, JSC just delivered, I entirely agree with him that the

appeal partially succeeds. Accordingly, I affirm the order of the court below remitting the case back to the trial court for the determination of the various issues on the merit. For the avoidance of doubt, I set aside the so-called “final orders” of the court below and make no order “as to costs while remitting the case to the trial court for trial *de novo*.” B

AKINTAN JSC

I had the privilege of reading, the draft of the leading judgment written by my learned brother, Musdapher, JSC. C

The facts of the case are well set out in the judgment. All the issues raised in the appeal are fully discussed therein. I will therefore not repeat them here.

The main issue raised in the appeal is whether the court below was right in holding that the appellants’ claim was not caught by the provisions of section 4 of the *Limitation Law* of Ondo State which provides that: D

“The following actions shall not be brought after the expiration of six years the cause of action accrued, that it to say E

(a) actions founded on simple contract or tort —————”

It is clear from the facts of the case that although the State Government had accepted the recommendations made by the Justice Morgan Commission in his report in 1981, it was still necessary for each chief- F
taincy recommendation to be adopted and registered before such could come into effect. It was the attempt to accept the recommendation in respect of the Arajaka Chieftaincy of Igbara-Ode in 1995 that was in issue.

I agree that the cause of action in *the* instant case arose in 1995 G
when efforts were made to register the new declaration in respect of the Arajaka Chieftaincy Declaration and not in 1981 when the Morgan Report was accepted by the defunct Western State Government. I therefore hold that the action filed by the plaintiffs/appellants was not statute H
barred.

The main issue raised in the cross-appeal is whether the court below was right; after holding that the action was not statute barred and

therefore ordered, that the case be sent back for hearing on the merit before another Judge, the court below again went further to make orders which were not part of the issues raised in the appeal before it. There, is no doubt that the court below was wrong in taking up issues yet to be decided in the substantive claim and which never arose in the appeal. There is therefore merit in the cross-appeal.

In conclusion, I hold that the plaintiffs' claim is not statute, barred and I affirm fee order made by the court below that the case be remitted to the High Court for trial *de novo* by another Judge.

I also allow the cross-appeal in that the court below was wrong in pronouncing on the substantive issues yet to be determined in the case and which were not part of the issues on appeal before the court. I also make no order on costs.

D

MOHAMMED JSC

I had the privilege before today of reading the leading judgment of my learned brother Musdapher, JSC which has just been delivered. I completely agree with him that this appeal succeeds in part.

The parties in this appeal were at the High Court of Justice of Ekiti State sitting at Ikere Ekiti to resolve a Chieftaincy dispute between them as to which of the two Chieftaincy Declarations is applicable in filling the existing vacancy in the stool in dispute. The two Chieftaincy Declarations are the 1958 Chieftaincy Declaration registered on 28th May, 1958 which declared that the Odundun Ruling House as the only Ruling House in Igbara-Odo Ekiti and the 1995 Chieftaincy Declaration registered on 3rd November, 1995 which declared that the Ruling Houses of Odundun, Ogungun and Odigede as the Ruling Houses in Igbara-Odo Ekiti. The trial Court after hearing all the witnesses called by the Plaintiffs, heard a motion filed by the Defendants asking the Court to dismiss the Plaintiffs' action on the ground that it was statute barred. The learned trial judge upheld the Defendants' contention in his ruling and struck out the Plaintiffs' action. The Plaintiffs therefore appealed to the Court of Appeal against the order of the trial Court striking out their action although in the course of hearing of the action, they had already closed

their case.

The Court of Appeal after hearing the Plaintiffs' appeal, came to the conclusion that the appeal had merit and allowed it in its judgment part of which states

"The long and short of it all is that this appeal succeeds in its entirety. It is accordingly allowed. The ruling of the learned trial judge striking out the Appellants' action is set aside. The case is remitted to the Ekiti State High Court for hearing de novo by another judge."

Obviously from the conclusion reached in its judgment, the Court below having allowed the Plaintiffs' appeal, set aside the order of the trial Court, striking out the Plaintiffs' action and having ordered the case to be heard de novo by another judge of the trial Court, the proceedings in the Court below clearly came to an end leaving nothing to proceed for further determination. The unfortunate action of the Court below in proceeding to revisit the Plaintiffs' action which it had already sent back to the trial Court for hearing, is indeed an error as it was clearly done in the absence of jurisdiction.

In the result, I entirely agree with my learned brother Musdapher, JSC in his leading judgment after resolving all the issues arising for determination in this appeal that the appeal deserves to succeed in part. As the order made to set aside the appointment and installation of the 6th Appellant and the setting aside of the registration of the Chieftaincy Declaration made on 3rd November, 1995, was made without, jurisdiction, the same is set aside. The appeal therefore succeeds on issue 3.

Finally, the appeal having succeeded in part is hereby allowed. However, the appeal against the order of the Court of Appeal setting aside the order of the trial High Court striking out the Respondents' action on the grounds that it was statute barred having failed, is hereby dismissed.

The order of the Court of Appeal sending the Plaintiffs' action back to the trial Court to be heard de novo by another judge is hereby affirmed with no order on costs.

ONNOGHEN JSC

This is an appeal against the judgment of the court of Appeal in

appeal No. CA/IL/11/2003 delivered by the Ilorin Division of the court on the 29th day of November, 2004 in which it set aside the ruling of the Ekiti state High Court delivered on the 29th day of November, 2002 in suit No. HCR/49/95.

B On the 2nd day of November, 1995 the 1st to 4th plaintiffs/respondents caused a writ of summons to be issued against the original defendants/appellants in which they claimed the following reliefs:-

C *“1. A Declaration that the recommendation of the Ondo state Chieftaincy Review Commission presided over by Honourable Justice Adeyinka Morgan in respect of the Arajaka of Igbara-Odo Ekiti Chieftaincy is contrary to the custom and tradition governing the selection of the Araka of Igbara-Odo, Ekiti.*

D *2. A Declaration that the Ondo State Government White Paper accepting the recommendation of the Ondo state Chieftaincy Review Commission presided over by Honourable Justice Adeyinka Morgan in respect of the Arajaka of Igbara-Odo Chieftaincy is contrary to the custom and tradition governing the selection of the Araka of Igbara-Odo,*
E *Ekiti.*

F *3. A Declaration that the Ondo State Government White Paper accepting the recommendation of the Ondo state Chieftaincy Review Commission presided over by Honourable Justice Adeyinka Morgan in respect of the Arajaka of Igbara-Odo Ekiti chieftaincy is repugnant to natural justice, equity and good conscience.*

G *4. A Declaration that the 1958 Chieftaincy declaration registered in respect of the Arajaka of Igbara-Odo Ekiti Chieftaincy is in consonance with the custom and tradition governing the selection of the Arajaka of Igbara-Odo Ekiti.*

5. A mandatory injunction compelling the defendants to call upon the Odundun Ruling House to present a candidate to fill the vacancy in the Arajaka of Igbara-Odo Ekiti

H *6. An order restraining the defendants, their agents, servants, privies or anybody whatsoever from considering, approving, registering or taking any steps whatsoever to give effect to the draft declaration contained in the Ondo state Government White Paper accepting the recom-*

mentation of the Morgan Chieftaincy Review Commission in respect of the Arajaka of Igbara-Odo, Ekiti Chieftaincy.

7. An order restraining the defendants, their agents, servants, privies or anybody whatsoever from registering any declaration relating to the Arajaka of Igbara-Odo Ekiti Chieftaincy.”

B

The above reliefs were amended by virtue of the further amended statement of claim filed on the 10th day of December, 1998 containing 10 reliefs; namely:-

“1. A Declaration that the recommendation of the Ondo state Chieftaincy Review Commission presided over by Honourable Justice Adeyinka Morgan in respect of the Arajaka of Igbara-Odo Ekiti Chieftaincy is contrary to the custom and tradition governing the selection of the Arajaka of Igbara-Odo, Ekiti.

C

2. A Declaration that the Ondo State Government White Paper accepting the Recommendation of the Ondo State Chieftaincy Review Commission presided over by Honourable Justice Adeyinka Morgan in respect of the Arajaka of Igbara-Odo Chieftaincy is contrary to the custom and tradition Governing the selection of the Arajaka of Igbara-Odo, Ekiti.

D

E

3. A Declaration that the Ondo state Government White paper accepting the recommendation of the Ondo State Chieftaincy Review commission presided over by Honourable Justice Adeyinka Morgan in respect of the Arajaka of Igbara-Odo chieftaincy is repugnant to natural justice, equity and good conscience.

F

4. A Declaration that the 1958 Chieftaincy Declaration registered in respect of the Arajaka of Igbara-Odo Ekiti Chieftaincy is in consonance with the custom and tradition governing the selection of the Arajaka of Igbara-Odo Ekiti.

G

5. A mandatory injunction compelling the Defendants to call upon the Odundun Ruling House to present a candidate to fill the vacancy in the Arajaka of Igbara-Odo Ekiti Chieftaincy.

H

6. An Order restraining the Defendants, their agents, servants, privies or anybody whatsoever from considering, approving, registering or taking any steps whatsoever to give effect to the Draft Declaration

contained in the Ondo State Government White Paper accepting the recommendation of the Morgan Chieftaincy Review Commission in respect of the Arajaka of Igbara-Odo, Ekiti Chieftaincy.

7. An Order restraining the Defendants, their servants, agents,
B *privies, or anybody whatsoever from taking further steps to give effect to the Chieftaincy Declaration dated 3rd of November, 1995 in respect of the Arajaka of Igbara-Odo Ekiti Chieftaincy.*

8. An Order declaring invalid, null and void the Chieftaincy Declaration dated 3rd day of November, 1995 relating to the Arajaka of Igbara-Odo Ekiti Chieftaincy for contradicting the Native Law and custom of
C *Igbara-Odo Ekiti Chieftaincy and or for being repugnant to natural justice, equity and good conscience.*

9. An Order declaring invalid, null and void the Chieftaincy Declaration dated 3rd day of November, 1995 relating to the Arajaka of Igbara-Odo Ekiti Chieftaincy for contravening the Chiefs Edict of Ondo State.
D

10. An Order restraining the Defendants, their servants, agents
E *privies or anybody whatsoever from registering any Declaration relating to the Arajaka of Igbara-Odo Ekiti Chieftaincy."*

It should be noted that reliefs 8, 9 and 10 are the new claims added to the original seven reliefs contained in the writ of summons and earlier reproduced in this judgment of the three new reliefs, 8 and 9 are directed
F at the Chieftaincy Declaration dated 3rd November, 1995 in respect of the Arajaka of Igbara-Odo Ekiti Chieftaincy. The above facts will become very relevant in the determination of the issue as to whether the action as instituted was statute barred, later in this judgment.

The matter did proceed to trial with the plaintiffs, adducing evidence in support of their claims and even closed their case and the matter adjourned for defence. Meanwhile learned counsel for the 5th - 7th appellants filed a motion dated 15th February, 2002 praying the trial court for an order dismissing the suit for being statute barred which application
G was duly granted in a ruling delivered on the 29th day of November, 2002 and the suit was consequently struck out.
H

The 1st - 4th plaintiffs were dissatisfied with that ruling and consequently appealed to the Court of Appeal which held, inter alia, as follows

at page 492 of the record.

“The long and short of it all is that this appeal succeeds in its entirety, it is accordingly allowed. The ruling of the learned trial judge striking out the appellants’ action is set aside. The case is remitted to the Ekiti state High Court for hearing de novo before another judge.” B

The Court of Appeal did not stop there but went on to order, inter alia, as follows:-

“..... The practical effect of this is that the appointment and installation of the 6th respondent during the pendency of the appellants’ action challenging same is set aside, so is the registration of the new Declaration. Things will remain as they were on 02/11/95 when the appellants took out their writ of summons.....” C

The present appellants are not satisfied with the judgment and have consequently appealed to this Court. There are two appeals rolled D into one. The first appeal is by the 1st - 4th appellants, represented by the Honourable Attorney-General of Ekiti state while the second appeal is by the 5th - 7th appellants represented by Chief Wole Olanipekun, SAN. The issues for determination as identified by the Honourable Attorney- E General OWOSENI AJAYI Esq. for 1st -4th appellants in the brief of argument deemed filed on 8/2/07 are as follows-

“(1) WHETHER OR NOT THE LOWER COURT WAS NOT IN ERROR WHEN IT HELD THAT THE PLAINTIFF’S ACTION WAS NOT F CAUGHT BY THE STATUTE OF LIMITATION (GROUND 1)

(2) WHETHER OR NOT THE LOWER COURT WAS NOT IN GRAVE ERROR TO HAVE HELD THAT THE PLAINTIFF’S CAUSE OF ACTION ACCRUED ON 19th SEPTEMBER 1995 (GROUND 2) G

(3) WHETHER OR NOT THE LOWER COURT WAS NOT IN GRAVE ERROR TO HAVE SET ASIDE ON ITS OWN VOLITION AND WITHOUT JURISDICTION THE APPOINTMENT AND INSTALLATION OF THE 6TH DEFENDANT/APPELLANT, AND FOR SETTING ASIDE ALSO EDICT NO. 4 OF 4TH FEBRUARY 1999 (GROUNDS 3- H 4)

(4) WHETHER OR NOT THE LOWER COURT WAS NOT IN ERROR TO HAVE OVERRULED THE TRIAL COURT CONSIDER-

ING THE WEIGHT OF EVIDENCE (GROUND G)."

On the other hand, the issues identified for determination by learned senior counsel for the 5th - 7th appellants, chief wole olanipekun, SAN in the brief of argument filed on 3/4/06 are as follows-

B “(i) *WHETHER OR NOT THE LOWER COURT WAS NOT IN GRAVE ERROR BY HOLDING THAT THE PLAINTIFF’S ACTION WAS/IS NOT STATUTE BARRED.*

AND/OR

C “(II) *WHETHER THE LOWER COURT WAS NOT PATENTLY WRONG IN HOLDING THE PLAINTIFF’S CAUSE OF ACTION ACCRUED ON 19TH SEPTEMBER, 1995 - GROUNDS 4, 5, 6, 9 AND 10*

D “(iii) *WHETHER OR NOT THE LOWER COURT WAS NOT PATENTLY WRONG AND OR WITHOUT THE NECESSARY JURISDICTION TO SET ASIDE THE APPOINTMENT AND INSTALLATION OF THE 6TH DEFENDANT/APPELLANT, AS WELL AS THE CHIEFTAINCY DECLARATION EMBODIED IN EKITI STATE EDICT NO. 1 OF 4TH FEBRUARY, 1999 OR IN ANY OTHER INSTRUMENT - GROUNDS 1, 2, 3, 2, 7 AND 11.*

F “(iv) *CONSIDERING THE PLEADINGS OF THE PARTIES, THE EVIDENCE BEFORE THE TRIAL HIGH COURT AND THE RULING OF THE SAID TRIAL COURT ITSELF, WHETHER OR NOT THE LOWER COURT WAS NOT IN ERROR TO HAVE UP TURNED THE WELL CONSIDERED RULING OF THE TRIAL HIGH COURT - GROUND 8.”*

G It should be noted that learned counsel for the respondents, M.A. Owoyemi Esq. in the brief of argument filed on 31/1/07 adopted issues 1 - 3 of the 1st - 4th appellants and contended that the 1st - 4th appellants’ issue no. 4 which is based on weight of evidence is premature and therefore irrelevant having regard to the fact that only the evidence produced H by the respondents is on record, the appellants’ not having called any evidence at the trial by the time the objection was raised.

With regard to the appeal of the 5th -7th appellants, learned counsel for the respondents identified the following issues for determination in

the brief of argument filed on 19/6/06:-

“1. Whether the Court of Appeal was not right in holding that the suit of the 1st to 4th Plaintiffs/Respondents was not statute barred thereby seating aside the ruling of the High court of Justice, Ikere-Ekiti delivered by Honourable Justice A.S. Daramole on 29th day of November, 2002.

2. Whether the court of Appeal was not right in setting aside the installation of the 6th Appellant herein as Arajaka of Igbara-Odo Ekiti having found, that the said installation was done or carried out by the 1st Defendant/Respondent during the pendency of this suit in view of the decision of this Honourable Court in Military Governor, Lagos State v. Ojukwu (2001) F.W.LR (pt. 50) 1779

3. Whether the court of Appeal lacked the power/discretion to set aside the 1995 Chieftaincy Declaration in respect of Arajaka of Igbara-Odo Ekiti, which Declaration was registered on 3rd November, 1995 after the suit had been initiated by the 1st to 4th Plaintiffs/Respondents on 2nd November, 1995.”

In arguing issues 1 and 2, learned counsel for the appellants submitted that the period of limitation is determined by looking at the claim of the plaintiff as contained in the writ of summons and statement of claim to ascertain the cause of action and when it is said to have accrued and compare same with when the action was filed in court; that a look at these facts disclose the fact that the complaint is against the recommendation made by the Morgan Chieftaincy Review Commission, the White Paper thereon and the Government decision which were made in 1981; that from that time to when the action was instituted is more than 6 (six) years allowed by the statute of limitation and as such the action is statute barred, relying on the case of Asemo II vs Adekanye (2002) 2 NWLR (pt. 644) 257 at 271; Apaka vs Ejiegwu (2000) 15 NWLR (pt.692) 684 at 710; Obiefuna vs Okoye (1961) 1 SCNLR 144; Savannah Bank of Nigeria Ltd. vs. Pan Atlantic Shipping & Transport Agency Ltd. (1987) 1 NWLR (pt H 49) 212.

On his part, learned counsel for the respondents submitted that the cause of action of the respondents is not founded on the Draft Dec-

laration contained in the Government Views on the Report of the Morgan Chieftaincy Review Commission of 1981 which was never registered in accordance with the provisions of section 4 (1) & (2) of the Chiefs Edict of Ondo State 1984; that since the Chieftaincy Declaration in issue was registered on the 19th day of September 1995, the respondent's cause of action arose on that date and that the action instituted subsequently cannot be said to be statute barred and urged the court to resolve the issues against the appellants.

Section 4(1)-(a) of the Limitation Law, Cap. 61 Laws of Ondo state provides as follows-

"The following action shall not be brought after the expiration of six years from the date in which the cause of action accrued, that is to say-

(i) *Actions founded on contract or tort....."*

In the case of Wohevem vs Emereuwa (2004) 13 NWLR (pt. 890) 398 at 417, this Court decided that for the purpose of determining whether or not an action is statute barred, the period of limitation is determined by looking at the writ of summons and the Statement of Claim only. I will however add, where one has been filed. It is from either or both of these processes that one can ascertain the alleged date when the wrong in question is said to have occurred or been committed thereby giving rise to the plaintiff's cause of action. When that ascertained date is compared with the date the writ of summons or originating process was filed in court it can then be determined whether the action was instituted within the period allowed by law or outside it. When it is found that the action was instituted within the period allowed by law, the action is said to be competent and the court has the jurisdiction to entertain same but where it is found to have been instituted outside the period allowed by law, the action is said to be statute barred and consequently the court is without jurisdiction to entertain same, see Savannah Bank of Nigeria Ltd. vs. Pan Atlantic Shipping and Transport Agency, Ltd. supra; Araka vs Ejicagwu (2000)15 NWLR (pt. 692) 684 at 710; Egbe vs Adefurasin (1987) 1 NWLR (pt. 47) 1; Ibrahim vs Judicial Service Commission (1998) 14 NWLR (pt. 584) 1.

It is settled law that limitation Act or Law removes the right of action of a plaintiff, his right of enforcement and the right of judicial relief leaving the plaintiff with a bare and empty cause of action which he cannot enforce if such a cause of action is found to be statute barred.

The relevant question that follows is: what is a cause of action? A cause of action has been defined by this Court in various cases to mean a factual situation existence of which entitles one person to obtain from the court a remedy against another person, see *Owodunmi vs Registered Trustees of C.C.C.* (2000) 10 NWLR (pt. 675) 315 at 365, *Ogbimi vs Owlo* (1993) 7 NWLR (pt. 304) 128 at 136; *Akilu vs Fawehinmi* (No. 2) (1989) 2 NWLR (pt 102) 122. C

Applying these principles of law to the facts of this case, can it be said that the action of the respondents as constituted is statute barred? Both parties agree that though the processes leading to the institution of the action started in 1981, the Chieftaincy Declaration relevant to the facts of this case was never registered until 19th September, 1995 section 4(1) & (2) of the Ondo State Chiefs Edict 1984 provides as follows:- D

“(1) Every declaration of the Committee approved by the Executive Council and every declaration made by the Executive Council shall be registered, and kept in safe custody by such officers as the Military Governor may direct.

(2) No declaration shall come into effect until it is so registered.” F

It is therefore my considered view that the lower court was right in holding that the action was not statute barred the same having been instituted on the 2nd day-of November, 1995 following the registration of the offensive Chieftaincy Declaration on the 19th day of September 1995, less than a month after the cause of action accrued to the respondents. G

The recommendations of the Morgan’s Commission remains a recommendation whether made in 1981 or later just as the Government White Paper thereon. They remain as paper tigers until registration which gives them life and the respondents a cause of action by operation of H section 4(1) and (2) supra.

The next and final issue I wish to comment on is issue NO. 3.

It is not in doubt that the lower court, having come to the conclu-

sion that the action was not statute barred accordingly set aside the order of the trial court striking out the action and proceeded to make a consequential order remitting the case to the trial court to be heard de novo by another judge. I hold the view that the above order of the lower court is
B very much within its jurisdiction to make.

However, the lower court did not stop at that, it proceeded further to set aside the appointment of the 6th defendant/appellant and Edict No. 1 of 4th February 1999. Going through the Amended Statement of Claim,
C there is no claim relating to the two further reliefs granted by the lower court. That apart, the ruling of the trial court which gave rise to the appeal before the lower court contained no order(s) on the basis of which the further reliefs could be grounded. However, and strangely too, in
D paragraph 4(b) of their Notice of Appeal, the appellants before the lower court sought an order setting aside the installation of the 6th respondent before that court as the Arajaka of Igbara-Odo Ekiti. I use the word “Strange” because it is settled law that appeals are usually against the ratio decidendi in the judgments on appeal. In other words, an appeal
E must be directed at the reasons for the judgment of the court appealed against and not outside it. In the instant case, as revealed by the facts on record, there was no decision of the trial court relating to the installation of the 6th defendant/appellant neither was there any decision by that court
F in relation to Edict No. 1 of 1999 in the circumstances I agree with, the submissions of learned counsel for the appellants that the lower court had no jurisdiction in making the further orders and that to have done so was erroneous in law. I therefore resolve the issue in favour of the appellants.
G

In conclusion, I agree with the reasoning and conclusion of my learned brother, MUSDAPHER J.S.C. in the lead judgment, the draft of which I had the privilege of reading before now, that the appeal partly succeeds. However, having regard to the fact that the main issues i.e. 1
H and 2 have been resolved against the appellants, the case is remitted to the trial court for hearing de novo before another judge.

I too make no order as to cost.