

**SUPREME COURT OF NIGERIA**

9<sup>TH</sup> FEBRUARY, 2007 SC.107/1999

**CORAM:- A. I. KATSINA-ALU, U. A. KALGO, A. M. MUKHTAR,  
M. MOHAMMED, I. F. OGBUAGU, JJSC**

1. PA A. K. Y. BALOGUN

2. PROFESSOR AJIBADE ROKOSU ..... APPELLANTS

3. ALHAJI R. A. SALAWÉ

4. ALHAJI MONSURU ALESHINLOYE

(For themselves and on behalf of 3 ruling  
House, namely, Okoya, Agbaje and Rokosu  
of the Salawe Chieftaincy Family)

AND

1. ALHAJI SHIFAWU ODE

2. NURAINI SANUSIAKA

3. RAUFU ADEKUINLE ..... RESPONDENTS

(For themselves and on behalf of Oke  
branch of Salawe Chieftaincy Family)

4. LAGOS ISLAND LOCAL GOVERNMENT

5. ATTORNEY-GENERAL & COMMISSIONER

FOR JUSTICE, LAGOS STATE

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ACTIONS - Jurisdiction - Writ of summons - And statement of claim -  
Are the basis for determining the Court's jurisdiction - Save there be  
statutory preclusion (H1)

CONSTITUTIONAL LAW - Jurisdiction - Chieftaincy matters - High  
Court's unlimited jurisdiction - Under s. 236 (1) 1979 Constitution -  
Cannot be limited by any conflicting law (H2)

CHIEFTAINCY MATTERS - Reliefs claimed - Did not contravene Ajase  
case principles - Nor the Chiefs Law of Lagos State (H3)

COURTS - Chieftaincy - Jurisdiction - Ouster clause in statute - In order

to be effective - Must be unambiguous - And should not be inconsistent with the Constitution (H4)

### **FACTS**

This is a chieftaincy matter seeking to determine the proper applicable Chieftaincy Declaration. The 1st set of respondents caused the Lagos State Government to promulgate a registered Chieftaincy Declaration that recognized 4 Ruling Houses that may step into the vacant stool of Salawe of Lagos. Following various rival claims to the said stool, the Government referred the matter to the Judicial Tribunal on Chieftaincy which recommended revocation of the 1986 Chieftaincy Declaration. The Tribunal recommended 2 Ruling Houses. 5th Respondent approved the recommendations and a new Chieftaincy Declaration was then promulgated by the Government.

Aggrieved by this, appellants instituted an action before the Lagos High Court against the respondents. They claimed inter alia, that there are 4 Ruling Houses in the Salawe Chieftaincy Family of Lagos, and that it is the turn of Rokosu Ruling House to present the next candidate. 1st to 3rd respondents raised a preliminary objection on the ground that no reasonable cause of action was disclosed. The trial court ruled that it has jurisdiction to determine the suit. Respondent's appeal to the Court of Appeal was allowed for it held that the trial court has no jurisdiction as the suit was a gross abuse of the court's process. Being dissatisfied the appellants have now appealed to the Supreme Court.

**HELD** (Unanimously allowing the appeal per **OGBUAGU JSC**)

#### ***Jurisdiction - Writ of summons***

1. As rightly stated at page 28 of the Records by the learned trial Judge and this is also settled, the issue of jurisdiction of a trial court in any particular case, is determined or decided by the claim in the Writ of Summons and the Statement of Claim - i.e. jurisdiction is determined by the Plaintiff's claim and not by the defendant's denial.

In the case of *Chief Utih & 6 ors. v. Onoyiwe & 5 ors. (1991) 1 SCNJ. 25*; Karibi-Whyte, JSC, at page 63 stated as follows:

*“The question whether the court can exercise jurisdiction in an action would depend upon the endorsement of the claim on the Writ of Summons and the reliefs in the Statement of Claim. Thus, where the endorsement on the Writ of Summons and Statement of Claim discloses a cause of action, (and I add as in the instant case leading to the instant appeal) the Court, unless precluded by other statutory provisions can exercise jurisdiction”* (p. 878 E)

### ***Jurisdiction - Chieftaincy matters***

2. It has to be borne in mind and this is also settled, that the provisions of Section 236(1) of the 1979 Constitution, gave or conferred on the High Court of a State, unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, interest, obligation or claim is in issue.

Therefore, any law, particularly the law of a State, which is in conflict with it, is null and void.

When the court below stated at page 77 of the Records, inter alia, as follows:-

“..... The recommendations of the Tribunal are intact. Indeed, they have crystallized into a law - The Chieftaincy Declaration to regulate succession to Salawe Chieftaincy Stool. By that Chieftaincy Declaration only two Houses can aspire to the Stool. The invitation to the court below, by the reliefs sought, is to make pronouncement contrary to the Declaration.....”,

it was, with respect, a gross misconception of the state of the law.

This is because, it is settled that any law (including a Chieftaincy Declaration) of a State which amounts to a removal or purports to remove Chieftaincy questions or matters from the jurisdiction of a State High Court, is obviously, inconsistent with the provisions of Section 236(1) of the 1979 Constitution of the Federal Republic of Nigeria. (p. 879 C)

### ***CHIEFTAINCY MATTERS - Reliefs claimed***

3. The learned trial Judge, after reproducing the reliefs sought by the Plaintiffs/Appellants, at page 30 of the Records, stated inter alia, as fol-

lows:

*“The Plaintiffs are not praying this Court to select a particular candidate or themselves as the Chief, neither were they praying the Court to appoint them as a Chief nor did they pray that a particular chief be*  
*deposed.*

*Therefore, the Plaintiffs have not contravened the principles as stated in the Ajase’s case supra, (i.e. Ajase v. Aladetuyi (1995) 6 NWLR (Pt.403) 527 - 544) of presenting a candidate for the vacant stool. All they prayed for were that there are four Ruling Houses for the vacant stool and that it was the turn of a particular Ruling House to present its candidate. The Plaintiffs have therefore not contravened the Obas and Chiefs Law of Lagos State Cap. 138”.*

[the underlining is mine]

I agree because, His Lordship was/is right. (p. 880 D)

#### ***Chieftaincy - Jurisdiction - Ouster clause in statute***

4. As also rightly stated by the learned trial judge, it is the law, that for a statute to oust the jurisdiction of the court, such statute must be clear and unambiguous in its provisions.

He concluded as follows:

*"Since there are no clear and unambiguous clause in Cap. 138 of Lagos State ousting the jurisdiction of this court, I therefore hold that this court has the jurisdiction to entertain this suit. The motion on Notice brought by the Defendant is therefore misconceived and is accordingly STRUCK OUT."*

I cannot fault the above, but I will add that even if there is/was an ouster clause in the said law Cap 138, that, obviously, should have been inconsistent with Section 236(1) of the 1979 Constitution and therefore, on the decided authorities, null and void and of no effect. (p. 881 A)

#### **NOTABLE POINT OF INTEREST**

##### **MUKHTAR JSC**

##### ***1. Conditions for estoppel were not satisfied***

The decision relied upon in the instant case is that of a Tribunal of

Enquiry and not a court of competent jurisdiction. The respondents herein did not in the circumstance satisfy the above conditions. Moreover they did not even exhibit the said decision to the affidavit in support for the court to see and determine its nature, as is incumbent on it, and without it, it is as good as assuming that there was in fact no decision available to B  
avail the respondents of the defence raised.

The motion of the respondents for dismissal/striking out of the appellants' suit was doomed to fail right from the moment it was filed. It is inconceivable that the learned trial judge would have been inclined to deny the appellants their rights and remedies and deprive them of their constitutional rights, on the strength of what was before the court. The suit did not constitute a gross abuse of the process of the court, and the court below erred in holding that it did. (p. 886 D) C

### **REPRESENTATION**

L.B. Lawal-Akapo, Esq. for the Appellants

M.A. Bashua, Esq. for the 1st to 3rd Respondents.

Lawal Pedro, Esq. for the 5th Respondent. D

### **CASES REFERRED TO**

Ajase v. Aladetuyi (1995) 6 NWLR (Pt.403) 527 - 544

C.G.G. (Nig.) Ltd. v. Chief Lawrence Ogu (2005) 2 SCNJ. 227 @ 237; (2005) 2 S.C (Pt.II) 50 F

Prince Mustapha v. Governor of Lagos State & ors. (1987) 2 NWLR (pt.58) 539

Attorney-General, Anambra State v. The Attorney-General of the Federation (1993) 6 NWLR (pt.302) 643-742 G

Attorney-General, Anambra State & 13 ors. v. Attorney-General of the Federation & 10 ors. (1994) 3 NWLR (Pt.335) 659 @ 674; (1994) 4 SCNJ. 30

Chief Utih & 6 ors. v. Onoyiwe & 5 ors. (1991) 1 SCNJ. 25 H

Bronik Motors Ltd. v. Wema Bank Ltd. (1983) 6 S.C. 158

Savannah Bank of Nig. Ltd. v. Pan Atlantic Shipping & Transport Agencies Ltd. & anor. (1987) 1 NWLR (Pt.49) 212

Alhaji Tukur v. Government of Gongola State (1989) 1 NWLR (Pt.117) 517

Attorney-General of Bendel State v. Attorney-General of the Federation & ors. (1982) 3 NCLR 1

B Alhaji Akibu & ors. v. Alhaja Oduntan & ors. (2000) 13 -NWLR (Pt. 685) 446

Fumubo v. Adekunle (1988) 2 NWLR (Pt.79) 723

Chief Oloba v. Akereja (1988) 3 NWLR (Pt.84) 508; (1988) 7 SCNJ. 56

C Moju & anor. v. Fregene & The Probate Registrar (1990) 7 NWLR (Pt.16) 211 C. A

### **LEAD JUDGMENT BY OGBUAGU JSC**

D This is an appeal against the decision of the Court of Appeal, Lagos Division (hereinafter called “the court below”), delivered on 8<sup>th</sup> July 1999 allowing the appeal of the 1<sup>st</sup> set of Respondents and setting aside the RULING of Humponu-Wusu, J of the High Court of Lagos State, Lagos Division delivered on 17<sup>th</sup> January, 1997 holding that it has the jurisdiction to entertain the suit brought by the Appellants and therefore, struck out the motion on notice brought by the 1<sup>st</sup> set of Respondents asking it to decline jurisdiction to entertain the said suit.

F Dissatisfied with the said decision, the Appellants have appealed to this Court on seven (7) grounds of appeal. The parties filed and exchanged their respective Briefs of Argument. In the Amended Brief of the Appellants, they have formulated five (5) Issues (not seven (7) as stated in the 5<sup>th</sup> Respondent’s Brief for determination, namely:

#### **“2.01 Issue No. 1**

G *Whether or not the Appellants suit before the High Court constitutes an abuse of court process.*

#### **2.02 Issue No. II**

H *Whether or not the High Court has jurisdiction to entertain the Appellants ‘ claim having regard to the powers of the High Court as enshrined in Sections 36 and 272(1) of the 1999 constitution i.e. Sections 33 and 236(1) of the 1979 Constitution) notwithstanding the fact that a Tribunal had looked into the matter and had made a recommenda-*

tion thereon.

**2.03 Issue No. III**

*Whether or not there was a decision or judgment by a Tribunal of Enquiry and whether or not such a decision or judgment (if any) could strip the High Court of its jurisdiction under Section 272(1) of the 1999 Constitution or limit or restrict the jurisdiction.*

**Issue No. IV**

*Whether or not the Court of Appeal could consider extraneous matters not placed before the High Court and make a decision based on such extraneous matters.*

**2.05 Issue No. V**

*Whether or not the decision in HANSON Vs RADCLIFFE U.D.C. (1922) 2 CH. 490 at 507 is applicable to the facts of this case”.*

The 1<sup>st</sup> to 3<sup>rd</sup> Respondents in their Brief, have formulated three (3) issues for determination, namely:

**“Issue I**

*Whether the Court of Appeal’s decision was erroneous taking into consideration the ruling of the High Court in respect of the application before it.*

**Issue II**

*Whether appellants before the Tribunal who were not satisfied with the findings or recommendation of the Tribunal could seek redress in Court without complying with the pre-condition in the Obas and Chiefs Law of Lagos State.*

**Issue III**

*Whether the Court of Appeal was right to dismiss the case instead of striking out”.*

The 5th Respondent in its Brief formulated two (2) issues for determination, namely:

“1. Whether the High Court can exercise its declaratory jurisdiction in respect of a matter already adjudicated upon by the standing Tribunal of Inquiry on Chieftaincy Matters, a statutorily constituted tribunal.

2. Whether the invocation of the declaratory jurisdiction of the

*High Court, instead of supervisory jurisdiction, docs not amount to abuse of the process of court”.*

The 4<sup>th</sup> Respondent did not file a Brief and no reason appears in the file of the court for not doing so.

B On 14<sup>th</sup> November, 2006, when the appeal came up for hearing, I noted that the 4<sup>th</sup> Respondent was absent and was not represented by counsel although there is in the Court’s file, evidence of service of the Hearing Notice for that date on it. However, the learned counsel for the  
C other Respondents, each adopted their respective Briefs. While the learned counsel for the Appellants adopted their Brief and urged the court to allow the appeal, the learned counsel for the 1<sup>st</sup> to 3<sup>rd</sup> and 5<sup>th</sup> Respondents, urged the court, to dismiss the appeal.

D The facts giving rise to the suit leading to this appeal briefly stated are, that the 1<sup>st</sup> set of Respondents - i.e. Salawe Chieftaincy Family, sometime in 1985 (not 1975 as appears, in 1<sup>st</sup> to 3<sup>rd</sup> Respondents’ Brief) made a request or (application to the Lagos State Government, to make a Chieftaincy Declaration that will regulate succession to the vacant stool of  
E their Salawe of Lagos which was/is a recognized Chieftaincy title under Part II of the Obas and Chiefs Laws of Lagos State, 1981. The 5<sup>th</sup> Respondent, later forwarded a draft chieftaincy Declaration to the Ministry of Local Government and Chieftaincy Affairs for approval and registration.  
F The draft, was approved and duly registered by the State Government. The said Chieftaincy Declaration, recognized four (4) Ruling Houses, namely.

- (1) Rokosu Ruling House
- (2) Okoya Salawe Ruling House
- G (3) Agbaje Salawe Ruling House
- (4) Oke Salawe Ruling House.

Following different claims and counter-claims from rival claimants to the said stool, the Government, referred the matter to the Judicial  
H Tribunal on Chieftaincy Chairmaned by Oshodi J. for investigation and report. The Tribunal in its report, recommended the revocation of the 1986 Chieftaincy Declaration and concluded by recommending Two (2) Ruling Houses, namely, FATOSA and FAYEMI with FATOSA being the



first on rotation basis. The 5<sup>th</sup> Respondent approved the findings and recommendations of the Tribunal. A new Chieftaincy Declaration, was then promulgated by Government.

Aggrieved by the said promulgation, the Appellants, instituted Suit No.LD/3854/95 dated 12<sup>th</sup> September, 1995 and both in Writ of Sum- B  
mons and in paragraph 29 of the Statement of Claim, they claimed the following reliefs:

“(i) *A declaration that there are FOUR (4) RULING HOUSES in the Salawe Chieftaincy Family of Lagos namely:-*  
*Okoya Ruling House, AGBAJE RULING HOUSE, ROKOSU C*  
*RULING HOUSE and OKE RULING HOUSE.*

(ii) *A declaration that all the Ruling Houses are entitled to present candidates to fill the vacant stool of Salawe Chieftaincy Family in the D*  
*following order of Rotation:-*

*ROKOSU RULING HOUSE*

*OKOYA RULING HOUSE*

*AGBAJE RULING HOUSE*

*OKE RULING HOUSE E*

(iii) *A declaration that it is the turn of Rokosu Ruling House to present the next candidate that for (sic) the vacant stool of Salawe of Lagos.*

(iv) *An order of perpetual injunction restraining the Defendants F*  
*whether by themselves, their Servants. Agents and Privies from nominat-*  
*ing or selecting any candidate for filing (sic) the vacant stool of the*  
*Salawe of Lagos.*

(v) *An order of perpetual injunction restraining the Defendant G*  
*whether by himself, his servants, Agents, Privies or functionaries from*  
*approving the nomination or candidate of any person presented by the*  
*1st – 3rd Defendants for purposes of filing (sic) the vacant stool of*  
*Salawe of Lagos”.*

After the parties had filed and exchanged their pleadings, the 1<sup>st</sup> H  
to 3<sup>rd</sup> Respondents thereafter, filed on 8<sup>th</sup> March, 1996, a motion on  
Notice, praying the trial court, to dismiss or strike out the suit on the  
ground that it does not disclose a reasonable cause of action in that:

“(ii)(sic) *The plaintiffs cannot re-open the same decision adjudicated upon in SC/5/1969 and the Judicial Enquiry into Obaship and Recognized Chieftaincy in Lagos State.*

(iii)(sic) *The claim is an abuse of the process of the court”.*

B After hearing arguments, the learned trial Judge, in a considered Ruling, struck out the application as being misconceived and held he had jurisdiction to entertain the said suit.

C Dissatisfied with the said Ruling, the Appellants appealed to the court below. Briefs were filed and exchanged. The court below - per Aderemi, JCA (as he then was), in its Judgment, allowed the appeal holding that the trial court, has no jurisdiction to entertain or determine the suit. It set aside the said Ruling of the trial court and in its place, dismissed the suit also holding that it was a gross abuse of the process of the court. It is against the said decision, that the Appellants have appealed to this Court.

In my respectful view, Issue 2-02 of the Appellants, or Issue I of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents which is substantially, the same as the said Issue 2.02 of the Appellants, is the crucial issue that will finally determine this appeal. **As rightly stated at page 28 of the Records by the learned trial Judge and this is also settled, the issue of jurisdiction of a trial court in any particular case, is determined or decided by the claim in the Writ of Summons and the Statement of Claim - i.e. jurisdiction is determined by the Plaintiffs claim and not by the defendant's denial.** See the cases of *Chief Adeyemi & ors. Opeyori (1976) 9 - 10 S.C. 31 @ 51* and recently, *C.G.G. (Nig.) Ltd. v. Chief Lawrence Ogu (2005) 2 SCN.J. 227 @ 237; (2005) 2 S.C (Pt.II) 50* citing several other cases therein. The trial court referred to the cases of *Prince Mustapha v. Governor of Lagos State & ors. (1987) 2 NWLR (pt.58) 539* (it is also reported in *(1987) 5 SCN.J. 765*) and *Attorney-General, Anambra State v. The Attorney-General of the Federation (1993) 6 NWLR (pt.302) 643-742*. See also *Attorney-General, Anambra State & 13 ors. v. Attorney-General of the Federation & 10 ors. (1994) 3 NWLR (Pt.335) 659 @ 674; (1994) 4 SCN.J. 30*.

**In the case of *Chief Utih & 6 ors. v. Onoyiuwe & 5 ors. (1991)***

1 SCNJ. 25;

Karibi-Whyte, JSC, at page 63 stated as follows:

*“The question whether the court can exercise jurisdiction in an action would depend upon the endorsement of the claim on the Writ of Summons and the reliefs in the Statement of Claim. Thus, where the endorsement on the Writ of Summons and Statement of Claim discloses a cause of action, (and I add as in the instant case leading to the instant appeal) the Court, unless precluded by other statutory provisions can exercise jurisdiction”.*

It has to be borne in mind and this is also settled, that the provisions of Section 236(1) of the 1979 Constitution, gave or conferred on the High Court of a State, unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, interest, obligation or claim is in issue. See the cases of Bronik Motors Ltd. v. Wema Bank Ltd. (1983) 6 S.C. 158; Savannah Bank of Nig. Ltd. v. Pan Atlantic Shipping & Transport Agencies Ltd. & anor. (1987) 1 NWLR (Pt.49) 212; (it is also reported in (1987) 1 SCNJ. 88) and Alhaji Tukur v. Government of Gongola State (1989) 1 NWLR (Pt.117) 517; (it is also reported in (1989) 9 SCNJ. 1) cited and relied on by the trial Judge. See also Attorney-General of Bendel State v. Attorney-General of the Federation & ors. (1982) 3 NCLR 1 and the case of Alhaji Akibu & ors. v. Alhaja Oduntan & ors. (2000) 13 -NWLR (Pt. 685) 446 cited and relied on in the Appellant’s Brief. (It is also reported in (2000) 7SCNJ. 189).

**Therefore, any law, particularly the law of a State, which is in conflict with it, is null and void.** See Fumubo v. Adekunle (1988) 2 NWLR (Pt.79) 723; Chief Oloba v. Akereja (1988) 3 NWLR (Pt.84) 508; (1988) 7 SCNJ. 56 and Moju & anor. v. Fregene & The Probate Registrar (1990) 7 NWLR (Pt.16) 211 C. A.

**When the court below stated at page 77 of the Records, inter alia, as follows:-**

**“..... .The recommendations of the Tribunal are intact. Indeed, they have crystallized into a law - The Chieftaincy Declaration to regulate succession to Salawe Chieftaincy Stool. By that**

Chieftaincy Declaration only two Houses can aspire to the Stool. The invitation to the court below, by the reliefs sought, is to make pronouncement contrary to the Declaration.....”,

it was, with respect, a gross misconception of the state of the

B law.

This is because, it is settled that any law (including a Chieftaincy Declaration) of a State which amounts to a removal or purports to remove Chieftaincy questions or matters from the jurisdiction of a State High Court, is obviously, inconsistent with the provisions of Section 236(1) of the 1979 Constitution of the Federal Republic of Nigeria. See the cases of *Kanada v. Governor of Kaduna State* (1986) 1 NWLR (Pt.35) 361 and *Military Governor of Ondo State v. Adewunmi* (1988) 3 NWLR (Pt.82) 280. Both cases also cited in paragraph 3 of the 5th Respondent’s Brief. See also *Attorney-General of the Federation & 2 ors. v. Sode & 2 ors.* (1990) 1 NWLR (Pt.28) 500; (1990) 3 SCNJ. 1) and *Military Governor of Bendel State & 6 ors. v. Ezaga & 2 ors.* (1990) 6 NWLR (Pt. 154) 19.

E The learned trial Judge, after reproducing the reliefs sought by the Plaintiffs/Appellants, at page 30 of the Records, stated inter alia, as follows:

“The Plaintiffs are not praying this Court to select a particular candidate or themselves as the Chief, neither were they praying the Court to appoint them as a Chief nor did they pray that a particular chief be deposed.

Therefore, the Plaintiffs have not contravened the principles as stated in the *Ajase’s* case *supra*, (i.e. *Ajase v. Aladetuyi* (1995) 6 NWLR (Pt.403) 527 - 544) of presenting a candidate for the vacant stool. All they prayed for were that there are four Ruling Houses for the vacant stool and that it was the turn of a particular Ruling House to present its candidate. The Plaintiffs have therefore not contravened the Obas and Chiefs Law of Lagos State Cap. 138”.

[the underlining is mine]

I agree because, His Lordship was/is right. See also the case of *Military Governor of Ondo Stale & ors. v. Kolawole & ors.* (2000) FWLR

(Pt.3) 395 @ 407. C.A. cited and relied on by the Appellant in their Brief.

**As also rightly stated by the learned trial judge, it is the law, that for a statute to oust the jurisdiction of the court, such statute must be clear and unambiguous in its provisions.** He referred to and relied on the case of Barclays Bank v. Central Bank of Nigeria [1976] All N.L.R. 409; Peenok Investments Ltd. v. Hotel Presidential [1983] 4 N.C.L.R. 122; Attorney-General, Lagos State v. Dosunmu [1989] 3 N.W.L.R. (pt. 111) 552-580 and Kotoye v. Saraki (Mrs.) & Anor. [1994] 7 N.W.L.R. (pt. 357) 414-443 (it is also reported in [1994] 7-8 S.C.N.J. 524).

**He concluded as follows:**

**"Since there are no clear and unambiguous clause in Cap. 138 of Lagos State ousting the jurisdiction of this court, I therefore hold that this court has the jurisdiction to entertain this suit. The motion on Notice brought by the Defendant is therefore misconceived and is accordingly STRUCK OUT."**

**I cannot fault the above, but I will add that even if there is/was an ouster clause in the said law Cap 138, that, obviously, should have been inconsistent with Section 236(1) of the 1979 Constitution and therefore, on the decided authorities, null and void and of no effect.**

In conclusion, this appeal which is meritorious, is allowed by me. I hereby and accordingly, set aside the side decision of the court below and affirm and restore the said judgment of the trial court. I hereby order that the said suit leading to this appeal, be remitted to the Lagos State High Court, Lagos Division for it to be heard and determined on its merits, and expeditious disposal of the case which hearing and determining, has been stalled since 1997 - nine(9) years ago.

Having so held that Issue II of the Appellants or Issue I of the 1st to 3rd Respondents, is the crucial issues for determination in this appeal and it has succeeded, my answer therefore, in respect thereof, is definitely that the said High Court, has jurisdiction to entertain and determine the said suit. In my humble but respectful view, my consideration of the other issues of the parties, will be irrelevant as they become non-issues in

all the circumstances. Except to say that one of the reasons or grounds for the dismissal of the suit by the court below, is/was because, it held, that the said suit, was a gross abuse of the process of the court and not simply on the issue of jurisdiction.

B Costs follow the event. The appellant are awarded N10,000.00 (ten thousand naira) costs payable to them by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents.

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C **KATSINA-ALU JSC**

I have read before now in draft the judgment delivered by my learned brother Ogbuagu JSC. I agree with it and, for, the reasons which he has given I also allow the appeal with costs of N10,000.00 in favour  
D of the appellants against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 5<sup>th</sup>, respondents.

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**KALGO JSC**

E I have read in draft the judgment just delivered by my learned brother Ogbuagu, JSC in this appeal. I have agree with him that issue 2 formulated by the appellant in the brief is the most important one as it touched on jurisdiction and the whole appeal will depend on its resolution  
F one way or the other. He has, in my view, fully and adequately considered the issue in the said judgment and I entirely agree with his reasoning and conclusion thereon. I therefore agree that there is merit in this appeal. I allow it and set aside the decision of the Court of Appeal and restore that of the trial court. I abide by the consequential orders made  
G including the order as to costs.

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**MUKHTAR JSC**

H I have had the advantage of reading in advance the lead judgment delivered by my learned brother Ogbuagu, JSC. I will however briefly by way of emphasize make some contributions.

The appellants who were plaintiffs in a representative capacity in

the High Court of Lagos State sued the respondents claiming the following:-

“(i) A declaration that there are four (4) Ruling Houses in the Salawe Chieftaincy Family of Lagos namely:- Okoya Ruling House, Agbaje Ruling House, Rokosu Ruling House and Oke Ruling House. B

(ii) A declaration that all the Ruling Houses are entitled to present candidates to fill the vacant stool of Salawe Chieftaincy Family in the following order of Rotation:-

Rokosu Ruling House C

Okoya Ruling House

Agbaje Ruling House

Oke Ruling House.

(iii) A declaration that it is the turn of Rokosu Ruling House to present the next candidate that for (sic) the vacant stool of Salawe of Lagos. D

(iv) An order of perpetual injunction restraining the Defendants whether by themselves, their servants, agents and Privies from nominating or selecting any candidate for filling the vacant stool of the Salawe of Lagos. E

(v) An order of perpetual Injunction restraining the 4<sup>th</sup> Defendant whether by himself, his servants, Agents, privies or functionaries from approving the nomination or candidate of any person presented by the 1st -3rd Defendants for purposes of filling the vacant stool of Salawe of Lagos. F

The defendants/respondents after filing their statement of defence filed a notice for further Directions for an order to dismiss/strike out the suit on the ground that it does not disclose reasonable cause of action on the following grounds:- G

(i) That the plaintiffs cannot reopen the same decision adjudicated upon in suit SC/5/1969 and the decision of the Judicial Tribunal of Enquiry into Obaship and recognized chieftaincy in Lagos State. H

(ii) That the claim is an abuse of the process of the court.

An affidavit in support of the above contains inter alia the following pertinent depositions:-

“4. That I am informed by the Solicitors and I believe them that the same evidence given in the lands Registry in LD/19A/87 an appeal from decision of the Registrar of Titles was the same evidence led by all parties in the Judicial Tribunal of Enquiry regarding the Chieftaincy in suit SCTCM/14/92.

5. That I am informed by the solicitors and I believe them that the plaintiffs are ready to use the process of the court to stall progress in the Chieftaincy.”

The learned counsel addressed the court on the motion on notice. The learned trial judge considered the addresses and at the end struck out the motion, on the ground that it had jurisdiction to entertain the suit. Aggrieved by the turn of event the defendant appealed to the Court of Appeal, Lagos division, which allowed the appeal. Dissatisfied the plaintiffs have now appealed to this court on seven grounds of appeal as contained in their amended notice of appeal. Learned counsel exchanged briefs of argument which were adopted at the hearing of the appeal. Five issues were formulated in the appellants’ brief of argument, for determination, and they are as follows:-

“1. Whether or not the appellants’ suit before the High Court constitutes an abuse of court process.

2. Whether or not the High Court has jurisdiction to entertain the appellants’ claim having regard to the powers of the High Court as enshrined in sections 36 and 272(1) of the 1999 constitution (i.e. sections 33 and 236(1) of the 1979 constitution) notwithstanding the fact that a tribunal had looked into the matter and had made a recommendation thereon.

3. Whether or not there was a decision or judgment by a Tribunal of Enquiry and whether or not such a decision or judgment (if any) could strip the High Court of its jurisdiction under section 272(1) of the constitution or limit or restrict its jurisdiction.

4. Whether or not the Court of Appeal could consider extraneous matter not placed before the High Court and made a decision based on such extraneous matters.

5. Whether or not the decision in Hansen v. Radcliffe U.D.C.



(1992) CH.490 at 507 is applicable to the facts of this case.

The 1<sup>st</sup> - 3<sup>rd</sup> respondents raised a preliminary objection in their respondents' brief of argument on the above issues, complaining that the issues are prolix and are not related to the findings and decision of the Court of Appeal. There is also objection to grounds (1), (2) and (5) of appeal, which learned counsel for 1<sup>st</sup> - 3<sup>rd</sup> respondents submitted are not relevant to the decision of the Court of Appeal. Learned counsel for the appellants did not in response to the objections file an appellants' reply brief of argument. Learned counsel for the 1<sup>st</sup> - 3<sup>rd</sup> appellants took steps to cure the defects that led to the objection by filing an amended notice of appeal and their brief of argument. Learned counsel for the respondents did not amend their brief of argument, as I believe they had no cause to do so. It seems therefore that the preliminary objection in their brief of argument has been overtaken by the above event of amendment.

There seems to have been misconception that the decision of the Judicial Tribunal of Enquiry into Obaship and recognized Chieftaincy in Lagos State was one that could fall within the ambit of a decision of a court of law, which could operate as an estoppel per rem judicatam. For the plea of estoppel to succeed a party relying on it must establish certain facts. According to Iguh, JSC in the case of *Achiakpa v. Nduka* 2001 14 NWLR part 734 page 623 at page 648.

*"At all events, it is trite law that for the plea of estoppel per rem judicatam to succeed the party relying on it must establish the following namely:-*

*7. That the parties or their privies involved in both the previous and present proceedings are the same.*

*8. That the claim or issue in dispute in both proceedings is the same.*

*9. That the res or the subject matter of the litigation in the two cases is the same.*

*10. That the decision relied upon to support the plea is valid, subsisting and final; and*

*11. That the court that gave the previous decision relied upon to sustain the plea is a court of competent jurisdiction.*

*Unless all the above pre-conditions are established the plea of estoppel, per rem judicatam cannot be sustained. See Oke v. Atoloye (No.2) 1986 1 NWLR (pt.15) 241 at 260; Yoye v. Olubode and others (1974) 1 All NLR (pt.20 118 at 122; Fadiora v. Gbadebo (1978) 3 SC B 219 at 229 etc. The burden is on the party who sets up the defence of estoppel per rem judicatam to establish the above pre-conditions conclusively”.*

The authors of Halsbury’s Laws of England Fourth Edition Reissue Volume 37 (Practice and Procedure) has in paragraph 1502 (19) on page 486 defined the meaning of final decision thus:-

“*Final decision’ means a decision of a court that would finally determine (subject to any possible appeal or detailed assessment of costs) the entire proceedings whichever way the court decided the issues before it.*”

Underlined above is mine.

The decision relied upon in the instant case is that of a Tribunal of Enquiry and not a court of competent jurisdiction. The respondents herein did not in the circumstance satisfy the above conditions. Moreover they did not even exhibit the said decision to the affidavit in support for the court to see and determine its nature, as is incumbent on it, and without it, it is as good as assuming that there was in fact no decision available to avail the respondents of the defence raised.

The motion of the respondents for dismissal/striking out of the appellants' suit was doomed to fail right from the moment it was filed. It is inconceivable that the learned trial judge would have been inclined to deny the appellants their rights and remedies and deprive them of their constitutional rights, on the strength of what was before the court. The suit did not constitute a gross abuse of the process of the court, and the court below erred in holding that it did. In this wise I am in complete agreement with the reasoning and conclusion of my learned brother Ogbuagu, JSC that the appeal is meritorious and should succeed. I also allow the appeal.

**MOHAMMED JSC**

This appeal is against the judgment of the Court of Appeal Lagos Division delivered on 8-7-1999 allowing the appeal by the first set of respondents setting aside the Ruling of the trial Lagos State High Court of 17-1-1997, in which that court decided that it has jurisdiction to entertain and determine the action brought by the appellants against the respondents. Some the ruling of the trial High Court arose from a motion filed by the first set of respondents virtually challenging the jurisdiction of the trial court, the main and real issue for determination in this appeal is whether having regard to the circumstances of this case on the facts and the applicable law, the trial court has jurisdiction to hear and determine the appellants' suit as filed before that court.

In the determination of this issue, the main question is whether the decision of the standing Tribunal on Chieftaincy Matters of Lagos State, though headed by a retired High Court judge, that the appellants' From Ruling Houses now reduced to Two in the Tribunal's Report submitted to the Government which led to the Promulgation and Registration of the Chieftaincy Declaration being challenged by the appellants in their action, constitutes a decision of course is in the negative as correctly found by the trial court.

It is for this reason that I find myself in full agreement with the judgment of my learned brother Ogbuagu JSC, that this appeal deserved to succeed and I also allow it. The judgment of the court below is set aside. In its place, I restore and affirm the Ruling of the trial court of 17-1-1997. I abide by the order on costs in the lead judgment.