

**SUPREME COURT OF NIGERIA**

9TH MAY, 2008 SC. 160/2002

**CORAM:- I. L. KUTIGI, G. A. OGUNTADE, A. M.  
MUKHTAR, F. F. TABAI, I. T. MUHAMMAD, JSC**

1. THE MILITARY GOV. OF ONDO STATE
2. THE ONDO STATE COMM. FOR LOCAL  
GOVT. AND CHIEFTAINCY AFFAIRS
3. THE SECRETARY MOBA LOCAL GOVT ..... DEFENDANTS/
4. OSENI OMOMEJI APPELLANTS
5. IDOWU ADEBIYI (For himself and on  
behalf of Gbogi Family).
6. AJEKIGBE ELEREBI (For himself and  
on behalf of Sakaraita Family).

**AND**

1. JAMES OLAGUNJU KOLAWOLE  
(For himself and on behalf of Obajeu  
Ruling House)
2. JAMES BABALOLA KODE  
(For himself and on behalf of  
Imoro Ruling House)
3. JOSEPH ADEBAYO OYINLOYE ..... PLAINTIFFS/  
(For himself and on behalf of Ile-Titun RESPONDENTS  
Ruling House).
4. SAMUEL ADEBOWALE ADEAGBO  
(For himself and on behalf of Ile- Iyaba  
Ruling House)
5. SAMUEL AJAYI  
(For himself and on behalf of Imoya  
Ruling House)

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JURISDICTION - Issue of - Time of raising - Statute of limitation - Is  
an issue of jurisdiction - And may be raised for the first time - Even at  
the Supreme Court - Without the need for any leave (H1)

PRACTICE & PROCEDURE - Claims - Proper order to make - On a  
claim without merit - Established practice is that - Where full hearing  
is had on a case - And a claim or relief is found to lack merit - Proper

order to make - Is an order for dismissal (H2)

ACTIONS - Reliefs - Conflicts - Where allowing relief number 3 - Would conflict with other reliefs granted by the trial court - It is necessary to dismiss it - As to enable the other reliefs stand (H3)

ACTIONS - Declaratory reliefs - Jurisdiction of court - Court has inherent jurisdiction - To grant declaratory reliefs - Where asked for - By a party before it - As done by the Court of Appeal - In respect of relief number 3 (H4)

EVIDENCE - Courts - Evaluation of evidence - Trial court has fundamental duty - To evaluate evidence placed before it - Appeal court will not interfere with findings thereon - Except special circumstances are shown (H5)

### ***FACTS***

The Plaintiffs/Respondents were from five different ruling houses of Oore of Otun throne in Ondo State, now Ekiti State. Each sued on his behalf and on behalf of his family belonging to his ruling house. The 4th to 6th Defendants/Appellants were each sued in his own behalf and on behalf of his family house. The 1st Defendant/Appellant is the Chief executive of Ondo State and is empowered to approve/disapprove of any amendment to or the making of any new chieftaincy declaration by Chieftaincy Committees in the state. The 2nd Defendant/Appellant is the Commissioner for Local Government and Chieftaincy affairs in Ondo State. The 3rd Defendant/Appellant is the Secretary to Moba Local Government, who sets in motion the machinery for filling a vacancy created in any recognized chieftaincy. Respondents have sued the Appellants at the High Court of Ondo State for Sundry reliefs centered on the nullification of the 1984 chieftaincy declaration of Oore of Otun, which declaration purportedly established three ruling houses - Sakaraita, Igbaleno and Adifagbade ruling houses. It is the case of the Respondents that there are five ruling houses for the Oore of Otun chieftaincy - Imoro, Ile Obajeu, Imoya, Ile Titum and Ile Iyaba ruling houses. They averred that the Obasinkin Chieftaincy title is reserved for the rest members and fami-

lies of Otun community among whom the 4th to 6th Appellants families belonged. The 6th Respondent was from the Sakaraita family. It was alleged that Sakaraita family was not an Oore of Otun but a herbalist and a palace messenger. In 1957, a chieftaincy declaration was made by the government for the Oore of Otun Cheftaincy wherein only four ruling houses were erroneously recognized - Imoro, Ile Obajeu, Ile Titun and Ile Iyaba. This remained uncorrected despite appeals and protests by Otun Ekiti people in 1957.

In 1972, the chieftaincy committee of Otun Ekiti District council then having jurisdiction over Otun-Ekiti Chieftaincy made a chieftaincy declaration reflecting the five ruling houses correctly. But the declaration was neither approved nor registered by the government of the time. About 1977, the Morgan Commission of Enquiry, set up to investigate the customary law on the issue and make recommendations thereon, recommended the re-structuring of the ruling houses into three - Igbaleno, Sakarita and Adifagbade ruling houses. Protests greeted that recommendation. But a second commission set up to revisit the issue also made the same recommendation in the end, as a result of which the 1984 declaration was made. After trial the learned trial judge gave judgment to the Respondents as prayed. The appeal of the Appellants to the Court of Appeal was dismissed. Hence they have brought this further appeal to the Supreme Court. Before the Supreme Court, the Respondents raised a preliminary objection that part of issue 1 formulated from ground 7 of the Notice of Appeal on Statute of Limitation was a fresh point raised without leave.

### **ISSUES FOR DETERMINATION**

#### **"Issue One**

*Whether or not the lower court properly exercised its jurisdiction in failing and/or refusing to dismiss the decision of the trial court in all the circumstances of this appeal/case? Grounds 1 and 7.*

#### **Issue Two:**

*Whether there was any justifiable reason for the lower court to discountenance admissible evidence while giving cognizance to inadmissible evidence thus, depriving the appellants a well deserved victory? Grounds 2, 5, and 6.*

#### **Issue Three:**

*Whether or not the lower court should not have set aside the*

*decision of the trial court in view of the totality of the evidence on record before it. Grounds 3, 4, and 8.”*

**HELD** (Unanimously dismissing the appeal per **MUHAMMAD JSC**)  
**JURISDICTION - Issue of - Time of raising**

B 1. I prefer to go by the submissions of learned counsel for the appellants that ground 7 borders on jurisdiction of the lower court to adjudicate and decide on non-existent claim or stale claims. Again, statute of limitation is a condition precedent which a case must fulfill prior to  
C its being said to be properly before the court.

It is trite that the issue of jurisdiction by whatever name and under any shade, can be raised at any stage. It can be raised viva voce or the court can raise it suo motu.

D This court, in a number of decisions, made several pronouncements on the inevitability of allowing issues of jurisdiction to be raised for the first time even without the need for any leave since this court is court of last resort. This is so, in order to allow ends of justice meet and prevent obvious miscarriage of justice.

E I accordingly dismiss the Preliminary Objection as lacking in merit and will prefer to decide the appeal on its merit. (p. 2092 E)

**Proper order to make - On a claim without merit**

F 2. The court below disagreed with the trial court on the grant of relief No. 3.

Thus, the views held by the lower court on relief number 3 is that it should not have been granted. The lower court dismissed the appeal and affirmed the judgment of the trial court except in respect of relief number 3. The lower court, I observe, failed to state the consequential order after refusal of relief number 3, whether it ought to have  
G been dismissed or struck out. Be that as it may, the established practice is that where full hearing of a case is taken to its logical conclusion, and where the claim or relief is found to be lacking in merit, the consequential order that follows is that of dismissal of the claim or  
H relief. (pp. 2094 C/2095 A)

**ACTIONS - Reliefs - Conflicts**

3. When one looks at the order made by the lower court on relief

number 3 in relation to other reliefs granted by the trial court and affirmed by the lower court, one would think, as did the learned counsel for the appellants that the lower court had removed the carpet from under the case of the respondents and there is no longer any live issue to be contested and all other . Issues or claims became mere academic, moot and theoretical. On a closer examination of all the reliefs and the antecedents of the case, however, I find myself in disagreement with the learned counsel on this submission. Allowing relief number 3 to stand as it is, would conflict with the other reliefs granted by the trial court. The dismissal of relief number 3 now leaves other reliefs free of any conflict. And now that legal declarations and injunctions are made by the trial court and affirmed by the court below, it follows that the 1984, Oore of Otun-Ekiti chieftaincy declaration which did not reflect ‘ the true and authentic custom relating to the Oore of Otun-Ekiti chieftaincy loses its effect as it has been declared null, void, invalid and illegal. By the same token, a declaration has now been made by the trial court that the only ruling houses entitled to present candidates for appointment and installation as Oore of Otun-Ekiti are Imoro, Ile Obajeu, Imoya, Ile Titun and Ile lyaba. This is of same application to the other reliefs granted and affirmed by the court below. (pp. 2095 E/2096 B)

***Declaratory reliefs - Jurisdiction of court***

4. It is not unusual for a High Court to grant declaratory reliefs where asked for by a party before it. In the case of Eguamwense v. Amaghizemwen (1993) 9 NWLR (Pt. 315) 1 at page 20, this court, per Uthman Mohammed, JSC., stated:-

*"These two claims fall within the supervisory Jurisdiction of the High Court over decisions of the prescribed authority. All the decided authorities referred to in this appeal disclose a settled law that unless the jurisdiction is clearly excluded, the High court has power to interfere with the decisions of statutory tribunals. It is also settled law, that an aggrieved party can invoke the jurisdiction of the High Court by way of declaration in seeking for such decisions to be set aside in the case in hand; the appellants can invoke by way of a declaration the supervisory jurisdiction of the High Court to correct fundamental errors of law committed by the prescribed authority."*

In 1998, the Honourable Chief Justice of Nigeria, Kutigi JSC., (as he then was) had this to say:

*“And having agreed with the views and conclusion of the Court of Appeal above, the issues herein for resolution must be decided against the appellants. Edict No. 16, of 1979 in Section 22 subsections (2),(3) & (6) prescribed no condition precedent to the exercise of jurisdiction by High Court.....”*

*..... While I do not quarrel with the exercise of a domestic forum for settlement of chieftaincy dispute, an aggrieved person should be free to decide if and when he should go there and it should not be to his detriment if he is dissatisfied with such a decision and wants to go to court on the same dispute.”*

The lower court was right in its decision on relief number 3 of the respondents ‘Brief as contained in their Amended Statement of Claim. (p. 2096 E)

### ***Courts - Evaluation of evidence***

5. The complaints in these issues are dealing with matter of evaluation and of admission or rejection of evidence which the trial court had undertaken. I observe that issue no. 2 which was raised by the appellants before the court below as issue number 3. The court below made a finding on it on page 501 of the printed record of proceedings, which states, inter alia:

*“It does not seem to me that from the evidence adduced, the learned trial Judge gave the respondents “a blanket judgment.” The judgment is supported by evidence. In my considered view, the learned trial Judge in arriving at the judgment relied on the events in recent years including Exhibit 13 - the intelligence report. He was right in doing so.”*

It is trite that when it comes to evaluation and ascribing of probative value to evidence placed before a trial court, that court has the fundamental duty to do so. Rarely do appeal courts interfere except special circumstances are shown to exist. Further, it is the law that wrongful admission of evidence or wrongful exclusion of evidence does not result in the reversal of a decision when it has not affected the decision of the trial court such that it would have been different if the error had not been committed (if at all).

Thus, from what I have read from the printed record and the law, I am more than convinced that the court below was right in affirming the judgment of the trial court, having satisfied itself with the evaluation of the evidence placed before the learned trial Judge. It is not that easy for me to interfere with the concurrent findings of the two lower courts where no miscarriage of justice has been shown to exist. (p. 2098 G) B

***NOTABLE POINT OF INTEREST***

***TABAI JSC*** C

1. *Action is not statute barred as cause of action only arose on registration of declaration*

In *Akilu v. Fawehinmi* (No.2) (1989) 3 S.C. (Pt. II) 1; (1998) 2 NWLR (Pt. 102) 122 at 169, this court, Per Karibi-Whyte JSC., spoke of the phrase thus:- D

*“Cause of action has been held to mean every fact which is material to be proved to entitle a plaintiff to succeed, or all those things necessary to give a right to relief in law or equity.”*

And in *Amodu v. Amodu* (1990) 9-10 S.C 61; (1990) 5 NWLR (Pt. 150) 356 at 367, this court quoted with approval its definition in *Hernaman v. Smith* (1855) 10 Exch. 659 at 666 thus:- E

*“The term “cause of action” means all those things necessary to give a right of action whether they are to be done by the plaintiff or a third party.”* F

It is clear from the above definitions, which I adopt, that it is the totality of the factual situation in a case which entitles the plaintiff to a relief or reliefs that constitutes the phrase “cause of action. ”

The contention of the plaintiffs/respondents is that it was on the registration of this Otun-Ekiti chieftaincy declaration on the 31/12/84, that the cause of action accrued to them. I am persuaded by this argument of the respondents. Their agitation following the 1957 declaration was for the inclusion of Imoya ruling house which request was granted by the Layiwola Commission report. It is the compression of the five ruling houses into two and the addition of a Sakaraita ruling house that gave rise to this new cause of action. And it is on the final registration of the said chieftaincy declaration on the 31/12/84, that a cause of action accrued to the plaintiffs. And having H

regard to the fact that this action was filed on the 26/3/85, it is not caught by the provisions of Section 2(a) of the Public Officers Protection Act. The result is that this action is not statute barred.  
(pp. 2101 H/2103 A)

**B** **REPRESENTATION**

Dayo Akinlaja, for the Appellants.  
Adekola Olawoye, for the Respondents.

**C** **CASES REFERRED TO**

- Seimograph. Ltd. v. Ogbein (1976) 4 S.C. 85  
State v. Aibangbee (1988) 7 S.C. (Pt. I) 96  
Oniah v. Onyia (1989) 2 S.C. (Pt. I) 69  
Okpala v. Ibeme (1989) 3 S.C (Pt.I) 61  
D Olayiole v. Ogo (1969) 1 All NLR 281  
Green v. Green (1987) NWLR (Pt. 16) 481  
Ogbechi v. Onochie (1988) 1 NWLR (Pt. 70) 370

**STATUTE & RULES REFERRED TO**

- E** Constitution of the Federal Republic of Nigeria 1979, ss. 1(1), 2(a), 3(1), 96(6)(b), 22(2), (3), (6) & 236(1)  
Evidence Act, s. 227  
Ondo State Chiefs Edict ( No. 11) of 1984, s. 16(10)

**F**

**LEAD JUDGMENT BY MUHAMMAD JSC**

The plaintiffs/respondents were from five different ruling houses of Oore of Otun throne in Ondo State, now Ekiti State. Each sued on his behalf and on behalf of his family belonging to his ruling house.

- G** They all averred that each has interest and and a right to become Oore of Otun.

The 1st - 3rd defendants/appellants were each sued in his own behalf and on behalf of his family house.

- H** The 4th defendant is the Chief Executive of Ondo State who is empowered to approve/disapprove of an amended or new chieftaincy declaration made by a chieftaincy committee or amend or make a new declaration. The 5th defendant/appellant is the Commissioner for Local Government and chieftaincy affairs in-Ondo State.

The 6th defendant/appellant is the Secretary to Moba Local Government who sets in motion the machinery for filling a vacancy created in any recognized chieftaincy.

Plaintiffs averred that there are ruling houses for the Core of Otun Chieftaincy:

*“(a) Imoro ruling house.*

*(b) Ile Obajeu ruling house.*

*(c) Imoya ruling house.*

*(d) Ile Titun ruling house; and*

*(e) Ile Iyaba ruling house.”*

They further averred that each of the ruling houses had at least one opportunity to provide the Oore of Otun.

They averred that the Obasinkin chieftaincy title is reserved for the rest members and families of the Otun community among such were title holders including the 1st - 3rd defendants families.

3rd defendant was from Sakaraita family, one of the ruling houses. It was alleged that Sakaraita was not an Oore of Otun but a herbalist and a palace messenger. He was not buried in the palace but he had a shrine in the palace premises.

In or about 1957, a chieftaincy declaration was made by the government for the Oore of Otun chieftaincy in which only four ruling houses viz: Imoro, Ile Obajeu, Ile Titun, Ile Iyaba were erroneously stated as the ruling houses entitled to present candidates for any vacancy in the Oore of Otun Chieftaincy. This remained unconnected despite appeals and protests by Otun Ekiti people in 1957.

In 1972, the chieftaincy committee of the Otun Ekiti District Council then having jurisdiction over Otun-Ekiti chieftaincy made a chieftaincy declaration reflecting the five ruling houses but the same was neither approved nor registered by government at the time.

In 1977, or thereabout, the government of Ondo State set up the Morgan Commission of Enquiry to investigate the customary law relating to the appointment of all recognized chieftaincies in Ondo State and make necessary recommendations with respect thereto. This commission recommended for the restructuring of the ruling houses into three ruling houses:

*“1. Igbaleno.*

*2. Sakaraita; and*

3. Adifagbade.”

Protests greeted that recommendation and as a result Layiwola chieftaincy review commission was set up. That commission made the same recommendation as Morgan’s commission.

B The 1984, chieftaincy declaration for Oore of Otun established three ruling houses:

“1. Sakaraita ruling house

2. Igbaleno ruling house; and

3. Adifagbade ruling house.”

C It was this re-structuring of the existing ruling houses that was the cause of action by the plaintiffs/respondents.

At the close of evidence and after final addresses by learned counsel for the respective parties, the learned trial Judge in a considered judgment, held among others:

D “The plaintiffs are entitled to judgment against the defendants on all the seven endorsements in their Amended Writ of Summons filed in this court on the 17th December, 1985 and I, so order.”

E On appeal to the court below, that court, after reviewing the record of appeal, the grounds of appeal and the issues raised by learned respective counsel and their submissions, came to the conclusion of dismissing the appeal. In doing so, the court below per Amaizu, JCA., observed:-

F “It does not seem to me that from the evidence adduced, the learned trial Judge gave the respondents “a blanket judgment.” The judgment which is the subject of this appeal in this court is supported by evidence. In my considered view, the learned trial Judge in arriving at the judgment relied on the events in recent years including Exhibit 13 - the intelligence report. He was right in doing so.

G Finally, I observe that it has been established by decided cases that a High Court where appropriate, and if requested may declare a chieftaincy declaration, null and void. For the reasons I have given earlier in this judgment the present suit is a good example of a case where a High Court declares a chieftaincy declaration, null and void.

H I observe further that Section 16 of the Chiefs Edict, 1984 of Ondo State provides:

‘(1) The executive council may cause such inquiries to be held at such times and in such places and by such person or persons as it

*may consider necessary or derivable for the purpose of this Edict.’*

*The above provision is clear and unambiguous. It follows that the appointments of Morgan and Layiwola Commissions are in order. This being the case relief No. 3 sought by the respondents in the lower court should not have been granted.*

*In the result the judgment of the lower court is affirmed except in respect of relief No. 3. The appeal is dismissed.....”* B

Dissatisfied with the judgment of the court below, the appellants filed their notice and grounds of appeal to this court. Each of the parties complied with our rules on Brief writing. C

Learned counsel for the appellants formulated the following issues:

*“Issue One*

*Whether or not the lower court properly exercised its jurisdiction in failing and/or refusing to dismiss the decision of the trial court in all the circumstances of this appeal/case? Grounds 1 and 7.* D

*Issue Two:*

*Whether there was any justifiable reason for the lower court to discountenance admissible evidence while giving cognizance to inadmissible evidence thus, depriving the appellants a well deserved victory? Grounds 2, 5, and 6.* E

*Issue Three:*

*Whether or not the lower court should not have set aside the decision of the trial court in view of the totality of the evidence on record before it. Grounds 3, 4, and 8.”* F

The respondents on their part formulated 3 issues as well. They are:

*“1. Is this case statute barred having regard to the claims of the plaintiffs/respondents? Covers ground 7.* G

*2. Whether or not the appellants were unjustly denied victory by the lower court in the way and manner issues brought for determination before it were resolved in favour of the plaintiffs/respondents? Covers grounds 1, 2, 5, 6, and 8.*

*3. Whether or not it is right and proper in law for the lower court judging from the evidence on the record of appeal and the appraisal of same, to uphold the findings of facts made by the trial court and based its decisions on same thereby dismissing this appeal?* H

*Covers grounds 3 and 4.”*

Learned counsel for the respondents raised a Preliminary Objection which, both its notice and submissions thereon, are embedded in the Brief of Argument.

There are two grounds upon which the Preliminary Objection  
B was based:

“(1) Part of issue 1 formulated from ground 7 of the Notice of Appeal that is on Statute of Limitation is a Fresh point being raised for the first time by the appellants; and

C (2) That a fresh point like the one on the said statute of limitation will not be entertained by this court if it had not have the benefit of the views of the Justices of the lower court. Learned counsel for the respondents cited and relied on several authorities including Lewis & Peat (NRI) Ltd. v. Akhimien (1976) 6 S.C. (Reprint) 159; (1976) 1  
D All NLR 46 at 465, Fadiora v. Gbadebo (1978) 3 S.C. 219; (1978) 3 S.C. (Reprint) 149, et cetra.

I have read all the submissions made by learned counsel for the respondents and the Reply made by learned counsel for the appellants in his Reply Brief.

E ***I prefer to go by the submissions of learned counsel for the appellants that ground 7 borders on jurisdiction of the lower court to adjudicate and decide on non-existent claim or stale claims. Again, statute of limitation is a condition precedent which a case must fulfill prior to its being said to be properly before the court.***  
F

***It is trite that the issue of jurisdiction by whatever name and under any shade, can be raised at any stage. It can be raised viva voce or the court can raise it suo motu.*** See: Nigerian Deposit Insurance Corporation (NDIC) v. Nigerian Bottling Company (NBC) (2002) 7 NWLR (Pt. 766) 272 at 292, 293-294.  
G

***This court, in a number of decisions, made several pronouncements on the inevitability of allowing issues of jurisdiction to be raised for the first time even without the need for any leave since this court is court of last resort. This is so, in order to allow ends of justice meet and prevent obvious miscarriage of justice.*** See: Oniah v. Onyia (1989) 2 S.C. (Pt. I) 69; (1989) 1 NWLR (Pt 99) 514 at 540, Attorney-General of Oyo State  
H

v. Fairlakes Hotel Ltd. (1988) 12 S.C. (Pt. I) 1; (1988) 5 NWLR (Pt. 92) at 59.

***I accordingly dismiss the Preliminary Objection as lacking in merit and will prefer to decide the appeal on its merit.***

In dealing with the issues raised, I intend to adopt the issue formulated by the learned counsel for the appellants. B

Issue No. 1:

This issue is premised on the striking out of relief No. 3 of the reliefs sought by the appellants. Learned counsel's submission on behalf of the appellants can be summarized as follows: C

"(a) That by striking out relief No. 3, there was no longer any life issue to be contested and the remaining issues/claims become mere academic. The following cases were cited in support: Ezeanya v. Okeke (1995) 4 NWLR (Pt. 388) 42 at 165, Badejo v. Federal Ministry of Education (1996) 5 NWLR (Pt. 464) 15. D

(b) On relief 4: by affirming the decision of the trial court, the court below validated the respondents' claim as contained in relief 4 concerning the complaints on the proceedings, findings, and recommendations of the Olayiwola Commission which formed the basis of the registration of the Chiefs Edict on 31st December, 1984. E

(c) Respondents claim was statute barred. On the assertion that the claim of the respondents was based on a cause of action which arose in 1946 or 1957, 1977 or 1978 or 1984 and therefore, statute barred as the respondents cannot claim against the commissions of enquiry outside 3 months as prescribed by Section 21 (a) of the Public Officers (Protection) Act. Learned counsel cited several cases in support including Ibrahim v. Judicial Commission (1998) 12 S.C. 20; (1998) 14 NWLR (Pt. 584) 1, Western Steel Union v. Iron Steel (1986) 2 NWLR (Pt. 30) 617 at 627-628. F G

(d) Error committed in not stating the reliefs claimed in the further and better Amended Statement of Claim. Learned counsel stated that the position of the law where a claim stated in the Writ of Summons and not repeated in the Statement of Claim is abandoned as Statement of Claim supercedes a Writ of Summons. Cases of Otanioku v. Alii (1977) 11-12 S.C. at 12-13; (1977) 11-12 S.C. (Reprint) 6, Lahan v. Lajoyetan (1972) 6- 9 S.C. 19 at 190; (1972) 6 S.C. (Reprint) 106. H

The first point raised under this issue is the striking out of relief No. 3 from the plaintiffs' reliefs. Below is relief number 3;

“(3) Declaration that the appointment and the proceedings including the findings and/or recommendations of the Olayiwola’s Commission of Enquiry were not in accordance with the law and therefore, irregular, illegal, invalid, null and void and of no effect.”  
 (See: page 99 of the printed record of appeal).

At the end of valuation of all the evidence led before him, the learned trial Judge concluded by the following words:

“Upon the whole, I am satisfied that the plaintiff have (sic) adduced a preponderance (sic) of evidence in support of their (sic) case against the defendants to entitle them to judgment. I hold that the 3rd plaintiff and the P.W.1 are witnesses of truth and I am impressed by their evidence on all the points in which the parties joined issues. The plaintiffs are therefore, entitled to judgment against the defendants on all the seven endorsements in their Amended Writ of Summons filed in this court on the 17th December, 1985; and I so order.”

**The court below disagreed with the trial court on the grant of relief No. 3.** The court, per Amaizu, JCA., stated:

“Finally I observe that it has been established by decided cases that a High Court where appropriate, and if requested may declare a chieftaincy declaration, null and void. For the reasons I have given earlier in this judgment the present suit is a good example of a case where a High Court can declare a chieftaincy declaration null and void.

I observe further that Section 16 of the Chiefs Edict, 1984, Ondo State provides:

(1) The executive council may cause such inquiries to be held at such times and in such places and by such person or persons as it may consider necessary or desirable for the purposes of this Edict.

The above provision is clear and unambiguous. It follows that the appointments of Morgan and Layiwola Commissions are in order. This being the case Relief 3 sought by the respondents in the lower court should not have been granted.

In the result, the judgment of the lower court is affirmed except in respect of relief number 3. The appeal is dismissed.”

**Thus, the views held by the lower court on relief number 3 is that it should not have been granted. The lower court dismissed the appeal and affirmed the judgment of the trial court except in respect of relief number 3. The lower court, I observe, failed to state the consequential order after refusal of relief number 3 , whether it ought to have been dismissed or struck out. Be that as it may, the established practice is that where full hearing of a case is taken to its logical conclusion, and where the claim or relief is found to be lacking in merit, the consequential order that follows is that of dismissal of the claim or relief.** See: Okpala v. Ibeme (1989) 3 S.C (Pt.I) 61; (1989) 3 NWLR (Pt.102) 208, Olayiole v. Ogo (1969) 1 All NLR 281, Green v. Green (1987) NWLR (Pt. 16) 481, Ogbechi v. Onochie (1988) 1 NWLR (Pt. 70) 370.

The appellants, in their issue No. 7 before the lower court urged the lower court, *“to dismiss the plaintiffs’ claims 1, 2 and 3 as not having been proved on the preponderance of evidence and the law.”* This forms part of the reliefs sought by the appellants in their Notice of Appeal before the court below. I think the court below was right in its decision in respect of relief number 3.

**When one looks at the order made by the lower court on relief number 3 in relation to other reliefs granted by the trial court and affirmed by the lower court, one would think, as did the learned counsel for the appellants that the lower court had removed the carpet from under the case of the respondents and there is no longer any live issue to be contested and all other . Issues or claims became mere academic, moot and theoretical. On a closer examination of all the reliefs and the antecedents of the case, however, I find myself in disagreement with the learned counsel on this submission.** This is for the simple reason as submitted before the court below by learned counsel for the appellants, that:-

*“Exhibit D I or D16 was made, approved and registered in accordance with the provisions of the Ondo State Chiefs Edict, (No. 11) of 1984. Section 16(1) of the Edict empowers the Executive Council to cause enquiries to be made for the 15 purposes of the edict. Sections 1 (1), 2 (a), 3(1), 3(2) and 3 (2), (a) and (b) of the*

*Edict cover this submission. There is no evidence that Exhibit D 1 or D16 did not go through the process prescribed by that Edict. It will be noted that the learned trial Judge did not say anything, or examine the Edict or make pronouncement as to whether or not it was complied with in his judgment before he found in favour of the plaintiffs on those three claims. The three claims are the substance of the plaintiffs' claims. The other claims are ancillary to them."*

Secondly, **allowing relief number 3 to stand as it is, would conflict with the other reliefs granted by the trial court. The dismissal of relief number 3 now leaves other reliefs free of any conflict. And now that legal declarations and injunctions are made by the trial court and affirmed by the court below, it follows that the 1984, Oore of Otun-Ekiti chieftaincy declaration which did not reflect 'the true and authentic custom relating to the Oore of Otun-Ekiti chieftaincy loses its effect as it has been declared null, void, invalid and illegal. By the same token, a declaration has now been made by the trial court that the only ruling houses entitled to present candidates for appointment and installation as Oore of Otun-Ekiti are Imoro, Ile Obajeu, Imoya, Ile Titun and Ile Iyaba. This is of same application to the other reliefs granted and affirmed by the court below. Lest I forget, I think I should mention that it is not unusual for a High Court to grant declaratory reliefs where asked for by a party before it. In the case of Eguamwense v. Amaghizemwen (1993) 9 NWLR (Pt. 315) 1 at page 20, this court, per Uthman Mohammed, JSC., stated:-**

*"These two claims fall within the supervisory Jurisdiction of the High Court over decisions of the prescribed authority. All the decided authorities referred to in this appeal disclose a settled law that unless the jurisdiction is clearly excluded, the High court has power to interfere with the decisions of statutory tribunals. It is also settled law, that an aggrieved party can invoke the jurisdiction of the High Court by way of declaration in seeking for such decisions to be set aside in the case in hand; the appellants can invoke by way of a declaration the supervisory jurisdiction of the High Court to correct fundamental errors of law committed by the prescribed*

**authority.”**

Onu, JSC., in *Oladoye v. Administrator of Osun State* (1996) 10 NWLR (Pt. 476) 38 at page 61-63, stated inter alia:-

*“clearly therefore, the declaration sought by the appellants in the instant case as reliefs 1 and 4 in the trial court which it declined to grant are declarations sought under Sections 6(6) (b) and 236(1) of the 1979, Constitution (ibid).”* B

**In 1998, the Honourable Chief Justice of Nigeria, Kutigi JSC., (as he then was) had this to say:**

***“And having agreed with the views and conclusion of the Court of Appeal above, the issues herein for resolution must be decided against the appellants. Edict No. 16, of 1979 in Section 22 subsections (2), (3) & (6) prescribed no condition precedent to the exercise of jurisdiction by High Court.....”*** C

***..... While I do not quarrel with the exercise of a domestic forum for settlement of chieftaincy dispute, an aggrieved person should be free to decide if and when he should go there and it should not be to his detriment if he is dissatisfied with such a decision and wants to go to court on the same dispute.”*** D  
E

**The lower court was right in its decision on relief number 3 of the respondents ‘Brief as contained in their Amended Statement of Claim.**

This settles issue number 1 in favour of the respondents. F

Issue No. 2:

Appellants’ issue number 2 is on the trial court’s discountenancing admissible and germane documentary evidence while giving cognizance to inadmissible evidence which the court below affirmed. Learned counsel for the appellants cited the instances of Exhibits 8 and 12 which were admitted without objection. The learned trial Judge, argued the learned counsel for the appellants, deliberately and most curiously underplayed this strong evidence in preference for other documents such as Exhibits D2 and 13 and even a David Atolagbe’s book which was not in evidence before him. Learned counsel argued that as there were admissions in the two documents it was beyond any peradventure as to the bindingness of the documents with regard to the issues brought to the fore before the trial court and G  
H

consequently the court below. These exhibits needed no further proof. The learned trial Judge's findings on these documents occasioned a serious miscarriage of justice. He cited several authorities including *Seimograph. Ltd. v. Ogbein* (1976) 4 S.C. 85; (1976) 4 S.C. (Re-print) 155, *State v. Aibangbee* (1988) 7 S.C. (Pt. I) 96; (1988) 3 B NWLR (Pt 84) 548 at 577, *Oniah v. Onyia* (1989) 2 S.C. (Pt. I) 69; (1989) 1 NWLR (Pt. 99) 514. He finally urged this court to answer this issue in the negative and in favour of the appellants.

Learned counsel for the respondents submitted that the 2nd C issue centres on concurrent findings of fact of the two lower courts which this court will not interfere with unless the appellants can show special circumstances either that there was a miscarriage of justice or a serious violation of some principles of law or procedure that has been occasioned. He cited the case of *Ogunbiyi v. Ishola* (1996) 6 D NWLR (Pt. 452 ) 12 at page 24- E - F. Learned counsel submitted that the lower court has properly reviewed, evaluated and appraised the findings of fact and decisions reached on them by the trial court before affirming them on the two exhibits that is Exhibits 8 and 12. The learned counsel for the respondents submitted that the two ex- E hibits are not evidence of admission that are binding on all the plain- tiffs/respondents. They were found by the trial court to have no evi- dential value. The lower court acted properly according to law in its finding of fact and affirmation of the decision of the learned trial Judge. Learned counsel urged this court not to interfere with the F decision of the lower court affirming the findings of facts of the trial court.

My Lords, it seems to me issues 2 and 3 are closely interre- lated. I shall treat same simultaneously.

G ***The complaints in these issues are dealing with matter of evaluation and of admission or rejection of evidence which the trial court had undertaken. I observe that issue no. 2 which was raised by the appellants before the court below as issue number 3. The court below made a finding on it on page 501***  
H ***of the printed record of proceedings, which states, inter alia: "It does not seem to me that from the evidence adduced, the learned trial Judge gave the respondents "a blanket judg- ment." The judgment is supported by evidence. In my consid-***

***ered view, the learned trial Judge in arriving at the judgment relied on the events in recent years including Exhibit 13 - the intelligence report. He was right in doing so.***

Again, earlier on, the court below held:-

*“In the light of the above, I do not agree with the submission of the learned counsel for the 2nd set of the appellants that the learned trial Judge did not weigh the evidence of the parties before coming to the above conclusion.”*

***It is trite that when it comes to evaluation and ascribing of probative value to evidence placed before a trial court, that court has the fundamental duty to do so. Rarely do appeal courts interfere except special circumstances are shown to exist.*** See: Agbabiaka v. Saibu & Ors. (1989) 7 S.C. (Pt. II) 167; (1998) 7 SCNJ 305, Danmainagge v. Gwamna (2004) 7 SCNJ 361, Ogunbiyi v. Ishola (1996) 6 NWLR (Pt. 459) 12.

***Further, it is the law that wrongful admission of evidence or wrongful exclusion of evidence does not result in the reversal of a decision when it has not affected the decision of the trial court such that it would have been different if the error had not been committed (if at all).*** See: Section 227 of the Evidence Act; Ojengbede v. Esan & Anor. (2001) 12 S.C (Pt. II) 1; (2001) 12 SCNJ 401.

***Thus, from what I have read from the printed record and the law, I am more than convinced that the court below was right in affirming the judgment of the trial court, having satisfied itself with the evaluation of the evidence placed before the learned trial Judge. It is not that easy for me to interfere with the concurrent findings of the two lower courts where no miscarriage of justice has been shown to exist.*** The two issues, that is numbers 2 and 3, are hereby resolved in favour of the respondents.

In conclusion, I find no merit in this appeal. I dismiss the appeal. I award costs of N50,000.00 (Fifty Thousand Naira) to the plaintiffs/respondents against the appellants.

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### **KUTIGI JSC**

I have had the privilege of reading before now the judgment

just delivered by my learned brother, Muhammad, JSC. I agree with his reasoning and conclusions. The appeal is clearly without merit. It is accordingly dismissed with N50,000.00 costs against the appellants and in favour of the plaintiffs/respondents.

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**B** **OGUNTADE JSC**

I have had the advantage of reading in draft a copy of the leading judgment by my learned brother. Muhammad, JSC. I agree with him that this appeal has no merit. I would also dismiss it with  
C N50,000.00 costs against the appellants in favour of the respondents.

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**MUKHTAR JSC**

I have read in advance the leading judgment delivered by my learned brother, Muhammad, JSC. This appeal is basically against  
D concurrent findings of facts of two lower courts, (the third issue for determination raised by learned counsel for the appellants being that of evaluation of evidence). This has been thoroughly dealt with in the leading judgment, and the position of the law well stated. Apart from the fact that it is not every slip or mistake that will result in the  
E reversal of a judgment (See *Onwuka v. Omogui* (1992) 3 NWLR (Pt. 230) 393 and *Fan Milk Ltd. v. Edemeroh* (2000) 9 NWLR (Pt. 672) 402, the settled law is that an appellate court will be cautious in interfering with findings of facts made by lower court unless the findings  
F are not based on evidence or, are perverse, and have led to a miscarriage of justice. See *Woluchem v. Gudi & Ors.* (1981) 5 S.C. 519; (1981) 5 S.C. (Reprint) 178, *Ebba v. Ogodo* (1982) S.C. 79 and *Akulaku v. Yongo* (2002) 2 S.C. (Pt. II) 45; (2002) 5 NWLR (Pt. 759) page 135. The instant case is definitely not one that can be interfered  
G with or disturbed, because I am satisfied that the evidence adduced have been properly evaluated. I am in full agreement with my brother that the appeal has no merit whatsoever and deserves to be dismissed. I therefore dismiss it, and abide by the consequential orders made in the leading judgment.

**H**

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**TABAI JSC**

In the leading judgment of my learned brother, Muhammad, JSC., with which I am in full agreement, the facts are well set out and

the various issues very ably considered and determined. I do not think I have anything new to add. By way of emphasis however, I shall comment briefly on the issues of statute jurisdiction and preponderance evidence.

First is the issue of jurisdiction. In the appellants' Brief of Argument Mr. Ayodele Ogundele argued that the action is by virtue of the provisions of Section 2(a) of the Public Officers Protection Act, statute barred. It was his contention that in view of the reliefs claimed and the evidence of the 3rd plaintiff, Joseph Adebayo Oyinloye, the cause of action arose in 1946 or 1957, 1977 or 1978 or 1984, and that the action filed in 1985 was initiated outside the three months period beyond which public officers are protected. It was his submission that "*Public Officers*" include public offices and that the Layiwola Chieftaincy Commission of 1984, falls within the meaning of public officers contemplated in the Act. He relied on Ibrahim v. Judicial Service Commission (1998) 12 S.C. 20; (1998) 14 NWLR (Pt. 584) 1. He urged that the claim be struck out for incompetence.

In his response in the respondents' Brief, Kola Olawoye, argued that the person sued in this case is not the Olayiwola Chieftaincy Commission which, according to him, is only the agent of a disclosed principal represented by the 1st, 2nd and 3rd defendants/respondents and that the cause of action arose on the 31st of December, 1984, when the chieftaincy declaration, Exhibit D16 was registered and enacted into law. It was his contention therefore that the suit filed on the 26th March, 1985, is within the three months stipulated in the Public Officers Protection Act.

To start with, let me ascertain the meaning of the phrase "*cause of action*". In the English case of Board of Trade v. Cayzer Irvine & Company Ltd. (1927) AC 610 at 617, the House of Lords speaking of the meaning "*cause of action*" said:-

*"Cause of action..... means that which makes action possible and in the present case that is the award of the arbitrators, for until it is in being no action is possible."*

In Akilu v. Fawehinmi (No.2) (1989) 3 S.C. (Pt. II) 1; (1998) 2 NWLR (Pt. 102) 122 at 169, this court, Per Karibi-Whyte JSC., spoke of the phrase thus:-

*"Cause of action has been held to mean every fact which is*

*material to be proved to entitle a plaintiff to succeed, or all those things necessary to give a right to relief in law or equity."*

And in *Amodu v. Amode* (1990) 9-10 S.C 61; (1990) 5 NWLR (Pt. 150) 356 at 367, this court quoted with approval its definition in *Hernaman v. Smith* (1855) 10 Exch. 659 at 666 thus:-

B *"The term "cause of action" means all those things necessary to give a right of action whether they are to be done by the plaintiff or a third party."*

C It is clear from the above definitions, which I adopt, that it is the totality of the factual situation in a case which entitles the plaintiff to a relief or reliefs that constitutes the phrase "*cause of action*."

D Having had a look at the meaning of "*cause of action*" the next question is the material from which to determine the accrual of cause of action. It is settled law that, it is the totality of the averments in the Statement of Claim that determines the accrual of cause of action. *Ayanboye v. Balogun* (1990) 9-10 S.C. 1; (1990) 5 NWLR (Pt. 151) 392, is good authority for this principle. See also *Fred Egbe v. Adefarasin* (1987) ANLR 1 at 21.

E Going by this principle therefore, it is the averments in the Statement of Claim and the reliefs claimed in the Writ of Summons that determine when the cause of action accrued to the plaintiffs/respondents. The relevant averments are paragraphs 27, 40, 40(a), 41, 42 and 43 of the Amended Statement of Claim filed on the 25/3/93. The case of the plaintiffs/respondents as pleaded in these paragraphs is that the 1957, Otun-Ekiti Chieftaincy declaration contained only the four ruling houses of Imoro, Ile Obajeju, Ile Titun and Ile lyaba leaving out Imoya. This led to continued agitations which led to the setting up of the Morgan Commission of Enquiry in 1977. The report of the said Morgan Commission did not meet the aspirations of the Otun-Ekiti people and in the wake of the continued protests the Government rejected the report and set up the Layiwola Commission of Enquiry in 1984. The Layiwola Commission report included the Imoya as one of the ruling houses but went ahead to compress the five ruling houses into two and brought in the Sakaraita ruling house as the third ruling house. The Government of Ondo State accepted this recommendation and registered same as the Otun-Ekiti chieftaincy declaration on the 31/12/84.

The contention of the plaintiffs/respondents is that it was on the registration of this Otun-Ekiti chieftaincy declaration on the 31/12/84, that the cause of action accrued to them. I am persuaded by this argument of the respondents. Their agitation following the 1957 declaration was for the inclusion of Imoya ruling house which request was granted by the Layiwola Commission report. It is the compression of the five ruling houses into two and the addition of a Sakaraita ruling house that gave rise to this new cause of action. And it is on the final registration of the said chieftaincy declaration on the 31/12/84, that a cause of action accrued to the plaintiffs. And having regard to the fact that this action was filed on the 26/3/85, it is not caught by the provisions of Section 2(a) of the Public Officers Protection Act. The result is that this action is not statute barred.

I now come to the issue of preponderance of evidence. It was the submission of the appellants that the totality of the evidence preponderates in favour of the appellant and therefore that the concurrent findings of the two courts below are perverse.

At page 358-359 of the record, the learned trial Judge identified the conflict in the traditional evidence of the parties and expressed the view that since he was not in a position to determine the preference of one version to that of the other he would invoke the principle in *Kojo v. Bonsue* by testing the evidence by reference to facts in recent years in order to decide which version is more probable. He then embarked upon, what I consider to be , a detailed evaluation before his findings. He referred firstly to the case of the 1st - 3rd defendants/appellants that there had been thirty-one Oores in Otun including the present reigning Oore of Otun. He found that there was no evidence that any of the thirty-one Oores came from the Sakaraita ruling house. The learned trial Judge also found that until the setting up of the Morgan Commission of Enquiry there was no claim that Sakaraita was also a ruling house. The learned trial Judge referred to the fact that the only memorandum submitted at the Morgan Commission of Enquiry on behalf of the Otun-Ekiti Community and the Oore of Otun was by Mr. Atolagbe which however did not include the Sakaraita as one of the ruling houses. With respect to the court's visit to the locus on the 5th January, 1994, the learned trial Judge made reference to the 20 graves of the past Oores

at the place, the assertion by Chief Adebisi for the defence that the graves were only made in 1988, during the pendency of this case and the contradiction of that assertion by the 7th defence witness, Mr. Emmanuel Oye Awoyemi that all past Oores except Sakaraita were buried at the palace and held that he accepted the version of the plaintiffs/respondents. At page 365 of the record the learned trial Judge said:-

*"I am satisfied from my inspection of the graveyard within the palace ground that the twenty graves of the past Oores were not newly made in 1988, to deceive the court. I find that the existence of the graves of the past Oores is more credible, factua reliable and convincing than the compiled record Exhibit "D2" prepared by D.W.I, Chief Adebisi. I am satisfied that the graves are real and that it is more probable that the remains of the past Obas were buried therein."*

These findings following the court's visit to the place are crucial. The court below saw no reason for disturbing these findings. I equally do not find any strong reason to interfere with them.

Again the learned trial Judge relied extensively on Exhibit 13, the intelligence report, which contents substantially corroborated the case of the respondents that there had so far been 21 Oores of Otun. The approach of the learned trial Judge cannot be faulted. The contents of Exhibit 13 are in my view strong evidence in support of the case of the plaintiffs/respondents.

On the whole the findings based on the contents of Exhibit 13, the trial court's visit to the graves of the twenty past Oores and the totality of the other aspects of the evidence are all amply supported by the evidence on record. I am not surprised that the court below endorsed all the findings. In my view the preponderance of evidence is clearly in favour of the plaintiffs/ respondents.

In view of the little I have considered above and detailed analysis contained in the leading judgment of my learned brother, Muhammad, JSC. I also dismiss the appeal for lack of merit. I adopt the costs as awarded in the leading judgment.

H