

SUPREME COURT OF NIGERIA

27TH JUNE 2008 SC. 185/2002

**CORAM:- D. MUSDAPHER, S. A. AKINTAN, M. MOHAM-
MED, W. S. N. ONNOGHEN, J. O. OGEBE, JJSC**

1. MICHAEL YUSUF
2. OBA PATRICK OWOLEKE OBADOFINAPPELLANTS
3. CHIEF TOWOFENI OBARULA
AND
MR. SAMUEL AFOLABI TOLUHI RESPONDENT

EVIDENCE - Proof - Custom - It is clear that respondent led credible evidence in proof of custom relating to appointment of Obani - The two courts found this as a fact - There has not been shown any basis for Supreme Court to disturb the finding (H1)

FACTS

The Plaintiff/Respondent and one other, now deceased, commenced this action against all the defendants/appellants seeking sundry declarations and orders centred on the nullification of the purported conferment of the title of Obani of Oweland on the 1st appellant by the 2nd and 3rd appellants. The case of the respondents was that only the Obaro of Kabba was entitled to appoint the Obani of Oweland. They led evidence to prove the custom.

Though appellants pleaded a contrary custom to the effect that the Obaro, Obadofin and Obajemu had equal say in the appointment of an Obani, they nevertheless conceded that 1st appellant was appointed without reference to the Obaro. After hearing, learned trial court gave judgment to the respondents. Appellants' appeal to the Court of Appeal was dismissed. Hence, they have brought the instant appeal to the Supreme Court.

ISSUE FOR DETERMINATION

Whether or not the respondents established their claim before the trial court?

HELD (Unanimously dismissing the appeal per **OGEBE JSC**)

EVIDENCE - Proof - Custom

1. I have read the record of appeal and it is clear that the respondent led credible evidence to establish the custom relating to the appointment of Obani while the appellants failed to contradict the custom as established by the respondent. This appeal turns entirely on the evaluation of evidence by the two lower courts. It is not for Supreme Court to disturb the concurrent findings of facts unless they are shown to be perverse or not supported by evidence.

The appellants have not been able to show any cause why I should interfere with the findings of the lower court. (p. 2839 H)

NOTABLE POINT OF INTEREST

OGEBE JSC

1. *Judicial Precedent - Court is not bound to take judicial notice of judgment not cited*

The lower court is not bound to take judicial notice of its judgment which is not brought to its attention. The Court of Appeal decides many cases yearly and cannot keep track of all its judgments. A counsel who seeks to draw its attention to any of its unreported judgments has a duty of bringing a certified copy of such a judgment to its notice. (p. 2839 C)

REPRESENTATION

J. O. Adesina, (with her are; A. M. Kayode and R. Ifayefunmi), for the Appellants.

R. Aremu, for the Respondent

CASES REFERRED TO

Agbonifo v. Aiwerioba (1988) 1 NWLR (Pt.70) 325

Ajuwa v. Odili (1985) 2 NWLR (Pt.9) 710

Ezeanya v. Okeke (1995) 4 NWLR (Pt. 388) 142

LEAD JUDGMENT BY OGEBE JSC

By a Writ of Summons dated the 19th day of December, 1997, the respondent and one other now deceased commenced an action against all the appellants (including the 3rd and 4th appellants now deceased) seeking the following:-

"1. A declaration that by the custom and tradition of Oweland, it is the prerogative of the Obaro of Kabba, Oweland to confer all traditional titles in Oweland including the Obani Title.

i. A declaration that by the custom and tradition of Oweland, the 2nd and 3rd defendants have no power, neither is it their function or duty or prerogative to confer the title of Obani of Oweland on any son of Oweland but that their duty is limited only to give blessings to Obani of Oweland, by Obaro of Kabba Oweland.

ii. A declaration that by the custom and tradition of Oweland, whoever first signifies his intention to the Obaro of Kabba in Oweland of taking the title of Obani is usually considered unless any factor exists, that makes him unfit for the title.

iii. A declaration that the purported conferment of title of Obani of Oweland on the 1st defendant by the 2nd and 3rd defendants on 12-12-97, is in violation of the custom and tradition of Oweland and is therefore null and void.

iv. A declaration that the plaintiff, being the 1st person to signify intention to Obaro in accordance with Owe custom and tradition, is the proper son to be conferred with the title of Obani of Oweland.

v. An Order or perpetual injunction restraining the 1st defendant from presenting himself or holding himself out as the Obani of Oweland, or wearing or using the paraphernalia of the office of Obani of Oweland.

vi. An Order of perpetual injunction, restraining the 1st defendant from adorning himself with the paraphernalia of office of Obani of Oweland.

vii. An Order of perpetual injunction restraining the 2nd, 3rd, 4th and 5th defendants from according recognition to the 1st defendant or in any way parading or holding out or presenting the 1st defendant as the Obani of Oweland or such order or orders as may seem just in the circumstance."

Parties joined issues on their pleadings and trial High Court heard evidence and gave judgment in favour of the respondents. The case of the respondents before the trial court was that only the Obaro of Kabba was entitled to appoint the Obani of Oweland and not the appellants. The respondents led evidence to prove the cus-

tom on the appointment of Obani of Oweland.

The appellants on the other hand did not plead the custom of such appointment but were merely challenging the appointment made by the Obaro of Kabba who was also the Chairman of the Traditional Council of Kabba. They averred that where Obaro, Obadofin and Obajemu were traditionally appointed they had equal say in the appointment of an Obani or any other traditional Owe Chieftaincy Title. From the evidence of their witness they appointed the first appellant without any reference to the Obaro which amounted to a concession from their own showing that the first appellant was not properly appointed. It is clear therefore, that the appellants had no defence to the respondents' claim in the trial court which gave judgment in favour of the respondents.

The appellant appealed to the Court of Appeal, Abuja Division which also dismissed the appeal. They have further appealed to this court and the learned counsel for them filed a Brief of Argument and formulated 3 issues for determination as follows:-

"1. Whether mere acknowledgment of the 1st respondent by the Obaro alone without meeting any other Ololus and also complying with other conditions precedent can confer on the tile respondent the title of Obani of Oweland?"

2. Whether the Court of Appeal rightly affirmed the decision of the trial court in not taking judicial notice of its own judgment in the case.

The Obadofin & 1 Or. v. Chief Peripe Obakoya & 8 Ors.

Suit No: KWS/LO/9/86

Epecially when the issues involved in both cases are similar?

3. Whether the respondent as plaintiff proved its case by credible evidence as to be granted all the eight claims sought by him?"

The learned counsel for the respondent also filed a Brief and formulated 1 issue for determination as follows:

"(i) Whether the Court of Appeal rightly affirmed the decision of the trial court, having regards to the nature of the pleadings and the quality of evidence adduced at the trial of the case?"

The appellant filed a lengthy Reply-Brief which is in fact not a Reply on points of law raised in the respondent's Brief but an attempt to re-open matters of fact.

The 1st and 2nd issues in the appellants' Brief are academic in nature and the answers to them do not determine the appeal. It is trite law that this court will not engage itself in an academic exercise. See *Ezeanya v. Okeke* (1995) 4 NWLR (Pt. 388) 142.

Issue 1 is a complete misapprehension of the respondent's claim before the trial court. Their case was that the 1st appellant was not properly appointed Obani of Oweland in accordance with the applicable Native Law and Custom and should be restrained from parading himself as such. There was no cross-action to challenge the locus standi of the 1st respondent (now the only surviving respondent) to claim the title of Obani. I find the issue completely irrelevant and discountenance it.

The 2nd issue is no better. The lower court is not bound to take judicial notice of its judgment which is not brought to its attention. The Court of Appeal decides many cases yearly and cannot keep track of all its judgments. A counsel who seeks to draw its attention to any of its unreported judgments has a duty of bringing a certified copy of such a judgment to its notice. The court has the right to determine whether or not the case is applicable to the case in hand.

The learned counsel for the appellants submitted in the main that this appeal should be allowed because the respondent failed to establish that only the Obaro can appoint the Obani or any other Chief in Oweland. They also failed to prove that the 1st respondent had validly applied for the post of Obani and that the 3 Ololus had approved his appointment and that they also failed to establish that the appointment of Obani is a matter first come first served under Owe Custom.

The learned counsel for the respondent submitted that the appellants did not put any opposition to the respondents' case at the trial court and the Court of Appeal made concurrent findings of facts as the trial court which should not be disturbed by this court.

Only one issue as formulated by the respondent arises for determination in this appeal and that is, whether or not the respondents established their claim before the trial court?

I have read the record of appeal and it is clear that the respondent led credible evidence to establish the custom re-

lating to the appointment of Obani while the appellants failed to contradict the custom as established by the respondent. This appeal turns entirely on the evaluation of evidence by the two lower courts. It is not for Supreme Court to disturb the concurrent findings of facts unless they are shown to be per-
verse or not supported by evidence. See: Agbonifo v. Aiwerioba (1988) 1 NWLR (Pt.70) 325, Ajuwa v. Odili (1985) 2 NWLR (Pt.9) 710.

The appellants have not been able to show any cause why I should interfere with the findings of the lower court.
 This appeal is devoid of merit and I hereby dismiss it with costs of N50,000.00 in favour of the respondent.

MUSDAPHER JSC

I have read before now, the judgment of my Lord, Ogebe, JSC., just delivered with which I entirely agree. For the same reasons canvassed in the judgment which I respectfully adopt as mine, I too find the appeal unmeritorious.

I accordingly dismiss it and I abide by the order for costs proposed in the aforesaid judgment.

AKINTAN JSC

The dispute that led to this appeal was in respect of a Chieftaincy Title of Obani of Oweland in Kabba-Bunu Local Government Area of Kogi State. The main point in dispute is in respect of who is the appointing authority to the office of Obani of Oweland. It was the contention of the respondents, as plaintiffs, that the appointing authority is the Obaro of Kabba. The appellants, as defendants, on the other hand, contended that was not the position. At the trial court, the respondent and another now deceased, as plaintiffs pleaded and led evidence relating to the customary practice in respect of the appointment to that title.

The trial court accepted the plaintiffs' case and entered judgment as per their claim for declaratory and injunctive reliefs against the appellants as defendants. Their appeal against the judgment to

the court below was dismissed. The present appeal is from the judgment of the said Court of Appeal dismissing their appeal.

The parties filed their respective Briefs of Argument in this court. The main argument canvassed by the appellants boils down to the concurrent findings of fact made by the two lower courts. I believe that the findings of fact were based on credible evidence led before the trial court. The appellants having failed to show that the findings of fact were perverted or establish any good ground for tampering with the findings of fact so made, I see no reason why they should be tampered with.

In the result, I agree with the conclusion reached in the leading judgment written by my learned brother, Ogebe, JSC., the draft of which I have read, that there is totally no merit in the appeal. I accordingly dismiss the appeal with costs as assessed in the leading judgment.

MOHAMMED JSC

This appeal is against the judgment of the Court of Appeal, Abuja Division of 11/12/2001, dismissing the appellants' appeal against the judgment of the High Court of Justice, Kogi State, sitting at Kabba dismissing the appellants' action challenging the appointment of the respondent as the Obani of Oweland. The custom for the selection and appointment of a candidate to fill the vacancy in the Chieftaincy was proved to the satisfaction of the trial court by the respondent. The judgment of trial court in favour of the respondent was affirmed on appeal by the court below.

In the absence of a complaint that the decisions of the courts below are perverse or not supported by evidence, I entirely agree with my learned brother, Ogebe, JSC., in his leading judgment that there is no merit in this appeal. I also dismiss the appeal and abide with the order on costs in the leading judgment.

ONNOGHEN JSC

I have had the advantage of reading in draft, the leading judgment of my learned brother, Ogebe, JSC.

I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed.

The appeal is mainly on the concurrent findings of facts by the lower courts and there is no reason for this court to interfere with same having regard to the fact that learned counsel for the appellant
B has not given this court the reason for such interference.

I therefore dismiss the appeal and abide by the consequential orders made by the leading judgment of my learned brother, Ogebe, JSC., including the order as to costs.

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