

SUPREME COURT OF NIGERIA

3RD DECEMBER, 2010. SC. 126/2003

**CORAM:- A. M. MUKHTAR, W. S. N. ONNOGHEN, M. S.
MUNTAKA-COOMASSIE, S. GALADIMA,
B. RHODES-VIVOUR, JJSC**

1. PRINCE KILANI ADEKEYE
2. CHIEF Y. S. SABEREDOWO
3. CHIEF JOHN AYODELE ----- APPELLANTS
4. CHIEF TIAMIYU ADEKANYE

AND

1. PRINCE SUMMONU ADESINA
2. CHIEF MICHEAL OYEWALE
3. THE GOVERNOR OF OSUN STATE ----- RESPONDENTS
4. ATTORNEY-GENERAL OF OSUN STATE
5. ODO-OTIN LOCAL GOVERNMENT, OKUKU

AND

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AND

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(For himself and on behalf of
Olarinoye lineage, Oyan) ----- RESPONDENTS
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(For himself and on behalf
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APPEALS - Briefs - Reply - Preliminary objection - Failure to file a reply or respond orally to the objection - Party is deemed to have conceded the objection (H1)

APPEALS - Parties - Right of Appeal - A person cannot appeal against a decision - Unless it wrongfully deprives him of an entitlement - Or some thing which he had a right to demand (H2)

APPEALS - Issues - Rule against fresh issues - Limit - Where the alleged fresh issue - Arises from specific findings of the court appealed from - It is not a fresh issue for which prior leave is required (H3)

APPEALS - Particulars - Grounds of appeal - Objection to specific particulars - Where other particulars exist to support the grounds - The objection will fail - As it can not affect validity of the grounds (H4)

PLEADINGS - Binding nature of - Effect - Parties and the court are bound by pleadings filed in a matter - As such any evidence on facts not pleaded goes to no issue (H5)

COURTS - Chieftaincy - Evidence - Findings of fact - Basis - Though estoppel was pleaded and testified to - It was not against the whole lineage of 1st respondent - So there was no basis for court of Appeal to have so held (H6)

CHIEFTAINCY MATTERS - Customary law - Registered declaration - Effect - Where a declaration in respect of a recognized chieftaincy - Is validly made and registered - It shall be deemed to be the customary law - Regulating the chieftaincy (H7)

EVIDENCE - Chieftaincy - Principle of rotation - Within Elemo Ruling House - Need for proof - Though Exhibit G2 recognized rotation

- It was not within the constituting units of a ruling house - Such therefore needed to be pleaded and proved aliunde - But was not (H8)

FACTS

The 1st and 2nd respondents, as plaintiffs, sued the appellants, as defendants, before the High Court of Osun State holden at Ikirun. The respondents' claim was for sundry declarations and injunctions by which they challenged the selection of the 1st defendant/appellant as the next candidate for the Oloyan of Oyan chieftaincy. It was not in dispute that a validly made and registered declaration in respect of the Oloyan of Oyan Chieftaincy - Exhibit G2, recognized four ruling houses entitled to present candidates for the Throne in rotation and one of those ruling houses is the Elemo ruling house. It is also agreed that it is the turn of the Elemo ruling house to produce a candidate for the Throne. Exhibit G2 does not purport to regulate the process by which a ruling house internally chooses its candidate for presentation to the kingmakers when it is its turn to present a candidate.

It was the case of respondents that Elemo ruling house had two lineages and that the two lineages took turns in producing candidates for the throne each time it was the turn of that ruling house to produce a candidate. However, the pleadings of the parties were silent on the issue of the principle of rotation between the two lineages of Elemo. Moreover, it was in evidence that at various times in the past people from the lineages had freely contested against each other when it was the turn of the ruling house to produce a candidate. Yet respondents maintained that it was the turn of their lineage as opposed to that of appellants to produce a candidate. Appellants counterclaimed for declaration that respondents were estopped from challenging the selection of 1st appellant, having participated voluntarily in the process that produced him. After hearing, trial court held *inter alia*, that though it was the turn of respondents' lineage to produce a candidate, respondents were estopped by their conduct from challenging selection of 1st appellant. Aggrieved respondents appealed to Court of Appeal. Appellants, being dissatisfied, also cross-appealed. But the court allowed the appeal and dismissed the cross-appeal. Still dissatisfied, appellants have brought this appeal against the judg-

ment of Court of Appeal.

ISSUES FOR DETERMINATION

B “1. Whether the court below was right to have upheld the decision of the trial court to the effect that the selection of an Oloyan from the Elemo Ruling House was based on the principle of rotation between the two lineages of the family and that it was the turn of the Olarinoye lineage to produce the next Oloyan when there was no pleadings nor evidence to support these crucial findings and when the 1st and 2nd respondents did not make out any case deserving of the crucial findings.

C 2. Whether the court below was right to have upturned the decision of the trial court that the right of the 1st respondent was caught up by abandonment and/or waiver moreover when the court below misconstrued the basis of the defence of abandonment and D waiver as raised and agitated by the appellants.

E 3. Whether the court below was right to have agreed with the trial court that the Oloyan Chieftaincy Declaration, Exhibit G2 was scanty and in-exhaustive and that it was right to resort to other evidence oral or documentary to fill in the perceived lacuna”.

HELD (Unanimously allowing the appeal per **ONNOGHEN JSC**) **Briefs - Reply - Preliminary objection**

F 1. It is instructive to note that learned counsel for the 7th appellant refused and/or neglected to file a reply brief to the brief of the 1st and 2nd respondents which would have made it possible for him to confront the issues/points canvassed in the preliminary objection, neither did he make any oral presentation on the matter at the hearing of the appeal. I hold the considered view that the failure or neglect of G the 7th appellant to file a reply brief or make oral presentation in response to the points canvassed in the objection means that the 7th appellant concedes the points so canvassed because he has no answer to them.

H It is therefore very clear that the preliminary objection raised against the appeal of the 7th appellant is well founded and is consequently upheld by me with the result that the appeal of the 7th appellant is liable to be struck out. I hereby order accordingly.
(pp. 2815 D/2816 B)

Parties - Right of Appeal

2. I had earlier reproduced the reliefs claimed by the 1st and 2nd respondents at the trial court and it is clear that none of them adversely affected the interest of the 4th defendant/7th appellant so as to qualify the 7th appellant to be considered a person aggrieved by an order of court so as to ground the locus standi of the 7th appellant to appeal against the said judgment. The 7th appellant has not suffered any legal grievance arising from the said judgment. B

It is therefore settled law that a party to proceedings, as the 4th defendant/appellant cannot appeal a decision arrived at in that proceedings except the same wrongfully deprives him of an entitlement or something which he had a legal right to demand. (p. 2815 F) C

Issues - Rule against fresh issues - Limit

3. I have gone through the grounds of appeal contained in the amended notice of appeal filed on the 17th day of January, 2005 and it is very clear that the grounds of objection against the particular grounds of appeal and their particulars are clearly misconceived. The reason for learned counsel for the 1st and 2nd respondents submitting that the alleged offending grounds or their particulars raise fresh issues not raised in the lower court is simply that the current complaints raised by the appellants never arose from the grounds of appeal before the lower court. E

What the contention of learned counsel misses is the fact that the instant appeal by the appellants is against specific concurrent findings by the lower courts and the learned senior counsel for the appellants quoted the specific findings/holdings in the judgment of the lower court which he considers to be the source of his complaints. The grounds of appeal alongside their particulars including the particulars complained of arose clearly from the decision of the lower court and consequently, not fresh issues for which the leave of this court is required. (p.2818 C/G) F

Grounds of appeal - Objection to specific Particulars H

4. Secondly, apart from the specific particulars of the grounds objected to, there are other particulars to support the grounds of appeal thereby rendering the success of the objection ineffectual as it cannot adversely affect the validity of the grounds of appeal if the

alleged offending particulars are struck out.

In conclusion, I find no merit whatsoever in the preliminary objection which is consequently overruled. (p. 2819 A)

PLEADINGS - Binding nature of - Effect

- B 5. It is settled law that parties and the court are bound by the pleadings filed in a matter. For facts needed to establish a right to a relief to be relevant, it has to be pleaded by the party seeking to rely on same to establish his claim or right to relief. It is after the relevant fact is
C pleaded that evidence would be admissible to establish the existence of that fact, that is why it is also settled law that evidence on facts not pleaded ground to no issue as parties normally join issues on the facts pleaded and only need evidence - either oral or documentary - to establish the facts so pleaded. Where, however, a court relies on
D evidence on facts not pleaded, an appellate court has the duty to set aside any finding/holding resulting from that reliance.

I have examined closely the above paragraphs and it is very clear that the fact of rotation of the throne/stool between the two lineages of Olarinoye and Aresinkeye both of Elemo Ruling House is not
E pleaded. (pp. 2819 H/2823 F)

Chieftaincy - Evidence - Findings of fact - Basis

- F 6. The case of the appellants is that the 1st respondent as well as the 2nd respondent haven participated directly or indirectly at the nomination exercise cannot resile from same since if it had favoured them, they would not have complained. The 1st respondent never protested his nomination alongside the 1st appellant for the contest for the stool in question.
- G There is nothing on record to suggest that the estoppel or waiver pleaded and testified to by the witnesses was against the lineage of the 1st respondent as held by the lower court neither did the trial court so find. There is, therefore, no basis for the lower court to interfere with that finding which is based on the pleadings and evidence.
H To have misconceived the case of the appellants on estoppel/waiver as one against the 1st respondent's lineage is erroneous as the truth is that it was pleaded and found by the trial court against the 1st and 2nd respondents as individuals.

In the circumstance, I resolve Issue 2 in favour of the appel-

lants. (pp. 2827 F/2828 C)

Customary law - Registered declaration - Effect

7. Exhibit “G2”, as has been stated is the Registered Declaration of Oloyan of Oyan chieftaincy and it is settled law that where a declaration in respect of a recognized chieftaincy is validly made and registered, the matter or custom or native law and custom therein stated shall be deemed to be the customary law regulating the selection of a person to be the holder of the recognized chieftaincy to the exclusion of any other customary usage or rule or tradition. B

The registered declaration is therefore a declaration of the tradition, customary law and usages pertaining to the selection and appointment to the particular chieftaincy stool/throne, it relates. Where, therefore, there is a registered chieftaincy declaration, such as Exhibit “G2”, the duty of the court generally is to apply the provisions of the chieftaincy declaration to the facts of the case as established by pleadings and evidence as the court has no power to assume the functions of the Chieftaincy Committee as regards the making or amendment of customary law governing the selection and appointment of traditional chiefs. (p. 2829 E) C D E

EVIDENCE - Chieftaincy - Principle of rotation

8. It is true that Exhibit “G2” does not concern itself with what happens within the constituting units of a ruling house or how they chose their candidate whenever it is their turn to produce the Oloyan of Oyan. In fact it is not their business to regulate that procedure. In the peculiar case of Elemo Ruling House, there are two lineages constituting the ruling house and the registered declaration talks of the ruling houses as a unit presenting a candidate for the appointment. If the candidate is to emerge by way of rotation between the two lineage that would be the custom of Elemo Ruling House which ought to be pleaded and proved by evidence so as to enable the court act on same. In the instant case, it has already been demonstrated that the fact of rotation between the two lineages of Elemo Ruling House was nowhere pleaded by the 1st and 2nd respondents and that the findings on rotation by the trial court and the affirmation of same by the lower court is perverse. (p. 2832 D) F G H

NOTABLE POINTS OF INTEREST

ONNOGHEN JSC

1. *Chieftaincy declaration may be set aside for inconsistency with custom*

It should, however, be noted that the court can set aside a chieftaincy declaration under certain circumstances such as where a registered declaration is proved to be contrary to the customs and traditions of the people. In the case of *Mafimisebi vs Ehuwa* (2007) 2 NWLR (pt.1018) 385 at 431, I had these to say:

“I hold the view that the claim as couched - being declaratory in nature are within the jurisdiction or competence of the court to grant if there are facts to support same. The court is not being called upon to make a chieftaincy declaration for the people, neither is it to amend the existing declaration. I hold the considered view that just as the court has the vires to declare or set aside a registered declaration found to be unconstitutional or contrary to the provisions of any Act or Law including the Chieftaincy Law under which it was made, the court equally has the competence to declare same null and void when from the evidence, it is clear that the said declaration does not truly represent the customary law it professes to restate” (p. 2830 B)

2. *It is the duty of the executive to amend chieftaincy declarations*

I should not be understood as saying that the situation as it exists does not result in injustice to one of the components of the ruling house.

What I am saying, and which is a restatement of the applicable law, is that where there is the need to amend a Registered Chieftaincy Declaration so as to bring it in line with the current trend in the customary law of the people, it is the duty of the executive arm of government to do so. In the instant case, there is the anguish of one of the lineages which has to produced only one Oloyan of Oyan out of the four so far produced by Elemo Ruling House; that is clearly unfair and something ought to be done about it by the appropriate authority. Olarinoye lineage ought not to be allowed to continue to suffer under the tyranny of the majority over a common property or proprietary interest with Aresinkeye lineage. (p.2833 C)

REPRESENTATION

Yusuf Ali Esq. SAN for the 1st - 4th Appellants with him are: S. A. Oke; Alex Akoja; I. O. Atofarati; P. I. Nwoha (Miss); K. A. Lawal Wole Adejumobi Esq. for the 5th & 6th Appellants (Principal S. C. Osun State).

Bola Aidi Esq. for the 7th Appellant with him, Osagie Imhabie and Benjamine Zakari.

Olalekain Ojo Esq. for the 1st & 2nd respondent with him, J. D. Rufau Esq.

CASES REFERRED TO

Ojo vs Azama (2001) FWLR (Pt.38) 1329 at 1347

Ogbu vs Ani (1994) & NWLR (Pt.355) 128 at 140

Aina vs UBA Plc (1997) 4 NWLR (Pt.498) 181 at 189

Adigun vs A-G Oyo State (1987) 1 NWLR (Pt.53) 678

Ukata vs Ndinaze (1997) 4 NWLR (Pt.499) 251 at 276

Oladele vs Aromolaran II (1996) 6 NWLR (pt.453) 180

Osagie vs Adonri (1994) 6 NWLR (Pt. 349) 131 at 154

Egbaran vs Akpotor (1997) 7 NWLR (Pt.514) 559 at 571

Mafimisebi vs Ehuwa (2007) 2 NWLR (pt.1018) 385 at 431

Oladele vs Aromolaran II (1996) 6 NWLR (Pt.453) 180 at 203

Ologunleko vs Ikuomola (1993) 2 NWLR (Pt 273) 16 at 24-25

Ikine vs Edjerode (2007) 18 NWLR (pt.745) 446 at 478 - 479

Ogundare vs Odunlowo (1997) 6 NWLR (Pt.589) 36 at 372 - 373

Generals Bank (Nig) Ltd vs Afekoro (1999) 11 NWLR (Pt. 627) 521 at 537

Olanrewaju vs Governor of Oyo State (1992) 9 NWLR (pt.265) 335 at 362 - 363

STATUTE REFERRED TO

Chief Law Cap 19

LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal in appeal NO.CA/1/75/99 delivered on the 8th day of January, 2003 in which the court allowed the appeal of the present 1st and 2nd respondents against the judgment of the High Court of Osun State Holden at Ikirun in Suit NO.HIK/15/97 delivered on the 30th day of

June, 1998 in favour of the defendants/present appellants.

In addition to allowing the appeal of the 1st and 2nd respondents, the lower court also dismissed the cross appeal of the present appellants against the said judgment of the trial court.

The respondents in this court instituted the suit as plaintiffs
B against the appellants claiming the following reliefs:

(i) *A declaration that there are two and only two lineages of Elemo Ruling House, Oyan, namely:- Elemo Olarinoye and Elemo Aresinkeye Lineages.*

(ii) *A declaration that the report of a discreet investigation
C alleged conducted by the secretary to the fourth defendant which purportedly increased the number of lineages of Elemo Ruling House to five (by splitting Aresinkeye Lineage into four) as unfair inequitable void and unconstitutional being arrived at without giving the
D Olarinoye Lineages a hearing at all or any notice whatsoever of such investigation.*

(iii) *A declaration that it is the turn of Olarinoye Lineage Elemo Ruling House Oyan to produce a candidate for the Oloyan of Oyan Chieftaincy.*

(iv) *A declaration that the attendance of the 5th and 6th defendants (Kingmakers) at the family meeting of Elemo Ruling House held on 22nd day of November, 1996 was an open demonstration of bias and the 5th and 6th defendants are as such disqualified from participating in any meeting of Kingmakers summoned for the consideration of any candidate nominated on the aforesaid date.*
F

(v) *A declaration that the selection of the 1st defendant by the 5th defendant at a meeting commandeered and conducted by the secretary to the 3rd defendant on 26th November, 1996 was oppressive, irregular, null and void.*
G

(vi) *An injunction restraining the 2nd defendant from relying on the aforesaid report of discreet investigation and or the nomination conducted on 20th November, 1996 in making an appointment to the Oloyan of Oyan Chieftaincy.*

(vii) *An injunction restraining the 2nd defendant from appointing the 1st defendant who is from (one of the lineages secretly created from Aresinkeye) lineage as the next Oloyan of Oyan.*
H

The facts of the case include the following:-

The Oloyan of Oyan Chieftaincy is a Ruling House Chief-

taincy with a registered Chieftaincy Declaration. On the 23rd day of August, 1996, Oba Omotoso Oyegbile, an occupant of that chieftaincy passed on thereby creating a vacancy.

It is agreed that there are four ruling houses in the registered declaration of the chieftaincy, Exhibit G2, entitled to present candidates for the throne in rotation. These are:-

(a) *Elemo*

(b) *Laojo*

(c) *Olomooba, and*

(d) *Daodu or Dawodu*

Also not disputed is the fact that following the demise of the said Oba, it was the turn of the Elemo Ruling House to present the candidate to fill the vacancy. To actualize this and as required by law, the secretary of Odo-Otin Local Government, the 5th respondent herein, wrote to the Kingmakers to call on the next Ruling House, that is, Elemo, to present candidate(s) for appointment as Oloyan of Oyan.

In Exhibit G2, Chieftaincy Declaration of Oloyan of Oyan, there are six Kingmakers recognized by law to act but at the material time only four of them were alive to function. The said 5th respondent duly informed the Elemo Ruling House to present candidates to fill the vacancy, as a result of which members of Elemo Ruling House held a meeting on the 22nd day of November, 1996 to select candidates for the stool. The secretary of the 5th respondent in the person of Mr. S.O. Fadara attended the said meeting in accordance with statutory requirements in the capacity of an observer. At the meeting both the 1st appellant and 1st respondent were duly nominated as candidates for the stool in question. PW3 acted as secretary of Elemo Ruling House at the meeting in question and took down the minutes while one Pa Oke was the chairman. The minutes of the meeting of 22nd November, 1996 recording the nominations was sent to the Kingmakers as a result of which the Kingmakers met on the 26th day of November, 1996 to elect/select a candidate out of the two for appointment as the Oloyan of Oyan.

At that meeting, three of the four existing and functional Kingmakers supported the candidature of the 1st appellant, while one supported the 1st respondent as a result of which the secretary to the 5th respondent forwarded the name of the 1st appellant to the 3rd

respondent, the appointing authority, for appointment as the Oloyan of Oyan. The 1st appellant was consequently appointed and installed the Oloyan of Oyan sometime in 1997. The only Kingmaker who supported the candidature of the 1st respondent is the 2nd respondent, who also gave evidence as PW5 at the trial.

- B It is the case of the 1st and 2nd respondents that there are two distinct lineages in Elemo Ruling Housing, namely: Olarinoye and Aresinkeye and that Elemo Ruling House had in the past produced three Oloyans out of which only one came from Olarinoye while the other two came from Aresinkeye lineage; that the meeting of 22nd November, 1996 evidenced in Exhibit C, was stalemated; that during the meeting of the Kingmakers on the 26th day of November, 1996 the 2nd respondent protested in spite of which protest three out of the four Kingmakers supported the 1st appellant while only the 2nd respondent supported the 1st respondent resulting in the 5th respondent sending the name of the 1st appellant to the 3rd respondent for appointment in spite of the circumstances.

However, it is the case of the appellants that the Elemo Ruling House has five lineages namely;

- E (i) Olarinoye
(ii) Ige
(iii) Onuola
(iv) Mejowuye/Aresinkeye and
(v) Oluyeye
- F and that whenever it was the turn of Elemo Ruling House to present a candidate for the throne, it was an open contest among the eligible members of the ruling house without regard to whichever lineage; that the 1st appellant and 1st respondent were regularly nominated in a regular meeting of the ruling house held on 22nd November, 1996 out of which the Kingmakers selected the 1st appellant for the throne in their meeting of 26th November, 1996; that the 1st respondent haven taken part through his Olarinoye lineage in the nomination exercise of 22nd November 1996 was estopped from impugning the exercise; that the 2nd respondent haven chaired the Kingmakers' meeting of 26th November, 1996 was estopped from attacking the appointment of the 1st appellant resulting from that meeting: that the nomination, selection and appointment of the 1st appellant was regular and in accordance with the native law and custom of Oyan rel-

evant to the appointment of Oloyan of Oyan.

The trial court held that there are two lineages of Elemo Ruling House which occupy the throne by rotation and that it was the turn of Olarinoye lineage to produce the next Oloyan of Oyan; that the Chieftaincy Declaration, Exhibit. G2 which governs the Oloyan Chieftaincy, was in-exhaustive and that there was a lacuna in it which the court is competent to fill; that the 1st respondent was estopped from impugning the nomination exercise of 22nd November, 1996; that it was not unusual for the names of more than one candidate to be submitted to the Kingmakers for them to choose one for the vacant throne/stool; that the 1st and 2nd respondents proved their reliefs in paragraph 66(a) and (c) of the Amended Statement of claim and accordingly awarded same to them. The trial court also held that reliefs 1, 3 and 4 of paragraph 50 of the appellants counter claim were successful and ordered accordingly.

The reliefs in the counter-claim are as follows:-

“(1) A declaration that the 1st defendant as the candidate who enjoys the support of the majority of the entire members of the Elemo Ruling House as demonstrated at the meeting of the said family on 22nd November, 1996 where he was selected as candidate and approved by majority of the Kingmakers for the Oloyan of Oyan chieftaincy at their meeting of 26th November, 1996 is the person entitled to be installed as the Oloyan of Oyan.

(2) A declaration that the 1st plaintiff and the 2nd plaintiff are estopped from challenging the selection and approval of the 1st defendant having voluntarily participated in the Elemo Ruling House and Kingmakers’ meeting respectively whereat the 1st defendant was selected by a majority of the members of the Elemo Ruling House and his candidature approved by a majority of the Kingmakers.

(3) An order directing the 2nd defendant to approve without any further delay the candidature of the 1st defendant for installation as the Oloyan or Oyan.

(4) An order of injunction restraining the 2nd plaintiff from doing or refusing to do anything that may affect the prompt installation of the 1st defendant as the Oloyan of Oyan”.

On appeal and cross appeal to the lower court, the court held that the appeal of the 1st and 2nd respondents succeeded while the cross appeal of the 1st and 2nd appellants failed.

It is against that decision that the instant appeal was filed, the issues for the determination of which have been identified by learned senior counsel for the appellants, YUSUF O. ALI ESQ. SAN, in the appellants' brief of argument filed on 23rd December, 2004 as follows:-

B “1. Whether the court below was right to have upheld the decision of the trial court to the effect that the selection of an Oloyan from the Elemo Ruling House was based on the principle of rotation between the two lineages of the family and that it was the turn of the C Olarinoye lineage to produce the next Oloyan when there was no pleadings nor evidence to support these crucial findings and when the 1st and 2nd respondents did not make out any case deserving of the crucial findings.

D 2. Whether the court below was right to have upturned the decision of the trial court that the right of the 1st respondent was caught up by abandonment and/or waiver moreover when the court below misconstrued the basis of the defence of abandonment and waiver as raised and agitated by the appellants.

E 3. Whether the court below was right to have agreed with the trial court that the Oloyan Chieftaincy Declaration, Exhibit G2 was scanty and in-exhaustive and that it was right to resort to other evidence oral or documentary to fill in the perceived lacuna”.

F The above issues have been adopted by learned counsel for the 1st and 2nd respondents, ADEMOLA ADEGBOLA ESQ., in the brief of argument filed on 17th March, 2005.

G It is important to note that apart from the instant appeal there is an appeal by the 5th and 6th appellants as evidenced in the brief of argument prepared by O.A. ADENIJI ESQ. and deemed filed on 28th May, 2007 and another appeal by the 7th appellant.

H It is strange that rather than performing the traditional role of respondents to the appeal of the appellants, the respondents, except the 1st and 2nd respondents, filed no respondent brief but appealed separately against the decision of the lower court even when, upon going through their grounds of appeal and the issues canvassed in their briefs of argument there is really nothing to choose between their so called appeals and that of the appellants, particularly as they adopted the same issues formulated by learned senior counsel for the appellants, which issues had earlier been reproduced in this judg-

ment.

There is however a preliminary objection by 1st and 2nd respondents against the appeal of the 7th appellant as argued in the 1st and 2nd respondents brief filed on 12th March, 2009 in which learned counsel has argued that the judgment of the lower court not haven decided anything against the 7th appellant, Odo-Otin Local Govern- B
ment, the said appellant cannot be a party aggrieved by the said decision of the lower court and cannot therefore appeal against same, relying on Societe Generals Bank (Nig) Ltd vs Afekoro (1999) 11 NWLR (Pt. 627) 521 at 537; Mobil Producing Nig. Unlimited vs C
Monokpo (2004) 2 MJSC 1 at 17; that the 7th appellant, though the 4th defendant at the trial court, did not appeal against the decision of the trial court to the lower court and that none of the five reliefs granted by the lower court can be said to have affected the 7th appel- D
lant.

***It is instructive to note that learned counsel for the 7th appellant refused and/or neglected to file a reply brief to the brief of the 1st and 2nd respondents which would have made it possible for him to confront the issues/points canvassed in the preliminary objection, neither did he make any oral presentation on the matter at the hearing of the appeal. I hold the considered view that the failure or neglect of the 7th appellant to file a reply brief or make oral presentation in response to the points/canvassed in the objection means that the 7th ap- E
pellant concedes the points so canvassed because he has no answer to them.*** F

***I had earlier reproduced the reliefs claimed by the 1st and 2nd respondents at the trial court and it is clear that none of them adversely affected the interest of the 4th defendant/7th G
appellant so as to qualify the 7th appellant to be considered a person aggrieved by an order of court so as to ground the locus standi of the 7th appellant to appeal against the said judgment. The 7th appellant has not suffered any legal griev- H
ance arising from the said judgment, see Sun Insurance Office Ltd vs Ojemuyiwa (1965) 1 ALL NLR 1. Mobil Producing Nigeria Unlimited vs Monokpo (2004) 2 MJSC 1 at 17***

It is therefore settled law that a party to proceedings, as the 4th defendant/appellant cannot appeal a decision ar-

rived at in that proceedings except the same wrongfully deprives him of an entitlement or something which he had a legal right to demand.

B Finally looking at the grounds of appeal of the 7th appellant it is clear that 7th appellant merely reproduced the grounds of appeal of the 1st - 4th appellants as its own and proceeded further to adopt the issues formulated by learned senior counsel for the said appellants arising from the said grounds of appeal, in the 7th appellants brief filed on 18th November, 2008.

C ***It is therefore very clear that the preliminary objection raised against the appeal of the 7th appellant is well founded and is consequently upheld by me with the result that the appeal of the 7th appellant is liable to be struck out. I hereby order accordingly.***

D On the appeal of the 5th and 6th appellants who were the 2nd and 3rd defendants at the trial court, there is no preliminary objection against same but there is no difference between the grounds of appeal in that appeal and the issues arising therefrom and those of the appeal of the 1st - 4th appellants. In fact, as stated earlier in this judgment, the 5th and 6th appellants adopted the very issues formulated by learned senior counsel for the 1st - 4th appellants in that appeal.

E The above being the case, it is my considered view that a disposal of the issues in the appeal of the 1st - 4th appellants automatically disposes of the issues calling for determination in the appeal of the 5th and 6th appellants.

F Therefore to save the time of the court, I propose to deal with the appeal of the 1st - 4th appellants, the issues involved therein haven been reproduced earlier in this judgment, haven disposed of the preliminary irritations arising from the two so-called appeals.

G In arguing Issue 1, learned senior counsel for the appellants referred the court to paragraphs 26, 42 and 43 of the Amended statement of claim and the evidence of the 1st respondent at page 34 of the record relevant to the paragraphs of the pleadings earlier referred to and submitted that the lower courts' findings on rotation of the chieftaincy between the two lineages of Elemo Ruling House is based on speculation as the same is neither supported by the pleadings nor evidence on record; that the parties and the court are bound by the pleadings of the parties and that evidence not in line with facts

pleaded ground to no issue, relying on *Olutfosoye vs Fakorecde* (1993) 1 NWLR (Pt. 272) 747 at 759-760; *Ologunleko vs Ikuomola* (1993) 2 NWLR (Pt 273) 16 at 24-25; *Osagie vs Adonri* (1994) 6 NWLR (Pt. 349) 131 at 154; *Adetoun Oladeji Nig. Ltd vs NB Plc* (2007) 5 NWLR (Pt. 1020) 415 at 441, 444.

It is further submitted that not only did the 1st and 2nd respondents fail to plead rotation between the lineages of Elemo Ruling House, the pleading of the 1st and 2nd respondents, particularly paragraph 26 of the Amended Statement of claim clearly pleads facts in negation of rotation since it states that after Olarinoye of the 1st respondent lineage reigned as Oloyan of Oyan, Aresinkkeye of the 1st appellants' lineage produced two Oloyans in succession and that when Onnuola, the second Oloyan from Aresinkeye lineage was to ascend the throne, Adeboya from the Olarinoye lineage contested against him; that the above would not have been the case if the tradition/custom of rotation was in vogue between the two lineages, and that the findings by the lower courts on the issue was clearly perverse and subject to be set aside and urged the court to so hold, relying on *Aina vs UBA Plc* (1997) 4 NWLR (Pt.498) 181 at 189; *Ukata vs Ndinaze* (1997) 4 NWLR (Pt.499) 251 at 276.

On his part, learned counsel for the 1st and 2nd respondents raised a preliminary objection against Grounds 1, 3 particular (v); Ground 4 particular (ii) and Ground 5 particular (iii) of the Amended grounds of Appeal from which Issue 1, supra, was distilled.

The reasons for the objection, according to learned counsel for the 1st and 2nd respondents, are that the said Grounds of Appeal raise fresh issues which were not raised before the lower court and consequently cannot be raised in this court without leave of either the lower court or of this court and that since no such leave was sought and granted, the grounds are incompetent and ought to be struck out, relying on *Dweye vs Iyomaan* (1993) 8 S.C. 76 at 83 - 84; *Ikeanyi vs ACB Ltd* (1997) 2 NWLR (Pt.489) 509

In the reply brief filed on 11th March, 2008, learned senior counsel for the appellants submitted that the objection is misconceived; that the passage quoted in Ground 1 comes from the judgment of the lower court and that an unbiased reading of Grounds 1 and 2 clearly shows that the particulars are intrinsic to the grounds; that they were findings made by the lower court to justify its decision

that there were two branches in the Elemo Ruling House; that particulars (i) and (ii) subjoined to the ground go to highlight the lack of credible evidence to support the findings by the lower court, learned senior counsel further submitted; that the compliant in Ground 3 is that there was no factual basis for the holding by the lower courts
 B that Exhibit G2 was scanty and in-exhaustive as vindicated by particular (v) thereof, etc; that even if the particulars of the grounds raise fresh issues which the appellants do not concede, the worst the court can do is to strike them out and if that happens the grounds would
 C still be valid as there are other particulars to support them; that the arguments canvassed on Issue 1 can equally be considered as arising from the omnibus ground and urged the court to overrule the objection.

I have gone through the grounds of appeal contained
 D ***in the amended notice of appeal filed on the 17th day of January, 2005 and it is very clear that the grounds of objection against the particular grounds of appeal and their particulars are clearly misconceived. The reason for learned counsel for the 1st and 2nd respondents submitting that the alleged offend-***
 E ***ing grounds or their particulars raise fresh issues not raised in the lower court is simply that the current complaints raised by the appellants never arose from the grounds of appeal before the lower court,*** that is why learned counsel submitted that
 F *“Reading through the grounds of appeal and brief of argument of the appellants in the lower court there is no where particulars (i) and (ii) of the Ground 1; particulars of (v) of Grounds 3; (ii) of Ground 4 and (iii) of Ground 5 could have be (sic) seen as being raise (sic) for the determination of the lower court.”*

G ***What the contention of learned counsel misses is the fact that the instant appeal by the appellants is against specific concurrent findings by the lower courts and the learned senior counsel for the appellants quoted the specific findings/***
 H ***holdings in the judgment of the lower court which he considers to be the source of his complaints. The grounds of appeal alongside their particulars including the particulars complained of arose clearly from the decision of the lower court and consequently, not fresh issues for which the leave of this court is required.***

Secondly, apart from the specific particulars of the grounds objected to, there are other particulars to support the grounds of appeal thereby rendering the success of the objection ineffectual as it cannot adversely affect the validity of the grounds of appeal if the alleged offending particulars are struck out. B

In conclusion, I find no merit whatsoever in the preliminary objection which is consequently overruled.

In reacting to appellants' Issue 1, learned counsel for the 1st and 2nd respondents submitted that paragraphs 26, 42 and 43 of the Amended Statement of Claim relied upon by the appellants in submitting that the issue of rotation was never pleaded does not support the contention, that in addition to the three paragraphs of the Amended Statement of Claim, paragraphs 17, 18, 20, 21, 22, 30, 31, 32, 33, 34, 35, 42, 47 and 56 of the said Amended Statement of Claim also contain facts of the rotation of the chieftaincy; that apart from the above pleadings there was evidence by PW1 and Exhibit C2 particularly paragraph 5 of Exhibit C2 to support the pleadings of the 1st and 2nd respondents on the matter; and that the findings by the lower courts on the issue is therefore not perverse as contended, relying on the case of Chinwendu vs Mbamali (1980) 3-4 S.C 31; Ibodo vs Enarofia; Ojo vs Azama (2001) FWLR (Pt.38) 1329 at 1347. Learned counsel urged the court not to interfere with the concurrent findings of fact by the lower court as the same is supported by the pleadings and evidence and consequently not perverse. C D E F

It should be noted from the onset that Issue 1 has nothing to do with the finding by the lower courts that there are two lineages in Elemo Ruling House as pleaded and testified to by the 1st and 2nd respondents as against the five lineages contended by the appellants. The issue and the argument of senior counsel for the appellants earlier summarized in this judgment limits itself to the question as to whether the issue of rotation of the chieftaincy between the two lineages as found by the lower courts was pleaded and evidence adduced in support thereof to justify the findings by the trial court and its confirmation by the lower court. The question is whether the issue or fact of rotation between the two lineages was pleaded by the 1st and 2nd respondents. G H

It is settled law that parties and the court are bound by

the pleadings filed in a matter. For facts needed to establish a right to a relief to be relevant, it has to be pleaded by the party seeking to rely on same to establish his claim or right to relief. It is after the relevant fact is pleaded that evidence would be admissible to establish the existence of that fact, that is why it is also settled law that evidence on facts not pleaded ground to no issue as parties normally join issues on the facts pleaded and only need evidence - either oral or documentary - to establish the facts so pleaded. Where, however, a court relies on evidence on facts not pleaded, an appellate court has the duty to set aside any finding/holding resulting from that reliance.

To support their contention that the fact of rotation of the chieftaincy was not pleaded by the 1st and 2nd respondents, learned senior counsel for the appellants cited and relied on paragraphs 26, 42 and 43 of the Amended Statement of Claim while the respondents relied on the same paragraphs in addition to paragraphs 17, 18, 20 - 22, 30 - 35, 42, 47 and 56 of the said Amended Statement of Claim to contend the contrary. Which of the contentions is correct? To answer the question one needs to take a look at the relevant paragraphs. First of all, let us look at paragraphs 26, 42 and 43.

Paragraph 26 pleads as follows:

“26. When it was again the turn of Elemo Ruling House to present an Oloyan, one of the sons of Ige Adubi Mejowuoye (Aresinkeye) who was called Onnuola was chosen and installed as Oloyan, One Adeboya from Olarinoye lineage contested with him. Thus the 3rd Oloyan to be produced from Elemo Ruling House also came from Aresinkeye lineage.

42. The plaintiff avers that since Faroumbi Elemo’s family consisted of two stripes from his two wives as stated in seven (7) above, it is customary for the children of each wife to constitute a lineage each.

Since Olarinoye produced the first Oloyan from Elemo Ruling House, and the second lineage (Aresinkeye had produced two Oloyans, it is fair just and in line with custom for Elemo Olarinoye to produce the next Oloyan so that the chances utilized by booth lineages will be two each and therefore equal.

43. The 1st plaintiff states that the first defendant’s family

knows that Oba Ige Adubi and Oba Onnuola hailed from Elemo (sale's (i.e. Elemo Aresinkeye) lineage".

"17. Faroumbi Elemo never became an Oloyan as he had many seniors but he had two sons namely Olarinoye and Adeniyi Oyegbanle alias Eegunjobi Elemo. B

18. Olarinoye was born by Segilola, Faroumbi's senior wife while Oyegbenle Adeniyi was born by Olorisade, Faroumbi's junior wife.

20. While Olarinoye was reigning as Oloyan, the compound became too congested. This necessitated the movement of a segment of Elemo to another location called Idi Orisa Aga. The segment that moved was composed of the children of Faroumbi Elemo through Olorisade. They were led by Oyegbenle Adeniyi alias Eegunjobi Elemo. C

21. The children of Elemo through his first wife Segilola, continued to live at the old homestead which was now specifically identified with Olarinoye the then reigning Oloyan. The new homestead was referred to as Elemo Isale's compound, while the old homestead is locationally called Elemo Oke or Elemo Olarinoye. It is a common thing in Oyan for the parts of a compound divided by location to be differentiated by "Oke" or "Isale E

22. Since then the Elemo dynasty has remained one integral entity with two distinct lineages. Each has within it smaller family units called "Kaa" presided over by principal family members. These several "Kaas" do not in themselves constitute lineages. F

30. Each of the two lineages of Elemo Ruling House have been choosing their heads independently and having lineage meetings. The minute's book of meetings of Elemo Olarinoye lineage is hereby pleaded and shall be relied upon at the trial. The 1st defendant is hereby given notice to produce the minute's book of Elemo Aresinkeye lineage. G

31. At a meeting of the two lineages summoned by the 2nd plaintiff and other Kingmakers on 16th September, 1996, the two lineages were distinctly represented by one representative each. At the meeting one Alhaji Oyewole Olabakinde who represented Aresinkeye lineage tried to twist history by alleging that there (are) five (5) lineages of Elemo which according to him were Olarinoye, Ige Adubi, Onnuola, Olueye and Majowuoye. He thus split Aresinkeye H

into four (4) - producing two of them by splitting the name of Oba Ige Adubi Majowuoye into two. The minutes of the meeting shall be relied upon.

32. At another meeting of the Kingmakers with the two lineages held on 23^d September, 1996, that two lineages were also represented by a representative each. One Shittu Awoniyi who represented Aresinkeye tried to even add another lineage - Ojoko - to the list given by Alhaji Oyewole in the meeting of 16th September, 1996.

33. At yet another similar meeting of 7th October, 1996 the two lineages were also represented by a representative each namely Mr. D. O Efunwole and Shittu Awoniyi for Olarinoye and Aresinkeye respectively, although Shitiu Oyewole took over from Shittu Awoniyi when the latter could no longer answer the questions put to him by the Kingmakers.

34. A notice/invitation for a meeting of the ruling house with the Kingmakers was sent to Elemo Aresinkeye and Elemo Olarinoye compounds. Also in preparation for another joint meeting of 17th October, 1996, the representative of the two lineages sent an application to the Divisional Police Officer for security men. At the meeting of the ruling house held on 6th November, 1996 the two lineages sat on two distinct sides and the attendance was so recorded. The minutes of meeting is hereby pleaded.

35. All the recent events documents and proceedings related in paragraphs 28 - 32 show that there are only two lineages (and not five (sic) of Elemo Ruling Housing, namely Elemo Olarinoye of Elemo Oke's compound and Elemo Aresinkeye of Elemo Isale compound Oyan. The 1st defendant and family are stopped from denying this fact.

47. Further to paragraph 46, if the device by Aresinkeye is allowed to stand, even when it is turn of Elemo Ruling House again in future Aresinkeye will still push forward one of its newly fabricated lineages and the rights of Olarinoye will be in risk or remoteness under the Chief's Law.

56. When nominations were to be made, the Olarinoye lineage made it clear that it was its turn to produce the next Oloyan, since the Aresinkeye lineage had produced two (2) out of the three (3) so far produced by Elemo Ruling House. The 1st plaintiff was then

nominated. The Aresinkeye lineage opposed this and nominated the 1st defendant as its own candidate. The meeting ended in a stalemate as the ruling house could not nominate a single candidate”.

I have reproduced the paragraphs of the pleadings relied upon by learned counsel in support of their respective contentions so as to see, at a glance, whether the fact of rotation of the chieftaincy throne/stool between the two lineages in question was pleaded so as to ground the case of the 1st and 2nd respondents. I had earlier found as a fact that Issue 1 under consideration has nothing to do with the issue as to whether there are two or five lineages in Elemo Ruling House, as can be seen from the issue as formulated and the argument of learned senior counsel thereon.

It is therefore very clear that all the paragraphs of the Amended Statement of Claim reproduced supra dealing with the number of lineages in Elemo Ruling House are not relevant in the determination of Issue 1 and are consequently discountenanced by me. I have had to reproduce them despite their irrelevancy so as to demonstrate clearly that they do not relate to the fact of rotation of the throne/stool between the two lineages.

Secondly, the fact that appellants have not attacked the concurrent findings by the lower courts that there are two lineages in Elemo Ruling House instead of five means that appellants accept or are deemed to have accepted that findings as correct and therefore binding on them and every other relevant person.

The question now is whether the issue of rotation of the throne/stool between the two lineages was pleaded having regards to the pleadings in paragraphs 26, 42, 43 and 56 supra. ***I have examined closely the above paragraphs and it is very clear that the fact of rotation of the throne/stool between the two lineages of Olarinoye and Aresinkeye both of Elemo Ruling House is not pleaded.*** What the paragraphs show is a desire for equal opportunity to occupy the throne alternately not that by the customs and traditions of Elemo Ruling House the throne of Oloyan of Oyan is occupied by rotation between the two lineages. It follows therefore that the issue of rotation was not part of the case presented by the 1st and 2nd respondents in their pleadings. In fact the fact that two Oloyans of Oyan from Elemo Ruling House came from one of the lineages (Aresinkeye) in succession clearly negates the principle of rotation

between the two lineages because if rotation had been in vogue, the throne would have been occupied alternately between the two lineages. Secondly, in paragraph 26 supra it is pleaded that when Onnuola from Aresinkeye lineage was chosen and installed as Oloyan one Adeboya from Olarinoye lineage contested the stool with him which fact clearly negates the principle of rotation and supports the case of the appellants that whenever it was the turn of Elemo Ruling House to produce an Oloyan of Oyan, candidates from the two lineages contested freely for the stool.

Now, it is settled law that evidence on facts not pleaded ground to no issue. It follows therefore that even if there was evidence on record on the issue of rotation between the two lineages, which is not conceded anyway, such evidence would be contrary to the pleadings and consequently of no legal effect. I therefore do not intend to waste time by going through the record to find out whether there is evidence in support of such a finding. I therefore resolve issue 1 in favour of the appellants.

On issue 2, learned senior counsel for the appellants referred the court to paragraphs 46 and 47 of the Amended Statement of Defence and counter-claim where estoppel by conduct is pleaded and the evidence from the witnesses thereon and stated that it is indisputable that there was an Elemo family meeting on 22nd November, 1996 where the representatives of Olarinoye and Aresinkeye lineages were present though the 1st appellant and 1st respondent did not attend; that it was at that meeting that the 1st appellant and 1st respondent were duly nominated as candidates for Oloyan stool; that no one protested the nominations; that at the meeting of the Kingmakers on 26th November, 1996, three out of the four Kingmakers voted in favour of the 1st appellant while only one, the 2nd respondent voted in favour of the 1st respondent; that the trial court agreed with the appellants on the matter and allowed their counter-claim No.1 as well as reliefs 3 and 4; that the lower court was in error in setting aside the finding on the issue by the trial court.

In support of the above submission, learned senior counsel cited and relied on *Abalogu vs S.P.D.C Ltd* (2003) 13 NWLR (Pt. 837) 308 at 335; *Nig. Bank for Commerce and Industry vs IND Gas (Nigeria)* (2005) ALL FWLR (Pt.250) 1; *Ogbu vs Ani* (1994) & NWLR (Pt.355) 128 at 140; *Egbaran vs Akpotor* (1997) 7 NWLR (Pt.514)

559 at 571 in urging the court to resolve the issue in favour of the appellants.

On his part, learned counsel for the 1st and 2nd respondents submitted that the meeting of 22nd November, 1996 ended in a stalemate as no candidate of the Ruling House was nominated as there was no agreement on a single candidate as required; that that being the case, the meeting of the Kingmakers on 26th November, 1996 in which the 1st appellant had three votes out of four was clearly of no moment; that paragraph (v) of Exhibit “G2” - the registered declaration provides for only one candidate to be nominated by the Ruling House and that since none of the two was the nominated candidate at the meeting, the question of waiver does not arise; that the lower court was right in coming to the conclusion it did and urged the court to resolve the issue against the appellants. B C

The foundation of the issue under-consideration is to be found in the pleadings of the parties, particularly that of the appellants who raised the defence of estoppel/waiver in their paragraphs 46 and 47 of Amended Statement of Defence and counter claim, where they pleaded thus:- D

“46. The defendants shall contend at the trial that the 1st plaintiff having taken part in the nomination exercise at which he lost to the 1st defendant who had the overwhelming majority is estopped from asserting the separateness of the Olarinoye lineage from the Elemo Ruling House.” E

47. The defendants shall also content that the 2nd plaintiff who joined the 5th, 6th and 7th defendants in fixing the meeting of the Kingmakers for the sole purpose of considering the nomination of candidates by Elemo Ruling House and after joining the 5th, 6th and 7th defendants in signing the letter of invitation sent to the secretary of the 3^d defendant and by his presence at the meeting is estopped from contesting the decision of the majority of the Kingmakers.” F G

The reaction of the plaintiffs to the above paragraphs of the Amended Statement of Defence and counter-claim is contained in paragraphs 11 and 15 of their reply to the statement of defence and defence to counter-claim. The paragraphs plead as follows:- H

“11. The 2nd plaintiff states that he was not even at the meeting of 22nd November, 1996, neither was the 1st defendant present. The issue of estoppels did not arise at all in the circumstance. The 1st

plaintiff denies that the 1st defendant had any majority as it is not the turn of his lineage (that has produced two out of three Oloyan from Elemo Ruling House) to field another candidate.

15. Further to paragraph 11 above, the 2nd plaintiff avers that the issue of estoppels or majority did not arise as the 5th, 6th and 7th defendants have stepped out of turn in their traditional duties in acting contrary to native law and custom by attending the family meeting on 22nd November, 1997. Also, the 5th-7th defendants together with Mr. Fadara acted on the minutes of an inconclusive meeting and without a nomination letter from the ruling house clearly indicating “a candidate” chosen by the ruling house as required by the public notice. But they later saw his point and sent a purported nomination letter to his house after they have (sic) already done the purported selection using what they called their “knowledge” in paragraph 38 of the defence”.

Evidence was adduced by both parties in support of their contending positions in their pleadings and the trial court, after evaluating the said evidence, held as follows at page 124 of the record:-

“But the plaintiff, for reasons stated earlier on in the judgment submitted to nomination by joint meeting of the family. They cannot resile from this. It is binding, therefore the 1st, 5th, 6th and 7th defendants counter-claim NO. 1 succeeds and same is granted by me. Reliefs 3 and 4 flowing from 1 also succeed (sic)”.

The reaction of the Lower court to the above finding/holding by the trial court is at page 254 of the record; where the court said, *inter alia*:

“... There is therefore no evidence in Exhibit “C” to warrant the learned trial judge’s finding of the Olarinoye family’s abandonment or waiver of their claim to the vacant stool...”

I hold that the trial court’s findings about the Olarinoye family’s abandonment or waiver of their right to produce a candidate for the vacant stool of Oloyan of Oyan is perverse same not having been supported by the evidence in Exhibit “C” and it is accordingly set aside. In its place I substitute a finding that at the meeting of the Elemo Ruling House on the 22nd November, 1996 the Olarinoye family maintained and insisted on their right to produce the candidate for the vacant stool...”

It is the contention of learned senior counsel for the appel-

lants that the above findings/holdings arose from a misconception of the case put forward by the appellants relating to the issue of estoppel/waiver; that the estoppel pleaded in paragraphs 46 and 47 of the Amended Statement of Defence and counter-claim was against the 1st respondent and not his lineage neither did the learned trial judge treat the matter on the basis of lineage but on the individual right of the 1st respondent; that the learned trial judge did not rely solely on Exhibit “C” in coming to the conclusion he did as held by the lower court but on the totality of the evidence before the court; and that the issue of inconclusive nature of the meeting evidenced in Exhibit “C” was uncalled for particularly as PW3, who was the secretary of the meeting never testified to the fact that the meeting was inconclusive or a stalemate. I agree with the above submissions of learned senior counsel for the appellants as the same is clear from the record and the pleadings earlier reproduced. The case of the appellants is simply based on estoppel by conduct against the 1st and 2nd respondents as individuals. It has nothing to do with their lineage at all.

It is not in dispute that two candidates were nominated for the stool of Oloyan of Oyan in the meeting of Elemo Ruling House held on 22nd November, 1996 which candidates were the 1st appellant and 1st respondent; that the names of the two candidates were forwarded to the Kingmakers who, in their meeting of 26th November, 1996 voted three against one in favour of the candidacy of the 1st appellant as against the 1st respondent. Both candidates were voted for in the meeting of the Kingmakers. ***The case of the appellants is that the 1st respondent as well as the 2nd respondent haven participated directly or indirectly at the nomination exercise cannot resile from same since if it had favoured them, they would not have complained. The 1st respondent never protested his nomination alongside the 1st appellant for the contest for the stool in question.*** From the record, the nomination of two candidates is also not novel as the 1st and 2nd respondents pleaded in paragraph 26 of the Amended Statement of Claim that:-

“When it was again the turn of Elemo Ruling House to present an Oloyan, one of the sons of Ige Adubi Mejowuoye (Aresinkeye) who was called Onnuola was chosen and installed as Oloyan. One Adeboya from Olarinoye lineage contested with him. Thus the 3^d Oloyan to be produced from Elemo Ruling House also came from

Aresinkeye lineage". The above pleading is supported by the testimony of PW1. 1st appellant at page 37 of the record, as follows:-

"Aresinkeye was made Oba twice. I was not born then but history told us that Adeboya contested against Onnuola and lost. I don't want my own side to lose again."

B So, it is clear that the present instance is not the first time that a candidate is nominated from each of the two lineages to contest for the stool of Oloyan of Oyan. It is clear also that it is from the two candidates that the Kingmakers were to choose one for appointment by the Governor or appointing authority.

C Secondly, ***there is nothing on record to suggest that the estoppel or waiver pleaded and testified to by the witnesses was against the lineage of the 1st respondent as held by the lower court neither did the trial court so find. There is, therefore, no basis for the lower court to interfere with that finding which is based on the pleadings and evidence. To have misconceived the case of the appellants on estoppel/waiver as one against the 1st respondent's lineage is erroneous as the truth is that it was pleaded and found by the trial court against the 1st and 2nd respondents as individuals.***

In the circumstance, I resolve Issue 2 in favour of the appellants.

F On Issue 3, learned senior counsel submitted that the lower court was in error when it affirmed the findings of the trial court to the effect that Exhibit 'G2' the Chieftaincy Declaration, was scanty and in-exhaustive and thereby resorted to other evidence to fill in the perceived lacuna. It is the further submission of the learned senior counsel that the 1st and 2nd respondents did not prove any lacuna in the Chieftaincy Declaration; that all the PWs agree that there is only one Elemo Ruling House; that there is no evidence that when Olarinoye ascended the throne he did so on an agreement on rotation neither is it the case that when Ige Adubi of the 1st appellant lineage came on the throne it was by an agreement on rotation between the two lineages; that in fact the fact that two Obas or Oloyans reigned in succession from Aresinkeye lineage is a negation of the case of rotation; that Exhibit "G2" is the customary law guiding the succession to the Oloyan of Oyan chieftaincy and cannot be lightly side tracked on the ground of lacuna or inconclusiveness. Learned

senior counsel cited and relied on the case of Oladele vs Aromolaran II (1996) 6 NWLR (Pt.453) 180 at 203, 207 - 208; Ogundare vs Odunlowo (1997) 6 NWLR (Pt.589) 36 at 372 - 373; Olanrewaju vs Governor of Oyo State (1992) 9 NWLR (pt.265) 335 at 362 - 363; Masimisebi vs Ehuwa (2007) 2 NWLR (Pt.1018) 385 at 428-429; Fasade vs Babalola (2003) 11 NWLR (Pt.830) 26 at 45. Finally learned senior counsel urged the court to resolve the issue in favour of the appellants and allow the appeal. B

On his part, learned counsel for the 1st and 2nd respondents submitted that both parties presented conflicting cases before the court as evidenced in their pleadings; that the parties were therefore duty bound to call evidence in support of their averments since Exhibit "G2"; the registered declaration of Oloyan of Oyan chieftaincy does not contain sufficient material evidence in proof of the facts pleaded making it in-exhaustive of the customs and traditions of the people; that it is on the basis of the above that recourse had to be made to evidence of tradition to enable the parties prove their case, relying on Edewor vs Uwegba (1987) 1 NWLR (Pt.50) 313 at 345; Lipede vs Sonekan (1995) 1 NWLR (Pt.374) 668 at 689 and urged the court to resolve the issue against the appellants and dismiss the appeal. C D E

Exhibit "G2", as has been stated is the Registered Declaration of Oloyan of Oyan chieftaincy and it is settled law that where a declaration in respect of a recognized chieftaincy is validly made and registered, the matter or custom or native law and custom therein stated shall be deemed to be the customary law regulating the selection of a person to be the holder of the recognized chieftaincy to the exclusion of any other customary usage or rule or tradition. F G

The registered declaration is therefore a declaration of the-tradition, customary law and usages pertaining to the selection and appointment to the particular chieftaincy stool/throne, it relates - see Oladele vs Aromolaran II (1996) 6 NWLR (pt.453) 180. Where, therefore, there is a registered chieftaincy declaration, such as Exhibit "G2", the duty of the court generally is to apply the provisions of the chieftaincy declaration to the facts of the case as established by pleadings and evidence as the court has no power to assume the functions of the Chief- H

taincy Committee as regards the making or amendment of customary law governing the selection and appointment of traditional chiefs - see *Ikine vs Edjerode* (2007) 18 NWLR (pt.745) 446 at 478 - 479; *Adigun vs A-G Oyo State* (1987) 1 NWLR (Pt.53) 678.

B It should, however, be noted that the court can set aside a chieftaincy declaration under certain circumstances such as where a registered declaration is proved to be contrary to the customs and traditions of the people. In the case of *Mafimisebi vs Ehuwa* (2007) 2 C NWLR (pt.1018) 385 at 431, I had these to say:

"I hold the view that the claim as couched - being declaratory in nature are within the jurisdiction or competence of the court to grant if there are facts to support same. The court is not being called upon to make a chieftaincy declaration for the people, neither D is it to amend the existing declaration. I hold the considered view that just as the court has the vires to declare or set aside a registered declaration found to be unconstitutional or contrary to the provisions of any Act or Law including the Chieftaincy Law under which it was made, the court equally has the competence to declare same E null and void when from the evidence, it is clear that the said declaration does not truly represent the customary law it professes to re-state".

F Though the above remains the law, for the court to intervene, relevant facts must be pleaded and evidence adduced thereon to the satisfaction of the court because the law is that customary law being a matter of fact must be proved by calling evidence unless frequent proof of same has made it to attain the legal status of notoriety so as to be judicially noticed - see *Olowu vs Olowu* (1985) 3 G NWLR (Pt. 13) 372.

What does the registered declaration, Exhibit "G2" say? It declares as follows:-

H *"DECLARATION MADE BY THE ODO-OTIN LOCAL GOVERNMENT CHIEFTAINCY COMMITTEE UNDER SECTION 4 (2) OF THE CHIEF LAW CAP 19 OF THE CUSTOMARY LAW REGULATING THE SELECTION TO THE OLOYAN OF OYAN CHIEFTAINCY APPENDIX "D"*

1. There shall be four ruling houses and the identity of the ruling houses are:-

i. Elemo Ruling House

ii. Laojo Ruling House

iii. Olomo-Oba Ruling House

iv. Dawodu Ruling House

2. The order of rotation in which the respective ruling house are entitled to provide candidates to fill successive vacancies in the chieftaincies shall be:- B

i. Elemo

ii. Laolo

iii. Olomo-Oba

iv. Dawodu C

3. The persons who may be proposed as candidates by a ruling house entitled to fill a vacancy in the chieftaincy shall be:-

Male members of the entitled ruling house of good character and sound mind without any previous conviction any court. D

4. There are six Kingmakers as under:-

i. FSA

ii. Ojomu

iii. Osholo

iv. Inurin E

v. Arogun

vi. Ola

5. The method of nomination by each ruling house is as follows:- F

i. The ruling house whose turn it is to provide a candidate will nominate at a family meeting to be summoned by the family head candidate for the chieftaincy to be presented by the family head to the Kingmakers.

ii. If the Kingmakers are satisfied that the candidate is suitable from all points of view they recommend him for approval by the Governor. If they are not satisfied, they request the entitled ruling house to present another candidate.

*MADE BY THE ODO-OTIN CHIEFTAINCY COMMITTEE
THIS 25TH DAY OF MAY, 1982.* H

(SGD) (P. O AMUSAN)

SECRETARY,

ODO-OTIN CHIEFTAINCY COMMITTEE

SGD (OBA S. A. O OYELEYE OLURONKE II OLOKUKU OF OKUKU

CHAIRMAN

ODO-OTIN CHIEFTAINCY COMMITTEE.

APPROVED BY THE GOVERNOR THIS 4th DAY OF FEBRUARY,

B 1983.

(SGD) (BOLA IGE)

GOVERNOR, OYO STATE.

REGISTERED THIS 15th DAY OF FEBRUARY, 1983.

C (SGD) (M. O. OJO)

FOR SECRETARY TO THE GOVERNMENT

There is no doubt that the principle of rotation is recognized in Exhibit “G2” as being the mode of filling the vacancy of Oloyan of Oyan whenever it exists among the recognized four Ruling Houses.

D Exhibit “G2” also states the order in which the rotation is to operate.

It is true that Exhibit “G2” does not concern itself with what happens within the constituting units of a ruling house or how they chose their candidate whenever it is their turn to produce the Oloyan of Oyan. In fact it is not their business to

E ***regulate that procedure. In the peculiar case of Elemo Ruling House, there are two lineages constituting the ruling house and the registered declaration talks of the ruling houses as a unit presenting a candidate for the appointment. If the candi-***

F ***date is to emerge by way of rotation between the two lineage that would be the custom of Elemo Ruling House which ought to be pleaded and proved by evidence so as to enable the court***

G ***act on same. In the instant case, it has already been demonstrated that the fact of rotation between the two lineages of Elemo Ruling House was no where pleaded by the 1st and 2nd respondents and that the findings on rotation by the trial court and the affirmation of same by the lower court is perverse.***

In fact the pleadings and evidence thereon demonstrates that whenever it was the turn of Elemo Ruling House to present a candi-
H date for the stool, there was a contest between nominated candidates. There is the evidence that Aresinkeye lineage produced two Oloyans in succession which would not have been the case if the principle of rotation is in operation. Secondly, it is also an undisputed fact that when Onnuola from Aresinkeye lineage was to ascend the

throne, Adeboya from Olarinoye lineage contested the stool with him. These facts are very stubborn and they speak volumes. They support the case of the appellants that whenever it is the turn of Elemo Ruling House to produce an Oloyan of Oyan, it was done by open contest by nominated candidates from both lineages. This cannot be said to be inconsistent with Exhibit "G2" neither would it create a lacuna in the customary law stated therein. Exhibit "G2" is complete as it is and without any lacuna to be filled by extrinsic evidence, granted that the fact of the lacuna and the customary law needed to fill same had been pleaded. B

I should not be understood as saying that the situation as it exists does not result in injustice to one of the components of the ruling house. C

What I am saying, and which is a restatement of the applicable law, is that where there is the need to amend a Registered Chieftaincy Declaration so as to bring it in line with the current trend in the customary law of the people, it is the duty of the executive arm of government to do so. In the instant case, there is the anguish of one of the lineages which has to produced only one Oloyan of Oyan out of the four so far produced by Elemo Ruling House; that is clearly unfair and something ought to be done about it by the appropriate authority. Olarinoye lineage ought not to be allowed to continue to suffer under the tyranny of the majority over a common property or proprietary interest with Aresinkeye lineage. D

In conclusion, I however resolve Issue 3 in favour of the appellants. E

With regards to the appeal by the 5th and 6th appellants, I had earlier stated in this judgment that they adopted the same issues formulated by learned senior counsel for the appellants arising from the same grounds of appeals. It follows, therefore, that the resolution of the said issues in favour of the 1st - 4th appellants results in the resolution of the same issues in favour of the 5th and 6th appellants. F

In conclusion, I hold the view that the appeals succeed and are allowed, the judgment of the lower court in Appeal NO. CA/1 /A/ 75/99 delivered on 8th day of January, 2000 is hereby set aside and in its place I hereby restore and affirm the judgment of the trial court in Suit NO. H1K/15/97 delivered on the 30th day of June, 1998 subject to or in line with the issues resolved in this judgment. G

Due to the nature of this case and in order to promote reconciliation and the spirit of brotherliness between the lineages, I do not want to award costs. I accordingly make no order as to costs. Appeals allowed.

B

MUKHTAR JSC

I have had the opportunity of reading in advance the lead judgment delivered by my learned brother Onnoghen JSC. I am in complete agreement with him that the notice of preliminary objection raised by the appeal of the 7th appellant has merit, and should be upheld. I also upheld it. Consequently I strike out the 7th appellant's appeal. However, the second notice of preliminary objection raised by the 1st and 2nd respondents, has no merit, and so it is overruled, as the grounds of appeal attacked are valid and competent. I also agree that the appeals of the 1st-4th appellants, and 5th and 6th appellants are meritorious and deserve to succeed. I allow the appeal, set aside the judgment of the lower court and restore and affirm the judgment of the trial court. My learned brother has painstakingly treated all the issues raised in his judgment, and I do not wish to highlight or add anything to it. I abide by the order as to costs.

F

MUNTAKA-COOMASSIE JSC

Having read and assimilated the draft judgment of my learned Lord Walter Onnoghen JSC, just read. I agree with his reasoning and conclusion in allowing this appeal. I too agree that the appeal before us deserved to be allowed same is therefore allowed by me. I endorse the reasons why costs should not be awarded. The decisions of the lower court is hereby restored and affirmed.

GALADIMA JSC

H I have seen and read before now the draft of the judgment of my Learned brother ONNOGHEN, JSC, which has just been delivered. I would like to add a very short comment of my own on the preliminary objection raised by the 1st and 2nd Respondents against the appeal of the 7th appellant. In the 1st and 2nd Respondents brief

their learned counsel has argued that the judgment of the lower court not having decided anything against the 7th appellant, (Odo-Otin Local Government) it cannot be a party aggrieved by the decision of the lower court and cannot therefore appeal against same. Reliance was placed on the of case SOCIETE GENERAL BANK (NIG.) LTD v APEILORO (1999)11 NWLR (Pt.627) 521 at 537; MOBIL PRODUCING (NIG) UNLIMITED v MONOKPO (2004) 2 M.J.S.C 1 at 17. The 7th appellant as the 4th dependent at the trial court did not appeal against the decision of the trial court to the appeal court. None of the five reliefs granted by the lower court can be said to have affected the appellant. I have also noted that the Learned Counsel for the 7th Appellant did not file a reply brief to the brief of the 1st and 2nd Respondents. This failure has made it impossible for the 7th Appellant to confront the points canvassed in the preliminary objection. Moreover, at the hearing of the appeal the 7th Appellant did not make any oral presentation on the matter. It is not shown that the 7th appellant was under any legal disability when he neglects to exercise its right to its benefit. It should be the best judge of its own benefit or interest. Having full knowledge of the rights, or interest or benefit conferred upon or accruing to it under the law, but intentionally decides to give up or waive it, 7th appellant cannot be heard to complain afterwards that it has not been permitted to exercise its rights or that it has suffered any legal grievance. 7th Appellant is deemed to have conceded the points so canvassed by the 1st and 2nd Appellants in their objection. My careful consideration of the reliefs claimed by the 1st and 2nd respondents at the trial court show clearly that none of these adversely affected the interest of the 7th Respondent so as to qualify it to be considered as a party aggrieved by an order of Court so as to warrant the 7th appellant to appeal against the said judgment. 7th Appellant, therefore, has not suffered any legal grievance, arising from the said judgment and I so hold: See MOBIL PRODUCING (NIGERIA) UNLIMITED v MONOKPO (Supra) also Halsbury Laws of England (3rd Edn. Vol. 14 para. 1175).

In my further enquiry into the grounds of appeal of the 7th appellant, it is clear that it merely reproduced the grounds of appeal of the 1st - 4th Appellants as its own and proceeded further to adopt the issues formulated by the Counsel of the said 1st - 4th Appellants. Consequently, the preliminary objection raised against the 7th Appel-

lant is firmly established. The result of this enquiry is that the appeal of the 7th Appellant is liable to be struck out and it is hereby struck out.

It would appear, though there is no preliminary objection against the appeal of the 5th and 6th Appellants who were the 2nd and 3rd defendants, respectively, at the trial court, there is no difference between the grounds of appeal in that appeal and the issues arising therefrom and those of in the 1st - 4th appellants' appeal. The 5th and 6th appellants decided to adopt the issues formulated by the learned senior counsel for the 1st - 4th Appellants in that appeal. If so, it seems to me therefore that a disposal of the issues in the appeal of the 1st-4th appellants automatically disposes of the issues calling for resolution in the appeal of the 5th and 6th Appellant. It now remains for me to relate those issues to the facts of this case so stated in detail in the lead judgment.

My Learned brother in this lead judgment has related these issues very well to the facts of this case as out in great detail at the beginning of the judgment. The main issue canvassed by the 1st - 4th Appellants is whether the issue of rotation of the stool between the two lineages was pleaded having regards to the pleadings in paragraphs 26, 42, 43 and 56. To support their contention that the fact of rotation of the Chieftaincy was not pleaded by the 1st and 2nd Respondents, learned senior counsel for the appellants referred to and relied on these paragraphs of the Appended Statement of Claims while the respondents relied on the same paragraph in addition to paragraphs 17, 18, 20 - 22, 30 -35, 42, 47 and 56 of the said Amended Statement of Claim to contend the contrary. For better appreciation of the contentions, I have set out paragraphs, 26, 42 and 43 herewith:

"26. When it was again the turn of Elemo ruling house to present an Oloyan, one of the son of Ige Adubi Mejowuoye (Aresinkeye) who was called Onnuola was chosen and installed as Oloyan. One Adeboya from Olarinoye Lineage contested with him. Thus the 3^d Oloyan to be produced from Elemo ruling house also came from Aresinkeye lineage.

42. The plaintiff avers that since Faroumbi Elemo's family consisted of two stripes from his two wives as stated in 17 above, it is Customary for the children of each wife to constitute a lineage each.

Since Olarinoye produced the first “43. “43. Oloyan from Elemo ruling house, and the second lineage (Aresinkeye) had produced two Oloyans, it is fair just and in line with custom for Elemo Olarinoye to produce the next Oloyan so that the chances utilized by both lineages will now be two each and therefore equal.

43. The plaintiff states that the first defendant’s family knows that Oba Ige Adubi and Oba Onnuola hailed from Elemo Isale’s (i.e. Elemo Aresinkeye) lineage”

From my close examination of the above paragraphs it is very clear that the fact of rotation of the stool between the two lineages of OLARINOYE and ARESINKEYE both of Elemo Ruling House is not pleaded. I am in agreement with the Appellants that what is indicated in these paragraphs is a desire for equal opportunity to occupy the throne alternately not that by the customs and traditions of Elemo Ruling House, the throne of Oyan is occupied by rotation between the two lineages.

In effect, the issue of rotation was not part of the case presented by the 1st and 2nd respondents in their pleadings. A valid point has been established here. That is the fact that two Oloyans of Oyan from Elemo Ruling House came from one of the lineages (Aresinkeye Lineage) in succession. This, in effect, negates the principle of rotation of throne/stool between the two-lineages. As correctly observed by my brother in his lead judgment, if the notion of rotation had been in “Vogue”, the throne would have been occupied alternately between the two lineages. The Appellants’ contention is further strengthened by their claim on paragraph 26 of the Amended Statement of Claim reproduced above, where it is pleaded that when Onnuola from Aresinkeye Lineage was chosen and installed as Oloyan one Adeboya from Olarinoye lineage, contested the stool with him. As I have observed. This fact clearly negates the principle of rotation and supports the case of the Appellants that whenever it was the turn of Elemo Ruling House to produce an Oloyan of Oyan, candidate from the two lineages contested freely for the stool. These were no evidence on facts favourable to the Appellants’ case. There was no evidence on record on the issue of rotation between the two lineages. In the light of the foregoing I resolve issue in favour of the Appellant.

The foundation of the second issue in this appeal under con-

sideration is to be found in the pleadings of the parties, particularly that of the Appellants. They raised the defence of estoppels or waiver in their paragraphs 46, and 47 of the Amended Statement of Defence and counter claim. The plaintiffs reacted to those paragraphs in paragraphs 11 and 15 of their reply to the Statement of Defence and defence to counter claim. Needless reproducing these paragraphs. However, my careful study of the paragraphs has led me to the conclusion that the estoppels plead in paragraphs 46 and 47 of the Amended Statement of Defence and Counter-claim was against the 1st respondent and not his lineage, neither did the learned trial judge treat the matter on the basis of lineage but on the individual right of the 1st respondent. I agree with learned senior counsel for the appellants that the learned trial judge did not rely solely on Exhibit "C" in coming to the conclusion he did as held by the lower court but on the entire evidence before the court. The issues of inclusive nature of the meeting evidenced in Exhibit "C" was really uncalled for. PW3, who was the secretary of the meeting was not shown to have testified to the fact that the meeting was inconclusive or a stalemate. The case of the appellants is based on estoppels by conduct clearly against the 1st and 2nd respondents as individuals. The lower court could not have held otherwise. The case put forward by the appellants has nothing to do with the lineage of the 1st and 2nd respondents at all.

In any case the 1st appellant and 1st respondent were forwarded as candidates to the Kingmakers who in their meeting of 26/11/96 voted 3 (three) against 1 (one) in favour of the 1st appellant as against 1st respondent. The appellants are contending that the 1st and 2nd respondents have participated directly or indirectly at the nomination exercise cannot now resile from their participation, for if they had been favoured by the voting exercise they would not have complained. The 1st respondent, in the first place, never protested his nomination along side the 1st appellant for the contest for the said stool of Oloyan of Oyan. Besides, from the record the nomination of the two candidates is not novel as the 1st and 2nd respondents pleaded in paragraph 26 of the Amended Statement of Claim. That pleading is supported by the testimony of PW1, (1st Appellant) at page 37 of the record as follows:

"Aresinkeye was made Oba Twice. I was not born then but History told us that Adeboya contested against Onnuola and lost. I

don't want my own side to lose again”

From this it is clear that the present instance is not the first time that a candidate is nominated from each of the two lineages to the contest for the stool.

In the light of the foregoing there is no basis for the lower court to interfere with the finding of the trial court which is based on the pleadings and evidence before it. This second issue is therefore resolved in favour of the Appellants. B

With the resolution of the 1st and 2nd issues in favour of the Appellants, I do not intend to consider issue 3. It has been exhaustively dealt in the lead judgment and resolved in favour of the appellants. C

In the light of the foregoing reasons and for the reasons so ably set down in the lead Judgment, to which I earlier made reference, I would also allow the appeal and set aside the judgment of the lower court but restore and affirm the judgment of the trial court. I too would not award costs, in the circumstance of these appeals.

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the leading Judgment prepared by Onnoghen, JSC. I am in complete agreement with it, and so hesitated before finally deciding to add a few observations of my own. E

On the 23rd day of August 1996, The Oloyan of Oyan died. A new Oloyan had to be crowned. The Oloyan Chieftaincy has four Ruling Houses. They are: F

1. Elemo
 2. Laojo
 3. Olomooba
 4. Daodu or Dawodu
- G

The Oloyan must be chosen from one of them. The Kingmakers decided that it was the turn of Elemo Ruling House to produce an Oloyan. There was no protest from the other three Ruling Houses. They agreed that it was the turn of Elemo Ruling House to produce the next Oloyan of Oyan. Now, there are two Lineages in the Elemo Ruling House. They are: H

1. Olarinoye

2. Aresinkeye

The 1st appellant is from the Aresinkeye Lineage. He was eventually appointed and installed as the Oloyan of Oyan in 1997. This appointment did not go down well with the 1st respondent, who is from the Olarinoye Lineage. He went to court. His case was that
 B the Elemo Ruling House had in the past produced three Oloyans with one coming from Olarinoye and two in succession from Aresinkeye.

The learned trial judge agreed with the 1st respondent and
 C found that it was indeed the turn of Olarinoye Lineage to produce the Oloyan and not the Aresinkeye Lineage. This judgement was affirmed by the court of Appeal. That it is the turn of the Olarinoye Lineage of the Elemo Ruling House to produce the next Oloyan of Oyan is a concurrent finding of fact by the High Court and the Court
 D of Appeal. If pleadings are to be of any use, parties must be held bound by them. In a plethora of cases it has been stated that parties are bound by their pleadings. See Ugochukwu v Unipetrol 2002 3SC p. 80; Mohammed v Klergestan Nig. Ltd. 2002 7SC Pt.11 p 1.

Paragraph 26 of the 1st respondents/plaintiffs pleadings read thus:

E *“26 when it was again the turn of Elemo ruling house to present an Oloyan one of the sons of Ige Adubi Mejowuiye (Aresinkeye) who was called Onuola was chosen and installed as Oloyan. One Adeloya from Olarinoye Lineage contested with him. Thus the 3rd Oloyan to be produced from Elemo Ruling House also
 F came from Aresinkeye Lineage”.*

The above shows that when it is/was the turn of the Elemo ruling house to produce the Oloyan an open contest is conducted between the representatives of both Lineages and the winner be-
 G comes the Oloyan. There is thus no sequence of succession within the Elemo Ruling house and so both Courts below were wrong to hold that it is by rotation between the two lineages of the Elemo Ruling house that an Oloyan is produced.

Finding of fact by two lower courts are normally not dis-
 H turbed by this court but this court would readily interfere, highlight the error and state the correct position of the facts. This would be done if special circumstances have been shown why this court should do so. For example, if procedural errors were committed by the two courts below which has led to miscarriage of justice. If rules of proce-

ture or some principles of law were not followed, or ignored, and/or if the findings are perverse.

See. Enang v Adu 1981 11 -12 SC p.25; Adebayo v Ighodalo 1996 5 NWLR pt 450 p.507; Mora v Okonkwo 1987 3 NWLR Pt 60 .314; Oladele v. Anibi 1998 9 NWLR pt 567 p. 559:

The findings of the two courts below that the Elemo ruling house produces its own candidate for the Oloyan chieftaincy based on rotation between its two Lineages is perverse in view of paragraph 26 of the 1st respondent/plaintiffs pleadings.

Finally, I must observe that a plaintiff swims or sinks with his pleadings. Judges cannot assist a plaintiff to win his case, because cases are not decided on emotions, sentiment, or some misguided consideration. Cases are won on pleaded facts supported by compelling evidence. For this and the much fuller reasoning in the leading judgment I would allow the appeal.

E

F

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