

**SUPREME COURT OF NIGERIA**  
16TH DECEMBER, 2011. SC. 200/2003  
**CORAM: - I. T. MUHAMMAD, J. A. FABIYI, O. O. ADEK-  
EYE, N. S. NGWUTA, M. U. PETER-ODILI, JJSC**

CHIEF GAFARU AROWOLO ..... APPELLANT  
AND

1. CHIEF SUNDAY OLOWOKERE
  2. GOVERNOR OF OGUN STATE
  3. ADO-ODO/OTA LOCAL GOVERNMENT .... RESPONDENTS
- 

WORDS & PHRASES - “Locus standi” - Meaning - It is the legal capacity to institute an action in court - And it is determined from the averments in statement of claim (H1)

CHIEFTAINCY MATTERS - Right of action - Since respondent asserted his family’s right and his interest to the stool of Itele - He has locus standi to bring the action - By virtue of 1999 Constitution s. 6(6) (H2)

ACTIONS - Declaratory action - Need to prove - Person claiming such right - Must show the existence of a subsisting legal right - In his favour (H3)

ACTIONS - Declaratory action - Burden of establishing same is on plaintiff - Whose evidence must be credible and in accordance with his pleadings (H4)

EVIDENCE - Evaluation - It is the duty of trial court - To evaluate and ascribe probative values to evidence of witnesses (H5)

APPEALS - Evidence - Evaluation - Findings of facts - Appellate court does not interfere - More so where it involves assessment of credibility of witnesses (H6)

APPEALS - Concurrent findings - Supreme Court does not interfere - Save where there is violation of some principles of law - Or where the findings are erroneous or perverse (H7)

### ***FACTS***

1st respondent in this appeal as plaintiff instituted this action at the High Court of Ogun State, Abeokuta Judicial Division pursuant to the leave granted by the court to prosecute the case in a representative capacity for and on behalf of the Adogun-Atele family of Itele on 18th of September, 1992. He claims, inter alia: Declaration that under the hereditary customs and traditions of Itele town, Ota, Ogun State, only the Adogun-Atele family comprising four Ruling houses namely; Imidawo Ruling House, Ogunrombi Ruling House, Osa Ruling House and Alagbeji Ruling House are eligible to hold the chieftaincy title of Oba of Itele, first held by 1<sup>st</sup> respondent's ancestor Adogun-Atele, the founder of the town and which title is now classified as Part II title under the Chiefs Law of Ogun State, 1978. At the trial, he gave traditional evidence of the genealogy of his family traced to his ancestor, Adogun-Atele the first Oba of Itele. He came to settle at Itele from Benin City. Adogun-Itele had four children - Imidawo, Ogunrombi, Osa and Alagbeji. The names became the Ruling Houses who are up till now and for over 200 years are eligible to hold the Chieftaincy title of Oba of Itele. He denied that appellant had any blood relationship with the past Obas or Baales of Itele.

Appellant on the other hand, gave his own traditional evidence of genealogy of his family. Appellant emphasized that he was properly installed as an Oba. Both parties informed 2nd respondent about the Ruling Houses existing in Itele and the procedure to be followed in filling the Obaship vacancy particularly after 2<sup>nd</sup> respondent had resuscitated the Obaship of Itele. 1<sup>st</sup> respondent's grievance is that 2nd and 3rd respondents failed to comply with the Chief's Law (Cap. 20) of Ogun State in filling the Stool of Itele. Hence the appointment, approval and installation of appellant were unlawful, illegal, mala fide and consequently null and void. After a meticulous evaluation of the facts of the case, the learned trial judge found in favour of 1<sup>st</sup> respondent and granted all the reliefs claimed. Being dissatisfied, appellant appealed to the Court of Appeal, Ibadan Division. The court resolved the issues against appellant and the appeal was dismissed. Aggrieved further, appellant filed the present appeal at the Supreme Court. 1<sup>st</sup> respondent raised preliminary objection on the competence of the appeal on the ground that the appeal cannot survive the original appellant (now deceased). Appellant contends

that 1<sup>st</sup> respondent has no right to the chieftaincy title of Itele. He thereby questions 1<sup>st</sup> respondent's right to institute this action.

### **ISSUES FOR DETERMINATION**

*“(1) Whether the plaintiff/respondent had the necessary locus standi to bring the action in the trial court challenging the 1st defendant/appellant's appointment as Oba of Itele.*

*(2) Whether the learned Justices of the Court of Appeal were right in holding that the plaintiff/respondent had successfully established that there were only four (4) Ruling Houses (the descendants of Adogun-Atele) under the hereditary customs and traditions of Itele town that are eligible to hold the chieftaincy title of Onitele of Itele and that the 1st defendant was not such a descendant and/or entitled thereto.*

*(3) Whether the learned Justices of the Court of Appeal were right in holding that the learned trial judge had rightly applied the principle established in Adenle V. Oyegbade (1967) NMLR pg.136 in the evaluation of the evidence adduced by the parties on traditional history.”*

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

### ***“Locus standi” - Meaning***

1. The issue of the locus standi of the plaintiff/appellant to institute this action on behalf of his family was challenged before the trial Court; in the face of the fact that he was granted leave by the High Court to institute this action in a representative action. It is therefore apt to consider the current attitude of the Courts to locus standi with particular reference to chieftaincy matter. Strictly speaking the term “locus standi” denotes the legal capacity to institute an action in a Court of law. It is a status which a plaintiff must have before being heard in Court. It is a condition precedent to the determination of a suit on its merits. The question whether a plaintiff has the locus standi to sue is determinable from the totality of the averments in the statement of claim.

The right to sue can only be conferred by statute or by constitution or by some customary law - particularly the Chiefs Law.

(p. 2808 B)

***CHIEFTAINCY MATTERS - Right of action***

2. The plaintiff/respondent had sufficiently asserted his family's right to the chieftaincy stool of Itele and also disclosed his family's interest to the stool. It is my view that he has locus standi to bring this action by virtue of Section 6 (6) of the 1999 Constitution. (p. 2809 G)

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***Declaratory action - Need to prove***

3. I must emphasize that a declaratory action is discretionary in that by such action, a plaintiff prays the Court to declare an existing state of affairs in law in his favour as may be discernible from the averments in the statement of claim. A person claiming such right must show the existence of a legal right subsisting and in future and that the right is contested.

C

What would entitle a plaintiff to a declaration is a claim which a Court is prepared to recognize and if validly made, it is prepared to give legal consequences to. (p. 2811 F)

***Declaratory action - Burden of establishing is on plaintiff***

4. In establishing their claim to the chieftaincy title, both parties rely on traditional evidence. The burden of establishing a case based on declaration rests more on the plaintiff whose evidence must be credible, convincing, positive, affirmative and unequivocal in support of his case. Such evidence must be in accordance with his pleadings.

E

Consequently, the success or failure of the plaintiff's claim depends on the nature and quality of his evidence and the weight attached by the trial Court to the traditional evidence. Evidence of traditional history is nothing short of evidence of a historical fact transmitted from generation to generation in respect of a family and may in appropriate cases be given by any witnesses who by virtue of their peculiar and special relationship and circumstances before them and their ancestors and are in a position and knowledgeable enough to testify on the traditional evidence in question. (p. 2812 A)

F

G

***EVIDENCE - Evaluation - It is the duty of trial court***

5. Civil cases are decided on preponderance of evidence and balance of probabilities. It is pre-eminently the primary duty of the trial Judge who had the opportunity of seeing, hearing and assessing the witnesses to evaluate the evidence and ascribe probative values to

H

such evidence. In the process of the trial, the exclusive role of the trial Judge is to watch the mannerism, habits and idiosyncrasies of the witness. (p. 2813 D)

***Findings of facts - Appellate court does not interfere***

6. Generally speaking, the attitude of the appellate Court to evaluation of evidence by the trial Court is that where a trial Court unquestionably evaluates the evidence of and appraises the facts, it is not the business of an appellate Court to substitute its own view to those of the appellate(sic, trial) court. What an appellate Court is required to do is simply to find out from the record whether there is evidence on which the trial Court could have acted or on which its findings are based. Once that is achieved, the appellate Court cannot interfere with the decision of the trial Court.

On the issues of findings based on the credibility of witnesses, it is not open to the appellate Court which did not have the opportunity of observing the witnesses give evidence to make important specific findings based on the credibility of witnesses.  
(p. 2814 B)

***APPEALS - Concurrent findings - Interference***

7. On gleaning through the record, it is my view that the judgment of the Court of Appeal affirming that of the trial court is unassailable. We now have before this court in the instant appeal concurrent findings of a trial court and the Court of Appeal on issues of fact well and properly considered by these two Courts before coming to such findings.

The Supreme Court will only disturb or upturn a concurrent finding of fact of the two lower Courts in exceptional cases, such as:

(1) Where violation of some principles of law or procedure exists and such erroneous proposition cannot stand if not corrected.

(2) Patently erroneous findings of fact which amount to a travesty of justice if left uncorrected.

(3) Where the findings of fact is erroneous or perverse and not based on the evidence led.

None of the foregoing exceptional circumstances is applicable to the findings of the two lower Courts so as to require the interference of this Court. (p. 2814 F)

**REPRESENTATION**

Prof. A.B. Kasunmu, SAN with A.B. Kasunmu for the Appellants  
Chief (Dr.) V.A. Odunaiya for the Respondents

**CASES REFERRED TO**

- B Ekpuk v. Okon (2006) 1 FWLR (pt.305) pg. 1470  
Young v. Bristol Aeroplane Co. Ltd. (1994) 2 All ER pg. 293  
Amusa Momoh & Anor. V. Jimo Olotu (1970) 1 All NLR page 117  
Adesanya v. President FRN (1981) 2 NWLR pg.358  
C Thomas v. Olufosoye (1986) 1 NWLR (pt.18) pg.669  
Adefulu v. Oyesile (1989) 5 NWLR (pt.122) pg.377  
Momoh v. Olotu (1970) 1 All NLR pg.177  
Eleso v. Govt. of Ogun State & 4 Ors (1990) 2 NWLR (pt.133) pg.420  
Adenle v. Oyegbade (1967) NMLR 136  
D Owoade V. Omitola (1988) 2 NWLR (pt.77) pg.413  
Kojo V. Bonsie (1957) 1 WLR pg.1223  
Adigun v. A-G Oyo State (No.1) (1987) 1 NWLR (Pt.53) pg. 678  
Dantata v. Mohammed (2000) 7 NWLR (pt.664) pg.176  
Ekundayo v. Baruwa (1965) 2 All NLR pg.211  
E Nwokidu v. Okanu (2010) 3 NWLR (pt.1181) pg. 362

**STATUTES & RULES REFERRED TO**

- Chiefs Law of Ogun State Cap. 20 Laws of Ogun State 1978, ss. 3, 4, 5, 6, 7 and 8  
F Constitution of Federal Republic of Nigeria 1999, s. 6 (6)(b)  
Supreme Court Rules 1999 (as amended), O. 2 r. 9

**LEAD JUDGMENT BY ADEKEYE JSC**

- G This appeal is against the judgment of the Court of Appeal, Ibadan Judicial Division delivered on the 21st of November, 2002. The 1st respondent in this appeal as plaintiff instituted this action at the High Court of Ogun State, Abeokuta Judicial Division pursuant to the leave granted by the Court to prosecute the case in a representative capacity for and on behalf of the Adogun-Atele family of Itele on 18th of September, 1992. The claims of the plaintiff/respondent as endorsed in the writ of summons of the 20th of April, 1993 are as follows: -  
H (a) Declaration that under the hereditary custom and tradi-

tions of Itele town, Ota, Ogun State, only the Adogun-Atele family comprising four Ruling houses namely; Imidawo Ruling House, Ogunrombi Ruling House, Osa Ruling House and Alagbeji Ruling House are eligible to hold the chieftaincy title of Oba of Itele, first held by the plaintiff's ancestor Adogun-Atele, the founder of the town and which title is now classified as Part II title under the Chiefs Law of Ogun State, 1978. B

(b) Declaration that the 1st defendant not being a descendant of Adogun-Atele within any of the four ruling houses is ineligible to hold the title of Oba of Itele.

(c) Declaration that the Ado-Odo Local Government was not designated by an order to be the competent Council for the Oba of Itele Chieftaincy title and all acts of the Council pertaining to the appointment without a registered declaration and installation of the 1st defendant as Oba of Itele were illegal, null and void. C D

(d) Declaration that the letter CHM2/27/172 of 25th March, 1992 addressed to the Chairman of Ado-Odo/Ota Local Government by the 2nd defendant to process the appointment papers into the Oba of Itele and all steps taken pursuant thereto including selection, appointment, approval of appointment and installation of 1st defendant as Oba of Itele were illegal, null and void under Sections 3, 4, 5, 6, 7 and 8 of the Chiefs Law (CAP 20) Laws of Ogun State, 1978 and have violated the customary hereditary rights of over one hundred years of the plaintiff's family. E

(e) Order that the installation of the 1st defendant as the Oba of Itele carried out by the 2nd defendant on 29th August, 1992, the next day that previous suit HCT/25/1992 was struck out without a valid selection, appointment and approval and without the customary three months Ipebi ceremony, was illegal, null and void. F G

(f) Injunction restraining the 1st defendant from occupying the stool of Oba of Itele and from exercising the powers or performing the duties attached.

In the process of trial before the High Court, the plaintiff / respondent gave traditional evidence at pages 22-92 of the record of the genealogy of his family traced to his ancestor, Adogun-Atele the first Oba of Itele. He came to settle at Itele from Benin City. Adogun-Itele four children - had Imidawo, Ogunrombi, Osa and Alagbeji. The names became the Ruling Houses who are up till now and for H

over 200 years are eligible to hold the Chieftaincy title of Oba of Itele namely: -

- (a) Imidawo Ruling House otherwise called Ijagona Ruling House.
- (b) Osa Ruling House also known as Isunba Ruling House.
- (c) Ogunrombi Ruling House otherwise referred to as Idotele Ruling House.
- (d) Alagbeji Ruling House sometimes called Ipotobo/Ilogun Ruling House.

He gave the names of the descendants of the four children of Adogun-Itete and particularly his own lineage traced down from Osa to Alimi Akapo his own father. He gave the names of the descendants of Adogun-Atele who had reigned as Oba as six in number and when Baaleship was introduced three members of the family had reigned at different times. There is no Olaforikanre Ruling House or Aro Ruling House as claimed by the respondent. The only person who reigned in Itele and was pot(sic) from Adogun-Itele line was Raugu Ilo who was imposed on Itele by the Olota of Ota, Oba T.T. Dada. The plaintiff's/appellant's father was one Fagbemi Arowolo who hailed from Totowu and came to live in Itele after the death of his father Okunupo. He was a brother to Ogbe the wife of Owofunmi. Owofunmi, a descendant of Adogun-Atele through Ogunrombi lineage was the first Baale of Itele. He denied that the 1st defendant/appellant had any blood relationship with the past Obas or Baales of Itele. The names claimed by him as descendants of Alagbeji his ancestor are names of compounds in Itele established by Adogun-Atele. It was the traditional history of the 1st defendant/ appellant that he was entitled to be an Oba in Itele through his ancestor, Ogungbeji Alagbeji - the first settler in Itele. He came to Itele from Ile Ife over 300 years ago. He had two children - Olaforikanre and Aro. He is from the Ido-tele branch of Olaforikanre Ruling House. There had been seven Onitele before him from Alagbeji and three Baales - the last of who was Raugu Ilo. He gave the names of his ancestors. Suberu gave birth to his father Abudu Arowolo.

He emphasized that he was properly installed as an Oba and he was at Ipebi for three months. He gave the name of the plaintiff's/respondent's father as Alimi Akapo who is not related to any of the Ruling Houses in Itele. Neither himself nor any of the ancestors was either Baale or Chief of Itele. The Olaforikanre Ruling House met



and nominated him as their Oba after the Local Government Council invited the Ruling House to nominate a candidate on 30/4/92, although on 20/5/91, he swore to a declaration before a magistrate embodied in Exhibit L before the trial Court that he had been appointed Oba of Itele. Both parties informed the 2nd defendant/respondent about the Ruling Houses existing in Itele and the procedure to be followed in filling the Obaship vacancy particularly after the 2nd defendant/respondent had resuscitated the Obaship of Itele. The plaintiff's/respondent's family expected the government to designate the competent Local Government for the chieftaincy - and that the latter would hold a public inquiry into the customs and traditions relating to the appointment of an Oba of Itele and later on produce a declaration about the chieftaincy. Henceforth, a public notice would be issued to all interested and eligible ruling houses for the title. All steps taken by the 1st defendant/appellant with the 2nd defendant/respondent were shroud in secrecy. The plaintiff/respondent consequently filed a suit No. HCT/25/92 in Court.

There were also rumours about the appointment of the 1st defendant/appellant confirmed by the letter No. CHM/2/27/172 of 25th of March, 1992 to the Ado/Odo Local Government requesting it to process appointment papers into the Oba of Itele stool. The suit was eventually struck out on the 28th of August, 1992, while the 1st defendant/appellant was installed as Oba of Itele on the 29th of August, 1992 without performing the Ipebi ceremony. In the process of appointment, the plaintiff/respondent's grievance is that the 2nd and 3rd respondents failed to comply with the Chief's Law (Cap. 20) of Ogun State in filling the Stool of Itele, hence the appointment, approval and installation of the 1st defendant/appellant was unlawful, illegal, mala fide and consequently null and void. After a meticulous evaluation of the facts of the case, the learned trial judge in his judgment delivered on the 16th day of June 1995 found in favour of the plaintiff/respondent and granted all the reliefs claimed. Being aggrieved by the decision of the trial Court, the 1st defendant/appellant appealed against it to the Court of Appeal, Ibadan Division. In the judgment of the Court delivered on the 21st of November, 2002, all the issues raised in the appeal by the appellant were resolved against him and the appeal dismissed. The 1st defendant/appellant filed the present appeal against the judgment of the Court of Appeal.

When this appeal was argued on the 6th of October, 2011, the appellant relied on the appellant's brief deemed filed on 19/6/07. The appellant adopted the brief and relied on the three issues formulated therein for the determination of this appeal set out as follows: -

B       “(1) *Whether the plaintiff/respondent had the necessary locus standi to bring the action in the trial court challenging the 1st defendant/appellant's appointment as Oba of Itele.*

C       “(2) *Whether the learned Justices of the Court of Appeal were right in holding that the plaintiff/respondent had successfully established that there were only four (4) Ruling Houses (the descendants of Adogun-Atele) under the hereditary customs and traditions of Itele town that are eligible to hold the chieftaincy title of Onitele of Itele and that the 1st defendant was not such a descendant and/or entitled thereto.*

D       “(3) *Whether the learned Justices of the Court of Appeal were right in holding that the learned trial judge had rightly applied the principle established in Adenle V. Oyegbade (1967) NMLR pg. 136 in the evaluation of the evidence adduced by the parties on traditional history.*”

The 1st respondent adopted and relied on the brief filed on 22/7/08 wherein three issues were also settled for determination as follows: -

F       “(1) *Whether the plaintiff/respondent had the necessary locus standi to bring the action in the trial Court challenging the 1st defendant/appellant's appointment as Oba of Itele.*

G       “(2) *Whether the learned Justices of the Court of Appeal were right in holding that the plaintiff had successfully established there were only four Ruling Houses (the descendants of Adogun-Atele) under the hereditary customs and traditions of Itele Town that are eligible to hold the chieftaincy title of Onitele of Itele and that the 1st defendant was not such a descendant and/or entitled thereto.*

H       “(3) *Whether the learned Justices of Appeal were light in holding that the learned trial Judge had rightly applied the principles established in Adenle V. Oyegbade (1967) NMLR pg. 136 in the evaluation of the evidence adduced by the parties on traditional history.*

The 1st respondent raised the issue of the competence of the appellant's appeal on the ground that the appeal cannot survive the

original appellant, Oba Jimoh Arowolo who died on the 1st of April, 2005. The action was instituted against him in his personal capacity and he defended the suit in that capacity. Such an action being an action in personam dies with the party and cannot be continued by his heirs. This issue was raised before the Honourable Court when the application for the substitution of the current appellant - Chief B Gafaru Arowolo was heard. The Court made the order substituting the current appellant. But his Lordship F.F. Tabai, JSC in his ruling on the 14th of July, 2006, granted liberty to the plaintiff/respondent to raise the issue in the main appeal. The order of the Supreme Court C made on the 14th of July, 2006, is a great departure from the earlier decisions of the Supreme Court on this issue in the case Oyeyemi v. Commissioner for Local Government Kwara State & Ors (1992) 2 NWLR (pt.226) pgs.661-664, Ekpuk v. Okon (2006) 1 FWLR (pt.305) pg 1470 at 1484 Young v. Bristol Aeroplane Co. Ltd. (1994) D 2 All ER pg. 293.

The 1st respondent urged this Court to strike out this appeal. If the appellant has any interest in this matter, he should institute a fresh action in the High Court to ventilate his interest or claim in the chieftaincy. The appellant opposed the objection and referred this E Court to the application filed on the 29th of July, 2005 by the appellant when it sought for an order that Chief Gafaru Arowolo be instituted as appellant in this suit for and on behalf of the Olaforikanre Ruling House of Itele in place of Alhaji Jimoh Arowolo now deceased. F The appellant quoted from the Court proceedings of that day which said: -

*“This honourable Court on the 14th of July, 2006 ruled while granting the said application per Onu JSC who held that “in the instant case which is clearly distinguishable from Mbonu case (supra) it G having been demonstrated that the judgment on appeal affected the rights of the family and the interest of justice demands that a member of appellant’s family be put forward in place of late Oba Jimoh Arowolo, it will be inequitable to refuse the appellant’s application as H couched and argued. Accordingly, I am of the view that the application be granted as prayed and an order is hereby made to substitute Chief Gafaru Arowolo in place of Alhaji Jimoh Arowolo now, deceased vide Order 8 Rule 9 (2) Supreme Court Rules.”*

A Certified True Copy of Ruling dated 14th day of July, 2006

and a Certified True Copy of the Enrolled Order of the Ruling were attached. On a sober reflection on the submission of parties on this preliminary objection filed by the 1st respondent, I see the objection as not only frivolous but also time wasting, in other words, an abuse of the process of this Court. The Certified True Copy of the Ruling of this Court dated the 14th of July, 2006 and a Certified True Copy of the Enrolment of the order of this Court made in the application show that it was a unanimous decision of all the five justices of this Court that it would be inequitable to refuse the application to substitute Chief Gafaru Arowolo in place of Alhaji Jimoh Arowolo now deceased. The order was made pursuant to Order 8 Rule 9 (2) Supreme Court Rules. It is a 1st respondent misconception by the same Court will reverse its order on a minority opinion expressed by F.F. Tabai JSC in his ruling on the subject-matter after he had expressed in the first paragraph of his ruling that it will be in the interest of the family to grant the application and in the last paragraph that

*"I shall also allow the application."*

It will not be doing substantial justice to strike out this appeal at this stage and direct the appellant to institute a fresh action in the High Court to ventilate his interest in the chieftaincy. The preliminary objection of the 1st respondent challenging the competence of the appeal is hereby overruled and consequently struck out.

Since the issues raised for determination by the parties are identical, I shall embark on considering them seriatim.

ISSUE NO. 1

Whether the plaintiff/respondent had the necessary locus standi to bring the action in the Court below challenging the 1st defendant/appellant's appointment as Oba of Itele.

The appellant submitted that this issue was sufficiently addressed in his pleadings and the 2nd further Amended Statement of Defence. The sum total of his evidence depict that Jimoh Oluwole Akapo - the plaintiff/respondent was not a member of the Royal family in Itele. He distorted the history of Itele by pleading that his ancestor was one Adogun-Itele whereas there was no such name in the history of Itele. Jimoh Oluwole Akapo though was born in Itele town, his grandfather, Mr. Osaro was an Egun man, who came from Imere village near Ojo town, Lagos to Itele. Osaro became a bell ringer at the palace and was buried in Imere when he died. That the plaintiff/

respondent failed to establish whether his father or grandfather or ancestor was a king or Baale of Itele, Ogun State.

The appellant called three witnesses who testified that the plaintiff/ respondent has no right to the chieftaincy title of Itele. The plaintiff/respondent did not join issues in his pleadings as to the serious averments challenging his legal capacity or locus standi to institute this action. The appellant referred to the case of *Amusa Momoh & Anor. V. Jimo Olotu* (1970) 1 All NLR page 117, where the Supreme Court pronounced on the issue of locus standi that -

*"It was not enough for the plaintiff to state that he was a member of the family; he had to state further that he had an interest in the Chieftaincy title and furthermore, state in his statement of claim how his interest in the chieftaincy title arose."*

The appellant finally submitted that the plaintiff had in the trial Court failed to effectually discharge the mandatory legal burden on him of establishing his standing to challenge the chieftaincy title at the trial Court. The learned Justices of the Court of Appeal were therefore wrong to have upheld his judgment that the plaintiff had locus standi to institute the action.

The plaintiff/respondent submitted that in chieftaincy matters, there are two ways or tests by which the locus standi of a person may be determined: -

- (1) Whether the action is justiciable and
- (2) Whether there is a dispute between the parties.

The plaintiff/respondent has the legal burden to establish before the Court that he has the locus standi to institute the action either for himself or as a representative of his family. In his writ of summons, statement of claim and oral evidence before the trial Court he had established that he was authorized to bring this action in a representative capacity to ensure that the hereditary rights of the descendants of Adogun-Atele to the title of Oba Itele are preserved and to stop further violation of those rights. On pages 22-32, he gave oral evidence of the genealogy of his family that his ancestor Adogun-Atele settled in Itele and had four children whose names were adopted for the Ruling Houses in Itele for a period of 200 years. In effect, the plaintiff/respondent pleaded and gave evidence of himself and his membership of Adogun-Atele in Itele, the hereditary customs and traditions of the Obaship in Itele and the Ruling Houses

eligible to hold the chieftaincy title of Oba of Itele. This plaintiff/respondent submitted further that he has locus to bring this action by virtue of Section 6 (6) (b) of the 1999 Constitution. Consequently, this Court is urged to resolve this issue against the defendant/appellant.

**B** *The issue of the locus standi of the plaintiff/appellant to institute this action on behalf of his family was challenged before the trial Court; in the face of the fact that he was granted leave by the High Court to institute this action in a representative action. It is therefore apt to consider the current attitude of the Courts to locus*

*standi with particular reference to chieftaincy matter. Strictly speaking the term “locus standi” denotes the legal capacity to institute an action in a Court of law. It is a status which a plaintiff must have before being heard in Court. It is a condition precedent to the determination of a suit on its merits. The question whether a plaintiff has the locus standi to sue is determinable from the totality of the averments in the statement of claim.*

**E** *Adesanya v. President FRN (1981) 2 NWLR pg.358, Thomas v. Olufosoye (1986) 1 NWLR (pt.18) pg.669, Adefulu v. Oyesile (1989) 5 NWLR (pt.122) pg.377, Momoh v. Olotu (1970) 1 All NLR pg.177, Owodunmi V. Registered Trustees C.C.C. (2000) 10 NWLR (pt.675) pg.315*

**F** *The right to sue can only be conferred by statute or by constitution or by some customary law - particularly the Chiefs Law.* In the case of *M.A. Eleso v. The Government of Ogun State & 4 ors* (1990) 2 NWLR (pt.133) pg.420, the Supreme Court laid down the yardstick for determining the right of a plaintiff to sue in a chieftaincy contest at page 444 where it held that: -

**G** *“The right of a plaintiff to sue in a chieftaincy contest may arise in two different ways: -*

*(a) The plaintiff may by his statement of claim and evidence show that the right that is being asserted is that of his family by reason of say their hereditary interest. In this type of case, it is the family usually through their representative who can bring this action on the premise that it is the civil right of the family that has been pleaded.*

**H** *(b) The plaintiff may assert his own right to the chieftaincy stool. What is required in such a case is that his statements of claim*

*and evidence, if evidence has been called, should show the nature of his interest and his entitlement of the stool. In such case, he has locus standi by virtue of section 6 (6) (b) of the 1999 Constitution.*

*The claim of the plaintiff must reveal*

*(1) A legal or justiciable right*

*(2) Show sufficient or special interest adversely affected*

*(3) Show a justiciable cause of action.”*

In paragraph 3 of the Amended Statement of Claim, the plaintiff/respondent pleaded -

Paragraph 3

The plaintiff has been authorized to bring this action to ensure that the hereditary rights of descendants of Adogun-Atele, the title of Oba of Itele are preserved and to stop further violations of those rights. The minutes of the meeting of Adogun-Atele family 29th August, 1992 will be tendered.

The plaintiff Respondent pleaded and also gave oral evidence about his ancestor Adogun-Atele, the first Oba of Itele. The four children of Adogun-Itele whom the four Ruling houses in Itele were named after. He gave evidence of his own connection with the family through Osa and his great grandfather, Bala, a son of Osa who was an Oba in his lifetime. He was in charge of the deities. He testified about the hereditary customs and traditions of Itele. The plaintiff/respondent's bone of contention is that only four Ruling houses had become established in Itele for over a period of two hundred years and that there is no Olafarikanre Ruling House known under the customs and history of Itele. The 2nd respondent violated Section 4 (4) of the Chiefs Law, Cap 20 Laws of Ogun State to have recognized such Ruling House.

***The plaintiff/respondent had sufficiently asserted his family's right to the chieftaincy stool of Itele and also disclosed his family's interest to the stool. It is my view that he has locus standi to bring this action by virtue of Section 6 (6) of the 1999 Constitution.***

I resolve Issue No. One in favour of the plaintiff/respondent.

Issues Two and Three are in my view within a narrow limit as they both challenge the findings of the learned Justice of the Court of Appeal and their perception of the findings of the learned trial Judge.

ISSUE NO. 2 reads: -

Whether the learned Justices of the Court of Appeal were right in holding that the plaintiff/respondent had successfully established that there were only (4) ruling Houses (the descendants of Adogun-Atete) under the hereditary customs and traditions of Itele town that  
B are eligible to hold the chieftaincy title of Onitele of Itele and that the 1st defendant was not such a descendant and/or entitled thereto.

ISSUE NO. 3

Whether the learned Justices of the Court of Appeal were right  
C in holding that the learned trial Judge had rightly applied the principles established in *Adenle v. Oyegbade* (1967) NMLR in the evaluation of the evidence adduced by the parties on traditional history.

I intend to consider these two issues together. The appellant submitted that based on the weight of evidence before the lower  
D Court and having regard to the legal principles which the learned Justices of the Court of Appeal ought to apply to the evidence adduced before the trial Court, they ought not to have arrived at the conclusions in their judgment. Particularly the Justices of the Court of Appeal ought not to have affirmed the findings of the learned trial  
E Judge that the plaintiff had successfully established that there were only four Ruling Houses the descendants of Adogun-Atele under the hereditary customs and traditions of Itele town that are eligible to hold the chieftaincy title of Onitele of Itele and that the 1st defendant was not such a descendant and/or entitled thereto. The learned trial  
F Judge derailed after quoting from the case of *Owoade V. Omitola* (1988) 2 NWLR (pt.77) pg.413 at page 425 about plaintiff whose case depends on traditional evidence that "it is of utmost importance that the traditional evidence must not only make a consistent sense  
G but also that it affirmatively links the plaintiff with the traditional history he relies upon."

The appellant also challenged the findings of the learned trial Judge on whether the principles established in *Adenle V. Oyegbade* (1967) NWLR pg.136 relating to evaluating the evidence adduced  
H by the parties on traditional history were followed. *Adenle v. Oyegbade* (supra) affirmed the principle enunciated in *Kojo V. Bonsie* (1957) 1 WLR pg.1223. The appellant finally concluded that the appeal be allowed and the judgment of the learned Justices of the Court of Appeal be set aside and also the order made by the court



dismissing the plaintiff/respondent's claim.

The 1st respondent submitted that the plaintiff/respondent had successfully proved that he is a descendant of Adogun-Atele, the first settler of Itele town and had equally established the fact that under the hereditary customs and traditions of Itele town, only the four Ruling Houses of Imidawo, Ogunrombi, Osa and Alagbeji, the descendants of Adogun-Atele are eligible to hold the chieftaincy title of Onitele of Itele and that the 1st defendant/appellant is not such a descendant therefore ineligible to hold the title of Oba of Itele. The lower court relied on the pleadings and oral evidence of the parties and their witnesses. The learned trial Judge concluded that he preferred the traditional evidence of the plaintiff/respondent to that of the defendant/ appellant.

The 1st respondent finally submitted that both the trial Court and the Court of Appeal evaluated the evidence of the parties properly before arriving at their respective decisions, therefore, this Court is urged to affirm the lower Court's decision and hold that the plaintiff/respondent tendered evidence of such quality which entitled him to the reliefs sought and granted to him.

The claims of the plaintiff/respondent as specified in the Writ of Summons filed on behalf of his family is a declaratory action to assert the hereditary rights of the family to the throne of Oba of Itele in accordance with the custom and tradition of Itele town. The chieftaincy title which was recognized as an Oba about 300 years ago - was relegated to the Stool of Baale but Ogun State Government reinstated the Oba in March, 1992 and it is now recognized under Part II of the Chiefs Law Cap 20 of Ogun State.

***I must emphasize that a declaratory action is discretionary in that by such action, a plaintiff prays the Court to declare an existing state of affairs in law in his favour as may be discernible from the averments in the statement of claim. A person claiming such right must show the existence of a legal right subsisting and in future and that the right is contested.***

***What would entitle a plaintiff to a declaration is a claim which a Court is prepared to recognize and if validly made, it is prepared to give legal consequences to.*** Adigun v. A-G Oyo State (No.1) (1987) 1 NWLR (Pt.53) pg. 678, Dantata v. Mohammed (2000) 7 NWLR (pt.664) pg.176, Ekundayo v. Baruwa (1965)

2 ANLR pg.211, Nwokidu v. Okanu (2010) 3 NWLR (pt.1181) 362.

***In establishing their claim to the chieftaincy title, both parties rely on traditional evidence. The burden of establishing a case based on declaration rests more on the plaintiff whose evidence must be credible, convincing, positive, affirmative and unequivocal in support of his case. Such evidence must be in accordance with his pleadings.*** Kodilinye v. Odu (1935) 2 NAIA pg.336, Uchendu v. Ogboni (1999) 5 NWLR (pt.603) pg.337, Owoade v. Omitola (1988) 2 NWLR (pt.77) pg.413.

***Consequently, the success or failure of the plaintiff's claim depends on the nature and quality of his evidence and the weight attached by the trial Court to the traditional evidence. Evidence of traditional history is nothing short of evidence of a historical fact transmitted from generation to generation in respect of a family and may in appropriate cases be given by any witnesses who by virtue of their peculiar and special relationship and circumstances before them and their ancestors and are in a position and knowledgeable enough to testify on the traditional evidence in question.***

Although evidence of traditional history is admissible, the weight to be attached to it is a matter which is left to the experience and wisdom of a Judge. Akuru v. Olubadan-in-Council 119 (1954) 14 WACA 523. The learned trial Judge after a review of the evidence of the parties and their witnesses invoked every judicial and judicious means in the evaluation of their evidence and ascription of probative value to the evidence. The trial Court identified three areas of conflict in the evidence of the parties as follows:

(a) In the traditional history of who was the founder of Itele and the identity of the Ruling Houses.

(b) The relationship of the plaintiff and those he represents on the one hand and that of the 1st defendant to the throne of Itele.

(c) The regularity of the process of appointment of the Obas and Bales.

He went further to make reference to the case of Adenle V. Oyegbade (1967) NMLR 196, where the Supreme Court at page 139 relied on the opinion of the privy council in the case of Kojo V. Bonsie (1957) 1 WLR pg. 1223 at 1226.

The principle enunciated in Kojo v. Bonsie is that

*“where there is a conflict in traditional history, the demeanour of witnesses is of little guide to the truth of the matter as it must be recognized that in the course of transmission from generation to generation of the traditional history, mistakes may occur without any dishonest motive. In such a case the traditional history is to be tested by recent facts established by evidence with a view to determining which of the conflicting versions is more probable.”* <sup>B</sup>

The learned trial Judge undoubtedly used this yardstick to determine the lineage of the past Obas and Bales since Itele was founded from Adogun-Atele and the four Ruling Houses; Imidawo, Orisa (Osa), Ogunombi and Alagbeji on one side and Alagbeji and his sons, Olafofikanre and Aro on the other side based on the testimony of the plaintiff/respondent and defendant/appellant, He concluded at Pg. 88 of the Record that:

*“I have come to the conclusion that traditional evidence of the plaintiff is more probable and concise and consistent.”* <sup>D</sup>

***Civil cases are decided on preponderance of evidence and balance of probabilities. It is pre-eminently the primary duty of the trial Judge who had the opportunity of seeing, hearing and assessing the witnesses to evaluate the evidence and ascribe probative values to such evidence. In the process of the trial, the exclusive role of the trial Judge is to watch the mannerism, habits and idiosyncrasies of the witness.*** <sup>E</sup>

The learned trial Judge consequently arrived at a conclusion in his well considered judgment by stating at page 94 of the Record that: - <sup>F</sup>

*“Having regard to the evidence before me and after putting the totality of the evidence adduced by both sides on an imaginary scale, I am satisfied that the probative value of the evidence adduced by the plaintiff and his witnesses is heavier in favour of the plaintiff and on the balance of probabilities, the plaintiff has proved his case. It is therefore the judgment of this Court that the plaintiff’s claim partly succeeds.”* <sup>G</sup>

The learned justices of the Court of Appeal came to the conclusion that the learned trial Judge undoubtedly evaluated the evidence and ascribed probative value properly in their assessment. As the findings of fact was based on credibility of witnesses, the appellate Court is handicapped to interfere or disturb findings based on cred- <sup>H</sup>

ibility of witnesses unless the appellate Court was satisfied that the learned trial Judge failed to take advantage of having heard, seen and watched the demeanours of the witnesses. The learned Justices concluded that they had no legal basis or justification to disturb or interfere with the findings of fact of the learned trial Judge based on credibility of witnesses or reverse the declaratory orders made based on the exercise of his discretion.

***Generally speaking, the attitude of the appellate Court to evaluation of evidence by the trial Court is that where a trial Court unquestionably evaluates the evidence of and appraises the facts, it is not the business of an appellate Court to substitute its own view to those of the appellate(sic, trial) court. What an appellate Court is required to do is simply to find out from the record whether there is evidence on which the trial Court could have acted or on which its findings are based. Once that is achieved, the appellate Court cannot interfere with the decision of the trial Court.***

***On the issues of findings based on the credibility of witnesses, it is not open to the appellate Court which did not have the opportunity of observing the witnesses give evidence to make important specific findings based on the credibility of witnesses.*** Ebba v. Ogodo (1984) 1 SCNLR 372, Sanni v. Ademiyi (2003) 3 NWLR (pt.807) pg.381, Guda v. Kitta (1999) 12 NWLR (pt.629) Pg, 21, Wilson v. Oshin (2000) 9 NWLR (pt.673) pg, 442, Odofin v. Ayoola (1984) 11 SC 72.

***On gleaning through the record, it is my view that the judgment of the Court of Appeal affirming that of the trial court is unassailable. We now have before this court in the instant appeal concurrent findings of a trial court and the Court of Appeal on issues of fact well and properly considered by these two Courts before coming to such findings.***

***The Supreme Court will only disturb or upturn a concurrent finding of fact of the two lower Courts in exceptional cases, such as:***

***(1) Where violation of some principles of law or procedure exists and such erroneous proposition cannot stand if not corrected.***

***(2) Patently erroneous findings of fact which amount to***

***a travesty of justice if left uncorrected.***

***(3) Where the findings of fact is erroneous or perverse and not based on the evidence led.***

***None of the foregoing exceptional circumstances is applicable to the findings of the two lower Courts so as to require the interference of this Court.*** Ude v. Chimbo (1988) 12 B NWLR (pt.577) pg.169, Okonkwo v. Adigwu (1985) 1 NWLR (pt.4) pg.694, Bayo v. Ahemba (2001) 2 WRN 109, Olokitinti v. Sarumi (2002) 13 NWLR (pt.784) pg.307, Johasen Triangles Ltd. V. C. M. & O Ltd. (2002) 15 NWLR (pt.789) pg.176.

I resolve Issues No. 2 and 3 in favour of the plaintiff/respondent. C

In consequence thereof, I find no merit in this appeal which I hereby dismiss in its entirety. The decisions of the Court below and the trial Court are affirmed with N50,000.00 costs to the plaintiff/ D respondent.

### **MUHAMMAD JSC**

My learned brother, Adekeye, JSC offered me an opportunity E to read in advance, the judgment just delivered. I am in agreement with my lord that the preliminary objection of the 1st respondent has no merit, which I also overrule and dismiss same. I also overrule and dismiss what the appellant calls “Preliminary Objection” I must observe F however, that it appears a novelty where an appellant files a preliminary objection against 1st respondent’s brief. A preliminary objection which normally stems from a respondent aims at challenging the competence of an appeal, with a view to nipping it in the bud. However, if it is the appellant that observes anything wrong with the G brief filed by a respondent, the door open to him is to file a reply brief in answer to that point. In any event, the “preliminary objection” was not rested in accordance with our Rules of Court (Order 2 Rule 9 Supreme Court Rules, 1999 as amended). I would have struck H it out ordinarily but since it was moved by its maker, it is this Court’s responsibility to give it a deserving consideration which is a dismissal. So, the Preliminary Objections filed by the 1st respondent and the appellant are hereby dismissed.

I adopt the facts set out by my lord, Adekeye. I adopt the

issues set out by the appellant. After full trial, the learned trial Judge entered judgment for the plaintiff /appellant and made the following orders, among others:

- i. “A declaration that under the hereditary customs and traditions of Itele Town, Ogun State only the Adogun-Atele family comprising Imidawo, Ogunrombi, Osa and Alagbeji Ruling houses are eligible to hold the Chieftaincy title of Oba of Itele which title is now classified as part 2 Chieftaincy under the Chiefs Law Cap 20 Laws of Ogun State.
- ii. A declaration that the defendant not being a descendant of Adogun-Atele or belonging to any of the said Ruling Houses is not entitled to hold the title of Oba of Itele.
- iii. A declaration that the letter CHM 2/27/172 of 25th March, 1992, directing the 3rd defendant to process the appointment to fill the vacant stool of Oba of Itele and all steps taken pursuant thereto including the selection, appointment, approval and installation of the 1st defendant as Oba of Itele is null and void.
- iv. An order directing that the 1st defendant be restrained and an injunction so restraining him from occupying the stool of Oba of Itele and from exercising the powers and performing the duties appertaining thereto.”

Being dissatisfied, the 1st defendant/appellant appealed against the decision to the Court below, which, after a thorough review of the whole case found no merit in the appeal and dismissed it. It should be noted from the outset, that the original 1st defendant/appellant was one Alhaji Jimoh Arowolo who was reported dead on the 1st of April, 2005. The current 1st defendant/appellant, Chief Gafaru Arowolo substituted his deceased brother by order of Court granted on 14th July, 2006. It is to be noted further, that the 2nd and 3rd defendants/respondents filed in this court on the 7th of October, 2003, a declaration, through Mrs. F. A. Adeyemi, from the Ministry of Justice, Abeokuta, on behalf of the said respondents, that they did not wish to be present in person or by counsel at the hearing of the appeal. So this appeal is between the appellant and the 1st respondent.

On the main appeal, appellants issue No. 1 is on plaintiff’s/ respondent’s locus standi to institute the action in the Court below challenging the 1st defendant’s/respondent’s appointment as Oba of

Itele. The contention of learned senior counsel for the appellant on this issue is primarily that the plaintiff did not join issues with the 1st defendant in his pleadings on the challenge to the legal capacity/locus standi of the plaintiff to institute the action or challenge the 1st defendant's claim. Secondly, the totality of the evidence given by the 1st DW, 2nd PW, DW5, as to the fact that the plaintiff has no right to the chieftaincy title of Itele was never shaken, challenged nor contradicted by the plaintiff under cross-examination, thereby giving the effect that the said evidence has been established and ought to have been so held. Learned SAN cited and relied on the case of Momoh & Anor v. Olotu (1970) 1 All NLR 117. He submitted further that the plaintiff had in the trial Court, failed to effectively and effectually discharge the mandatory legal burden on him of establishing his standing to challenge the chieftaincy title of Itele and it was wrong of the learned Justices of the Court below to have upheld the judgment of the learned trial Judge to the effect that the plaintiff had the locus standi to institute the action.

Learned Counsel for the 1st respondent submitted on issue I that the plaintiff/respondent has the necessary locus or the standing to institute this action. Learned Counsel argued further that in chieftaincy matters, there are two ways or tests by which the locus standing of a person may be determined, viz:

- (i) whether the action is justifiable and
- (ii) whether there is a dispute between the parties. It is learned

Counsel's submission that not only did the plaintiff/respondent plead and give evidence of himself and his membership of Adogun Atele, he gave vivid account of the founding or settlement of Adogun Atele in Itele and that under the hereditary customs and traditions of Itele, only the Adogun Atele family are eligible to hold the chieftaincy title of Oba of Itele. That the plaintiff/respondent pleaded and gave evidence that defendant/appellant's father named Fagbemi Arowolo and his grandfather were from Totowu near Igbesa and not a member of Adogun Atele family or that he has no blood relationship with any of these persons who have been Baale of Itele. This historical fact, it was submitted, was neither denied nor challenged by the defendant/appellant. That the plaintiff/respondent has discharged the burden placed upon him by section 137 of the Evidence Act, though his pleadings and oral evidence before the court that he has the nec-

essary right or standing to institute the action for himself and as a representative of Adogun Atele Family of Itele.

The whole concept of the Latin Maxim LOCUS STANDI means a place of standing. Its legal application connotes that legal right which a person has to bring or file an action or be heard in a Court of law.

B Certainly, the law is sacrosanct that a party will have locus standi in a matter only if he has special legal right, or, alternatively, if he can show that he has sufficient or special interest in the performance of a duty sought to be enforced, or where his interest is adversely affected. In a legal tussle where the claim of the plaintiff is on chieftaincy matter, the law is well settled that it is not enough for the plaintiff to state that he is a member of the family; he has to state further that he has an interest in the chieftaincy title, and furthermore, he should state in his statement of claim how his interest in the chieftaincy title D arose. See *Momoh & Anor v. Oluto* (1970) All NLR 121 at 127. It is thus, the legal duty of the plaintiff to show to the Court, through his pleadings and evidence, that he has the standing (locus standi) to institute the action either for himself or as a representative of his family, whose civil rights and obligations have been, or are in danger of E being violated or infringed. He also has to show that he or the family he represents have a justiciable dispute with the defendant. I took sober look at the pleadings and evidence of the plaintiff/1st respondent, and I am contended with the findings of both lower Courts that F the plaintiff/1st respondent pleaded and tendered evidence that entitled him to have locus standi to institute the action for himself and as a representative of Adogun Atele family of Itele. He has thus, sufficiently disclosed the nature of his interest and that of his family to the chieftaincy stool. He has therefore satisfied the requirement of section 6(6)(b) of the Constitution of the Federal Republic of Nigeria, G 1999 (as amended) and has every right to institute the action as he did.

For this and the more detailed reasons given in the leading judgment, I too, dismiss the appeal as lacking in merit. I affirm the H concurrent decisions of the two Courts below. I adopt all other orders made in the leading judgment of Adekeye, JSC, including order as to costs.



**FABIYI JSC**

I have had a preview of the judgment just delivered by my Brother - Adekeye, JSC. I agree with the reasons advanced therein to arrive at the conclusion that the preliminary objection taken on behalf of the 1st respondent should be overruled while the appeal should be dismissed. B

In its real essence, the main complaint of the appellant has to do with the mode of appraisal of evidence adduced at the trial Court which the Court of Appeal sanctioned. Indeed, issue 3 formulated by the appellant states as follows:-

“Whether the learned justices of the Court of Appeal were right in holding that the learned trial Judge had rightly applied the principles established in *Adenle V. Oyegbade* (1967) NMLR 136 in the evaluation of the evidence adduced by the parties on traditional history.” C D

In the main, the trial Court found the evidence adduced by the appellant and his witnesses to be contradictory and inconsistent in many material respects. The learned trial Judge put the evidence with probative value adduced by both sides on an imaginary scale as enjoined in the decisions in *Mogaji V. Odojin* (1978) 4 SC 91 at page 93 and *Bello V. Eweka* (1981) 1 SC 101 and found that the defendants(sic). He arrived at the final conclusion that the traditional evidence of the plaintiff is more probable concise and consistent. E

Certainly, ascription of probative value to the evidence of witnesses is pre-eminently the business of the trial court which saw and heard the witnesses. An appeal court will not lightly interfere with same unless for compelling evidence adduced by the plaintiff outweighed that of the reasons. See *Ebba V. Ogodu* (1984) 1 SCNLR (Pt. 2) 66; *Ogbechie V. Onochie* (1998) 1 NWLR (Pt. 470) 370. F G

The Court of Appeal had no reason to interfere with the balanced appraisal of evidence made by the trial Court. I have no reason to fault them. And I shall not interfere.

Apart from the above, the findings of fact made by the two courts below are concurrent. It is not usual for this Court to tamper with same except there is a compelling reason for same. No justifiable reason has been shown. The findings of fact remain intact. See *Kale V. Coker* (1982) 12, SC 252; *Anaeze V. Anyaso* (1993) 5 NWLR (Pt. 291) 5 SC 62 at page 70. H

For the above reasons and those set out in the lead judgment which I hereby adopt, this appeal should be dismissed. I order accordingly. I affirm the decision of the Court below and endorse the order relating to costs as made in the lead judgment.

B

### **NGWUTA JSC**

The main claim of the appellant as plaintiff in the High Court of Ogun State, Ota Judicial Division, is hereunder reproduced:

C “A declaration that under the hereditary custom and tradition of Itele town in Ota, Ogun State, only the Adogun Atele family comprising four ruling houses viz: Imidawo, Ogunrombi, Osa and Adagbeji is eligible to hold chieftaincy title of Oba Itele first held by the plaintiff’s ancestor, i.e. Adogun Itele, the founder of the town and which D title is now classified as Part II title under the Chiefs Law of Ogun State.”

The other reliefs are dependent on the relief reproduced above. Pleadings were filed and exchanged. At the conclusion of the hearing, the trial Judge found in favour of the plaintiff, now respondent. E On appeal, the lower Court affirmed the Judgment of the trial Court. The appellant appealed to this Court but he died before the appeal could be heard. By an order of this Court dated 14/7/2006, Chief Gafaru Arowolo was substituted in place of the deceased Alhaji Jimoh F Arowolo.

The issues raised in the briefs were fully set out in the lead Judgment of my learned brother, Adekeye, JSC. I do not need to repeat them.

The 1st Respondent raised a preliminary objection in his brief. G He argued that the appeal is incompetent as it does not survive the original appellant, Alhaji Jimoh Arowolo. He relied on the ruling of Tabai, JSC on 14/7/2006, in which His Lordship granted liberty to the Respondent to raise the issue in the main appeal. My learned brother, Adekeye, JSC having reviewed the argument on both sides, H saw the objection

*“as not only frivolous but also time wasting, in other words, an abuse of the process of this Court”.*

I cannot agree more with that assessment.

Ruling on the motion for substitution on 14/7/2006 this Court

held, inter alia:

“Accordingly, I am of the view that the application be granted as prayed and an order is hereby made to substitute Chief Gafaru Arowolo in place of Alhaji Jimoh Arowolo now deceased vide ord. 8 Rule 9(2) Supreme Court Rules”, per Onu, JSC.

Now, raising the issue again in his brief the respondent is asking the Court to sit on appeal and set aside its ruling of 14/7/2006. This, the Court cannot do, notwithstanding the rider in the ruling of my Lord Tabai, JSC on the motion for substitution. I also dismiss the preliminary objection.

On the merit of the appeal, I refer to the evidence of the appellant who testified as DW1 in the trial Court. In his pleading and evidence, he traced his family tree back to the founder of Itele. In paragraph 8 of his 2nd amended statement of defence, he averred thus:

“The 1st defendant is descendant of Alagbeji who founded Itele land over three centuries ago. He was the 1st Oba of Itele.” He did not say that any of his ancestors or descendants of the founder of Itele ever left the town to settle elsewhere. In his testimony under cross-examination, he denied that his grand father was born in Totowo. He claimed his grand father was born at Idotele. However, when confronted with a certified true copy of proceedings and Judgment in Suit No. AB/35/68 dated 9/12/98, Exhibit G, he changed his story and stated thus.

“I have heard what you read as the evidence of my father as to the place where his own father was born. I now say that I do not know whether or not, he was born at Totowo; all I know is that he is a native of Itele.” (See page 45 of the record of the trial Court.).

This is a crucial point in the case. If his grand father is not born at Itele, he himself, being his grandson can hardly be crowned an Oba of that town - Itele. I do not think that is possible.

In any case, the appeal is against the concurrent Judgments of the trial Court and the lower Court. The trial Court Judge saw and heard the witnesses and came up with findings based on the credibility of the witnesses for each side. On appeal, the Judgment of the trial Court was affirmed by the lower Court. There is no suggestion that the Judgment of both or either Court is perverse within the meaning of the term in *State v Ajile* (2000) 7 SC (Pt. 1) 24, *Nassr v.*

Ibrahim (1975) 5 SC 55; Nzekwu v. Nzekwu (1989) 2 NWLR (Pt 104) 373. In the circumstance, the Supreme Court will not disturb the concurrent Judgments of the two Courts below.

Based on the above and the more comprehensive reasoning in the lead Judgment of my learned brother, Adekeye, JSC, which  
B Judgment I had the privilege of reading in draft, and with which I entirely agree, I also find that the appeal is devoid of merit and accordingly, I dismiss same. I also award N50,000.00 cost to the Respondent.

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