

**SUPREME COURT OF NIGERIA**  
16TH DECEMBER, 2011 SC. 224/2003  
**CORAM: - W. S. N. ONNOGHEN, J. A. FABIYI, O. O.**  
**ADEKEYE, B. RHODES-VIVOUR, M.U. PETER-ODILI, JJSC**

JABIN ONESA OGAGA ..... APPELLANT  
AND  
1. THOMAS E. UMUKORO  
2. MILITARY ADMINISTRATOR  
OF DELTA STATE ..... RESPONDENTS  
3. ATTORNEY-GENERAL  
OF DELTA STATE

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CONSTITUTIONAL LAW - Chieftaincy - 1979 Constitution - Supremacy of - S. 32 of Chiefs Edict which ousts jurisdiction of court in Chieftaincy matter is void - Since it conflicts with ss. 6(6)(b) and 236(1) of the Constitution (H1)

**FACTS**

1<sup>st</sup> Plaintiff/ 1<sup>st</sup> respondent commenced this action at the High court of Delta State, Otu-Jeremi. The action is in respect of a dispute arising from the rightful person to be crowned the Ovie of Ewu (or Eghwu) a community in Ughelli South Local Government Area of Delta state. 1<sup>st</sup> respondent and defendant/appellant came from the Ruling House (Okpor Ruling House) whose turn it is to produce the King of Ewu Kingdom. 1<sup>st</sup> respondent claimed inter alia, a declaration that 1<sup>st</sup> respondent is the Ovie of Ewu Kingdom. Appellant raised objection to the jurisdiction of the trial court and placed reliance on provisions of the Supremacy and Enforcement of Powers Decree No. 12 of 1994 and Section 32 of the Traditional Rulers and Chiefs' Edict 1979 of the defunct Bendel State (as applicable to Delta State). He felt that the same ousted the jurisdiction of the trial court.

At the end of hearing, the court ruled that it had no jurisdiction to hear the case. It therefore dismissed the action. Dissatisfied, 1<sup>st</sup> respondent appealed to the Court of Appeal, Benin City. The court held that section 32 of the Traditional Rulers and Chief's Edict, 1979 is unconstitutional; having regard to section 6(6)(b) of the 1979 constitution and that Decree 12 of 1994 did not oust the jurisdiction of

the trial High court. The court then remitted the case to the High Court for re-trial on the merits. Aggrieved, appellant has appealed to Supreme Court.

**ISSUE FOR DETERMINATION**

*“Whether by the combined effect of the provisions of Section 19 (1) of the Traditional Rulers and Chiefs Edict 1979 applicable to Delta state and section 1 (2) (b) (i) of Supremacy and Enforcement of Powers, Decree No.12 of 1994, the Court of Appeal was right when it held that the High court sitting at Otu-Jenemi has jurisdiction to hear and determine the substantive suit by remitting same to the said court for hearing on the merit.”*

**HELD** (Unanimously dismissing the appeal and upholding the judgment of the Court of Appeal per **PETER-ODILI JSC**)

**1979 Constitution - Supremacy of**

1. In my view the submission made by learned counsel for the Appellant on the second issue settles the point. The Traditional Rulers and Chiefs Edict, 1979 was enacted before the coming into force of the 1979 constitution. The 1979 constitution swept away all laws which ousted the jurisdiction of courts over chieftaincy questions in sections 6 and 236 (1) of that constitution because it was provided in section 236 (1)..... The tenor of section 32 of the Traditional Rulers and Chiefs Edict is the same as section 28 of the Chiefs Law Ondo State 1978. This provision is clearly in conflict with the 1979 constitution and consequently became void to the extent of the inconsistency. And since the said Edict was an existing law, it was deemed modified by virtue of section 274(1) of 1979 constitution so as to bring it in line with the said 1979 constitution. At the time the learned trial judge interpreted and applied the said provisions of the Edict, it was no longer the law. Notwithstanding that Decree No. 12 of 1994 had been promulgated at the time the matter went to court, section 236 (1) of the 1979 constitution had not been abrogated and so it took precedence over the Traditional Rulers and Chiefs Edict, 1979 since the Edict ranks below the un-suspended and modified section of the 1979 Constitution.

It is therefore crystal clear that section 32 of the Traditional Rulers and Chiefs Edict 1979 is void since it conflicts with sections 6 (b) (b) and 236 (1) of 1979 constitution and the learned trial judge

was in error when he held that section 1 (2) (b) (i) of Decree No.12 of 1994 applied because of the Traditional Rulers and Chiefs Edict, 1979.

It is clear therefore that the court below was right in its application of the relevant laws, situate side by side the Constitutional provision related thereto. Therefore it is safe to say that the ouster clause and Edict of 1979 had ceased to exist and the constitution is supreme, with the effect that the trial High court had its jurisdiction intact to entertain the suit before it. In conclusion this appeal fails and is dismissed. The orders of the Court below setting aside the ruling of the High Court of Delta State and remitting the case back to the Chief Judge of Delta State for reassignment to another judge for hearing is upheld. (pp. 2922 D/2924 H)

### **NOTABLE POINTS OF INTEREST**

#### **ADEKEYE JSC**

##### *1. Court must give meaning to intention of legislature in statutory interpretation*

In the interpretation and construction of the Constitution or Statutes the courts are enjoined to act in accordance with the intendment of the law makers, and to lean against any interpretation that will provide absurdity. A statute must not be given a construction that will defeat its purpose. The words of the statutes here are clear and unambiguous; they ought to be accorded their simple grammatical meaning.

It is settled that courts guard their jurisdiction jealously and any statute ousting the jurisdiction of a superior court has to be strictly construed. The provisions of the Constitution on the functions of the court in Section 236 (1) of the 1979 Constitution *impari materia* with Section 272 (1) of the 1999 Constitution must be strictly construed. (p. 2929 H)

#### **RHODES-VIVOUR JSC**

*2. Applicable laws are those in force when the cause of action arose*  
Jurisdiction is a question of Law and not of facts and so once raised it is fundamental that the Laws in force at the time the cause of action arose are examined. After all, a case is decided on Legislation in force of the time the cause of action arose. In this case, the plaintiffs' cause

of action arose in 1995 and he filed his suit in 1996. The very relevant Laws in existence then and applicable were:

- (a) Decree No.12 of 1994
- (b) The Traditional Rules and Chiefs Edict of 1979
- (c) The 1979 Constitution

B (p. 2931 H)

### **REPRESENTATION**

A. O. Ajineh, Ismaila Olokun for the Appellants

C G. J. Odjessa for the Respondents

### **CASES REFERRED TO**

Madukolu v. Nkemdilim 1962 2 NSCC 375

Yalaju Amaye v. A.R.E.C. Ltd. (1990) 4 NWLR (pt.145) 422

D Tukur v. Govt. of Gongola State (1989) 4 NWLR (Pt.117) 517

Magaji v. Matari (2000) FWLR (Pt.18) 237 at 252 para H

Okulate v. Awosanya (2000) FWLR (Pt.25) 1666

Nig. Engineering Works Ltd. v. Denap Ltd. (2002) FWLR (pt.89) 1062

E Osadebey v. A-G Delta State (1991) 1 NWLR (pt. 169) 525

Labiya v. Aretiola (1992) 8 NWLR (pt. 258) 13

Adejumo v. Military Government of Lagos State (1972) All NLR

Obada v. Military Governor Kwara State (1990) 6 NWLR (Pt.157) 482

F Ikine v. Edjerode & ors (2002) FWLR (Pt.92) 1775

Lagos State v. Dosunmu (1989) 3 NWLR (pt.111) 552

A. G. Fed v. Guardian Newspapers Ltd. (2001) FWLR (pt.32) 87

A-G Fed. v. Sode (1990) 1 NWLR (Pt.128) 537

G Miscellaneous Offences Tribunal v. Okoroafor (2001) FWLR (Pt.81) 1730

### **STATUTES REFERRED TO**

Supremacy and Enforcement of Powers Decree No. 12 of 1994, s.

H 1(2)(b)(i)

Traditional Rulers and Chief Edict, 1979 of Delta State, SS. 19(1) and 32

Constitution of Federal Republic of Nigeria 1979, ss. 6(6) (b), 236 and 274(1), Chapter IV

**LEAD JUDGMENT BY PETER-ODILI JSC**

This appeal is against the judgment of the Court of Appeal sitting in the Benin Division of the court which judgment was delivered on the 11th of April, 2003

The appeal to the Court of Appeal Benin was from a ruling of the High Court of Delta holden at Otu-Jeremi which suit was in respect of a dispute arising from successorship to the Kingship stool of Ovie of Ewu (or Eghwu) a community in Ughelli South Local Government Area of Delta state. Both the Defendant/Appellant and Plaintiff/Respondent came from the Ruling House (Okpor Ruling House) whose turn it is to produce the King of Ewu Kingdom.

For clarity, I shall recast the Plaintiff's Statement of claim at the trial High court specifically the claim in paragraph 29 thereof:-

1. A declaration that the 1st Defendant was never appointed as the Ovie of Ewu or Ovie-elect of Ewu within the jurisdiction of this Honourable Court.

2. A declaration that the 1st Defendant was never selected and/or appointed as the Ovie of Ewu by the Ahavwa Kingmaker or any relevant body in Ewu as Ewu customs demand.

3. A declaration that the 1st Defendant is not the Ovie by the customs of Ewu the Ovie of Ewu.

4. A declaration that the purported approval of 1st Defendant as Ovie of Ewu by the Delta State Government headed by the 2nd Defendant as announced in December, 1995 while an inquiry on the same Ovieship set up by the 2nd Defendant has not sat to hear evidence and submit report is against natural justice and the constitutional requirement of fair hearing, a breach of the 1979 constitution of Nigeria and therefore is null and void and against the constitutions of Inquiry Law 1976 applicable to Delta state.

5. An order of perpetual injunction restraining the 2nd and 3rd Defendants from further recognizing the 1st Defendant as Ovie of Ewu and/or from granting a staff of office or any insignia of office to the 1st Defendant as such Ovie.

6. An order of perpetual injunction restraining the 1st Defendant from parading himself as Ovie of Ewu and/or from presenting himself to anyone, anybody and/or authority as the Ovie of Ewu or Ovie - elect of Ewu for any purpose whatsoever especially for the purpose of being presented with the staff, certificate and/or any in-

signia of office as Ovie of Ewu.

7. A declaration that the Plaintiff is the Ovie of Ewu.

In his Amended statement of Defence, the Defendant/Appellant raised a question of jurisdiction contending that the Supremacy and Enforcement of Powers Decree No. 12 of 1994 coupled with  
B Section 32 of the Traditional Rulers and Chief Edict, 1979 of the defunct Bendel State applicable to Delta State ousted the jurisdiction of the trial court. The issue was heard as a preliminary point of Law.

The trial High court ruled that it had no jurisdiction to hear the  
C case. On appeal by the plaintiff who was dissatisfied, the court below held that section 32 of the Traditional Rulers and Chief's Edict, 1979 was unconstitutional; having regard to the 1979 constitution and that Decree 12 of 1994 did not oust the jurisdiction of the trial High court. The Court of Appeal then remitted the case to the High Court for  
D trial on the merits. It is against the appeal that the Defendant/Applicant has appealed to this Court.

At the hearing, Mr. Ajineh adopted the Brief of the Appellant and a Reply Brief and on behalf of the Appellant formulated a single issue viz:-

E *"Whether by the combined effect of the provisions of Section 19 (1) of the Traditional Rulers and Chiefs Edict 1979 applicable to Delta state and section 1 (2) (b) (i) of Supremacy and Enforcement of Powers, Decree No.12 of 1994, the Court of Appeal was right*  
F *when it held that the High court sitting at Otu-Jenemi has jurisdiction to hear and determine the substantive suit by remitting same to the said court for hearing on the merit."*

Learned counsel for the Respondent, Mr. Odjessa adopted the Brief of the Respondent in which was also crafted a sole issue as  
G follows:-

Was the Court of Appeal right when it held that the High Court of Justice, Delta state has jurisdiction to hear and determine the substantive case despite section 19 (1) of the Traditional Rulers and Chiefs Edict 1979 and the Supremacy and Enforcement of Powers Decree  
H No. 12 of 1994.

The two issues, each differently couched by each side are in the main the same in substance and so, what is left is to answer the question posed.

Learned counsel for the Appellant, Mr. Ajineh contended

that it is the Plaintiff's claim that determines the jurisdiction of any court whether the court has jurisdiction to hear and determine a claim before it. He cited *Yalaju Amaye v. A.R.E.C. Ltd.* (1990) 4 NWLR (pt.145) 422 at 441 para C; *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt.117) 517 at 549 para B; *Magaji v. Matari* (2000) FWLR (Pt.18) 237 at 252 para H; *Okulate v. Awosanya* (2000) FWLR (Pt.25) 1666 at 1696 paras A - B. B

That the appointment or approval of the Appellant as the Ovie of Ewu was an act of the Delta State Government and the further recognition accorded the Appellant by the 2nd Respondent by so gazetting the said approval/appointment was also an act of the Delta State Government done pursuant to Section 19 (1) of the Traditional Rulers and Chiefs Edict of 1979 of the defunct Bendel State now applicable to Delta state. That reliefs 4, 5 and 6 of the Plaintiff/Respondent in the Statement of Claim are a direct challenge of the acts of the Delta State Executive council represented by 2nd and 3rd Defendants/Respondents. C D

Mr. Ajineh of counsel for the Appellant called the attention of the Court to Section 1 (2) (b) (i) of the Supremacy and Enforcement of Powers) Decree No. 12 of 1994. E

Mr. Ajineh for the Appellant said the Court below did not address the provisions of the Edict thoroughly especially with regard to the provision of Section 19 (1) thereof under which the acts that the Plaintiff/Respondent seeks to upturn through the judicial process were carried out. That the Court below addressed the issue of the jurisdiction of the trial court rather too narrowly by focusing only on Section 32 of the Edict which learned counsel for the Appellant concedes is in conflict with the provisions of the then Section 6(6) (b) and section 236 of the 1979 Constitution. That the proper thing is for the Court below to have situated the acts complained of in a broader and better perspective by narrowing the Plaintiff's claims or reliefs through the said provisions of the Edict and Decree respectively and a holistic approach. That the approach adopted by the Court below was fatal to its own judgment. He cited *Nigeria Engineering Works Ltd v. Denap Ltd.* (2002) FWLR (pt.89) 1062 at 1090 paras A - B. F G H

Learned counsel for the Appellant stated earlier on that the issue of the conflict is only incidental to the larger issue of the effect of the claim of the Plaintiff/Respondent in the light of the acts of the 2nd

and 3rd Defendants/Respondents with particular focus on the relevant provisions of the Edict and Decree No. 12 of 1994. That the provisions of section 19 (1) of the Edict are unambiguous and also not unambiguous as the provisions of section 1 (2) (b) (i) of Decree 12 of 1994. That they ought to have been given their literal and/or plain/clear interpretations. That the Court of Appeal should have followed the principle of stare decisis and gone along the decisions of this court in the cases of: Attorney General of the Federation v. Sode (1990) 1 NWLR (Pt.128) 537 paragraph F; Osadebey v. Attorney General Delta State (1991) 1 NWLR (pt. 169) 525 at 574 G - H.

Mr. Ajineh of counsel went on to say that though the original source of jurisdiction of the High Court is the 1979 Constitution itself, but at the material time, where a Decree promulgated had ousted the jurisdiction of all courts or tribunals in any subject matter inconsistent with the provisions of the 1979 Constitution, the Decree such as Decree No.12 of 1994 prevailed and must be followed. He referred to Attorney General of the Federation v. Sode (supra) 518-519 Paras H-A; Attorney General of Lagos State v. Dosunmu (1989) 3 NWLR (pt.111) 552 at 581 para D; Attorney General of the Federation v. Guardian Newspapers Ltd. (2001) FWLR (Pt.32) 87 at 167 paras. C - E; Miscellaneous Offences Tribunal v. Okoroafor (2001) FWLR (Pt.81) 1730 at 1748 & 1749.

For the Appellant it was further contended that where the jurisdiction of a court has been clearly ousted by a Decree or statute as under Decree No.12 of 1994, the court is bound or obliged to uphold the ouster of their jurisdiction. He cited the following cases: Labiyi v. Aretiola (1992) 8 NWLR (pt. 258) 13; Adejumo v. Military Government of Lagos State (1972) All NLR; Obada v. Military Governor Kwara State (1990) 6 NWLR (Pt.157) 482 at 497 - 498 G - A.

Mr. Ajineh for the Appellant conceded that section 32 of the Edict are inconsistent with the provisions of the un-suspended parts of the 1979 constitution and so the section has been declared null and void and in addition has been declared impliedly repeated or modified by section 274 of the 1979 constitution. He cited the case of Ikine v. Edjerode & ors (2002) FWLR (Pt.92) 1775 at 1799 - 1720 paragraphs A - B. That in the matter of section 19 of the Edict under which the acts complained of happened that provision still remained extant and so claim of the 1st respondent should have



been viewed in the light of section 19(1) of the Edict and section 32 of the Edict together or conjunctively and not disjunctively.

In responding, learned counsel for the respondent stated that the Constitution (Suspension And Modification Decree 1993 left unsuspended and unmodified Sections 6 (6) and 236 (1) of the 1979 Constitution, and that Counsel for the Appellant concedes is in conflict with the provisions of the then Section 6 (6) (b) and Section 236 (1) of the 1979 Constitution. That the proper thing is for the Court below to have situated the acts complained of in a broader and better perspective by narrowing the Plaintiff's claims or reliefs through the said provisions of the Edict and Decree respectively and with a holistic approach. That the approach adopted by the Court below was fatal to its own judgment. He cited *Nigeria Engineering Works Ltd v. Denap Ltd. (2002) FWLR (pt. 89) 1062 at 1090 paras A – B.*

Learned counsel for the Appellant stated thereof that the issue of the conflict is only incidental to the larger issue of the claim of the Plaintiff/Respondent in the light of the acts of the 2nd and 3rd Defendants/Respondents with particular focus on the relevant provisions of the Edict and Decree No. 12 of 1994.

That the provisions of Section 19(1) of the Edict and unambiguous and also not unambiguous are the provisions of Section (1) (2) (b) (i) of Decree No.12 of 1994. That they ought to have been given their literal and/or plain/clear interpretations. That the Court of Appeal should have followed the principle of stare decisis and gone along the decisions of this court in the cases of: *A. G. Bendel State (1991) 1 NWLR (pt.169) 525 at 574 paras G - H.*

Mr. Ajineh of counsel went on to say that though the original source of jurisdiction of the High court is the 1979 constitution itself, but at the material title, where a Decree promulgated had ousted the jurisdiction of all courts or tribunals in any subject matter inconsistent with the provisions of the 1979 Constitution, the Decree such as Decree No.12 of 1994 prevailed and must be followed. He referred to *A.G. Federation v. Sode (supra) 518 - 519 paras H - A; A - G. Lagos State v. Dosunmu (1989) 3 NWLR (pt.111) 552 at 581 para D; A. G. Federation v. Guardian Newspapers Ltd. (2001) FWLR (pt.32) 87 at 167 paras C - E; Miscellaneous Offences Tribunal v. Okoroafor (2001) FWLR (Pt.81) 1730 at 1748 & 1749.*

For the Appellant it was further contended that where the ju-

risdiction of a court has been clearly ousted by a Decree or statute as under Decree No. 12 of 1994, the courts are bound or obliged to uphold the ouster of their jurisdiction. He cited the following cases: Labiyi v. Aretiola (1992) 8 NWLR (Pt.258) 13; Adejumo v. Military Government of Lagos State (1972) All NLR; Obada v. Military Governor, Kwara State (1990) 6 NWLR (Pt.157) 482 at 497 - 498 G -A.

Mr. Ajineh for the Appellant conceded that Section 32 of the Edict that are inconsistent with the provisions of the un-suspended parts of the 1979 constitution and so the section has been declared null and void and in addition had been declared impliedly repeated or modified by section 274 of the 1979 constitution. He cited the case of Ikine v. Edierode & ors. (2002) FWLR (Pt.92) 1775 at 1799-1720 paragraphs A -B.

Learned counsel for the Respondent stated that the ample powers given to the High court of Delta state to determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claims is in issue were extant in 1995 when the cause of action arose in this case. That under the applicable Traditional Rulers and Chiefs Edict, 1979 Bendel state, the Government does not select nor appoint a traditional ruler for the communities. That under section 19 (1) of the said Edict, the relevant Executive council can only approve or set aside the selection of a traditional which selection is done at the community level in accordance with custom and traditions. He cited Adeyeri v. Atanda (1995) 5 NWLR (Pt.397) 512 at 533 para B.

Mr. Odjessa for the Respondent said the severance of role between the selectors, appointers on the one hand and the approving authorities was profoundly brought out in Eze v. Okechukwu (1998) 5 NWLR (Pt.548) 43 at 68 paras E - G in respect of a similar Decree 13 of 1984 and that judgment of the Court of Appeal was affirmed by the Supreme Court in Eze v. Okechukwu (2002) 18 NWLR (Pt.799) 348.

For the Respondent it was also put forward that all the reliefs except one sought by the Plaintiff/Respondent pose questions about nomination, selection and/or appointment of either of the two combatants within the Ewu traditional, customary law. That the exceptional relief which is No.4 is saved by section 1 (2) (b) (ii) of Decree 12 of 1994 as it is based on chapter IV (Fundamental Rights) of the

1979 constitution. That the intention of the lawmaker was to restrict the ouster of the jurisdiction of a court in respect of matters under chapter IV of the 1979 constitution to when Decrees are challenged and not acts done or purportedly done under Edicts. That to enable the purport of a statute to emerge, all the sections of the statute should be read as a whole. That adopting a holistic approach to the interpretation of Decree 12 of 1994, that the Edict could not oust the jurisdiction of a court in a claim touching on Fundamental Rights. B

Learned counsel for the Respondent said Reliefs 5 and 6 were ancillary to the main claims of the plaintiff/Respondent and cannot be used to determine the jurisdiction of the trial court. He referred to Daily Times (Nig.) Plc. v. Akindiji (1998) 13 NWLR (pt.580) 22 at 32 - 33. C

He contended for the Respondent that in the case at hand no one had challenged the validity of any Edict. That what is in focus are the customs and traditions as accepted by the traditions as accepted by the people of Ewu and indeed that of Respondent and Appellant which this Court answered effectively in *Eze v. Okechukwu* (supra) and *Omokhafa v. Military Administrator Edo State of Nigeria* (2005) All FWLR (Pt.243) 629 at 642 - 643 paras G - B. That the two cases above referred to are not dissimilar to the one in hand. Mr. Odjessa for the Respondent went on to say that the commencement date of the Federal Military Government (Supremacy and Enforcement of Powers) Decree 1994 (Decree No.12 of 1994) was 18th November, 1993. The Traditional Rulers and Chiefs Edict 1979 came into force on 24th August, 1979. D E F

That assuming though not conceding that this case at the trial court was a challenge to an act of the Military Government in Delta State an act done pursuant to the Traditional Rulers And chiefs Edict 1979 Decree 12 of 1994 cannot operate retrospectively to protect both the act and the Edict from the amplitude of judicial powers granted the High court of Justice of Delta state under sections 6 (6), 236(1), 274 (2) and 274 (3) of the 1979 Constitution in force when the cause of action arose. He cited *Nigerian Engineering Works Ltd. v. Densap Ltd* (2002) FWLR 1062; *Kanada v. The Governor Kaduna State* (1986) NWLR (pt.35) 361 at 373 - 376 paras H - B; *Commissioner for Local Government Anambra State v. Ezenuokwe* (1991) 3 NWLR (pt.181) 615 at 628 para C. G H

In reply on points of law, Mr. Ajineh learned counsel for the Appellant said where the resolution of the main claims or reliefs in a suit cannot be done without a resolution of the ancillary reliefs as in the case in hand, the court cannot assume jurisdiction. He cited *Akinola v. Vice-Chancellor Unilorin* (2005) All FWLR (Pt.259) 1934 at 1955 paras C - E; *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt.117) 517 at 567 para E, P.568 paras A - B.

Having stated the submissions of counsel on either side, it seems to me that the relevant portion of the judgment of the court below needs be restated for a better appreciation of the issues at stake including the findings of the trial High court and its consideration by the Court below. It is as follows at pages 465 - 468 of the Record:-

*“The learned trial Judge considered the provisions of Decree No.12 and held that it was not counsel’s contention that the appointment of 1st Defendant was made under Decree No.12 of 1994. He however considered reliefs 4 and 5 in paragraph 29 of the statement of claim vis-a-vis section 32 of the Traditional Rulers and Chiefs Edict, 1979 and held that the court’s jurisdiction was ousted.”*

***In my view the submission made by learned counsel for the Appellant on the second issue settles the point. The Traditional Rulers and Chiefs Edict, 1979 was enacted before the coming into force of the 1979 constitution. The 1979 constitution swept away all laws which ousted the jurisdiction of courts over chieftaincy questions in sections 6 and 236 (1) of that constitution because it was provided in section 236 (1)..... The tenor of section 32 of the Traditional Rulers and Chiefs Edict is the same as section 28 of the Chiefs Law Ondo State 1978. This provision is clearly in conflict with the 1979 constitution and consequently became void to the extent of the inconsistency. And since the said Edict was an existing law, it was deemed modified by virtue of section 274(1) of 1979 constitution so as to bring it in line with the said 1979 constitution. At the time the learned trial judge interpreted and applied the said provisions of the Edict, it was no longer the law. Notwithstanding that Decree No. 12 of 1994 had been promulgated at the time the matter went to court, section 236 (1) of the 1979 constitution had not been abrogated and so it took precedence over the Traditional Rulers and Chiefs Edict,***

**1979 since the Edict ranks below the un-suspended and modified section of the 1979 Constitution.**

**It is therefore crystal clear that section 32 of the Traditional Rulers and Chiefs Edict 1979 is void since it conflicts with sections 6 (6) (b) and 236 (1) of 1979 constitution and the learned trial judge was in error when he held that section 1 (2) (b) (i) of Decree No.12 of 1994 applied because of the Traditional Rulers and Chiefs Edict, 1979.**

Section 32 of the Traditional Rulers and chiefs Edict 1979 provides as follows:-

*“32 - Notwithstanding anything in any written law whereby or where under jurisdiction is conferred upon any court, whether such jurisdiction is original, appellate, or by way of transfer, no court shall have jurisdiction to entertain any civil case or matter -*

*1. Instituted for the determination of any question relating to the selection, appointment, installation, deposition, withdrawal of approval of appointment, abdication or suspension of a traditional ruler, regent or a chief as the case may be”.*

Those are clear ouster clauses and no court could enter into any matter pertaining to the subject matter or related matters covered by that Edict.

However Section 236 (1) of the 1979 constitution came into being and provided thus:-

*“236 - (1) Subject to the provisions of this constitution and in addition to such other jurisdiction may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceeding in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person”.*

The above was the basis upon which this court voided the provisions of section 28 of the Chiefs Law of Western Region of Nigeria Cap. 20 of the Laws of western Region 1963, which became on creation of Ondo State Cap .20 of the Laws of Ondo State 1978. That section had ousted the jurisdiction of all courts original or appellate. Also that section and law are impari material to Section 32 of the Traditional Rulers and chiefs Edict 1979, the law relevant to today's

discourse. I refer to *Military Governor of Ondo State v. Adewunmi* (1988) 3 NWLR (Pt.82) 280. I would like to cite and quote Igu JSC in *Benin Rubber Producers Ltd. v. Ojo* (1997) 9 NWLR (pt.521) 388. In that case the Appellant's counsel had contended that the respondent's failure to comply with or exhaust all the remedies prescribed by section 51 (1) (c) of the Cooperative Societies Law Cap. 45 Laws of Bendel State of Nigeria 1976 before filing his action against the appellant and its servant robbed the court of jurisdiction to entertain the suit. This court considered the combined effect of sections 6 (6) (b), 236 and 274 of the 1979 Constitution alongside the said Section 51 (1) (c) of the Co-operative Societies Law and held that the court's jurisdiction was not ousted. Illuminating the position, Iguh JSC in the lead judgment at page 405 stated as follows:-

*"The combined effect of these sections of the 1979 constitution is, subject to the other provisions of the said Constitution, to confer unlimited jurisdiction on the High court of a State and all existing Laws and/or any provision in a state Laws which are not in conformity with the provisions of the Constitution or tend to derogate from the powers of such courts shall to the extent of such inconsistency be void. State Laws which purports to oust the jurisdiction of the state High court is void as being inconsistent with the Constitution of the Federal Republic of Nigeria 1979. See Bronik Motors Ltd. & Anor v. Wema Bank Ltd. (1983) 6 SC. 158, Military Governor of Ondo State and Anor v. Victor Adewunmi (1988) 3 NWLR (pt. 82) 280. In my view therefore, the provisions of Section 51 (1) (a), 51 (1) (b) and 51 (6) are inconsistent with of the Federal Republic of Nigeria 1979. See Bronik Motors Ltd. & Anor v. Wema Bank (1983) 6 SC 158, Military Governor of Ondo State and Anor. v. Victor Adewunmi (1988) 3 NWLR (pt.82) 280. In my view therefore, the provisions of section 51 (1) (a), 51 (1) (b) and 51 (6) of the Cooperative Societies Law, cap 45 Laws of the former Bendel State of Nigeria 1976 which are State enactment must be regarded as void in so far as they purport to limit or oust the jurisdiction of the High Courts as therein provided contrary to the express provisions of the 1979 Constitution."*

**It is clear therefore that the court below was right in its application of the relevant laws, situate side by side the Constitutional provision related thereto. Therefore it is safe to say**

***that the ouster clause and Edict of 1979 had ceased to exist and the constitution is supreme, with the effect that the trial High court had its jurisdiction in tact to entertain the suit before it. In conclusion this appeal fails and is dismissed. The orders of the Court below setting aside the ruling of the High Court of Delta State and remitting the case back to the Chief Judge of Delta State for reassignment to another judge for hearing is upheld.*** B

I award the sum of N50,000.00 to the Respondent to be paid by the Appellant. C

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**ONNOGHEN JSC**

I have had the benefit of reading in draft, the lead judgment of my learned brother MARY U. PETER-ODILI, JSC just delivered. D

I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

I order accordingly and abide by the consequential orders made in the said lead judgment including the order as to costs. E  
Appeal dismissed.

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**FABIYI JSC**

I had a preview of the judgment just delivered by my learned brother - Peter Odili, J.S.C. I agree with the reasons therein contained in arriving at the conclusion that the appeal should be dismissed. F

This is chieftaincy matter. The defendant at the trial court raised objection to the jurisdiction of the trial court and placed reliance on the provisions of Section 32 of the Traditional Rulers and chiefs' Edict 1979 of the defunct Bendel State as applicable to Delta State. He felt that the same ousted the jurisdiction of the trial court. G

The trial court maintained that it had no jurisdiction. On appeal to the Court of Appeal, Benin Division (the court below, for short) it was held that Section 32 of the Traditional Rulers and chiefs' Edict of 1979 was unconstitutional having regard to the provisions of Section 236(1) of the 1979 Constitution and that Decree 12 of 1994 did not oust the jurisdiction of the trial High court. H

Section 236(1) of the 1979 Constitution conferred unlimited jurisdiction on State High Courts. The combined effect of the provisions of Section 6(6) (b), 236(1) and 274 of the 1979 Constitution which were left intact, imbued the State High Court with unlimited jurisdiction. Any state law that is not in conformity is to the extent of  
 B the inconsistency void. See: *Military Governor of Ondo State and Anor. v. Adewunmi* (1988) 3 NWLR (Pt. 82) 280; *Benin Rubber Producers Ltd. V. Ojo* (1997) 9 NWLR (Pt. 521) 388; *Bronik Motors Ltd. and Anor. V. Wema Bank Ltd.* (1983) 6 SC 158.

C The court below was on a firm ground in the stance posed by it. The trial court wrongly declined jurisdiction. For the above reason and more especially the fuller ones set out in the lead judgment, I too feel that the appeal is devoid of merit and should be dismissed. I order accordingly and endorse, all consequential orders therein contained inclusive of that relating to costs.

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### **ADEKEYE JSC**

E I have read in draft, the judgment just delivered by my learned brother M. U. Peter-Odili JSC.

My learned brother had vividly considered the issues formulated for consideration - and I have no reason to differ from her reasoning conclusion. The background facts of the case, the reliefs  
 F sought by the plaintiff/respondent and issues raised in the briefs of argument of the parties are as reproduced by my learned brother.

In the amended statement of defence, the defendant/ appellant raised a question of jurisdiction to the effect that the Supremacy and Enforcement of Powers Decree No. 12 of 1994 coupled with  
 G Section 32 of the Traditional Rules and Chiefs Edict, 1979 of the defunct Bendel State applicable to Delta State ousted the jurisdiction of the trial court. The issue was heard as a preliminary point of law before the High Court of Delta State Otu-Jeremi Judicial Division in suit No. HCG/2/96. That court declined jurisdiction to hear the case.

H The Court of Appeal Benin Division ruled that Section 32 of the Traditional Rulers and Chiefs Edict was unconstitutional having regard to the 1979 Constitution and that Decree No. 12 of 1994 did not oust the jurisdiction of the High Court. The defendant/ appellant lodged this appeal against the decision of the Court of Appeal. The



dispute before the High Court was in respect of successorship to the traditional Stool of Ovie of Ewu in the Ughelli South Local Government Area of Delta State. The plaintiff went to court after the Delta State Government announced the appellant as the Ovie of Ewu. The complaint against the government was that the government did not approve the appointment of the plaintiff/respondent who had been selected as the Ovie of Ewu in accordance with the customs and tradition of the people. Approval of the appointment of the appellant as the Ovie of Ewu was an act of the Delta State government. The government gave recognition to the Ovie by gazetting the said approval in the Delta State Gazette No. 11 DSL No. 3 of 1999 - an act of the State Government in pursuant to Section 19 (1) of the Traditional Rulers and Chiefs Edict of 1979 of the defunct Bendel State now applicable to Delta State. The germane issue before this court for resolution is whether by the combined effect of the provisions of Section 19 (1) of the Traditional Rulers and Chiefs Edict 1979 applicable to Delta State and Section 1 (2) (b) of (Supremacy and Enforcement of Powers) Decree No. 12 of 1994, the Court of Appeal was right when it held that the High Court sitting at Otu-Jeremi has jurisdiction to hear and determine the substantive suit by remitting same to the said court for hearing on the merit. The cause of action arose in 1995. The operative laws in existence then were: -

1. The Constitution (Suspension and Modification) Decree 1993.

2. The Un-suspended and unmodified Sections of the 1979 Constitution.

3. Section 19 (1) of the Traditional Rulers and Chiefs Edict 1979 applicable to Delta State.

4. Section 32 of the same Edict 1979.

5. Section 1 (2) (b) (1) of Supremacy and Enforcement of Powers Decree No. 12 of 1994.

I shall reproduce the provision of these laws:-

Section 19(1) of the Traditional Rulers and Chiefs Edict 1979 states as follows:-

“Subject to the provisions of this section the executive council may approve or set aside the selection of a Traditional Ruler”.

Section 32 of the Edict 1979 reads:-

“Notwithstanding anything in any written law whereby or where

under jurisdiction is conferred upon any court where such jurisdiction is original, appellate or by way of transfer, no court shall have jurisdiction to entertain any civil case or matter-

B (a) Instituted for the determination of any question relating to the selection, appointment, installation, deposition, withdrawal of approval of appointment, abdication or suspension of a traditional ruler, regent or a chief as the case may be or

C (b) Instituted for the recovery or delivery up of any property in connection with the selection, appointment, installation, deposition, withdrawal of approval of appointment, abdication or suspension of a traditional ruler, regent or a chief save that any traditional ruler, regent or chief whose appointment has been approved by the Executive Council or the prescribed authority as the case may be shall not be precluded from taking action in a court of competent D jurisdiction for the recovery or delivery of such property and related damages.

E (c) Calling in question anything done in the execution of any of the provisions of this edict or the repealed law or in respect of any neglect or default in the execution of any such provisions by the Executive Council, the appropriate authority, a Traditional Council or its secretary, a prescribed authority, a Local Government Council, a ruling house or a kingmaker”.

F Supremacy and Enforcement of Powers Decree No.12 of 1994 states that:  
Section 1 (2) (b) (1)

G “No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or Purported to be done under or pursuant to any Decree or Edict and if such proceedings are instituted before on or after the commencement of this Decree the proceedings shall abate, be discharged and made void.”

H The un-suspended and unmodified portion of the 1979 Constitution are Sections (6)(6) and 236 (1) of the 1979 Constitution. Section (6)(b) of the 1979 Constitution vested judicial powers in the courts.

Section 236(1)

“The High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a

legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture punishment or other liability in respect of an offence committed by any person”.

The role of the community is to select and nominate a candidate to fill a stool within members of the ruling house for that chieftaincy, while the role of the Executive Council under Section 19 (1) of the Traditional Rulers and Chiefs Edict is to approve or set aside the section of a traditional ruler. Section 236 (1) of the 1979 Constitution was extant when the cause of election accrued in 1995. It was left un-suspended and unmodified by the Constitution/ Suspension and Modification Decree 1993.

The defendant/appellant held that the acts of approval by the 2nd and 3rd Respondents were done pursuant to Section 19 (1) of the Edict.

That acts having been done pursuant to the Edict, they could not be challenged in any civil cause or matter in accordance with the provision of Decree No.12 and 1994, and Section 32 of the 1979 Edict. Simultaneously with these laws section 236 (1) of the 1979 Constitution giving wide and unlimited powers to the High Court over civil proceedings of this nature was still in existence. Decree No. 12 of 1994 came into existence on the 18th of November 1993 - and since it was not meant to have retrospective effect it cannot therefore have an effect on the Chiefs Edict of 1979. In the Supremacy and Hierarchy of laws the Constitution is superior to an Edict. It is the provision of 1979 or 1999 Constitution Section 1 (3) that:-

“If any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall to the extent of the inconsistency be void”.

Section 32 of the Chiefs Edict 1979 is nullified by this section of the Constitution for being unconstitutional. The justices of the Court of Appeal were therefore correct in their unanimous decision that Decree No. 12 of 1994 did not oust the jurisdiction of the trial High Court.

The courts are vested with the power to interpret the Constitution and Statutes. They are in fact custodians of the Constitution.

In the interpretation and construction of the Constitution or Statutes the courts are enjoined to act in accordance with the

intendment of the law makers, and to lean against any interpretation that will provide absurdity. A statute must not be given a construction that will defeat its purpose. The words of the statutes here are clear and unambiguous; they ought to be accorded their simple grammatical meaning. *Adewunmi vs. A. G. Ekiti state* (2000) 2 NWLR pt.751 pg. 474, *Fawehinmi vs. IGP* (2000) 7 NWLR pt. 665, Pg.481, *Awolowo vs. Shagari* (1979) 6-9 SC 51.

It is settled that courts guard their jurisdiction jealously and any statute ousting the jurisdiction of a superior court has to be strictly construed. The provisions of the Constitution on the functions of the court in Section 236 (1) of the 1979 Constitution *impari materia* with Section 272 (1) of the 1999 Constitution must be strictly construed. *Katto vs. C. B. N.* (1991) 1 NWLR pt.214, pg. 126 *Wilson vs. A. G. Bendel State* (1985) 1 NWLR Pt.4, pg 572.

With fuller reasons given in the lead judgment, I agree with my learned brother that the appeal be dismissed and the cross-appeal be allowed, I abide with the consequential orders including the order of costs.

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### ***RHODES-VIVOUR JSC***

I have had the advantage of reading in draft the leading judgment prepared by my learned brother, Peter-Odili, JSC. So completely do I agree with it, but I have decided to add a few paragraphs of my own. The plaintiff/1st respondent was selected as the *Ovie* of Ewu in line with the custom and tradition of his people. The Delta State Government was then expected to appoint him as the *Ovie* of Ewu, but the Government reasoned otherwise and announced the appellant as the *Ovie* of Ewu. The 1st Respondent as plaintiff filed an action in a Delta State High Court sitting of Otu-Jeremi for:

1. A declaration that the 1st defendant was never appointed as the *Ovie* of Ewu within the jurisdiction of this Honourable Court.
2. A declaration that the 1st defendant was never selected and/or appointed as the *Ovie* of Ewu by the *Ahavwa* Kingmaker or any relevant body in Ewu as Ewu custom demand.
3. A declaration that the 1st defendant is not the *Ovie* by the customs of Ewu, the *Ovie* of Ewu.
4. A declaration that the purported approval of 1st Defendant

as Ovie of Ewu by the Delta State Government headed by the 2nd Defendant as announced in December, 1995 while an inquiry on the same Ovieship set up by the 2nd Defendant has not sat to hear evidence and submit report is against natural justice and the constitutional requirement of fair hearing, a breach of the 1979 constitution of Nigeria and therefore null and void and against the constitutions of Inquiry Law 1976 applicable in Delta state. B

5. An order of perpetual injunction restraining the 2nd and 3rd Defendants from further recognizing the 1st Defendant as Ovie of Ewu and/or from granting a staff of office or any insignia of office to the 1st Defendant as such Ovie. C

6. An order of perpetual injunction restraining the 1st Defendant from parading himself as Ovie of Ewu and/or from presenting himself to anyone, anybody and/or authority as the Ovie of Ewu or Ovie-elect of Ewu for any purpose whatsoever especially for the purpose of being presented with the staff, certificate and/or any insignia of office as Ovie of Ewu. D

7. A declaration that the Plaintiff is the Ovie of Ewu.

The defendants (i.e. the appellant and the 2nd and 3rd respondent) raised a Preliminary objection on jurisdiction. It reads: E

“That the court lacks jurisdiction to entertain the substantive suit or any ancillary application connected thereto having regard to Decree No.12 of 1994.

The learned trial Judge ruled that he had no jurisdiction to hear the case because the act being challenged falls within section 32 of the Traditional Rulers and Chiefs edict 1979. This reasoning was upset on appeal. The Court of Appeal held that the State High Court had jurisdiction to hear the claims and remitted the case back to the Chief Judge of Delta State for hearing of the claims. F

Now, it has been said in a plethora of cases that a court is competent when- G

1. It is properly constituted with respect to the number and qualification of its members.

2. The subject matter of the action is within its jurisdiction. H

3. The action is initiated by due process of Law and any condition precedent to the exercise of its Jurisdiction has been fulfilled. See *Madukolu v. Nkemdilim* 1962 2 NSCC p.375

Jurisdiction is a question of Law and not of facts and so once

raised it is fundamental that the Laws in force at the time the cause of action arose are examined. After all, a case is decided on Legislation in force of the time the cause of action arose. In this case, the plaintiffs' cause of action arose in 1995 and he filed his suit in 1996. The very relevant Laws in existence then and applicable were:

- B (a) Decree No.12 of 1994
- (b) The Traditional Rules and Chiefs Edict of 1979
- (c) The 1979 Constitution

Arguments on the issue of jurisdiction is on (2) above (i.e. whether the subject matter of the action is within the jurisdiction of the High Court). Section 1 (2) of Decree No 12 of 1994 states:

"No Civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing purported to be done under or pursuant to any Decree or Edict and if such proceedings are instituted before, on or after the commencement of this Decree the proceedings shall abate, be discharged and made void".

Section 32 of the Traditional Rulers and Chiefs Edict 1979 states that:

E Notwithstanding anything in any written Law whereby or where under jurisdiction is conferred upon any court, whether such jurisdiction is original, appellate, or by way of transfer no court shall have jurisdiction to entertain any civil case or matter-

F (a) Instituted for the determination of any question relating to the selection, appointment, installation, deposition, withdrawal of approval of appointment, abdication or suspension of a traditional ruler, regent or a chief as the case may be or...

Now, Sections 6(1) (6) (b) and 236 (1) of the 1979 Constitution are relevant as they were not suspended. They read:

"6 (1) The judicial powers of the federation shall be vested in the courts to which this section relates being courts established for the federation.

(6) The judicial powers vested in accordance with the foregoing provisions of this section

(b) Shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person."

The above shows clearly the extent of judicial powers.

Section 236 (1) states that:

“The High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture punishment or other liability in respect of an offence committed by any person.” B

Any law, particularly the law of a state in conflict with section 236(1) of the 1979 constitution becomes null and void. See *Famubo v. Adekunle* 1988 2 NWLR pt.79 p.723. C

My lords, Section 6(6) (b) and 236 (1) of the 1979 constitution confers unlimited jurisdiction on State High Courts on all existing Laws. Consequently any State Law or its provisions which are in conflict with the provision of the constitution shall to the extent of the inconsistency be void. Where a State Law/Legislation ousts or purports to oust the jurisdiction of a State High Court such legislation is void for being inconsistent with the constitution. See *M.G. of Ondo State & Anor v. Adewunmi* 1988 3 NWLR pt. 82 p.280. D

It follows naturally that section 32 of the traditional Rulers and Chiefs Edict 1979 of the former Bendel State, now Delta State, a State Legislation is void since it ousts the jurisdiction of the State High Court. It is contrary to the clear provisions of the 1979 Constitution. Decree No 12 of 1994 became effective from November 1993. It has no retrospective effect and so has no effect on the State Legislation of 1979 i.e. the Traditional Rulers and Chiefs Edict of 1979. The provisions of Decree No. 12 of 1994 do not oust the jurisdiction of the State High Court. The Court of Appeal was therefore correct to rule that the learned trial judge was wrong to decline jurisdiction. E  
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It is for these and those ably stated in the leading judgment that I uphold the judgment of the Court of Appeal. I also agree with the orders made and costs.