

SUPREME COURT OF NIGERIA

25TH MAY, 2012. SC. 142/2004

**CORAM:- M. MOHAMMED, C. M. CHUKWUMA-ENEH,
M. S. MUNTAKA-COOMASSIE, J. A. FABIYI,
B. RHODES-VIVOUR, JJSC**

1. CHIEF JOSEPH TAIWO
(ODOFIN OF IJABE)
2. CHIEF FAKAYODE OLUWO APPELLANTS
3. MR. ANTHONY AYoola
4. MR. LASISI IDOWU
(FOR THEMSELVES AND ON BEHALF
OF ODOFIN OF IJABE CHIEFTAINCY
FAMILY OF ILE-OKE IROKO, IJABE)
AND
1. MR. NICHOLAS OGUNDELE
2. MR. SIMEON ODEDIRAN RESPONDENTS
3. MR. SUNDAY OGUNTOYE
4. MR. GEORGE AJALA
(FOR THEMSELVES AND ON BEHALF
OF ALATA'S FAMILY OF ALALA'S
COMPOUND IJABE)

CHIEFTAINCY MATTERS - Judicial Precedents - Rule in *Kojo v. Bonsie*
- Application - The rule is not applicable to present case - That requires strict prove of native law (H1)

CHIEFTAINCY MATTERS - Evidence - Contradictions - Effect on appeal - It must be shown that trial court - Failed to advert its mind to the contradictions - Before its judgment can be reversed (H2)

FACTS

The families of plaintiffs/appellants and defendants/respondents were involved in chieftaincy dispute over the rightful person to occupy the throne as Odofin of Ijabe in Osun State. The tussle necessitated the institution of this action by appellants at the High Court of Osun State sitting at Ikirun. Appellants claimed inter alia, a declaration that the Odofin family of the Oke-Iroko's compound Ijabe is

the only family entitled to the Odofin of Ijabe Chieftaincy title. Appellants called five witnesses who gave traditional evidence of appellants' settlement on the land and entitlement to the Odofin stool.

On the other hand, respondents gave their version of traditional evidence and maintained that the Odofin stool was rotating among the families of the parties. The court properly evaluated evidence of the parties and held that appellants' family is entitled to the Odofin stool. Dissatisfied, respondents appealed to the Court of Appeal, Ibadan division. The court after re-evaluating the evidence of both parties, found that there are contradictions in evidence of appellants. As such, the evidence was held not reliable. The court applied the rule in *Kojo II v. Bonsie* and thus set aside the judgment of trial court. The appeal was allowed. Aggrieved, appellants filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

1. Whether having regard to the circumstances of this case, the court below was right to have involved and relied upon the rule in *KOJO II vs. BONISIE* in tampering with the impeccable decision of the trial court which led to a miscarriage of justice against the Appellants.

2. Whether the lower court was right in tampering with the finding of fact made by the trial court when there were sufficient, credible, cogent and believable oral and documentary evidence to support the various findings made by the trial court.

HELD (Unanimously allowing the appeal per

MUNTAKA-COOMASSIE JSC)

Judicial Precedents - Rule in Kojo v. Bonsie - Application

1. With tremendous respect to the justices of the lower court, I must state that it is not in all cases where there is evidence of conflicting traditional history before the Court that the rule in *Kojo II v. Bonsie* will be applicable. Such cases include:-

(i) Where there is a concurrent findings of the two lower courts on a question of fact the rule will not apply

(ii) Where there is a fundamental contradiction on the traditional history of a party, the rule will not apply

(iii) Where the traditional history is based, for instance, on fiction and mysticism beyond the comprehension of the Court and therefore incapable of being assigned any probability of truth, the rule will not apply

(iv) In a matter of proving customary law or Native law and custom which is required, in law, to be proved by anybody who asserts its existence by credible evidence rather than by speculation, the rule is not applicable –

The case in hand falls within the cases, where the rule is not applicable. Thus the rule in *Kojo II vs. Bonsie* which is based on inference or speculation has no application to this case which requires the Native Law and Custom of Odofin of Ijabe Chieftaincy to be proved strictly by cogent and reliable evidence of not only one witness but should be corroborated by an independent witness. (p. 2039 D)

Evidence - Contradictions - Effect on appeal

2. On the second issue, the thrust of which is the alleged contradiction in the evidence of the appellants witnesses on the place of the conferment of the Odofin title on Oke. The law is settled that contradictions in the evidence of witnesses may not necessarily be fatal to a case, especially when they are minor; and the judgment of a trial court will not be reversed on appeal merely because there were contradictions in the evidence of witnesses, it must be further shown that the Judge did not advert his or her mind to those contradictions.

(p. 2040 D)

NOTABLE POINT OF INTEREST

FABIYI JSC

1. Evaluation of evidence – Duty of trial court

The point must also be made that ascription of probative value to the evidence of witnesses is pre-eminently the business of the trial court which heard the witnesses. An appeal court does not make it a practice to lightly interfere with same unless for compelling reasons.

(p. 2044 C)

REPRESENTATION

Yusuf O. Ali, SAN with S. A. Oke Esq., I. O. Atofarati Esq., A. W. Raji Esq., Jima Ahmed (Miss) and S. O. C. Giwa Esq, for the Appellants
Mr. Akeem Agbaje Esq., with Gboyegi Alawode, for the Respondents

B

CASES REFERRED TO

Onigbede v. Balogun (2002) 6 NWLR (Pt.762) 1

Sanusi v Adebiyi (1997) II NWLR (Pt. 530) 565

C Ogbuokwelu v. Umeana Funkwa (1994) 4 NWLR (Pt. 341) 676

Giwa v. Erinmilkun (1961) 1 SCNLR 377

Ozogaba II v. Ekpenga (1962) 1 SCNLR 423

Onyejukwe v. Onyejukwe (1999) 3 NWLR (Pt. 596) 483

Olarewaju v. Oyeyemi (2001) 2 NWLR (Pt.696) 229

D Queen v. Ekanen (1960) 5 FSC 14

Enahoro v. Queen (1965) 1 All NLR 125

Irimi v. Erhurhobara (1991) 2 NWLR (Pt.173) 252

Kojo II v. Bonsie (1957) 1 WLR 1233

Balogun v. Labiran (1988) 3 NWLR (Pt. 80) 66

E Chinwendu v. Mbamali (1950) 3-4 SC 32

Ebba v. Ogodo (1984) 1 SCNLR 372

Ogbechie v. Onochie (1998) 1 NWLR (Pt. 470) 370

STATUTE REFERRED TO

F

Court of Appeal Act, s. 16

LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC

G This is a chieftaincy tussle. The Appellants herein were plaintiffs in the High court of Justice Ikirun in Osun State. The plaintiffs prayed for the following reliefs in their amended statement of claim paragraph 33 thereof:-

1. Whereof the plaintiffs claim against the defendants jointly and severally as follows:-

H *"i) A Declaration that the Odofin family of the Oke-Iroko's compound Ijabe, is the only family entitled to the Odofin of Ijabe Chieftaincy title.*

ii) A Declaration that members of the 1st - 4th defendants family i.e. Ajala family of Ajala's compound, Ijabe are not members of Odofin

of Ile-Oke Iroko family and are therefore not entitled to the Odofin of Ijabe Chieftaincy title.

iii) An Order that the 1st - 4th defendants' family should remove the sign post bearing the inscriptions of "Odofin Obafemi Compound" erected in their Ajala family compound in Ijabe from their compound. B

iv) An Order that all members of the 1st - 4th defendants Ajala family should erase the words "Odofin Obafemi Compound" inscribed on the walls of their houses.

v) Injunction restraining the 1st - 4th defendants' Ajala family from claiming or parading themselves as entitled to Odofin chieftaincy family". C

The appellants in order to prove their claims called five witnesses who testified that their progenitor by name Oke-Iroko was a warrior who settled at Ijabe town from Agbonde in present day Kwara State. The Onijabe gave him the title of Odofin of Ijabe and that he was so installed at Ikirun before they returned to Ijabe after the war. Oke was said to be the first Odofin and he was succeeded by the following descendants of his in unbroken succession to the stool of Odofin of Ijabe namely; D E

- (i) Olatoyan
 - (ii) Omilowo
 - (iii) Omiwole
 - (iv) Fajenyo and
 - (v) Lawal
- F

It was stated that after the demise of Lawal in 1962, the appellants' family nominated one Yekini, a member of their family to ascend the Odofin stool after some disagreement between the appellants' family they refused to submit another name to Onijabe. The latter then approached the family of the respondents, the Ajala family of Ijabe, to select a candidate for the Odofin stool. The latter was not accepted. That caused the pending impasse which persisted until about 1977 when the 1st Appellant was installed as the Odofin by Oba Sunmonu Oyewale. H

On the other hand, the respondents stated that Odetola was their Owu ancestor who was a great hunter and warrior, he was made, according to them, the first Odofin by Oba Areoye of Ijabe after Jalumi was killed in Ikirun. It was also their case that pre-mature

death in their homestead made it impossible for them to produce any other Odofin in Ijabe until after the death of Odofin Lawal of the Appellants' family in 1962. They further stated that Fatoki Aremu was installed as Odofin from their own family in 1963. Also it was the claim of the defendants/respondents that the Odofin stool was rotational among the families of the parties.

The PW3, 4 and 5 gave evidence in favour of the Appellants. The trial court reviewed the evidence of both parties. The evidence of the defendants was well evaluated. At the end of this exercise the trial court found for the plaintiffs. Their family was the first Odofin and that the Odofin stool is exclusively belonging to the family of the plaintiffs. He held that the plaintiff's family is entitled to reliefs one, two and five. The defendants were aggrieved by the judgment of the trial court and successfully appealed to the Court of Appeal Ibadan Division. After what the Court of Appeal Ibadan Division called re-evaluation of the evidence and submissions of the parties and allowed the appeal and the judgment of the trial court overturned and set aside. The Court of Appeal Ibadan Division unanimously held that after their re-evaluation of the evidence and the submissions of both parties they discovered that the evidence of the plaintiffs/appellants herein are full of contradictions and are not reliable. To resolve the conflicts in the appellants evidence it employed the rule in *Kojo II v. Bonsie*. The judgment of the trial court was regarded as perverse. The trial court decision was therefore reversed and the appeal before it was allowed. On page 107 of the record of proceedings the Court of Appeal hereinafter referred to as lower court has this to say per Ibiyeye JCA on page 107.

"In view of the foregoing appraisal I hold that the findings of facts of the learned trial judge are perverse and not supported by evidence which is overtly set out in the record of appeal. I shall therefore interfere with those findings. See Ude & ors. Vs. Chimbo and ors. Supra at p. 5945...

In sum, there is merit in this appeal and it is allowed. The decision of the learned trial judge is set aside. In essence, members of the Appellants' family at Ijabe in Odo-Ofin Local Government Area of Osun State are entitled to the Odofin Chieftaincy title".

The Appellants herein have further appealed to this Court and formulated two issues for determination from the grounds of appeal

as follows:-

1. Whether having regard to the circumstances of this case, the court below was right to have involved and relied upon the rule in KOJO II vs. BONSIE in tampering with the impeccable decision of the trial court which led to a miscarriage of justice against the Appellants. B

2. Whether the lower court was right in tampering with the finding of fact made by the trial court when there were sufficient, credible, cogent and believable oral and documentary evidence to support the various findings made by the trial court. C

The respondents also set down two issues for determination thus:-

i) Whether the court below was right in applying the Rule in KOJO II vs. BONSIE (1957) 1 WLR 1223 and further whether the application of the rule has occasioned miscarriage of justice in the circumstances of this case. D

ii) Whether the learned justices of the Court of Appeal (court below) were right in setting aside the judgment of the learned trial Judge having regard to all the circumstances of this case.

I observe that the issues formulated by both parties were similar though couched differently. I shall therefore deal with them equally. Going through the arguments of the appellants in his brief of argument under issue one, the learned counsel conceded that the trial court stated that the two parties had stated a conflicting story as to who was the first Odofin. There is no where in the decisions of the learned trial Judge expressed any doubt as to which of the conflicting stories to believe. The lower court per Ibiyeye JCA, on page 97 of the record chose to apply the rule in Kojo II v. Bonsie. The learned counsel contended that in so employing the said rule the lower court (fumbled) mis-applied the rule having regard to the fact and antecedent of this matter. He poised to put the matter straight by referring to the dictum of Lord Denning in that case - In Kojo II v. Bonsie thus: F G

“Learned Counsel further argued that the rule in the above case does not mean that once there is any conflict the court cannot believe any of the sides. In the normal course of events, two traditional histories would normally conflict. It is only when the trial Judge is unable to make up his mind as to which side to believe that the rule H

in Kojo II vs. Bonsie comes into play. Not only that the learned counsel posited and stated that if one of the stories, as told by the parties is riddled with contradicting and unbelievable story, the trial court would be entitled to rely on the cogent and believable story of the other party”.

B The learned Senior Counsel for the Appellant submitted to the effect that the rule in *Kojo II vs. Bonsie* will not be applicable in a situation similar to the present case where the trial court was in a position to believe one side in preference to the other. *Sanusi v. Adebiji* (1997) II NWLR (Pt.530) 565/575; was cited. The Supreme Court per Ogundare JSC of blessed memory has this to say;

C *“I think I agree with the contention of the plaintiffs. The witnesses for the defendants not only contradicted each other on the traditional history relating to the property in dispute, they also contradicted the pleadings of the defendants in a situation such as this, there is no room for the application of the rule in Kojo II v. Bonsie.”*

D In *Iriri v. Erhurhobara* (1991) 2 NWLR (pt.173) 252, 269, this court held that a *“Trial Judge is entitled to reject evidence of traditional history which is incredible”*. See also *Ogbuokwelu V. Umeanafunkwa* (1994) 4 NWLR (pt.341) 676, 710 D-F where I endorsed what Uwaifo, JCA had said in the case in the Court of Appeal to the effect:

F *“Where a story is told by a witness which in itself has serious internal conflicts or is based, for instance, apparently on fiction and mysticism beyond the comprehension of the court and therefore incapable of being assigned any probability of truth, then the trial court must of necessity wonder whether the witness’s ancestors in fact told that story and whether the story, if told could possibly be true. Once the internal conflicts in the evidence destroy it or the answers posed above are in the negative and the traditional history breaks down on its own, the question of applying the principle in Kojo II v. Bonsie (supra) will not arise. See Joseph E. Aiknete and Ors v. Eidi eoakhena (1980) 3 CA 54. Benin Division.*

H *...But where the traditional history of both parties are merely in conflict, but each is a probable story on its own, then the best way to test which one is more probable is by reference to facts in recent years as established by evidence.*

As the traditional evidence for the defendants is ex facie dis-

credited; there is no need for the application of the rule in Kojo II v. Bonsie in the instant case, I therefore, find no substance in defendants' complaint".

Learned senior counsel pointed out that the learned trial Judge has not complained that he encountered any difficulty as to which of the conflicting stories to believe, there was no need for the application of Kojo II v. Bonsie, as erroneously done by the lower court. That court was not by any legal or factual grounds justified for doing so. The lower court simply cannot temper with the findings of fact of the trial court in their quest to apply the rule in Kojo II V. Bonsie (supra) he urge this court to hold that the Court of Appeal wrongly applied the rule in Kojo II v Bonsie. The 1st issue formulated by the Appellant therefore should be resolved in favour of the appellant. On issue No. 2 learned senior counsel to the appellant contended that Pw3, Pw4 and Pw5 are neutral witnesses whose evidence favoured the appellants claim vis-a-vis the appellants traditional history. The witnesses who testified for the respondents are one way or the other related to the Respondents they could not produce independent testimonies unlike the Appellants witnesses. The learned senior counsel for the appellants submitted that the trial court rightly held that the appellants made out their case and granted the reliefs sought by the appellants. He urged this court to resolved the second issue in favour of the Appellant. Learned senior counsel lamented that the court below held differently. He further contended that the lower court, per Ibiyeye, JCA relied on scattered and unreliable evidence to hold for the respondent's traditional history.

In arguing the 1st issue of the Respondents the learned counsel maintained that this issue relates to propriety or other wise of applying the rule in Kojo II V. Bonsie (supra) to this case, by the court below. Learned counsel pointed out that the court below was right and justified in invoking and applying the rule in Kojo II V. Bonsie in this case. It was submitted that the learned trial Judge held that the two parties *"had offered a conflicting story as to who was the first Odofin and how and where the title was conferred on the original bearer"*. He further contended that the evidence adduced by the appellants on the above points are conflicting and the Appellants' witnesses contradicted themselves. He submitted further that the trial court had misdirected itself when it held that the traditional history of

the Appellants to the Odofin Chieftaincy title was more probable. Having concluded that the evidence produced by the appellants' witnesses is full of contradictions and un-consistencies learned counsel then submitted that the lower court was correct to have invoked the rule in *Kojo II v. Bonsie*. The case of *Awoyale v. Ogunbiyi* (1986) 2 NWLR (Pt.24) 626 at 628 was cited. Learned counsel further contended that the trial court only based its decision on the demeanour of the witnesses without testing the evidence against recent happening living memory. Thus the lower court was right in applying the rule in *Kojo II v. Bonsie* (Supra) it was also the contention of the respondents' counsel that the issue of who was the first Odofin of Ijaba was not properly resolved by the trial Judge and the lower Court was justified in correcting the glaring error. Learned counsel relies on the case of *NEPA v. OSOSANYA & Ors.* (2004) 116 LRCN 3510 at 3514, he then submitted that even if the rule in *Kojo II V. Bonsie* is not applicable in this case, the act of recent history as to the appointment and installation of late Fatoki Aremu as the Odofin of Ijabe, a candidate from the respondents family by the Onijabe of Ijabe, should count in favour of the respondents.

On the second issue, learned counsel submitted that the power of the Court of Appeal to review and evaluate evidence led at the trial Court has been recognised and upheld both statutory and by overwhelming judicial decisions section 16 of the Court of Appeal act Cap. 75 LFN and *Ezebuilo Abisi v. Ekweador* (1993) 6 NWLR (Pt. 302) 643 at 648, *Adeleke v. Iyanda* (2001) 88 LRCN 2162 at 2163. He therefore, posited that the decision of the lower Court was arrived at after a thorough and painstaking review and re-evaluation of the evidence at the trial court and its decision was based on the pieces of evidence so led. He therefore, submitted that the decision of the trial court was perverse when it ignored the facts or evidence placed before it. The following cases were cited –

- (1) *Registered Trustees of Apostolic Faith Mission Vs James* (1981) 3 NWLR (Pt.61) 556/557
- (2) *Tsokwa Motors Nigeria Limited v. UBA Limited* (1996) 43 LRCN 1898 at 1899. Learned counsel then urged this court to dismiss the appeal.

I have carefully perused the submissions of the learned counsel to both parties. Since the central point of this appeal deals with

whether the lower Court was right in applying the rule in *Kojo II Vs Bonsie* (Supra) to overturn the decision of the trial court it will be necessary to examine the findings of the trial court Vis-vis the evidence placed before it to determine whether the findings were supported by the evidence.

On the issue of the respondents not producing any Odofin of Ijabe until 1963 in spite of the protests of the appellants the trial court found as follows at page 40 of the Record of proceedings:-

“The story being told that his brother had died before him and nobody from Okedola’s family could then become Odofin and subsequently no elderly one was able to take the chieftaincy for reasons of epidemic diseases which killed them not only looks to me very unconvincing, unimpressive but quite spurious. I believe that after Oke, then came Olatoyan, Omilowo, Oniwole, Fajenyo and Lawani all in succession as Odofin of Ijabe.

This to my mind shows clearly that the plaintiffs has established a dynasty of Odofin chieftaincy over several decades to the exclusion of others before the attempt to break monopoly was made in 1963. This casts doubt as to the validity of the appointment of Fatoki Aremu who I believe has been so arbitrary made the Odofin without any justifiable history support.”

The evidence of Pw1, who gave history as how Oke became the Odofin Ijabe and his successors, he further stated how he resisted the appointment of Fatoki Aremu as Odofin as he was not from the appellants’ family. Pw2 also gave history of how Oke and his successors have been made Odofin of Ijabe in succession. The evidence of Pw3, the third in rank to Onijabe of Ijabe also corroborated the evidence of the PWs 1 and 2 and asserted that Fatoki Aremu was never installed as Odofin of Ijabe in accordance with the tradition of Ijabe as Akoko leaves was never placed on his head. The Pw5, who was the regent of Ijabe confirmed the traditional history as given by the appellants’ witness and confirmed that an attempt to confer the titles of Odofin of Ijabe Fatoki Aremu was withdrawn as he was not from the appellants’ family.

However Dw1 in his evidence told the court that they could not be installed as Odofin until 1963 because the respondents could not produce an elderly person to become Odofin while Dw3 stated that the appellant’s were able to produce Odofin in succession be-

cause there was no elder from the defendants family at that time. It was the Dw4 who stated the issue of epidemic and as a result of which they could not produce any elderly person to occupy the position. With due respect, in view of the evidence of the parties highlighted above, can we say that the findings of the trial court was not supported by the evidence placed before it? Or that the trial court found it difficult to evaluate same before making its findings. I will consider this point along with the other findings of the trial court anon. On the issue of who is the rightful family to hold the Odofin title, and the alleged inconsistencies in the evidence of the appellants' witnesses. The trial court found at pages 43 - 44 of the record and after evaluation of the witnesses evidence as follows:-

"Going through the evidence of the first plaintiff and the fourth and fifth plaintiff witness who as earlier stated are Kingmakers and second and third in rank to the Oba as to the traditional history of the title looks to me more probable. I am inclined, from their demeanour in court to believe their story. I am fortified again in the preference and the finding by the evidence of subsequent events as regards the successive holding of the title by the members of the plaintiffs' family. I believe that Oke fought the Jalumi war with Oba Areoye and he was subsequently conferred with that title of Odofin for his bravery. I do not believe that the title was ever conferred on anyone before the outbreak of Jalumi war. The conferment of the title appears to me from the evidence to have taken place in Ikirun after the war and the minor discrepancy in the evidence for the plaintiff as regard the place of conferment is not sufficient or fundamental to shake my finding. And a careful reading of the paragraph six of the amended statement of claim does not suggest contrary to the interpretation of the learned counsel for the defendants that it was during the war that the conferment took place thus rendering, according to him the evidence averse to the pleading. That paragraph says and I quote-

One was a great warrior during his life and during the Jalumi war went to Ikirun with Oba Areoye the then Onijaba where he distinguished himself as a great warrior. From this valour and prowess during the war, the said Onijabe Oba Areoye decided to honour him with a chieftaincy title.

I do not think this pleading admit any ambiguity as to why,

where and when Oke was conferred with the title. The evidence that Oke was conferred with the title at Ikirun after the war for his bravery is, in my view, in support of these averment above."

My lords, I have no doubt that these findings were based on evidence adduced before that court. I have carefully gone through the judgment of the trial court I could not see where it was in difficulty in resolving the issues placed before it. However, the lower court upturned the judgment of the trial court on the ground that it did not properly evaluate the evidence place before it, and resorted to the rule in *Kojo II v. Bonsie* and held thus on page 107:-

"In view of the foregoing appraisal I hold that the findings of facts of the learned trial Judge are perverse and not supported by evidence which is overtly set out in the record of appeal. I shall therefore interfere with those findings".

With tremendous respect to the justices of the lower court, I must state that it is not in all cases where there is evidence of conflicting traditional history before the Court that the rule in Kojo II v. Bonsie will be applicable. Such cases include:-

(i) Where there is a concurrent findings of the two lower courts on a question of fact the rule will not apply - see *Onigbede v. Balogun* (2002) 6 NWLR (Pt.762) 1 at 17.

(ii) Where there is a fundamental contradiction on the traditional history of a party, the rule will not apply - *Sanusi v Adebiyi* (1997) II NWLR (Pt. 530) 565.

(iii) Where the traditional history is based, for instance, on fiction and mysticism beyond the comprehension of the Court and therefore incapable of being assigned any probability of truth, the rule will not apply - *Ogbuokwelu v. Umeana Funkwa* (1994) 4 NWLR (Pt. 341) 676.

(iv) In a matter of proving customary law or Native law and custom which is required, in law, to be proved by anybody who asserts its existence by credible evidence rather than by speculation, the rule is not applicable - *GIWA v. ERINMI TOKUN* (1961) 1 SCNLR 377, *Ozogaba II vs Ekpenga* (1962) 1 SCNLR 423 at 426; and *Onyejukwe Vs Onyejukwe* (1999) 3 NWLR (Pt.596) 483.

The case in hand falls within the cases, where the rule is

not applicable. Thus the rule in *Kojo II vs. Bonsie* which is based on inference or speculation has no application to this case which requires the Native Law and Custom of Odofin of Ijabe Chieftaincy to be proved strictly by cogent and reliable evidence of not only one witness but should be corroborated

by an independent witness. See *Olarewaju v. Oyeyemi* (2001) 2 NWLR (Pt.696) 229. In the instant case, the plaintiffs did not only give evidence in proof of his case but also called independent witnesses who are high ranking chiefs and kingmakers in Ijabe.

As I earlier clearly noted in this judgment, it is my respectful view that evaluation of the evidence by the trial court was not only properly done, its finding were also supported by the evidence before it. The lower court Division in which the rule in *Kojo II v. Bonsie* was called in aid was done in error. I therefore resolve the 1st issue in favour of the appellants.

On the second issue, the thrust of which is the alleged contradiction in the evidence of the appellants witnesses on the place of the conferment of the Odofin title on Oke. The law is settled that contradictions in the evidence of witnesses may not necessarily be fatal to a case, especially when they are minor; and the judgment of a trial court will not be reversed on appeal merely because there were contradictions in the evidence of witnesses, it must be further shown that the Judge did not advert his or her mind to those contradictions.

See *Queen v. Ekanen* (1960) 5 FSC 14 at 15 - *Enahoro v. Queen* (1965) 1 All NLR 125 at 149.

As earlier shown in this judgment, the trial court adverted its mind to this contradiction and held that they were not fundamental and that they did not affect the merit of this case particularly, when it has been that the appellants' family have been producing Odofin of Ijabe in succession starting from Oke. My lords, on this point it is my ardent view that the trial court was correct in its holding which the lower court was in error to have upturned the trial court's decision. In view of this I also resolve the second issue in favour of the appellants.

Finally, I hold that this appeal is pregnant with a lot of merits and is accordingly allowed. The judgment of the lower court delivered on 28th day of April, 2003 is hereby set aside, while the judg-

ment of the trial court delivered on 20th May, 1996 is hereby restored and affirmed. Fifty thousand naira (N50, 000.00) costs is awarded to the appellants in this appeal.

B

MOHAMMED JSC

The appeal is against the judgment of the Court of Appeal Ibadan Division delivered on 28th April, 2003 allowing the appeal brought before it by the Respondents resulting in setting aside the judgment of the trial High Court of Justice of Osun State sitting at Ikirun and delivered on 20th May, 1996. C

The issues identified for the determination of the appeal in the Appellant's brief of argument filed by their learned senior Counsel are - D

"1. Whether having regard to the circumstances of this case, the Court below was right to have invoked and relied upon the rule in Kojo II v. Bonsie in tampering with the impeccable decision of the trial Court which led to a miscarriage of justice against the Appellants.

2. Whether the lower Court was right in tampering with the findings of fact made by the trial Court when there were sufficient, credible cogent and believable oral and documentary evidence to support the various findings made by the trial Court." E

In the brief of argument filed on behalf of the Respondents by their learned Counsel, the above issues identified in the Appellants brief of argument were virtually adopted though differently worded. From the records of this appeal, the undisputed findings of the trial Court in its judgment at the end of the hearing of the case of the Appellants who were the plaintiffs in that Court and which findings seemed to have been accepted by the Respondents who were the Defendants as reflected at pages 5 and 6 of their Respondents' brief of argument include the following findings - F G

(a) That the Plaintiffs/Appellants traditional history looks more probable. H

(b) That subsequent events as regards the successive holding of title of Odofin of Ijabe Chieftaincy title by the Plaintiffs/Appellants family confirmed their story.

(c) That the conferment of the Odofin Chieftaincy title took

place at Ikirun and that the discrepancy in the evidence of the Plaintiffs/Appellants witnesses is minor and not fundamental.

(d) That there is doubt about the validity of the appointment of Fatoki Aremu from the Defendants/ Respondents family as the Odofin of Ijabe.

B The above glaring findings of the trial Court shows quite clearly that the Court was satisfied with the evidence led by the Plaintiffs/Appellants in support of their claims which was more probable than the evidence led by the Defendants/Respondents in support of their claim to the same Chieftaincy title of Odofin of Ijabe. The resultant judgment of the trial Court in favour of the Plaintiffs/Appellants was therefore quite in order as the balance in the scale of justice on the evidence before that Court had tilted in their favour. The law is trite that a trial Judge is entitled to reject evidence of traditional history which is incredible as rightly found by the learned trial Judge in the present case. See *Irimi v. Erhurhobara* (1991) 2 N.W.L.R. (Pt.173) 252 at 259 where Obaseki JSC stated the law thus -

E *“The law is that where the evidence of traditional history is inconclusive, the learned trial Judge is estopped from accepting one set of evidence against the other conflicting set of evidence. If the evidence of traditional history is conclusive, a trial Judge is entitled to accept it as against evidence of traditional history which is in conflict and which is not supported by evidence of recent acts of possession. See Kojo v. Bonsie (1957) 1 W.L.R.1223.”*

F In the instant case therefore where the Defendants/Respondents evidence of traditional history was inconclusive in that there was doubt about the validity of the appointment of Fatoki Aremu from the family of the Defendants/Respondents as the Odofin of Ijabe which G chieftaincy title was found to have been successively held by the family of the plaintiffs/Appellants, the judgment of the trial Court is quite in line with the position of the law. In this respect I am of the strong view that the Court below did not correctly apply the decision in *Kojo II v. Bonsie* (supra) in setting aside the decision of the trial Court. H Consequently, I entirely agree with my learned brother Muntaka-Coomassie, JSC in his leading judgment which I have had the opportunity of reading before today that this appeal has merit and deserves to succeed. Accordingly, I hereby allow the appeal, set aside the judgment of the Court below delivered on 28th April, 2003 and

restore and affirm the judgment of trial Court in favour of the Plaintiffs/Appellants delivered on 20th May, 1996.

There shall be N50,000.00 costs to the Appellants against the Respondents.

B

CHUKWUMA-ENEH JSC

I have read in advance the judgment of my learned brother Muntaka-Coomassie JSC in which he has satisfactorily dealt with all the issues raised for determination in this appeal.

C

I agree with him that the interference with the trial court's decision by the lower court in this matter by invoking of the principle in *Kojo II v. Bonsie* (1957) 1 WLR 1233 is with respect misconceived. One thing that is clear from the trial court's findings of fact based on the traditional evidence of the parties in regard to the chieftaincy title of Odofin of Ijabe in this matter is its acceptance of the appellants' case against the respondents' case as the more probable in the circumstances. Needless stating that the trial court has adverted its mind to the minor discrepancies in the traditional evidence given by the appellants. In other words there is no conflict in the traditional evidence of the parties in any material particulars as to warrant resorting to the principle as established in *Kojo II v. Bonsie* (supra) which has to be resorted to only when a trial court is in difficulty as to which of the parties to believe based on their conflicting traditional evidence. Then and only then must the court as in the instant matter look at what other evidence is available for help and such evidence may include acts of recent events. The principle in *Kojo II v. Bonsie* is therefore, inapplicable here. Clearly the lower court's decision based on the misconception of the principle in the cited case must be set aside.

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There is therefore, merit in this appeal and it should be allowed and I allow it. The judgment of the trial court in favour of the appellants is hereby restored with costs as in the lead judgment.

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FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother Muntaka-Coomassie, JSC. I agree with the reasons ably advanced therein to arrive at the conclusion that the appeal is

meritorious and should be allowed.

This is a chieftaincy matter. The trial court found the evidence proffered by the plaintiffs and their witnesses with respect to Odofin of Ijabe chieftaincy more probable than that of the defendants and their witnesses. The plaintiffs proved that their lineage produced five people after Oke the initial holder who also held the title. The defendants said they could not get any adult to hold the title as they were plagued by epidemic. The trial court felt that the plaintiffs' evidence was more credible and found in their favour. In my opinion, the finding by the trial court is not perverse at all. The court below should not have disturbed it. See: *Balogun v. Labiran* (1988) 3 NWLR (Pt. 80) 66 at 77; *Chinwendu v. Mbamali* (1950) 3-4 SC 32.

The point must also be made that ascription of probative value to the evidence of witnesses is pre-eminently the business of the trial court which heard the witnesses. An appeal court does not make it a practice to lightly interfere with same unless for compelling reasons.] See: *Ebba v. Ogodo* (1984) 1 SCNLR 372, *Ogbechie v. Onochie* (1998) 1 NWLR (Pt. 470) 370; *Arowolo v. Olowookere* (2011) 18 NWLR (Pt. 1278) 280 at 312. The court below, in effect, employed the decision in *Kojo II v. Bonsie* (1957) 1 WLR 1223 to tilt the judgment of the learned trial Judge. The crux of the decision in the celebrated case is that where the evidence of traditional history is inconclusive, the learned trial Judge is estopped from accepting one set of evidence against the other conflicting set of evidence. The judge would have to test such conflicting evidence with recent events by the parties. The trial court found the plaintiffs/appellants' traditional history more probable. Subsequent events touching on successive holding of the title of Odofin of Ijabe chieftaincy further confirmed their story. To say the least, the court below missed the target in applying the decision in *Kojo II v. Bonsie* (supra) to set aside the decision of the learned trial Judge. For the above reasons and those clearly set out in the judgment of my learned brother, I too feel that the appeal is meritorious and should be allowed. I endorse all the consequential orders contained in the lead judgment; that relating to costs inclusive.

RHODES-VIVOUR JSC

I read in draft the leading judgment of my learned brother,

Muntaka-Coomassie, JSC and I am in full agreement with his lordships conclusions, I shall add a few paragraphs of my own.

This is a chieftaincy matter and the appeal has merit. This central issue is: Which side is entitled to the chieftaincy title of Odofin of Ijabe. Both sides relied on traditional history to lay claim to the chieftaincy title. The learned trial Judge in a well considered judgment examined both traditional history as presented and was satisfied with the plaintiffs/appellants traditional history which his lordship found to be more probable as the chieftaincy title was held repeatedly by the plaintiffs/appellants family. On the other hand the traditional history of the defendants/respondents was found by the learned trial Judge to be unreliable as it was inconclusive and there were clear doubts about the appointment of Fatoki Aremu as the Odofin of Ijabe, and the difficulty of the defendants/respondents ability to get any adult to hold the title due to some epidemic was established.

On these facts the learned trial Judge quite rightly in my view entered judgment in favour of the plaintiffs/appellants. The Court of Appeal applied the Rule in *Kojo II v. Bonsie* 1957 1 WLR p.1223 and upset the judgment of the trial court. The Rule in *Kojo II v. Bonsie* supra was explained by the Privy Council in these words:

“The dispute was all as to the traditional history which had been handed down by word of mouth from their forefathers. In this regard it must be recognized that, in the course of transmission from generation to generation, mistakes may occur without any dishonest motives whatever. Witnesses of the utmost veracity may speak honestly but erroneously as to what took place a hundred or more years ago. Where there is a conflict of traditional history, one side or the other must be mistaken yet both may be honest in their belief. In such a case demeanour is little guide to the truth. The best way is to test the traditional history by reference to the facts in recent years as established by evidence and by seeing which of the two competing histories is more probable.”

The Rule in *Kojo II v. Bonsie* supra has been followed by this court in cases where traditional history is relied on in a case. See *Agedegudu v. Ajenifuja* 1963 1 ALL N.L.R p.109, *Irimi v. Erhurhobara* 1991 2 NWLR pt. 173 p.252, *Ogbuokwelu v. Umeanafunkwa* 1994 4 NWLR pt.341 p.676. Where the traditional history of both parties are in conflict which usually is the case, but the trial Judge is able to

resolve the conflicts there would be no need to resort to the Rule in Kojo II v. Bonsie supra. Where on the other hand the traditional history are in conflict and each has much weight, i.e. they both appear reliable and probable, it would then be the duty of the judge to resolve the impasse by reference to facts in recent years by compelling evidence. The rule is only applicable in a case where traditional evidence is inconclusive.

After a diligent review of proceedings it is clear that there was no need for the learned trial Judge to resort to the Rule in Kojo II v. Bonsie (supra). Traditional history of the defendants/respondents was easily discredited. It ended up being inconclusive and thus unreliable. On the other hand the traditional history of the plaintiffs/appellants was straight to the point and reliable. As between both traditional histories, that presented by the plaintiffs/appellants was more probable. The Court of Appeal was wrong to resort to the Rule in Kojo II v. Bonsie supra as such an exercise is only carried out when a trial Judge is unable to resolve conflicts in traditional history. In this case the learned trial judge resolved conflicts in traditional history admirably.

For the reasons given above and more particularly those given by my learned brother Muntaka-Coomassie the judgment of the Court of Appeal delivered on the 28th of April 2003 is set aside and the judgment of the trial court rendered on the 20th of May, 1996 is confirmed with costs of N50,000 to the Appellants.

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