

SUPREME COURT OF NIGERIA
FRIDAY 12TH JULY, 2013. SC. 248/2004
CORAM:- I. T. MUHAMMAD, J. A. FABIYI, S. GALADIMA,
M. D. MUHAMMAD, S. S. ALAGOA, JJSC

1. EMMANUEL ATUNGWU
2. CHIEF IMONI OTOKPA APPELLANTS
AND
ADA OCHEKWU RESPONDENT

JUDGMENTS - Delivery - Delay in - Effect - The delay did not affect the trial court's judgment - As issues raised were considered and resolved - And no miscarriage of justice was shown to have been suffered by appellant (H1)

JUDGMENTS - Mistake in - Effect - Statement of CA that grounds 3 & 4 were not covered by the issues - Occasioned no miscarriage of justice - For it is not every error in judgment - That results in appeal being allowed (H2)

CHIEFTAINCY MATTERS - Appeals - Concurrent findings - Concerning approval of Benue State Govt. - With regards to appointment and assumption of duties by clan head - Cannot be faulted by SC - As same have not been shown to be perverse (H3)

CHIEFTAINCY MATTERS - Chiefs Law s. 8 - Application - The section deals with oath taking by chief - And not government approval as a prerequisite - To assumption of office as a chief (H4)

APPEALS - Judgment - Correctness of - CA rightly affirmed trial court's judgment - Despite resolving issue 2 in appellants' favour - Since there was overwhelming credible evidence evaluated by the trial court (H5)

CHIEFTAINCY MATTERS - Affidavit - Resolution - As demand were made on appellants to surrender the chieftaincy property - CA rightly held that no conflict exist - That calls for oral evidence (H6)

FACTS

1st appellant (plaintiff in suit no. OHC/196/95) had commenced the action against defendant/respondent at the High Court of Benue State Otukpo, challenging the appointment of respondent as the Clan Head of Edikwu Clan. 1st appellant had in addition to his plea, asked for an order allowing him (1st appellant) to continue in the acting capacity. Respondent was appointed the substantive Clan Head of Edikwu Community, following the death of the previous holder and the expiration of the regency. At the hearing, respondent brought an application seeking for an order dismissing the action on the ground that there was no vacancy in the office of the Clan Head to allow for the regency or acting period to continue. In its ruling, the court granted the application and held that there was no vacancy existing in the Clan Headship of Edikwu Clan after respondent was selected and beaded. The case was thus struck out.

Following this ruling, respondent commenced the present action against appellants in suit No. MHC/63m/97, seeking for an order of mandamus and injunction. In the course of the proceedings in the latter suit, appellants filed interlocutory appeal to the Court of Appeal, challenging the jurisdiction of the trial court in the matter. The court dismissed the appeal and ordered that the case be heard on merit. The case then went to hearing at the trial court. At the end of hearing, the reliefs sought by respondent were granted. Dissatisfied, appellants appealed to the Court of Appeal, contending inter alia that the trial court delivered its judgment outside 90 days after the final addresses of counsel as stipulated in section 294(1) of the Constitution of the Federal Republic of Nigeria 1999. Having heard the appeal, the court affirmed the judgment of the trial court and dismissed the appeal. Aggrieved further, appellants appealed to Supreme Court.

ISSUES FOR DETERMINATION

“3.01. Whether the Court of Appeal was right in striking out grounds 3 and 4 of the Notice of Appeal on the ground that no issues were formulated thereon.

3.02 Whether the Court of appeal was right when it held that the suit No.MHC/63m/97 seeking the relief of mandamus and injunction was not premature, pre-emptive and that no approval of relevant government agency was required for the selection/appoint-

ment and beading of the Clan Head of Edikwu.

3.03 Whether the Court of Appeal was right in confirming the order of injunction against the second appellant after having allowed the appeal on issue No. 2 concerning suit No. OHG/503m/95 which was the basis of the trial of the court order of injunction, particularly against the second appellant who was not a party in that case.

3.04 Whether the Court of Appeal was right when it held that there was no need to call oral evidence on the issue of demand and that there was satisfactory proof of demand on the first appellant to handover the chieftaincy property to the respondent.

3.05 Whether the Court of Appeal was right when it held that the appellants failed to adduce convincing evidence of miscarriage of justice or injury suffered by them as a result of the trial court delivering its decision/ruling outside 90 days after that addresses as stipulated in the 1999 Nigerian Constitution.”

HELD (Unanimously dismissing the appeal per GALADIMA JSC)

JUDGMENTS - Delivery - Delay in - Effect

1. In the light of the foregoing provisions, it must be noted that delay in delivery of Judgment per se, does not lead to a Judgment being vitiated. The delay must occasion a miscarriage of justice to result in such a conclusion. In other words, it has to be established that the delay occasioned a miscarriage of justice in that the trial Judge did not take a proper advantage of having seen or heard the witnesses testify or that he had lost his impressions of the trial due to such inordinate delay.

The Appellants have contended that failure of the trial court to consider and appreciate the issues and the records placed before it was due to inordinate delay by the trial court. With due respect the Appellants have failed to show that the late delivery of the Ruling affected the Judgment of the trial court resulting in a miscarriage of justice. The court below in the judgment on appeal held that the trial court properly considered and evaluated the evidence before it before arriving at its

judgment in favour of the Appellants. I am of the respectful view that the delay in the delivery of the judgment did not affect the judgment of the trial court as all the issues raised before it were adequately considered and resolved. The Appellants have failed to show satisfactorily that they have suffered any miscarriage of justice by the late delivery of the Judgment. (p. 3697 A/F)

JUDGMENTS - Mistake in - Effect

2. The above extract of the Judgment of the court below shows that the grounds of appeal complained of by the Appellants under this issue were considered even though the court had initially said that the grounds were not covered by the issues formulated by the Appellants. The record of Appeal at pages 302 and 307 show that issue No. 2 distilled from grounds 2 and 3 of the ground of appeal was considered by the court below, while Issue No. 3 distilled from ground 4 was as well considered at pages 308 - 310, of the Record of Proceeding. Therefore it is my view that the statement of the court below that the grounds Nos. 3 and 4 were not covered by any of the issues formulated, when in fact the said grounds were considered by the court occasioned no miscarriage of justice. It has long been settled that it is not every mistake or error in a judgment that will result in the appeal being allowed. The Appellants having failed to show how the Judgment of the court below has occasioned miscarriage of justice, the issue must be resolved in favour of the respondent. (p. 3698 G)

Appeals - Concurrent findings

3. The passages of the Judgment of the court below are findings of fact made in agreement with that of the trial court. These are concurrent findings of facts by the two courts below in this appeal. It is settled law that this court will loathe to interfere with the concurrent findings of fact by the two courts below once such findings are on evidence legally admissible and it is not shown that the findings are perverse and/or palpably erroneous and cannot be supported by such evidence. The findings of facts made by the two Lower Courts concern-

ing the approval of Government of Benue State with regards to the appointment and assumption of duties by Clan Head cannot be faulted. From the affidavit evidence before the trial court, it was not in doubt that the appointment of the Clan Head is exclusively the responsibility of the Elders and/or King makers of the community and not the Government. It is only after the appointment of a person is validated by the Elders/ King makers in accordance with the Custom and Tradition of the people and has performed the Traditional Rites and beaded that the question of recommendation to the Government arises. (p. 3700 C)

CHIEFTAINCY MATTERS - Chief Laws. 8 - Application

4. The Appellants also relied on Section 8 of the said Law in their Brief of Argument in support of their contention for prior Government approval to assumption of office. I do not think there is such provision in the said section, which provides;

“8. If any person declines or neglects to take the oath when any Oath required to be taken by him under Section 7 is duly tendered, he shall:-

(a) If he has already entered his office of Chief or Head Chief, vacate the same; or

(b) If he has not entered his office of Chief or Head Chief, be disqualified from entering same.”

The above provision clearly deals with the taking of oath of office by the Chief and not Government “approval as a prerequisite to assumption of office as a Chief or Clan Head. Oath taking is not synonymous with Government’ “approval”.

(p. 3701 A)

Judgment - Correctness of

5. From the passage of the Judgment of the Court below reproduced above it is crystal clear that the reason why the Judgment of the trial court was affirmed despite the resolution of issue No. 2 in favour of the Appellants was that there was overwhelming credible evidence which the trial court considered and evaluated before arriving at its decision.

What I have garnered from the extract of the Judgment of the

court below is that reason for its affirming the Judgment of the trial court granting an order of injunction against 2nd Appellant was not solely tied to the two Rulings of Kaka'an J. The court below stated clearly that there were abundant evidence before the trial court outside the said Rulings which the trial court acted upon in entering Judgment in favour of the Respondent. It was for this reason the court below refused to set aside the Judgment of the trial court on the ground that its findings were not perverse as would allow appellate court to interfere with. In the light of the foregoing this issue is equally resolved in favour of the Respondent. (pp. 3702 D/3703 A)

Affidavit - Resolution

6. The grudge of the Appellants on issue 4 is that there were conflicts in the affidavit of the parties on the issue of demand of the regalia of the office of the Clan Head of Edikwu, as such there was need for oral evidence to resolve the conflicting affidavits. The Respondent's counsel has submitted that there was overwhelming affidavit evidence before the trial court which showed conclusively that demands were made on the Appellants to surrender the chieftaincy property and there were no conflicts in the affidavit evidence to warrant calling of oral evidence.

On the same page 309, the court below found that there were other correspondences in the body of the Ruling addressed to law enforcement agencies and other kingmakers or chiefs on which the issues of plea made to the appellants for the return of regalia featured prominently. The court then concluded thus:

"With these correspondences, I feel it will not be correct for the Appellants to say there had not been any request or demand made to them to surrender the said regalia. The Lower Court had therefore, in my view, duly considered the affidavit evidence adduced before it in arriving at its conclusion that there was formal and proper demands made to the Appellants to surrender the Chieftaincy property regalia/paraphernalia of office. With the overwhelming affidavit evidence before it, which I hold was not conflicting. I do not think there

was any need for the trial court to venture into calling of oral evidence as doing so will be futile and unnecessary since it will ultimately lead to the same conclusion.”(p. 3703 C)

REPRESENTATION

Ademola Bakre Esq. with Abdulwahab Muhammad Esq. S. F. Soyemi B
(Miss), for Appellant
P. A. Omengala Esq. with S. O. Ada Esq., for Respondent

CASES REFERRED TO

Akintemi v. Onwumechili (1986) SC 123 C
Alao v. V-C of University of Ilorin (2008) 1 NWLR (pt.1069) 421
Alibo v. Okusin (2010) ALL FWLR (pt. 529) 1059
Ogala v. Egwere (2010) All FWLR (pt. 532) 1609
Akpan v. Umoh (1999) 7 SC (pt. II) 13 D
Fawehinmi v. IGP (2002) 7 NWLR (pt. 767) 606
Ohakim v. Agbaso (2010) 6-7 SC 85
Olujinle v. Adeagbo (1988) 2 NWLR (pt. 75) 235
Echi v. Nnamani (2000) 5 SC 62
Savanah Bank v. Ajilo (1981) ALL NLR 26 E
Otuedon v. Akpotor (1997) 7 SCNJ 392
Ekeogun v. Aliri (1991) 3 NWLR (pt. 179) 255
Olowosago v. Adebajo (1988) 4 NWLR (pt. 88) 275
Ifezue v. Mbadugba (1984) S.C.N.L.R. 427 F
Odi v. Osafire (1985) 1 NWLR (pt. 1) 17

STATUTES REFERRED TO

Chief (Appointment & Disposition) Law Cap. 20 Laws of Northern Nigeria, ss. 2 (1)(2), 8 G
Benue State Chief & Traditional Council's Law No. 4 of 1991, s. 1(a)
Benue State Local Government (Establishment Law) 2000, s. 61(1)(2)
Constitution of the FRN 1999, s. 294(1)(5)

BOOKS REFERRED TO

De Smith's Judicial Review of Administrative Action 4th Ed. p. 557 H
Laws of England 4th Ed. Vol., 1 p. 124

LEAD JUDGMENT BY GALADIMA JSC

This is an Appeal brought by the Appellants from the Judgment of the Court of Appeal (herein referred to as the court below) Jos Division in Appeal No. CA/J/2/2/2001 delivered on 29/6/2004, wherein that Court dismissed the Appeal and affirmed the Judgment of the trial Court.

Dissatisfied with the Judgment of the Court below, the Appellants have appealed to this Court upon the Notice of appeal containing 8 Grounds of Appeal. From the 8 grounds of Appeal 5 issues, which the Respondent adopted for determination were formulated. I shall come to the issues anon. However, the facts of this case which has a chequered History and intriguing circumstances must be first exposed. It is that sometimes about 29th day of April 1995, the Respondent herein was appointed the substantive Clan Head of Edikwu Community, following the death of the previous holder and the expiration of the Regency or period allowed by the Custom and Tradition of the people.

Upon the Appointment of the Respondent by the King Makers, the Respondent was “beaded” as the substantive Clan Head. Following the appointment and beading of the Respondent, the 1st Appellant, who was then laying claim to the Regency, upon the death of his own father, one ATUNGWU AJIMA, who himself was once a Regent, commenced proceedings against the Respondent at Otukpo High Court vide Suit No. OHC/196/95 challenging the appointment of the Respondent as the Clan Head of Edikwu Clan. The 1st Appellant also sought for an order of the court allowing him to continue in the acting capacity.

Issues having been joined, the Respondent filed a Motion No.OHC/50/M/95 seeking for an order dismissing the case on the ground that there was no further vacancy in the office of the Clan Head of Edikwu Clan to allow for the regency or acting period to continue.

On the 21st day of March 1996, the Otukpo High Court in a considered Ruling granted the application and struck out the case. In the course of the Ruling the trial court found that the Respondent herein, then the applicant in the motion is the substantive Clan Head of Edikwu Clan. It was also held that there was no vacancy existing in the clan Headship of Edikwu Clan after the Applicant was selected

and beaded, and accordingly the case was struck out.

It was upon the above Ruling of KAKA'AN J that the Respondent commenced proceedings against the Appellants in suit No.MHC/63m/97, seeking for an order of Mandamus and injunction. In the course of the proceedings in the said Suit No. MHC/63m/97 the Appellants herein filed an interlocutory appeal to the Court of appeal in Appeal No. CA/J./160/97, challenging the Ruling of the trial court which had assumed jurisdiction to entertain the case. B

The Court of Appeal, however, on the 25th day of October, 1995 in a well considered Judgment dismissed the appeal and ordered that the case be heard on the merit. C

Upon the Judgment of the Court of Appeal in the said appeal No.CA/J/160/97 the trial court proceeded with the case and on 12th day of April 2001 granted the reliefs sought by the Respondent herein. Aggrieved by this decision, the Appellants appealed to the Court of Appeal upon Notice of appeal containing 7 grounds. Again, on the 29th day of June 2004 the court below dismissed the appeal and affirmed the Judgment of the trial court. It is against this Judgment of the Court below that the Appellants herein, have appealed to this Court. D E

As earlier stated in this Judgment the appellants' Notice of Appeal contains 8 Grounds of Appeal from which 5 issues have been formulated as follows:

"3.01. Whether the Court of Appeal was right in striking out grounds 3 and 4 of the Notice of Appeal on the ground that no issues were formulated thereon. F

3.02 Whether the Court of appeal was right when it held that the suit No.MHC/63m/97 seeking the relief of mandamus and injunction was not premature, pre-emptive and that no approval of relevant government agency was required for the selection/appointment and beading of the Clan Head of Edikwu. G

3.03 Whether the Court of Appeal was right in confirming the order of injunction against the second appellant after having allowed the appeal on issue No. 2 concerning suit No. OHG/503m/95 which was the basis of the trial of the court order of injunction, particularly against the second appellant who was not a party in that case. H

3.04 Whether the Court of Appeal was right when it held that there was no need to call oral evidence on the issue of demand and

that there was satisfactory proof of demand on the first appellant to handover the chieftaincy property to the respondent.

3.05 Whether the Court of Appeal was right when it held that the appellants failed to adduce convincing evidence of miscarriage of justice or injury suffered by them as a result of the trial court delivering its decision/ruling outside 90 days after that addresses as stipulated in the 1999 Nigerian Constitution."

On the 23rd April, 2013, when this appeal came up for hearing, learned counsel for the Appellants, Ademola Bakre Esq. referred to the Appellants' brief of argument which was deemed filed on 23rd November, 2010. He adopted the brief and without much ado urged this Court to allow the appeal.

In the same vein, P. A. Omengala Esq. learned counsel for the Respondent having identified his brief filed on behalf of the Respondent on 20th December 2010, adopted the said brief and without further amplifications of the issues, he urged the court to dismiss the appeal.

Arguing the first issue learned counsel for the Appellants submitted that, the court below was wrong in law to have struck out grounds 3 and 4 of the Notice of Appeal before it and that the action of the Court has occasioned grave miscarriage of justice as this has prejudiced the minds of the learned Justices in the consideration of the entire appeal before it. He referred to pp. 291-295 of the Record wherein the court below gave reasons for striking out the two grounds as failure to marry the two grounds to any of the issues formulated and canvassed before it. It is contended that the court having taken that stance proceeded on page 96 to state that the second issue formulated by the Appellants covers grounds 2 and 3 of the Notice of Appeal and also accommodated respondent's issue No. 2. That the court held further that issue No. 3 in appellants' brief was married to ground 4 and encapsulates the respondent's issue No. 2. Further reference was made to page 259 wherein it was stated clearly that in the Appellants' brief of argument under paragraph 4.02 thus - issue No. 2 (grounds 2 and 3) and at page 262 paragraph 4.03 - issue No. 3 (grounds 4). In the light of this learned counsel for the Appellants has submitted that the argument of the appellants under issues Nos. 2 and 3 amply covers grounds 3 and 4 which are grounds challenging the order of restraint against the 2nd appellants.

In the light of the above, learned counsel submitted that it is very clear that the views expressed by the court below that grounds 3 and 4 were not married to any issue canvassed before it is unjust, misconceived and perverse, and this has made the court below to dismiss the appellants' appeal. It is accordingly urged that this issue be resolved in favour of the appellants. B

Regarding the Appellants' issue No. 2, Learned counsel submitted that the court below erred in consideration of its issue No. 1 in the appeal before it particularly on the questions of Guidelines, non-approval of appointment of the respondent and whether the Clan Head of Edikwu is a Chief within the meaning of the relevant laws and whether the application for mandamus was not premature or pre-emptive. It is contended that in consideration of the above issues, the court below completely failed to advert its minds to the appellants' Reply brief dated 21/5/2002, contained on pages 283 - 287 of the Record. It is submitted that the failure of the court below to advert its mind to the Reply brief necessitated its erroneous approach to the resolutions of issue No. 1 against the Appellants. C D

Learned counsel submitted that the exclusion of the Clan head of Edikwu as a 'Chief in its definition was contrary to express provisions dealing with the definition of Chief. Learned counsel referred to Exhibit 'C' attached to the Respondent's application at the trial Court, which is a letter written by H.R.H. John Enefu Antenyi Odejo K. Apa dated 24/4/96, addressed to the Chairman of Apa Local Government. It is contended that since the chairman by this letter confirmed that the respondent was received by the Traditional Council, as one of the Traditional Rulers in the Local Government, the obvious implication of the content of the letter is that the Clan Head of Edikwu is a member of Apa Traditional Council and a functionary of Apa Local Government. For this contention reliance was placed on Section 2 (1) and (2) of Chiefs (Appointment and Disposition) Law Cap. 20, Laws of Northern Nigeria, which defines "*property*" to include all regalia and other things whatsoever attaching to a chief by virtue of his chieftaincy status. To further buttress his point on the argument canvassed on this issue, learned counsel referred to S. 1 (a) of the Benue State Chief and Traditional Council's Law No. 4 of 1991, which recognizes all traditional Rulers within the Area Traditional Council as members of the Council and Section 61 (1) and (2) E F G H

of the Benue State Local Government (Establishment Law) 2000, which created the Local Government Council and therein recognizes the Clan Heads and all the Traditional Rulers as members of the Traditional Council. It is in this vein learned counsel has submitted that there is no iota of doubt that the Clan Head of Edikwu is a
 B recognized Chief not only within the provisions of the Chiefs (Appointment and Disposition) Law Cap. 20, Laws of Northern Nigeria, but within the Benue State Laws. That the court below was in error when it held that the definition of Chief does not include Clan Head,
 C and therefore that the Government approval is not required for the performance of the duties of the Clan Head of Edikwu. But that the appellants have shown by Exhibits 1, 2, 3, and Exhibit 'E' that approval is required and it is mandatory and must precede "*beading*" and performance of duties by the Clan Head of Edikwu. He referred
 D to and relied on the case of SAVANAH BANK V. AJILO (1981) All NLR 26 at 45.

It is finally submitted that contrary to the decision of the court below that the action of the Respondent was timeous and not pre-emptive, the appellants have shown that the action before the trial
 E court was not only illegal but premature and pre-emptive because the approval of Government is a pre-requisite or a precondition for the respondent to assume the duties of the Clan Head of Edikwu. On this contention, the counsel relied on the case of AKINTEMI &
 F ORS. V. PROF. ONWUMECHILI (1986) SC 123, at 158, and De Smith's Judicial Review of Administrative Action 4th Edition at page 557. It is therefore urged that this issue be resolved in favour of the Appellants.

Arguing issue No. 3, learned counsel for the Appellants submitted that the court below was wrong to have dismissed the appeal wherein the 2nd Appellant was restrained by the trial High Court from parading or holding himself as the Clan Head of Edikwu on the ground that the respondent was selected and beaded by the Elders of Edikwu on 29/4/1995. It is contended that the Appellants questioned the decision of the trial High Court on this issue in ground 3 of their Notice of Appeal before the Court below, but that, as it has been found, while arguing issue 1, the court struck out the Notice on the ground that no issue was married to it; but that the Appellants have shown that issue 2 was married to ground 3. It is therefore

argued that in view of the order striking out ground 3 of the Notice, the Court below failed to consider the effect of the resolution of issue 2 in favour of the Appellants. It is submitted that the main reason for restraining the 2nd Appellant by the trial High Court, was because in his interpretation, the trial Judge in OHC/503m/95, struck out Suit No.MHC/196/95, to the effect that “*there was no vacancy*” existing B in the acting Clan headship of Edikwu after the applicant (Respondent herein) was selected and beaded. Therefore the Court below having found for the appellants in resolution of issue 2 that the trial court was wrong to have relied on the decision of Kaka’an J. in OHC/ 503m/95 it ought to have proceeded to set aside the order of injunction C placed on the 2nd Appellant. It is submitted that since the court below did not strike out ground 3 of the Notice of Appeal before it, the court would have adequately considered the effect of the order of injunction against the 2nd Appellant after resolving issue 2 in favour D of the Appellants. That this failure has occasioned miscarriage of justice and since there is no Cross-appeal against the resolution of issue No. 2 in favour of the appellants, the court below ought to have resolved issue No. 3 in favour of the Appellants, particularly, the 2nd E Appellant.

On issue 4, learned counsel for the appellants has submitted that the court below wrongly held that there was no need to call oral evidence on the issue of demand or request to the Appellants to surrender the Chieftaincy regalia. According to the Appellants there was no evidence of demand ascribable to the two letters, Exhibits ‘B’ F and ‘C’ which emanated from the Chairman of the Traditional Council, the Och’ Idoma. It is submitted that if the lower court had carefully considered and evaluated the affidavit evidence of the parties, it would not have reached the conclusion it did on the issue of demand G letters; and it would have been apparent to the court the authors of those letters of demand were not the king makers of Edikwu chieftaincy.

The 5th and last issue formulated by the Appellants, is on the question of whether the court below was right when it held that the appellants failed to adduce evidence of miscarriage of justice or injury suffered by them as a result of the trial court delivering its Judgment outside 90 days after the final addresses of counsel as stipulated in Section 294(1) of the Constitution of the Federal Republic of Ni H

geria 1999. Learned counsel for the appellants has submitted that the reason adduced by the court below is a misconception of the position of the law on the issue of miscarriage of justice. It is contended that failure of the court to consider most of issues properly raised and canvassed before it has occasioned miscarriage of justice due mainly to the delay by the trial court to appreciate the issues on the records. It is submitted that the reason given by the trial court for the delay in delivering its ruling was untenable and clearly an after-thought.

The learned counsel for the Respondent has responded to the five issues raised and argued by the Appellants, seriatim. On the issue No. 1, learned counsel has submitted that the complaint of the Appellants is baseless and unfounded because the lower court gave reasons for arriving at the conclusion at pages 294 - 295 of the Record of proceedings. That even though the lower court stated in those pages that no issues were formulated from grounds 3 and 4 of the grounds of appeal and proceeded to strike them out, but at page 296 of the Record of proceedings the court again stated that the 2nd issue formulated by the Appellants covers grounds 2 and 3 of the Notice of Appeal and also accommodated Respondent's issue No. 2 and that issue No. 3, in the appellant's brief is married to ground 4 and also encapsulates the Respondent's issue No.2. In other words, issue No. 2 was considered by the lower court at pp. 302 to 307 while issue 3 was equally considered at pp. 308-310 of the Record of proceedings respectively.

It is thus submitted that the error of the court below, if any in stating that the grounds 3 and 4 are not covered by any of the issue formulated, when in fact the said grounds were considered by the court, occasioned no miscarriage of justice. That it is not every error in a Judgment that will lead to an appeal being allowed. Reliance was placed on the case of ABDULKADIR OBA ALAO V. VICE-CHANCELLOR OF UNIVERSITY OF ILORIN (2008) 1 NWLR (Pt.1069) 421 at pp 467 - 468.

Regarding issue No. 2, learned counsel for the Respondent submitted that the Appellants' complain that the approval of Government is needed to the assumption of duties by the Respondent as the beaded Clan Head of Edikwu Clan is erroneous and baseless. It is submitted that upon performance of the traditional rites, the Clan

Head immediately assumes office without awaiting the authority or approval of Government. On the Appellants' reliance on the "*Guidelines for the Appointment and Discipline of Traditional Rulers in Benue State*" issued and circulated in 1991, learned counsel submitted that the findings of the trial court on the Guideline was concurred by the court below as supported by evidence and therefore this Court will not readily interfere with such findings. Reliance was placed on the cases of CHIEF OLUNTA ALIBO V. CHIEF BENJAMIN OKUSIN & ORS. (2010) ALL FWLR (pt.529) 1059, and MELFORD OGALA & ORS. V. CHIEF FELIX ONWUKIO EGWERE (2010) All FWLR, (Pt.532) 1609 at 1630.

Learned Counsel has submitted that the argument of the learned counsel for Appellants on the Status of the Clan Head of Edikwu, is of no moment as it has no effect whatsoever on the outcome of the Respondent's case before the trial court. That contrary to the contention of the appellants, the Chiefs (Appointment and Deposition, Law Cap. 20, Laws of Northern Nigeria 1963, does not provide for recognition or approval of Government before assumption of Office by Clan Heads or other categories of Chiefs. Similarly, the said provision made no provisions for issuance of Guidelines, on the Appointment and Discipline of Traditional Rulers. It is in this light the court is being urged to resolve this issue in favour of the Respondent.

On issue No. 3 it is the contention of the Appellants that the lower court having resolved issue No. 2 in favour of the Appellants ought not to have granted the injunction restraining the 2nd Appellant from parading himself as the clan Head of Edikwu. Having set out in paragraphs 6.02 and 6.03, some passages of the Judgment of the court below, the learned counsel submitted that it is abundantly clear that the reason why the Judgment of the trial court was affirmed despite resolution of issue No. 2 in favour of the Appellants was that there was no overwhelming evidence which the trial court considered, evaluated and believed before it arrived at its Judgment. It is contended that the findings of the lower court on this issue is not the subject of appeal in any of the grounds of appeal in the Appellants' Notice of Appeal to this Court.

Regarding issue No. 3 on the question of demand to the appellants to surrender traditional regalia, Learned counsel submitted

that there was overwhelming affidavit evidence before the trial court showing that demands were made on the Appellants and that the court below was right in arriving at the conclusion that there were no conflicts in the affidavit evidence to warrant the calling of oral evidence. That the lower court having accepted the evidence of the Respondent granted the reliefs sought by him. It submitted that it is not the duty of the court below, on the consideration of the case of the parties to have commended on each and every document exhibited to the affidavit evidence as the acceptance of the case of the Respondent meant the rejection of the case of the Appellants. It is contended that the trial court has properly evaluated and considered the evidence before it before arriving at the conclusion that there were no conflicts in the affidavit of the parties and it is in the same vein the lower court confirmed the findings of the trial court on the issues, which findings this court would be loathe to interfere with.

On the final issue, on the failure to deliver Judgment by the trial court within 90 days of the final addresses, learned counsel has submitted that the Appellants have failed to show that they have suffered any injury or there has been miscarriage of justice by reason of such delay. In the light of this, the court is urged to resolve the issue in favour of the Respondents.

Now to the consideration of all the issues raised and canvassed by the respective parties. I shall consider first issue 5 since the validity of the Judgment of the trial court is put to test. The parties are ad idem that the trial court delivered its Judgment outside the 90 days contrary to Section 294(1) of the Constitution of the Federal Republic of Nigeria, 1999.

“Every court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter with duly authenticated copies of the decision within seven days of the delivery thereof.”

However, in Section 294 (5) of the said Constitution it is provided that:

“The decision of a court shall not be set aside or treated as a nullity solely on the ground of noncompliance with the provisions of subsection (1) of this section, unless the court exercising jurisdiction by way of appeal or review of that decision is satisfied that the party

complaining has suffered a miscarriage of justice by reason thereof”

In the light of the foregoing provisions, it must be noted that delay in delivery of Judgment per se, does not lead to a Judgment being vitiated. The delay must occasion a miscarriage of justice to result in such a conclusion. In other words, it has to be established that the delay occasioned a miscarriage of justice in that the trial Judge did not take a proper advantage of having seen or heard the witnesses testify or that he had lost his impressions of the trial due to such inordinate delay. See AKPAN V. UMOH (1999) 7 SC (Pt. II) 13.

In resolving this issue the court below at pp.312-313, of the Record of Proceedings, has this to say:-

“In the instant case, there is no doubt that the Lower Court delivered its ruling outside the 90 days period stipulated in the Constitution. That notwithstanding, for this court to declare the decision a nullity on the ground of the delay in delivery of the ruling, the Appellants have to produce convincing and credible evidence that they actually have suffered miscarriage of justice by reason of such delay. The Appellants in this regard did not or have failed to adduce such evidence occasioning miscarriage of justice to them in any respect. They have not shown that they suffered injury of any sort by reason of such delay. And even if they showed they suffered any injury, such injury must also be shown to have been suffered as a result of such delay or could actually be traceable to such delay in delivering the ruling lately. All these, the Appellants have failed to establish. I therefore refuse to declare the decision of the Lower Court a nullity or invalid.”

The Appellants have contended that failure of the trial court to consider and appreciate the issues and the records placed before it was due to inordinate delay by the trial court. With due respect the Appellants have failed to show that the late delivery of the Ruling affected the Judgment of the trial court resulting in a miscarriage of justice. The court below in the judgment on appeal held that the trial court properly considered and evaluated the evidence before it before arriving at its judgment in favour of the Appellants. I am of the respectful view that the delay in the delivery of the judgment did not affect the judgment of the trial court as all the issues raised

before it were adequately considered and resolved. The Appellants have failed to show satisfactorily that they have suffered any miscarriage of justice by the late delivery of the Judgment.

It is for this reason I must resolve this issue in favour of the Respondent and it is so resolved.

I shall now consider the remaining four issues serially. I have considered the comprehensive arguments and submissions of the respective counsel on issue No. 1. Appellants have complained under this issue that the court below was wrong to have struck out grounds 3 and 4 of appeal on the ground that no issues were formulated from them. There is no basis for this complaint. The court below gave reasons for arriving at the conclusion it reached that no issues were formulated from the grounds that were struck out (i.e. grounds 3 and 4). Even though it did strike out grounds 3 and 4 of the grounds of appeal, however at page 296 of the Record the court below retracted its findings and now noted that:

“...I notice that the 1st issue for determination proposed by the Appellants relates to grounds numbers 1 and 5 and cover No. 3 in the Respondent’s brief of Argument. The second issue formulated by the Appellants covers grounds Nos: 2 and 3 of the Notice of Appeal and also accommodated Respondent’s issue No. 2. Issue No. 3 in the Appellant’s brief is married to ground 4 and also encapsulates the Respondent’s issue No. 2. Also the Appellants’ issue No. 4 which is lifted from ground of appeal No. 6 covers issue No. 2 of the Respondent. Finally issue No. 5 formulated by the Appellants which has been distilled from ground of appeal No. 7 incorporates Respondent’s issue No. 4. I shall consider the issues serially except issues 3 and 4 which I shall consider together.” The underlined portion is for emphasis.

The above extract of the Judgment of the court below shows that the grounds of appeal complained of by the Appellants under this issue were considered even though the court had initially said that the grounds were not covered by the issues formulated by the Appellants. The record of Appeal at pages 302 and 307 show that issue No. 2 distilled from grounds 2 and 3 of the ground of appeal was considered by the court below, while Issue No. 3 distilled from ground 4 was

as well considered at pages 308 - 310, of the Record of Proceeding. Therefore it is my view that the statement of the court below that the grounds Nos. 3 and 4 were not covered by any of the issues formulated, when in fact the said grounds were considered by the court occasioned no miscarriage of justice. It has long been settled that it is not every mistake or error in a judgment that will result in the appeal being allowed. B
 See ABDULKADIR OBA ALAO V. VICE-CHANCELLOR UNIVERSITY OF ILORIN (supra). **The Appellants having failed to show how the Judgment of the court below has occasioned miscarriage of justice, the issue must be resolved in favour of the respondent.** C

ISSUE NO. 2. Is on a narrow point of whether the court below was right when it held that suit No. MHC/63m/97 seeking the relief of mandamus and injunction was not premature, pre-emptive and that no approval of relevant Government agency was required for the selection/appointment and beading of the Clan Head of Edikwu. Appellants complained that the approval of the Government of Benue State is a condition precedent to the assumption of duties by the Respondent as the beaded Clan Head of Edikwu Clan and that in the absence of such approval, the Respondent had no locus standi to commence proceedings as he did, against the Appellants seeking for the Orders of mandamus and injunction before the trial court. E

In resolving this issue the learned Chief Judge of Benue State held at page 241 of the Record of proceedings thus: F

"It was strenuously argued for the Respondent that since the Governor of Benue State has not approved the appointment demand by the Applicant is premature and pre-emptive. I do not accept this argument. Selection and beading are some of the processes leading to the approval of a candidate for the appointment. From the available evidence and reaction of both the King-makers and Apa Local Government Traditional Council once a person has been duly selected and beaded the paraphernalia of office are handled over to him. The approval of the Governor is to stamp what has been done by relevant appointing bodies, the most relevant of all being the King-Makers." G H

The court below dealt with the same issue on page 300 of the Record, and succinctly put it this way:

"I have considered the submissions of the learned counsel to the parties on this issue. I am in agreement with the submission of the learned Counsel for the Respondent that the learned Appellants' Counsel heavily relied on the provisions of the "Guidelines." I have thoroughly examined the provisions on pp. 161 - 164 of the Record of Proceedings. I agree that on the face of the said "Guidelines," it was not shown what laws/enactment the author of the "Guidelines" drew his power to issue same. It has not been signed by anybody. Similarly, the commencement date that such "Guidelines" will be effective or would start operating was also not stated."

The passages of the Judgment of the court below are findings of fact made in agreement with that of the trial court. These are concurrent findings of facts by the two courts below in this appeal. It is settled law that this court will loathe to interfere with the concurrent findings of fact by the two courts below once such findings are on evidence legally admissible and it is not shown that the findings are perverse and/or palpably erroneous and cannot be supported by such evidence. See the cases of CHIEF OLUNTA ALIBO & ORS. V. CHIEF BENJAMIN OKUSIN & ORS. (supra) and MELFORD AGALA & ORS. V. CHIEF FELIX ONWUKIO EGWERE & ORS. (supra). **The findings of facts made by the two Lower Courts concerning the approval of Government of Benue State with regards to the appointment and assumption of duties by Clan Head cannot be faulted. From the affidavit evidence before the trial court, it was not in doubt that the appointment of the Clan Head is exclusively the responsibility of the Elders and/or King makers of the community and not the Government. It is only after the appointment of a person is validated by the Elders/King makers in accordance with the Custom and Tradition of the people and has performed the Traditional Rites and beaded that the question of recommendation to the Government arises.**

In its Judgment the court below based its opinion of the status of the Clan Head on the definition of 'Chief in Section 2(2) of the Chiefs (Appointment, and Deposition) Law Cap. 20, Laws of Northern Nigeria, 1963 applicable in Benue State, and said that the definition does not include "*Clan Head*". The court also held that the law neither provided for recognition/approval nor for issuance of Guide-

lines on the Appointment and Discipline of Traditional Rulers.

The Appellants also relied on Section 8 of the said Law in their Brief of Argument in support of their contention for prior Government approval to assumption of office. I do not think there is such provision in the said section, which provides;

“8. If any person declines or neglects to take the oath when any Oath required to be taken by him under Section 7 is duly tendered, he shall:-

(a) If he has already entered his office of Chief or Head Chief, vacate the same; or

(b) If he has not entered his office of Chief or Head Chief, be disqualified from entering same.”

The above provision clearly deals with the taking of oath of office by the Chief and not Government “approval as a prerequisite to assumption of office as a Chief or Clan Head. Oath taking is not synonymous with Government’ “approval”.

The Appellants’ reliance placed on the Chiefs (Appointment and Deposition) Law (supra) to allege that the findings of the two courts below are perverse is absolutely unfounded and unsupportable by that Law.

At page 300 of its Judgment, the court below stated as follows:

“Even Section 7 of the same Law which was relied on, did not talk of approval by government as a prerequisite to the performance of function of a Clan Head and it even said oath can be taken as soon as may be after the appointment.”

It is in the light of the foregoing, this issue is resolved in favour of the Respondent but against the Appellants.

In issue No. 3 the Appellants’ grouse is that the court below erred when it affirmed the Order of injunction made against the 2nd Appellant by the trial court. It is the contention of the Appellants that the error arose because the court below failed to consider their Ground 3 in their Notice of Appeal on the ground that the said Ground 3 was not covered by any of the issues formulated and argued by the Appellants. It is their contention that the court below having resolved issue No. 2 in favour of the Appellants ought not to have granted the injunction restraining the 2nd Respondent from parading himself as the Clan Head of Edikwu. In the opinion of the appellants the main

reason why the Court below restrained the 2nd appellant was because of that court interpretation of the decision of Ka'akan J. in OHC/503m/95 striking out Suit No. MHC/196/95 to the effect that no vacancy existed in the acting Clan Head of Edikwu after the Respondent herein was selected and beaded. The contention of the Appellants on this issue shows complete misrepresentation of the views expressed in the Judgment of the Court below. That court after resolving issue No. 2 in favour of the appellants and against the Respondent proceeded further to state at page 307 of the Record of proceedings as follows:

"I must however quickly point out at this stage, that despite the erroneous reliance by the lower court on the said two decisions of Kaka'an J. (supra), that did not however mean that it did not consider the evidence adduced before it in arriving at its final conclusion. The trial court had before it overwhelming credible evidence which it had rightly considered evaluated and believed before it arrived at its conclusion. I will come back to this when treating issues Nos. 3 and 4".

From the passage of the Judgment of the Court below reproduced above it is crystal clear that the reason why the Judgment of the trial court was affirmed despite the resolution of issue No. 2 in favour of the Appellants was that there was overwhelming credible evidence which the trial court considered and evaluated before arriving at its decision.

In its further justification for affirming the Judgment of the trial court, the court below at page 310 of the Record of Proceedings held thus:

"Although I had earlier held when treating issue No. 2 that the court was wrong in holding that there were no appeals on those applications or that the lower court erroneously relied on or referred to those rulings, that does not mean it solely based its finding on those rulings. The lower court had duly considered the evidence adduced before it in the instant case before it arrived at its conclusion. Even without referring to or relying on those rulings the court had enough evidence before it and had rightly relied on the evidence adduced before it which could independently make the respondent's case to stand on its feet.

I therefore hold that the lower court's finding was not perverse

as would justify this court to disturb or interfere with it."

What I have garnered from the extract of the Judgment of the court below is that reason for its affirming the Judgment of the trial court granting an order of injunction against 2nd Appellant was not solely tied to the two Rulings of Kaka'an J. The court below stated clearly that there were abundant evidence before the trial court outside the said Rulings which the trial court acted upon in entering Judgment in favour of the Respondent. It was for this reason the court below refused to set aside the Judgment of the trial court on the ground that its findings were not perverse as would allow appellate court to interfere with. In the light of the foregoing this issue is equally resolved in favour of the Respondent.

The grudge of the Appellants on issue 4 is that there were conflicts in the affidavit of the parties on the issue of demand of the regalia of the office of the Clan Head of Edikwu, as such there was need for oral evidence to resolve the conflicting affidavits. The Respondent's counsel has submitted that there was overwhelming affidavit evidence before the trial court which showed conclusively that demands were made on the Appellants to surrender the chieftaincy property and there were no conflicts in the affidavit evidence to warrant calling of oral evidence.

At page 309 of the Records the court below made some crucial findings based on the annexure to the affidavit supporting the application with regard to the demands made for the return of the Regalia of the chieftaincy of Edikwu. The annexure include:

"(1) Annexure 'D' titled Request for Handover of Chieftaincy Regalia of Edikwu.

(2) Annexure 'F' Letter signed by 8 King makers of Edikwu Clan dated 14th June, 1996 addressed to the 1st Appellant."

On the same page 309, the court below found that there were other correspondences in the body of the Ruling addressed to law enforcement agencies and other kingmakers or chiefs on which the issues of plea made to the appellants for the return of regalia featured prominently. The court then concluded thus:

"With these correspondences, I feel it will not be cor-

rect for the Appellants to say there had not been any request or demand made to them to surrender the said regalia. The Lower Court had therefore, in my view, duly considered the affidavit evidence adduced before it in arriving at its conclusion that there was formal and proper demands made to the
B Appellants to surrender the Chieftaincy property regalia/ paraphernalia of office. With the overwhelming affidavit evidence before it, which I hold was not conflicting. I do not think there was any need for the trial court to venture into calling of
C oral evidence as doing so will be futile and unnecessary since it will ultimately lead to the same conclusion.”

The above passages were based on the findings of the trial court which the court below affirmed. The trial court in its Ruling on page 241 of the Record held:

D “From the above documentary evidence, it is clear that both the kingmakers of Edikwu and Apa Traditional Council demanded from the first respondent the return and handover of the paraphernalia of the Clan Head of Edikwu of the applicant. There was therefore a demand on the first respondent... There is no evidence that he
E has accepted the demand.”

Consequently, upon the above findings the court ordered the 1st respondent to surrender the paraphernalia appertaining to the office of the Clan Head of Edikwu.

F Again, here the two courts below were concurrent in their findings. I cannot find any reason to interfere with such findings as there is no obvious error on the appraisal of evidence and ascription of probative value thereto.

G In conclusion, I find no merit in this appeal and it is accordingly dismissed. I affirm the Judgment of the court below delivered on 29th day of June, 2004 in Appeal No.CA/J/2/2001. However, I order that parties bear their respective costs in the circumstances and antecedent of this case.

Appeal dismissed.

H

I. T. MUHAMMAD JSC

I read before now the judgment of my learned brother, Galadima, JSC. I agree with his reasoning and conclusion. The ap-

peal lacks merit. I, too, dismiss the appeal. I abide by consequential orders made in the lead judgment including one on costs.

FABIYI JSC

I have had a preview of the judgment just delivered learned B
brother, Galadima, JSC. I agree with the reasons therein advanced
to arrive at the conclusion that the appeal should be dismissed.

I wish to chip in a few words of my own in support. The re-
spondent at the trial court, in the main, applied for an order of man- C
damus to compel the 1st appellant to deliver possession of the tradi-
tional toga of the chieftaincy of Edikwu to him as the substantive
beaded clan-head. With respect to the demands made for the return
of the Regalia of the chieftaincy of Edikwu by the 1st appellant; An-
nexure D and F were exhibited. D

It is apt to depict it here that mandamus is a writ issuing from a
court of competent jurisdiction, commanding an inferior tribunal,
board, corporation or a person to perform a purely ministerial duty
imposed by law. It is an extraordinary writ which lies to compel per-
formance of duty where there is a clear legal right in the plaintiff and E
a corresponding duty on the defendant. *Cohen v. Ford* 19 Pa. Com-
monwealth 417, 339 A-2d 175, 177 (Blacks Law Dictionary Sixth
Edition page 961).

The principle of '*Demand and Refusal*' is usually a prerequisite F
before an order is made in favour of an applicant. See the cases of
Fawehinmi v. IGP (2002) 7 NWLR (pt.767) 606; *Chief Ohakim v.*
Chief Agbaso (2010) 6-7 SC 85 at 132. Such an application usually
engenders due exercise of discretion by a court. This is extant in
Halsbury's Laws of England, 4th Edition, Vol. 1 page 124. G

The appellants contended that there were conflicts in the affi-
davits of the parties on the issue of demand of the regalia of the office
of the clan head of Edikwu. They felt that there was need for oral
evidence to resolve the conflicting affidavits. There is no big deal on
this score. This is because the respondent's application was supported H
by documentary evidence to wit: Annexure 'D' titled 'Request for
Handover of Chieftaincy Regalia of Edikwu, and Annexure 'F' which
is a letter signed by 8 King Makers of Edikwu clan dated 14th June,
1996 addressed to the 1st appellant for the return of the stated Re-

galia. Any conflict in the affidavits of the parties is resolved without much ado by the consideration of the above stated annexure. There was no need for any further viva voce evidence in the prevailing circumstance. See *Olujinle v. Adeagbo* (1988) 2 NWLR (pt.75) 235.

In short, demand prerequisite for an order of mandamus was clearly established by the respondent.

The appellant had an issue on the late delivery of the judgment by the trial court outside the 90 days dictated by Section 294 (1) of the Constitution of the Federal Republic of Nigeria, 1999. They failed to demonstrate how same occasioned a miscarriage of justice to them. The court below was on a firm stand in refusing to declare the judgment of the trial court a nullity on this ground.

I should say it in passing that the two courts below made concurrent findings of fact on most crucial issues which have not been shown to be perverse in any respect. It is not the practice of this court to interfere in such a situation. I shall not interfere. See *Echi v. Nnamani & Ors.* (2000) 5 SC 62 at 70.

For the above reasons and those carefully set out in the lead judgment, I too feel that the appeal lacks merit and deserves an order of dismissal. I order accordingly and endorse all the consequential orders in the lead judgment inclusive of that relating to costs.

M. D. MUHAMMAD JSC

I had a preview of the lead judgment of my learned brother Galadima JSC, with whose reasoning and conclusion that the appeal lacks merit I entirely agree. In emphasizing some of the reasons advanced by his lordship in the resolution of the crucial issues raised by the appeal, I rely on the summary of the facts that brought about the appeal supplied in the lead judgment. I am however to stress that the Respondent it was who commenced Suit No. MHC/63M/97, from which the instant further appeal arose, against the appellants seeking for an order of mandamus and injunction. The trial court's decision overruling the appellants' objection on the competence of the Suit led to the appellants interlocutory appeal No. CA/J/160/97 challenging the trial court's assumption of jurisdiction to entertain the case. With the dismissal of the appellants' appeal at the court below, Respondent's case proceeded and was fully heard by the trial court.

At the end of trial, the court in a well considered judgment dated 12th April 2001 granted all the reliefs sought by the respondent. Aggrieved by the judgment, the appellants appealed to the court below which judgment of 29th June 2004 dismissed the appeal and affirmed the trial court's judgment. It is against that judgment that the appellants have further appealed to this court. B

The five issues distilled by the appellant as calling for resolution in the determination of the appeal, the three which I shall dwell upon jointly because of their overriding relevance read:-

"3.02 Whether the Court of appeal was right when it held that the suit No.MHC/63m/97 seeking the relief of mandamus and injunction was not premature, pre-emptive and that no approval of relevant government agency was required for the selection/appointment and beading of the clan Head of Edikisu. C

3.04 Whether the Court of Appeal was right when it held that there was no need to call oral evidence on the issue of demand and that there was satisfactory proof of demand on the first appellant to handover the chieftaincy property to the respondent. D

3.05 Whether the court of appeal was right when it held that the appellants failed to adduce convincing evidence of miscarriage of justice or injury suffered by them as a result of the trial court delivering its decision/ruling outside 90 days after addresses as stipulated in the 1999 Nigerian Constitution. " E

In arguing the appeal under that 2nd issue, learned appellants' counsel contended that the court below had erred in its consideration of the first issue in the appeal before it. The said issue, it was submitted, particularly touched on the guidelines and laws which provided for the appointment of the chief and clan Head of Edikwu. The appellants, learned counsel contended, had raised questions as to whether respondent's application for mandamus was not premature or pre-emptive. The court's inadvertence to the appellants' reply brief dated 21st May 2002, it was argued, resulted in the court's erroneous and perverse resolution of the particular issue against the appellants. Indeed, learned counsel submitted, the court's conclusion on the issue was contrary to its own findings. The obvious implication of Exhibit C annexed to respondent's application for the handover of the Edikwu chieftaincy regalia is that as the Edikwu clan head the applicant was a traditional ruler and a chief within the pur- F
G
H

view of Section 2 (1) of the Chiefs (Appointment and Deposition) Law Cap 70 Laws of Northern Nigeria. Under Section 51 (1) and (2) of the Benue State Local Government (Establishment Law) 2000 the applicant is recognised as a member of Apa traditional council.

The respondent, further argued learned appellants' counsel, required Government's approval, indeed before beading and the performance of any function of his office as the clan head and Chief of Edikwu. Exhibits 1, 2, 3, and E tendered by the appellants, submitted learned counsel, clearly makes Government approval a pre-condition to respondent's assumption of duty as the clan head of Edikwu. The trial court's conclusion that respondent's suit as the clan head of Edikwu without having acquired the mandatory Government approval is not premature is manifestly an error that entitles this court to set aside the lower court's perverse affirmation of same. Learned counsel relies on *Savanah Bank v. Ajilo* (1981) ALL NLR 26 at 45 and *Akinfemi & ors v. Prof. Onwumechili* (1985) SC 123 at 158 and urges that the issue be resolved against the respondent.

On the 4th issue, it is submitted that for the respondent to succeed in his suit, he needed to establish by credible evidence that he had requested the appellants to return the chieftaincy regalia' Exhibits 'B' and 'C', the two letters from the Ochi' Idoma the respondent relied on did not constitute such demand. The letters which were not issued by Edikwu chieftaincy king makers, contended learned counsel' could not constitute the demand the respondent needed to succeed in his claim.

On their 5th issue, it is submitted that the lower court's finding that the appellants required to prove the miscarriage of Justice the belated delivery of the trial court's judgment caused them to successfully have the judgment set-aside does not correctly state the law under Section 294 (1) of the 1999 Constitution The reason contained in the trial court's judgment for the delay are unavailing The court's breach of the constitutional provision alone justifies an appellate court's intervention. Learned counsel urges that the lower court's refusal to set aside the trial court's illegal judgment be tempered with.

On the 2nd issue for the determination of the appeal, learned respondent's counsel argued that once beaded, the clan Head of Edikwu required no government approval to entitle him assume duty and perform the duties of the clan's head. All the respondent re-

quired to do was to perform the traditional rites and assume office immediately. The findings of the two courts below on the issue, learned counsel submitted, being concurrent, cannot on the authority of Chief Olunta Alibo v. Chief Benjamin Okusin & ors (2010) ALL FWLR (part 529) 1059 at 1087-1088 and Melford Ogala & Ors v. Chief Felix Onwuku Egwere (2010) All FWLR (part 532) 1609 at 1630, be easily set-aside. B

On appellants' 4th issue, learned respondent's counsel contended that the issue must be resolved against the appellants as well. There is no conflict in the affidavit evidence of the parties to warrant the hearing of oral evidence by the trial court to resolve the conflict the appellants alleged existed. There is ample evidence before the court that respondent was the Edikwu clan Head. There was also no dispute that the respondent had demanded the return of the regalia by the 1st appellant who instead asserted that he had, following an order of court, handed the property to the 2nd appellant. The affidavit evidence before the two courts, contended learned respondent's counsel, had made bare how appellants' position on their 4th issue is. Relying on Osibakoro Otuedon v. Igbakpan Akpotor (1997) 7 SCNJ 392 at 401, learned counsel urged that the issue be resolved against the appellants. C

Regarding appellants' 5th issue learned respondent counsel argued, and correctly too, that the lower court's finding at pages 312-313 of the record of proceedings on the interpretation of Section 294 (5) of the 1999 Constitution vis-à-vis the facts of this case cannot be faulted as it represents the position of the law. The lower court's affirmation of such finding, submitted learned counsel, is therefore unassailable. On the whole the respondent urged that the unmeritorious appeal be dismissed. D

I am unable to agree with learned appellants' counsel for all the right reasons outlined by learned respondent's counsel that indeed all the issues the appellants distilled for the determination of the appeal must be resolved against them. E

Firstly, legislations must be ascribed the meaning that is clear and unambiguous words that make them give to them. See Ekeogun v. Aliri (1991) 3 NWLR (Pt.179) 255 and Olowosago v. Adebajo (1988) 4 NWLR (Pt.88) 275. In the instant case all the legislations and/or guidelines relied upon by the appellants to show that the re- F

spendent required government approval before he assumed duty, on the basis of the clear and unambiguous words that make them up, do not reveal what the appellants seek to ascribe to them. It is not the principle that the said legislations should be made to say anything other than what their makers intended to say in them. At page 241
B of the record of appeal the trial court had held as follows:-

*"It was strenuously argued for the Respondent that since the Governor of Benue State has not approved the appointment demand by the Applicant is premature and preemptive. I do not accept
C this argument. Selection and beading are some of the processes leading to the approval of a candidate for the appointment. From the available evidence and reaction of both the king-makers and Apa Local Government Traditional Council once a person has been duly selected and beaded the paraphernalia of office are handled over to
D him. The approval of the Governor is to stamp what has been done by relevant appointment bodies, the most relevant of all being the King-Makers."*

The lower court at pages 299-300 of the record in affirming the trial court's foregoing finding opined thus:-

*"I have considered the submissions of the learned counsel to the parties on this issue. I am in agreement with the submissions of the learned counsel for the Respondent that the learned Appellant's counsel heavily relied on the provisions of the "Guidelines." I have
F thoroughly examined the provisions of the "Guidelines which were reproduced on pages 161 to 164 of the Record of proceedings. I agree that on the face of the said "Guidelines," it was not show what laws/enactment the author of the "Guidelines" drew his power to issue same. It has not been signed by anybody. Similarly, the com-
G mencement date that such "Guidelines" will be effective or would start operating was also not stated. "*

The Appellant also referred to the provisions of selection 8 of the Chiefs (Appointment and Deposition) Law, Cap. 20, Laws of Northern Nigeria 1963 applicable to Benue State, to buttress his sub-
H mission regarding the issue of approval of government as a precondition to the appointment of a Clan Headship. With due respect to the learned Counsel for the Appellants, that provision merely relates to Oath taking and did not make any reference to approval by government. Even Section 7 of the same Law which was also relied on,

did not talk of approval by government as a prerequisite to the performance of function of a Clan Head and it even said Oath can be taken as soon as may be after appointment. Again, going by the definition of Chief given in Section 2(2) of the law (*supra*) I do not think it includes ‘Clan Head.’

Learned respondent’s counsel is right that the foregoing are concurrent findings of fact and that same having drawn from the evidence on record which the two courts are not shown to have arrived at by taking into account what they should have excluded, the findings cannot be interfered with by this Court. Learned counsel’s reliance on Chief Olunta Aliba & ors v. Chief Benjamin Okusin & Ors (2010) ALL FWLR (part 529) 1059 at 1087-1088 and Mr. Melford Agala & Ors v. Chief Felix Onwukio Egwere & ors (*supra*) is also apposite. It is clear from the evidence on record that the respondent required no approval of government before he assumed the office of the clan head of Edikwu and having rightly assumed office his suit, when his powers were threatened by the appellants, was neither premature nor pre-emptive.

Appellants added complaint that there are lingering conflicts in the affidavit relied upon by both sides to make their respective cases and/or that respondent’s evidence does not establish that respondent had demanded the return of the regalia from the appellants, which demand is necessary in an action for the issuance of an order of mandamus must also be discountenanced.

Admittedly, for mandamus to apply there must be evidence that the respondent who was the applicant in the case at hand had requested the appellants to return the regalia and that the latter were under a public duty to return same. That both courts below have however held not only that the affidavit evidence of both sides do not conflict but further held that from the totality of the evidence the respondent had indeed requested the return of the regalia, again takes the bottom off from the appellants. Having failed to show these concurrent findings to be perverse, the appellants are disentitled to the relief they seek by virtue of their 4th issue and the ground of appeal from which they distilled the issue. The issue is accordingly resolved against them.

It is also urged by learned appellants’ counsel that we set-aside the lower court’s judgment affirming the trial court’s judgment that

has breached s. 294 (5) of the 1999 Constitution. Appellants argued that the judgment was delivered beyond the 90 days the mandatory section of the Constitution permits it should be delivered. The court below on the issue held at pages 312-313 held as follows:-

“In the instant case, there is no doubt that the Lower Court delivered its ruling outside the 90 days period stipulated in the Constitution. That notwithstanding, for this court to declare the decision a nullity on the ground of the delay in delivery of the ruling, the Appellants have to produce convincing and credible evidence that they actually have suffered miscarriage of justice by reason of such delay. The Appellants in this regard did not or have failed to adduce such evidence of occasioning miscarriage of justice to them in any respect. They have not shown that they suffered injury of any sort by reason of such delay. And even if they showed they suffered any injury, such injury must also be shown to have been suffered as a result of such delay or could actually be traceable to such delay in delivering the ruling lately. All these, the Appellants have failed to establish. I therefore refuse to declare the decision of the Lower Court a nullity or invalid,”

This court, in interpreting Section 258(1) and (4) of the 1979 Constitution, which is in pari materia with the Section in contention, consistently maintained that the delivery of judgment outside the 90 days required by subsection 1 of Section 294, given subsection 4 of the same Section, does not ipso facto nullify the judgment. An appellate court would only interfere if the appellant has satisfied it that by the non-compliance he has suffered miscarriage of Justice. See *Ifezue v. Mbadugba and another* (1984) S.C.N.L.R. 427; *Odi v. Osafire* (1985) 1 NWLR (Pt. 1) 17 and *Harold Sodipo v. Lemmin Kainen Oy & anor* (1985) 2 NWLR (Pt.8) 547. The lower court’s decision towing the line the Supreme Court stated the law to be cannot therefore be wrong. Accordingly appellants’ 5th issue is resolved against them as well.

Lastly, appellants have also argued that the court below is wrong to have affirmed the trial court’s injunctive order against the 2nd Appellant. They must be reminded that an injunctive order is available to restrain a party such as the 2nd appellant from the repetition or continuation of the particular wrongful act complained of with the view to supporting respondent’s established legal right. Had the re-

spondent not established a legal right recognized by the court, the injunction he obtained would not have lawfully been granted. In the case at hand the respondent, as rightly held by both courts below, having established a continuing wrong against the appellants is deserving of the order he obtained. See *Obeya Memorial Hospital & anor v. A-G Federation and anor* (1987) 2 NSCC 961; *Ajewole v. Adetimo* (1996) 2 NWLR (Pt 431) 391; *Ayorinde v. A-G Oyo State* (1996) 3 NWLR (pt.434) 20 and *Dyk Trade Ltd v. Omnia Nigeria Ltd* (2000) 7 SC (pt. 1) 56.

For the foregoing and the fuller reasons advanced in the lead judgment of by learned brother Galadima, JSC, finding no merit with the appeal, I hereby dismiss it. I abide by the consequential orders made in the lead judgment including the one on costs.

ALAGOA JSC

I read before now and in draft, the Lead Judgment just delivered by my learned brother Suleiman Galadima, JSC and I agree with his reasoning and conclusion reached. He has quite ably and exhaustively dealt with all the issues involved. I wish however to say a few words of mine by way of contribution. Heavy weather appears to have been made by the Appellants concerning the need to call oral evidence to resolve the conflict as to whether a demand was made for the return of the paraphernalia of the chieftaincy of Edikwu.

On this point this court per Nnaemeka Agu, JSC in *OSITA NWOSU VIMO STATE ENVIRONMENTAL SANITATION AUTHORITY & ORS* (1990) 1 ALL NLR 379 held as follows -

“But I believe that it is not only by calling oral evidence that such a conflict should be resolved. There may be authentic documentary evidence which supports one of the affidavits in conflict with another... that document is capable of tilting the balance in favour of the affidavit which agrees with it.”

In our present situation such authentic documentary evidence which show that demands for the return of such paraphernalia of the chieftaincy of Edikwu were made by the Respondent on the 1st Appellant are annexures “D” and “F” which are as follows:-

(i) Annexure “D” which is headed Request for handover of the chieftaincy Regalia of Edikwu

AND

(ii) Annexure “F” which is a letter signed by 8 kingmakers of Edikwu clan dated the 14th June, 1996 and addressed to the 1st Appellant.

The lower court was therefore right as has been seen to hold that there was no need to call oral evidence on the issue of demand. Another issue I want to touch on is the Appellants’ contention that judgment of the trial court was delivered outside the 90 day period after final addresses as stipulated by the 1999 Nigerian Constitution. The relevant section of s.294 (1) of the Nigerian Constitution 1999 provides as follows,

“Every Court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses...”

Litigants have tended to view this Constitutional provision as a trump card to truncate Judgments which otherwise have no flaws. This line of thinking has garnered some wide followership because of the word “shall” in that provision. There is nothing sacrosanct about the provision. As to the word “Shall” this Court per Mohammed JSC in UMEANADU V. A-G ANAMBRA STATE (2008) 9 NWLR (PART 1091) 175 held that, “It is not in every case that the word “shall” imports a mandatory meaning into its use.” See also AMADI V. N.N.P.C. (2000) 10 NWLR (PART 674) 76; ABDULLAHI v. THE MILITARY ADMINISTRATOR & ORS (2009) 15 NWLR (PART 1165) 417 wherein it was stated that the word “Shall” may at times be construed as conveying a permissive or directory meaning of “May” Whether the word “Shall” is used in a mandatory or directory sense would depend on the circumstances of the case. In the particular context in which it is used under section 294 (1) of the Constitution of the Federal Republic of Nigeria 1999 the word “Shall” cannot be construed as meaning a command or compulsion for the very simple reason that there could be a myriad of reasons why a decision of court is not turned in within the constitutionally prescribed 90 day period under the Constitution.

To set aside a decision of court in reliance on the provisions of section 294 (1) of the Constitution, the party asserting must give satisfactory reasons why the non-compliance with this provision has occasioned a miscarriage of justice. The lower court was right to hold

that the Appellants had not shown satisfactory and convincing reasons or evidence of miscarriage of justice occasioned to them just because the trial court's decision was not delivered within 90 days of final addresses.

On yet another issue the government from affidavit evidence does not appoint the head of the clan for the people. That lies within the province and powers of the Elders and King makers of the community. B

The finding of the lower court is in concurrence with that of the trial court. The attitude of this court is not to disturb such findings of fact except where they were perverse or occasioned a miscarriage of justice. *See ABIODUN FAMUROTU V. MADAM AGBEKE* (1991) 5 NWLR (PART 189) 1, *OJOMO v. AJAO* (1983) 2 SCNLR 156; *AKEREDOLU V. AKINROMI* (1989) 3 NWLR (PART 108) 164. C

I do not think the findings are perverse or have occasioned a miscarriage of justice. D

It is for these reasons and the fuller reasons given by my learned brother Suleiman Galadima, JSC, in his Lead Judgment that I too find no merit in the appeal and dismiss same while abiding by all the other order/s contained in the Lead Judgment including order on costs. E

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