

SUPREME COURT OF NIGERIA
FRIDAY 7TH FEBRUARY, 2014. SC. 76/2008
**CORAM:- J. A. FABIYI, S. GALADIMA, B. RHODES-
VIVOUR, N. S. NGWUTA, K. M. O. KEKERE-EKUN, JJSC**

1. MAJOR NICKSON STANLEY DONG
2. MR. CLARKSON TAKWI
3. MR. ALVAN DUKADI
4. MR. JACKSON BONANDA
5. MR. ALEXANDER MAGANI APPELLANTS
6. EDWARD HUNKUSO
7. PHANUEL IBRAHIM
8. MR. OMI MYATO
9. MR. YAKUBU ZUNKUNE
(Suing for themselves and on behalf
of the Dong Community)
- AND
1. ATTORNEY-GENERAL OF
ADAMAWA STATE RESPONDENTS
2. NUMAN TRADITIONAL COUNCIL
3. REV. BENSON ATETE KUSHI

CHIEFTAINCY MATTERS - District heads - Mode of appointment -
By Adamawa District Creation Law s. 7 - Two methods of selecting
such heads are by traditional or customary method - And by Elec-
toral College of village head (H1)

CHIEFTAINCY MATTERS - District head - Appointment - Proof -
Appellants were required to prove that selection of 3rd respondent -
Was not done in accordance with tradition and custom of the area
constituting Dong District (H2)

FACTS

By a writ of summons filed before the High Court of
Adamawa State Yola, plaintiffs/appellants commenced this action
against defendants/respondents, claiming inter alia that the traditional
method and/or procedure for the selection, appointment and/or elec-
tion of a District Head for Dong District of Demsa Local Government

Area of Adamawa State, was not followed in the appointment of 3rd respondent (Rev. Benson Atete Kuchi) as the District Head of Dong District.

There is an alternative claim for declaration that there is no traditional method/procedure applicable in Dong District for the appointment selection and/or election of the District Head of Dong District and therefore the Electoral College of the village Heads of Dong District should have been set up to select the Head of Dong District. Pleadings were ordered and exchanged. Issues having been joined, the case proceeded to trial. Appellants called 5 witnesses and tendered 5 Exhibits. Respondents called 7 witnesses and tendered 2 Exhibits. In its judgment, the learned Chief Judge held in favour of respondents. Appellants being dissatisfied with the decision, appealed to the Court of Appeal Jos Division. The court heard the appeal and dismissed same. Aggrieved further, appellants appealed to Supreme Court.

ISSUES FOR DETERMINATION

(i). Whether having regard to the fact that Dong District was a new creation and the requirement to prove a custom as a question of fact, the Court of Appeal was right when it held that the Chief of Batta the representative of the 2nd Respondent by the mere fact of his being chief, was in a position to determine the traditional or customary method in existence in Dong District for the selection of the District Head and did so in this respect when he made wide consultations with the members of the Ruling Families and the Kingmakers.

(ii). Whether the Lower Court was right when it based its decision on the fact that the appellants having pleaded the existence of a Tradition or Custom for the appointment of the Chief of Dong, ought not to be heard to contend that an Electoral College of the Village Heads be convened even though, this was the Appellants' Alternative Relief.

(iii). Having regard to the larger size of Dong and its more advanced chieftaincy institution, whether there was any basis for the Appellants' Claim of the Custom or Tradition for the appointment of the Chief of Dong as being the applicable Tradition or Custom for the Appointment of the District Head of Dong District.

HELD

(Unanimously dismissing the appeal per

GALADIMA JSC)

CHIEFTAINCY MATTERS - District heads - Mode of appointment

1. As can be gleaned from section 7 of the above law two methods of selection or appointment to the office of District Heads in Adamawa are envisaged, namely.

(i) The traditional or customary methods of appointing District Heads, where one exists:

(ii) By an electoral college of Village Head as selectors, where no traditional or customary method exists.

(p. 569 B)

CHIEFTAINCY MATTERS - District head - Appointment - Proof

2. The Appellants were required to establish by proving that the selection of the 3rd Respondent was not done in accordance with the tradition and custom of the area constituting Dong District. How is this done? Section 14 [1] of the Evidence Act, provides ready answer thus:

“14(1). A custom may be adopted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence, the burden of proving a custom shall lie upon the person alleging its existence.”

I agree with the finding of the court below that the Appellants have not been able to prove non-compliance with section 7[1], (Supra). They, however, have been able to prove that Dong Village has a tradition of selection which could be adopted for Dong District. In other words they have accepted that there is a tradition and customary method of selection in the new Dong District. (p.572 E)

NOTABLE POINTS OF INTEREST

FABIYI JSC

1. Court to make finding on customary law

Let me observe it here that it has been held that it is not the business of the court to make declaration of customary law relating to the

selection or appointment of chiefs. But it is the business of the court to make a finding of what the customary law is and apply the law for declaration. (p. 573 H)

2. Customary law – Proof

- B Under the Evidence Act, a customary law is a matter of fact to be pleaded and proved by evidence unless it has been judicially noticed. (p. 574 A)

KEKERE-EKUN JSC

3. Main and alternative reliefs – Resolution of

- When reliefs are sought in the alternative, the main relief is considered and resolved first. Where a plaintiff set up two or more inconsistent sets of material facts and claims relief in each of them in the alternative, he will be granted such relief as the set of facts he established would entitle him to where the first and principal relief is exhaustive of his remedy there would be no need to consider the alternative relief. (p. 577 C)

REPRESENTATION

Chief Leonard Dan Nzadon, Esq., for the Appellants
Respondents absent and not Represented

CASES REFERRED TO

- F Nsirim v. Nsirim (2002) 3 NWLR (pt. 755) 695
IHeanacho v. Chigere (2004) 17 NWLR (pt. 901) 130
Usionbuifo v. Awani (2001) 12 NWLR (728) 726
Ogolo v. Ogolo (2003) 18 NWLR (pt. 852) 494
G Adigun v. A-G Oyo State (1981) 1 NWLR (pt. 53) 698
Lipede v. Sonekan (1995) 1 NWLR (pt. 374) 668
Kale v. Coker (1982) 12 SC 252
Cameroon Airline v. Otutuizu 2011 1-2 SC (pt. iii) 200
Haruna v. A.G. Federation (2012) 3 SC (pt. iv) 40
H PDP v. INEC (2012) 2 SC (pt. iii) 1
M.V. Caroline Maersk v. Nokoy Investments Ltd. (2002) 12 NWLR (pt. 782) 472
Agidigbi v. Agidigbi (1996) 6 NWLR (pt. 454) 300
Amadi v. Nwosu (1992) 5 NWLR (pt. 241) 273

Yusuf v. Adegoke (2007) 4 SC (pt. 1) 126

STATUTES REFERRED TO

Evidence Act, s. 14(1)

Adamawa State (District Creation) Law 1992 (as amended), s. 7

B

LEAD JUDGMENT BY GALADIMA JSC

A key characteristic of a chieftaincy tussle in this country is its protracted trial and determination at the Courts below, before it gets to the Apex Court. That is why it is said to have chequered history. Often times the facts are bizarre and the claims of the parties are spurious.

C

This is one of such cases which started 20 years ago. The Appeal is against the judgment of the Court of Appeal, Jos Division (“the lower court”) delivered on 13th October, 2007 dismissing the Appellants appeal. The Appellants herein, were the 2nd to 10th Appellants before the court below. The 1st Appellant died before the appeal was brought to this court. The appeal is thus being prosecuted by the present Appellants who were also the plaintiffs before the trial High Court Yola in Adamawa State.

E

The Appellants in that Court, after having been granted leave to sue for themselves and on behalf of the DONG COMMUNITY, against the Respondents as Defendants, took out a Writ of Summons on 25/3/93 claiming the following reliefs:-

F

“(i). A declaration that the traditional method and/or procedure for the selection, appointment and/or election of a District Head for Dong District was not followed in the appointment of the 3rd defendant as the District Head of Dong District.

(ii). In the alternative to (i) above, a declaration that there is no traditional method/procedure applicable in Dong District for the appointment, selection and/or election of the District Head of Dong District and therefore the Electoral College of the Village Heads of Dong District should have been set up to select the Head of Dong District.

H

(iii). A declaration that the appointment of the 3rd defendant as the District Head of Dong District by the 2nd defendant through its officers, servants and/or agents is altogether unconstitutional, irregular, invalid, null and void and of no effect whatsoever for of

fending the provisions of the Adamawa State Creation of Districts Law, 1992 (as amended).

(iv). *An injunction to restrain the 3rd defendant by himself or his agents/servants or howsoever from parading himself or continuing to parade himself as the District Head of Dong District*

B (v). *An order directing the 2nd defendant to supervise the conduct of fresh selection, appointment and/or election to fill the position of the District Head of Dong District."*

C Pleadings were ordered and exchanged. Issues having been joined the case proceeded to trial. The Appellants called 5 witnesses and tendered 5 Exhibits. The Respondents called 7 witnesses and tendered 2 Exhibits.

D In his considered judgment delivered on 24/08/95 the learned Chief Judge decided in favour of the Respondents and the Appellants appealed to the Court below on 24/11/95.

E That court delivered its judgment on 13/10/2006. The Appellants sought leave of this court to appeal on points of fact and mixed law and fact and this was granted to them on 6/7/2007, on SEVEN grounds of Appeal. I do not deem it necessary to reproduce the Grounds of appeal. However, the issues distilled from the grounds of appeal are as follows:

F (i). Whether having regard to the fact that Dong District was a new creation and the requirement to prove a custom as a question of fact, the Court of Appeal was right when it held that the Chief of Batta the representative of the 2nd Respondent by the mere fact of his being chief, was in a position to determine the traditional or customary method in existence in Dong District for the selection of the District Head and did so in this respect when he made wide consultations with the members of the Ruling Families and the Kingmakers. (This issue covers Grounds 1, 3, 4 of the Grounds of Appeal).

H (ii). Whether the Lower Court was right when it based its decision on the fact that the appellants having pleaded the existence of a Tradition or Custom for the appointment of the Chief of Dong, ought not to be heard to contend that an Electoral College of the Village Heads be convened even though, this was the Appellants' Alternative Relief. (This issue covers Grounds 5 and 6 of the Grounds of Appeal).

(iii). Having regard to the larger size of Dong and its more

advanced chieftaincy institution, whether there was any basis for the Appellants' Claim of the Custom or Tradition for the appointment of the Chief of Dong as being the applicable Tradition or Custom for the Appointment of the District Head of Dong District.] (This issue covers Grounds 2 and 7 of the Grounds of Appeal).

I must mention at this stage that the Respondents did not deem it necessary to file their Brief of argument. Hence, the Appellants brought their application to this Court to hear this appeal on the Appellants' brief, of argument. This was granted on 20/5/2013. This appeal was accordingly heard on 11/11/2013 on the Appellants' brief of argument alone.

Arguing issue 1, in the Appellants' brief learned counsel for the Appellants, Chief Leonard Dan Nzadon Esq. referred to the findings of the Lower Court on pp. 173 - 174 and submitted that the Learned Justices erred in their findings. He referred to section 14(1) of the Evidence Act on the need to prove customary law by evidence, as it is a question of fact, in any particular case unless the custom is of such notoriety and has been so frequently followed or applied by courts that Judicial Notice would be taken of it without requiring evidence. Reliance was placed on the cases of *NSIRIM v. NSIRIM* (2002) 3 NWLR (pt.755) 695,713; *IHEANACHO v. CHIGERE* (2004) 17 NWLR (Pt.901) 130, 160, *USIONBUIFO v. AWANI* (2001) 12 NWLR (728) 726 at 752 and *OGOLO v. OGOLO* (2003) 18 NWLR (pt.852) 494 at 809 - 510. The learned Counsel, submitted therefore that no custom was proved before the trial court, which the Lower Court upheld thereby reducing the requirement of proof of custom to a question of presumption of knowledge by the Paramount Ruler. That it is settled law, that it is not the business of the court to make declarations of customary law, relating to the selection of chiefs under the chief's law, but it is the business of the court to make findings of what the customary law is and apply same for the purpose of the claims for declarations: Reliance was further placed on the cases of *ADIGUN V. ATTORNEY-GENERAL, Oyo State* (1981) 1 NWLR (pt.53) 698; *LIPED v. SONEKAN* (1995) 1 NWLR (Pt.374) 668 at 691.

It is contended by the learned counsel that, what was placed in evidence by the parties before the trial court and accepted by the Court of Appeal was that Dong District was a wholly new creation

and the 3rd Respondent is the first appointee as the District Head. He refers to pages 73 lines 44 - 48 and 74 lines 40 and 41, on the findings of the trial court, to support his contention.

He submitted that it was a perverse decision for the two Lower Courts to attach or assimilate a custom or tradition of one or all the Districts in Numan Division to the newly created Dong District; it is suggested that there could be said to be a tradition or customary procedure for the selection of the District Head for the said District. That the duty imposed on the two Lower Courts was to interpret section 7 (1) and (2) of Adamawa State (District Creation) Law 1992 (as amended) as it is and not as it ought to be; as in this case where the law is clear and unambiguous.

It is submitted that when the trial court found that there were two main traditional methods for the appointment of the Hama Dong on the one hand and the Village Heads of Lawaru and Bolon on the other, it should have held that there was no tradition or custom applicable for the appointment of the District Head of Dong. Learned Counsel agreed that the two concurrent findings of fact by the Lower Courts are not easily interfered with, unless perverse, but that this is a proper case for this court to interfere, as the findings of the two courts are perverse and not supported by law.

On the issue No.2, learned Counsel for the Appellants has drawn our attention to their second relief in the Statement of Claim which was an alternative relief. He submitted that, on the number of authorities of this courts, their lordships of the two courts below were in error when it had based its decision on the fact that Appellants having pleaded the existence of a Tradition or Custom for the appointment of chief of Dong ought not to be heard to contend that an Electoral College of the Village Heads be convened even though, this was the Appellants' alternative relief.

On the issue No.3, learned counsel for the Appellant submitted that there was overwhelming evidence before the trial court, which was accepted by it that the settlement of Dong in pre-colonial times was a separate and distinct Chieftaincy, with its own highly sophisticated traditional method for the appointment of Chief of Dong. Reference was made to PW1's testimony on page 29 of the record and that of DW1 at pages 47 and 48 of the said Record.

This is a traditional chieftaincy tussle, pleadings of respective

claimant and the evidence led at the trial are crucial to the resolution of the matter. However, undisputed facts as agreed by the parties, usually help in narrowing down the issues for determination without going into long history. I shall summarize the facts of the case. The Dong Community is in Demsa Local Government Area of Adamawa State. It was under Batta District of one of the five Districts that make up the then Numan Division. Other Districts are Bachama, Lunguda (Guyuk) Mbula and Shelleng. The Dong Community was headed by a traditional ruler known as Hama Dong. The Hama Dong was appointed by the traditional king makers of Dong known as Kabai Dong.

The appointment of Hama Dong was watered down as the Hama Batta has to give his blessing to the nominee prescribed by the Kabai Dong. This system of selection duly subordinated Hama Dong and he becomes answerable to the Hama Batta.

The five Districts arrangement in the then Numan Division remained so until the Civilian Administration of Governor Saleh Michika undertook the exercise of creating additional Districts in the Adamawa State, As a result of this exercise, Dong District as presently constituted was created. The District comprises not only Dong Village Area over which the Hama Dong holds sway, subject only to the authority of Hama Batta; but also Lawaru and Bolon village areas.

The newly created Dong District comprised of Dong Village Area, Lawaru and Bolon Village Areas. These three Villages had their own heads and under the control of Hama Batta, the former District Head, Hama Dong became the Village Head of Dong and Ha Lawaru of Lawaru and Nabali of Bolon respectively. The three villages were all subordinated to the Hama Batta but retain their different modes of appointment of Village Heads.

It is noteworthy that the two lower Courts made a very vital observation from the testimonies of witness on both sides. That is to the effect that the Hama Dong was appointed after the selection of the Kabai Dong. On the contrary the head of both Lawaru and Boton were selected and appointed by the Hama Batta. There is difference in the selection of the Head of Dong and the other two Bolon and Lawaru Village Heads.

Now to the issue articulated by the Appellants for determination of the appeal, since the Respondents did not formulate any issue.

I shall take all the Appellants' three issues together. In fact the first issue is couched quite so aptly that it can determine the appeal. Issues 2 and 3 are unnecessary embellishments of issue 1.

The Appellants are challenging the legality of the 3rd Respondent REV. ATETE BENSON KUSHI under section 7 of the B Adamawa State (District Creation) Law, 1992 (as amended).

The law which prescribes two modes of selection for the appointment of District Head provides as follows:

C *"7(1). The procedure for the selection or election and appointment of District Heads shall be in the following manner: where traditional or customary methods of selecting District Heads exist -*

D *(a) Selection shall be done in accordance with tradition or custom of the area constituting the District and under the supervision of a representative of the council and such security agents as the council may require.*

(b) The representative of the council shall within one week make a report in writing to the Council of the result of selection and submit same indicating the first three names who have the required number of votes set down by the council.

E *(c) On receipt of the report, the council shall deliberate on the report and shall recommend one person to the Governor for approval as District Head of the District concerned.*

F *(d) The council shall within one month of approval take necessary steps and performs turbaning ceremony.*

(2) Where no traditional methods of selecting District Heads exist.

(a) Where a vacancy exists and applications are received by the council, the council

G *(b) shall arrange for the election at any appropriate date and time, and save for security reasons; the election shall be conducted at the Headquarters of the District.*

(c) The Village Heads shall be the selectors.

H *(d) The election shall be under the supervision of a representative of the council and such number of security agents as may be required by the council to keep the peace and issue a separate report on the election.*

(e) The Representative of the council shall within one week, make a report in writing to the council of election, and submit same

indicating the first three persons who have scored the required number of votes as set down by the council.

(f) On receipt of the report and comments, the council shall deliberate on the report and comments and recommend only one person to the Governor for approval as District concerned.

(g) The council shall within one month of the Governor's approval take necessary steps and perform the turbaning."

As can be gleaned from section 7 of the above law two methods of selection or appointment to the office of District Heads in Adamawa are envisaged, namely.

(i) The traditional or customary methods of appointing District Heads, where one exists:

(ii) By an electoral college of Village Head as selectors, where no traditional or customary method exists.

With the foregoing clear provision whither the Appellants' grounds for challenging the appointment of the 3rd Respondent?

At page 198 of the Record the lower Court agreed with the learned trial Chief Judge's, findings at page 74 of the Record thus:

"The 3rd defendant is even not a stranger. He hails from the Ruling House of Baya. There is also no basis for constituting an electoral college among the villages. This method can be followed if there is no traditional method of appointing the various village heads that comprised the new Dong District Hama Dong is appointed by Hama Batta through the Kabai. Ha Lawaru and Ha Nabali are appointed direct by Hama Batta from princess (sic). The combination of consultation with members of the Ruling Houses of Dong and elders from Lawaru and Bolon and receiving application from the members of the Ruling Houses and Consultation with Nzomoto by the Hama Bata before the appointment of the 3rd defendant as the District Head of Dong District must be seen as the adaptability of the existing customs in the area to suit the new circumstances. I accept the new method and I hold that it does not violate the principle of fairness. I would have taken a contrary position if the present village head of Dong was elevated to the position of a District Head or the District was created out of Dong village area only."

The foregoing is the concurrent findings of facts of the two lower Courts which I have no reason to interfere with as they are, not shown to be perverse.

The Learned Appellants' Counsel has submitted that the traditional method in appointing Hama Dong should have been applied in the appointment of a District Head for Dong District.

Learned Counsel advanced the following reasons for his submissions:

B (i) *That Dong District is a new District created vide the Adamawa State (Districts Creation) Law, 1992. Before this time, Dong was under the Batta District with the Hama Batta as the paramount ruler.*

C (ii) *Dong Town is Chieftdom in its own right and has its own separate and distinct traditional method of appointing and installing its Chief without any external interference or intervention.*

D (iii) *Of the 15 villages listed under Paragraph 14 of the Statement of Claim as constituting Dong District, 9 villages are under the direct control and management of the Hama Dong. The Respondents admitted this fact in their Paragraphs 1 and 7 of the Statement of Defence.*

E (iv) *The villages of Lawaru and Bolon have lesser Chieftaincies than that of Dong. PW3 (The 1st Plaintiff now deceased) who was Chief of Dong testified to the fact that he was the superior to both the Ha Lawaru and Ha Bolon as they are Ward Heads while he is a Village Head. (See Page 38 Lines 39-62).*

F (v) *The Ward Heads of Lawaru and Bolon are appointed directly by the Hama Batta without reference to anybody. This is the biggest pointer to the subservient status of these appointees and it cannot therefore by any stretch of the imagination be said as the Trial Court Judge did and the Court of Appeal agreed with him, that they have a co-ordinate jurisdiction with the Chief of Dong. (See 56 Lines G 40 and 41; Page 57 Lines 43; Page 58 Lines 11 and 12).*

(vi) *The centrality of Dong to the District. It is the largest of the 3 major settlements that constitute the District. It is the Headquarters of the District. The District itself takes its name from Dong.*

H (vii) *The 2nd Respondent through the Hama Batta sought to use a part of the tradition of Dong Community to install the 3rd Respondent as the District Head of Dong. Why if we may ask, if it is not the traditional procedure applicable in Dong Town for the appointment of the Chief of Dong that is applicable to the appointment of the District Head of Dong, did the Nzometo (D.W.1) install the 3rd*

as the District Head of Dong District when the latter was appointed by the Hama Batta? There seems to be an inbuilt contradiction in the procedure adopted for the appointment of the District Head of Dong District by the 2nd Respondent. While on the one hand, the Respondents cannot shut their eyes to the pivotal role being played by Dong in the scheme of things in the District, on the other hand the Respondents would like to impose a District Head of Dong contrary to the custom and tradition applicable in Dong and yet would like to go further and use the King making institution of Dong to legitimize its process.

(viii) The evidence, which shows that the Head of the King making institution installed the 3rd Respondent as the District Head of Dong District, does not show that either the Ward Heads of Lawaru or Bolon were consulted in this highly significant exercise. The conclusion to be drawn is that they were inconsequential to the process and in the scheme of things in the District.

(ix) The Chief of Batta as averred to under Paragraph 12 of the Statement of Claim is the Paramount Ruler of Batta District, which existed before the Dong District was carved out of it in 1992. He was made the Head of the District because of his commanding position. The Chief of Dong became a lesser Chief under the Chief of Batta. In the same way, the Chief of Dong is the superior of the Ward Heads of Lawaru and Bolon and the independent traditional procedure employed in his appointment ought to have been the one invoked in this instance to appoint the District Head of Dong District.

(x) Finally, the illegality of a position whereby the Hama Batta cannot unilaterally appoint Hama Dong but he can single-handedly appoint the District Head of Dong who is superior to the Chief of Dong ought not to be lost sight of."

In a sentence or two the précis of the arguments and submissions of the learned counsel for the Appellants is that the traditional method in appointing Hama Dong should have applied as the appointment of a District Head for Dong District. The reason being that the Dong village Area is larger in size in comparison to Lawaru and Bolon Village Areas. It is further argued that Dong Community has a very elaborate and sophisticated king making procedure unlike the other two villages. In considering these arguments, the court below at page 200 of the Record held thus:

"It is in evidence that Dong District was carved out of Batta District with Hama Batta as District Head. The dong District is made up of 3 village areas. There is no evidence to show how that Dong is superior in nomenclature to the other 2 village areas. It is on record that the Hama Batta appoints the Hama Dong after the Kabai selection. It is also on record that the Hama Batta appoints the Ha Lawaru of Lawaru village and Nabali of Bolon village. The three villages are all subordinate to Hama Batta and of co-ordinate jurisdiction. Therefore it cannot be said that Dong is superior to the other two villages as such its traditional method of selection should supercede that other 2 villages."

I cannot fault the findings of the Lower Court as stated above. It is not disputed that Hama Dong is appointed by Hama Batta through the Kabai Dong Ha Lawaru and Ha Nabali are appointed directly by Hama Batta. Evidence of DW1 to DW7 on pages 47 - 69 is overwhelming on this point.

I have earlier reproduced S.7 [1][a] of the said Adamawa State creation of District Law of 1992. It is further set out for purpose of emphasis thus:

"Selection shall be done in accordance with tradition or custom of the area constituting the District and under the supervision of a representative of the council and such security agents as the council may require."

The Appellants were required to establish by proving that the selection of the 3rd Respondent was not done in accordance with the tradition and custom of the area constituting Dong District. How is this done? Section 14 [1] of the Evidence Act, provides ready answer thus:

"14(1). A custom may be adopted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence, the burden of proving a custom shall lie upon the person alleging its existence."

I agree with the finding of the court below that the Appellants have not been able to prove non-compliance with section 7[1], (Supra). They, however, have been able to prove that Dong Village has a tradition of selection which could be adopted for Dong District. In other words they have accepted

that there is a tradition and customary method of selection in the new Dong District.

In the light of the foregoing, I hold that the Appeal lacks merit and it is accordingly dismissed. I hereby affirm the decision of the court below. In the circumstance of this case I make no order as to costs. Parties to bear their own costs. B

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - Galadima, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and should be dismissed. C

In its real essence, the claim of the appellants, as plaintiffs at the trial court, is that the appointment of the 3rd respondent as the District Head of Dong District was not done in compliance with the dictates of section 7 of the Adamawa State Districts Creation Law, 1992. There is the alternative claim for the selection of the District Head of Dong District through Electoral College of the Village Heads of Dong District. D E

The relevant part of section 7 of the stated law reads as follows:-

“7 (1) Where traditional or Customary method of selecting District Heads exist -

(a) Selection shall be done in accordance with the tradition and custom of the area constituting the District and in the presence of representative of the council and such security agents as the council may require F

(2) Where no traditional method of selecting District Heads exist - G

(a) Where a vacancy exists and applications are received by the council, the council shall arrange for the election at any appropriate date and time, and save for security reasons, the election shall be conducted at the Headquarters of the District. H

(b) The Village Heads shall be the selectors.”

Let me observe it here that it has been held that it is not the business of the court to make declaration of customary law relating to the selection or appointment of chiefs. But it is the business of the

court to make a finding of what the customary law is and apply the law for declaration. Under the Evidence Act, a customary law is a matter of fact to be pleaded and proved by evidence unless it has been judicially noticed. See the case of Lipede v. Sonekan (1995) 1 NWLR (Pt.374) 668.

B The learned trial Chief Judge found ‘that there was a traditional method of appointing a head’. That the combination of consultation with members of the Ruling houses of Dong and elders from Lawaru and Bolon, and receiving application from the members of
C the Ruling Houses and the consultation with Nzomoto by the Hama Batta before the appointment of the 3rd defendant/respondent as District Head of Dong must be seen as the adaptability of the existing customs in the area to suit new circumstances. As found by the trial CJ, the three villages are subordinate to Hama Batta.

D The court below agreed with the findings of the learned trial CJ that the method employed in the selection of the 3rd respondent was in order. It further found that it cannot be said that Dong village is superior to the other two villages of Lawaru and Bolon and as such its traditional method of selection should supercede those of the other
E two villages.

The two courts below made concurrent findings on the crucial issue in point. Same have not been shown to be perverse. This court will not interfere with the findings in the prevailing circumstance. See: Kale v. Coker (1982) 12 SC. 252.

F In sum, the appointment of the 3rd respondent is in tune with the dictate of section 7 (1) of the Adamawa State Districts Creation Law, 1992.

G For the above reasons and of course the detailed ones contained in the lead judgment, I too feel that the appeal is devoid of merit and should be dismissed. I order accordingly and hereby endorse all the other consequential orders in the said lead judgment.

H **RHODES-VIVOUR JSC**

I agree. The issue raised by this appeal is whether the appointment of the 3rd respondent was done in compliance with section 7 of the Adamawa State Districts Creation Law, 1992. Section 7 of the Legislation supra provides for two methods of selection or

appointment to the office of District Head in Adamawa State. They are:

“Section 7(1) ... Where traditional or Customary method of selecting District Heads exist

(a) Selection shall be done in accordance with the tradition and custom of the area constituting the District and in the presence of the representative of the Council and such security agents as the council may request....

(2) Where no traditional method of selecting District Head exist

(a) Where a vacancy exists and applications are received by the council, the council shall arrange for the election at an appointed date and time and save for security reasons the election shall be conducted at the Headquarters of the District.”

The learned trial judge found that the selection of the 3rd respondent was done in compliance with the provisions of section 7(1)(a) supra when His Lordship said:

“In the light of the evidence before the court, I hold that traditional method of selecting the District Head of Dong District exists in Dong...

The selection and appointment of the 3rd defendant as the District Head of Dong District is therefore in order and it was and is not unconstitutional”

Affirming the decision of the trial High Court, the Court of Appeal had this to say:

“It follows logically that since the exercise falls squarely under section 7(1) of the Adamawa State Creation District Law, 1992 there is no need of the alternative mode of selection of District Head as envisaged by section 7(2) of the said Law i.e. Electoral college as argued by the appellant.”

Section 7 of the Adamawa State Districts Creation Law, 1992 provides two methods for the selection or appointment of District Head. The trial court was satisfied after examining evidence that the traditional method as provided by section 7(1) supra was used, a fact affirmed by the Court of Appeal. Since the appellants failed to show that in the appointment exercise there was non compliance with section 7 supra, the appointment of the 3rd respondent as District Head is flawless and concurrent findings of facts are forever unassailable.

The Supreme Court is always slow to disturb or interfere with concurrent findings of fact established by the trial court and affirmed by the Court of Appeal, but would be compelled to reverse them and state the correct position of the facts if found that the findings cannot be supported by evidence or are perverse, or that there was miscarriage of justice, or the court overlooked some principle of law or practice. See: *Cameroon Airline v. Otutuizu* 2011 1-2 SC (pt.iii) p.200, *Haruna v. A.G. Federation* 2012 3 SC (pt.iv) p.40, *PDP v. INEC & 3 Ors* 2012 2 SC (pt. iii) p.1.

This court should give weight to the opinion of the courts below, that explains why concurrent findings of facts are rarely disturbed.

After the learned trial judge painstakingly reviewed evidence he came to the correct conclusion that the 3rd respondent was appointed District Head in accordance with the provisions of section 7 of the Adamawa State District Creation Law, 1992. Concurrent findings of the courts below are not perverse. They are correct.

For the brief reasons, as well as those more fully given by my learned brother Galadima, JSC I also dismiss the appeal.

NGWUTA JSC

I read before now the lead judgment just read by my learned brother, Galadima, JSC and I entirely agree with the reasoning and conclusion therein.

Accordingly, I hold that the appeal is devoid of merit. I also dismiss same and affirm the decision of the Court below.

Appeal dismissed.

KEKERE-EKUN JSC

I have had the benefit of reading in draft the judgment of my learned brother, Galadima, JSC, just delivered. I agree that the appeal lacks merit and should be dismissed.

This is an appeal against the concurrent findings of the two lower Courts. The Court of Appeal, Jos Division on 13/10/2007 upheld and affirmed the judgment of the trial court, the High Court of Adamawa State sitting at Yola delivered on 13/12/2006.

The appellants, as plaintiffs at the trial court claimed, inter alia (i) that the traditional method and/or procedure for the selection, appointment and/or election of a District Head for Dong District of Demsa Local Government Area of Adamawa State, was not followed in the appointment of the 3rd defendant (3rd respondent herein) Rev. Benson Atete Kuchi, as the District Head of Dong District. (ii) Alternatively, they sought a declaration that there is no traditional method/procedure applicable in Dong District for the appointment selection and/or election of the District Head of Dong District and therefore the Electoral College of the village Heads of Dong District should have been set up to select the Head of Dong District (see paragraph 36 of the statement of claim at page 15 of the record).

When reliefs are sought in the alternative, the main relief is considered and resolved first. Where a plaintiff set up two or more inconsistent sets of material facts and claims relief in each of them in the alternative, he will be granted such relief as the set of facts he established would entitle him to where the first and principal relief is exhaustive of his remedy there would be no need to consider the alternative relief. See *M.V. Caroline Maersk Vs Nokoy Investments Ltd.* (2002) 12 NWLR (Pt.782) 472 @ 508 - 509 H - E; *Agidigbi Vs Agidigbi* (1996) 6 NWLR (Pt.454) 300 @ 313.

From the appellants' reliefs (i) and the alternative relief (ii), it is evident that only one or the other could succeed. Relief (i) presupposes that there is a traditional method or procedure for the selection which was not followed while relief (ii) is based on the premise that there is no traditional method and therefore an Electoral College ought to have been set up.

Section 7 of the Adamawa State (District Creation) Law of 1992 (as amended) provides for both situations. Section 7 (1) provides for the situation where traditional or customary methods of selecting District Heads exist while Section 7 (2) provides for the situation where no traditional methods for selecting District Heads exist.

In the instant case, the two lower Courts made concurrent findings of fact supported by the evidence on record, that there was a traditional method in existence for the selection of the District Head of Dong. The issue then was whether the method or procedure was followed in the case of the 3rd respondent.

As my learned brother, Galadima, JSC observed in the lead

judgment the lower Court at page 198 of the record agreed with the findings of the learned trial Judge at page 74 of the record to the effect that the method employed in the selection of the 3rd respondent was an adaptation of the existing customs to suit the new circumstance.

B The concurrent findings of the two lower Courts are therefore to the effect that the traditional method of selection was employed in the appointment of the 3rd respondent as the District Head of Dong District. The appellants therefore failed to establish their main relief. In view of the evidence showing that the existing traditional method was followed, there was no need for the court to consider the alternative relief (ii). It is well settled that this court is always reluctant to interfere with concurrent findings of the Lower Courts unless it is shown that the findings are perverse or not supported by the evidence on record, or that there is a manifest error that leads to a miscarriage of justice, or a violation of some principle of law or procedure. See *Amadi v. Nwosu* (1992) 5 NWLR (Pt.241) 273 @ 283 - 284 H - A; *PD.P Vs INEC & Ors* (2012) 2 SC (Pt.111) 1; *Yusuf Vs Adegoke & Anor.* (2007) 4 SC (Pt.1) 126 @ 146 - 147 lines 20 - 20.

E The appellants herein have failed to advance any reason to warrant the interference of this court with the concurrent findings of the two lower courts.

F For these and the more detailed reasons expressed in the lead judgment, I also find this appeal to be unmeritorious. It is hereby dismissed. The judgment of the Lower Court is affirmed. I abide by the order for costs.

G

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