

SUPREME COURT OF NIGERIA
FRIDAY 14TH FEBRUARY, 2014. SC. 238/2008
CORAM:- J. A. FABIYI, B. RHODES-VIVOUR,
M. U. PETER-ODILI, M. D. MUHAMMAD,
J. I. OKORO, JJSC

AKUNWATA OGBOGU MBANEFO APPELLANT
AND
1. NWAKAIBIE HENRY MOLOKWU
2. CHINYELUGO RICHMOND
CHUKWURAH
3. AKUNNIA ERNEST OKAFOR
4. OJINNAKA OKECHUKWU RESPONDENTS
5. NWEZE CASSODU POPGWI
6. UGOKWU FELIX ETUKOKWU
7. AKUNNE ONUORA ONYECHE
(For themselves and as representing
Agbalanze Onitsha)

ACTIONS - Town union - Influence - Appellant being not in good standing with his general Onitsha Community - Cannot restrict his suit to Agbalanze - And is not welcomed to associate with the group - Which is part of Onitsha community (H1)

ACTIONS - Freedom of association - Native society - By voluntarily becoming member of Agbalanze society - Appellant chose to adhere to its regulations - He cannot pick which aspect suits him - And which he is at liberty to do away with (H2)

ACTIONS - Commencement - Necessary party - Action on ostracism proceeded without joining Obi in Council or Onitsha community is of no moment - As the parties are the instrument of making known to appellant - That he could not relate with Agbalanze (H3)

ACTIONS - Commencement - Necessary party - Court will not compel plaintiff to proceed against a party he has no desire to prosecute - Save where inter alia justice cannot be done and case properly determined (H4)

ACTIONS - Commencement - Representative capacity - Failure to obtain leave to sue in that capacity does not vitiate the action - Since 1st respondent as the head - Acted as mouth piece of the Agbalanze (H5)

JUDGMENTS - Error - Effect - It is not every error that vitiates judgment - Since if what court had done met the minimum standard of a good judgment - And there is no proof of miscarriage of justice - The judgment will stand irrespective of style utilized by Judge (H6)

ACTIONS - Pleadings - Purpose of - Pleadings give each party opportunity to prepare for his evidence and arguments on issues raised - And this prevents either side from being taken by surprise (H7)

PLEADINGS - Binding nature - Parties are bound by their pleadings - And evidence which is at variance with averments in pleadings - Goes to no issue and should be disregarded by court (H8)

FAIR HEARING - Test - In trial court fairness is tested by impression of a reasonable person present - While in Court of Appeal the test is whether having regard to rules of court and the law - Justice has been done to parties (H9)

FAIR HEARING - Principles - Hearing is taken to be fair when all parties to dispute are given hearing - Since if one of the parties is refused hearing - The same cannot qualify as fair hearing (H10)

FACTS

Before the High Court of Anambra State Ihiala, plaintiff/appellant instituted this action against defendants/respondents. Appellant's claims are among others for declaration that respondents do not have the authority to stop appellant from participating in Ozo Title ceremonies and from enjoying his rights and privileges as an Ozo titled man at every Ozo title ceremony so long as he is not in breach of any Ozo rules and the Agbalanze Onitsha Constitution. Appellant's contention is that he was ostracized and prevented from participating in functions of the Agbalanze Society by 1st respondent

(President of the Association). Appellant maintained that no reason was given for his ostracism. Appellant testified for himself, called one witness and tendered several exhibits to support his case. Respondents' case is that appellant along with some others breached the peace and harmony of the Onitsha Community in protest to the emergence of Obi Alfred Achebe as the Obi of Onitsha. Respondents stated that the rebellious persons usurped the powers of the said Obi under the Onitsha custom by illegally conferring title on one Dr. Gabriel Emodi.

The situation therefore led to violent reactions in the community which was later calmed by the Ugwunaobakankpa kindred group to which the Appellant belonged. The said kindred suspended appellant and the other rebellious persons. The decision of the kindred was subsequently adopted by entire Onitsha community including the Ozo society (Agbalanze). Respondents maintained that appellant was therefore duly prevented from attending the function of the association since he was in defiance of the entire community's decision. Respondents called four witnesses and tendered some documents in proof of his case. After hearing in the matter, the court dismissed appellant's case on the basis that the Agbalanze Society as part of the Onitsha Indigenous community was bound to maintain its decisions. It held that appellant had not challenged the action of his purported ostracism by the Onitsha indigenous community and thus has not properly proceeded against the rightful party. Aggrieved, appellant went on appeal to the Enugu Division of the Court of Appeal. The appeal was dismissed leading to appellant's further appeal to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the decision by the respondents, made on 26/12/04 asking the appellant to withdraw from the Ozo Ceremony, complied with the Agbalanze Onitsha Constitution, Exhibit A, and whether the Appellant joined issues with the Respondents' in the pleadings with respect to the method of decision taking by Agbalanze Onitsha?

2. Whether the Appellant's right of fair hearing as provided of the Agbalanze Onitsha Constitution and guaranteed by the 1999 Constitution of the Federal Republic of Nigeria, was not breached by the Respondents, and whether the Court of Appeal was correct in

holding, that such a complaint should be directed at the Obi-in-Council and not the Respondents?

3. Is the Agbalanze Onitsha bound from the provisions of its Constitution, Exhibit A, to implement the decisions of the Obi-in-Council?

B 4. Is Ostracism approved by the 1999 Constitution of the Federal Republic of Nigeria, or is it unconstitutional?

5. Whether the Court of Appeal was correct, when it held that Article 26 (d) of Exhibit A is a recognized procedural provision, which did not curtail a Plaintiff's right to court?

C 6. Was the Court of Appeal correct, when it held that the trial court properly evaluated the evidence presented before it?

D **HELD** (Unanimously dismissing the appeal per **PETER-ODILI JSC**)

ACTIONS - Town union - Influence

1. The implication of what I am trying to put across is that the rights of the Appellant cannot be granted in isolation of the rights of other persons within his community.

It is in the light of the facts above, that when the Appellant in pleading and in evidence sought to restrict the action taken against him to only the Agbalanze or I dare say the 1st Defendant who had asked him to withdraw from the assembly, he was merely scratching the surface of what was playing out from a larger picture. As what the Agbalanze Society was in effect telling him was that since he was not in good standing with the general Onitsha Community whose head was the Obi who rules in Council, then the result is that he would not be welcomed to associate within the Agbalanze which does not operate either outside the general Onitsha Community or that of the Obi-In-Council. (p. 598 E)

H *ACTIONS - Freedom of association - Native society*

2. It is to be stated that when the Appellant entered and became a full member of the Agbalanze Society, he did so with the full knowledge and freewill to adhere to the rules and regu-

lations guiding it. Therefore, it is not for him to pick and choose which aspect suits him at a given time and which he is at liberty to do away with. To wish to so choose is to first disengage from the association otherwise, he is bound wholly and entirely to what has been provided by the association for the association or members on how its operations are to be conducted. B

From what is available therefore, the Court of Appeal was right when it held that the Respondents properly considered themselves bound to implement the disciplinary actions against the Appellant. Also, the Court below was right when it held that the Appellant failed to establish that his right to freedom of association was violated by the Respondents since the Agbalanze or the Respondents had not gone outside the stipulations in their Constitution to which the individual members including the Appellant and the group were bound. C D

(pp. 598 H/601 A)

ACTIONS - Commencement - Necessary party

3. The reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action, and the question to be settled therefore must be a question in the action which cannot be effectually and completely settled unless he is a party. E

A “necessary party” to a proceeding is a party whose presence is essential for the effectual and complete determination of the claim before the court. It is a party in the absence of whom the claim cannot be effectually and completely determined. F G

Therefore, the Court below was correct that the Appellant set a case against the wrong persons or in their words, “knocked at the wrong door.” Any action on the ostracism without the Obi-In-Council and the Onitsha Community is a beating about the bush. The action taken against the Respondents being the representatives of the Agbalanze Onitsha is just not it, not that they could not be brought in but that would be in company of the Obi-In-Council and the Onitsha Community since they are the instrument of making known to the H

Appellant, that is if he did not know before that, since the Obi-In-Council had had him ostracized, he could not relate with the Agbalanze. But the action against the Agbalanze Onitsha would not have the effect of a determination effectually and completely which is to be the fate of every proceeding before court to avoid a multiplicity of actions and see that there is an end to litigation. (p. 600 A/ E)

ACTIONS - Commencement - Necessary party - Inclusion

4. The law is settled that the court will not generally compel a plaintiff to proceed against a party whom he has no desire to prosecute unless:-

(a) Where a very strong case is made out, showing that in the particular case justice cannot be done and the case cannot be properly determined without the new defendant being brought in; or

(b) When the plaintiff's case or the existing defendant's case cannot be very effectually and completely determined without the joinder. (p. 600 B)

ACTIONS - Commencement - Representative capacity

5. The appellant had also contended that the 1st Respondent acted on his own motion when he asked the Appellant to withdraw from the Assembly of the Agbalanze and so the Agbalanze was not bound by the decision of the 1st Respondent. This contention is not borne out of the pleadings and evidence. From what is available to court, the 1st Respondent as chairman was merely acting as the mouth piece of the Organization. This is shown from the reiteration by the Secretary of the Society for the Appellant to take a leave from them. Also the other members clearly were privy and in support of the action as expressed by the chairman and Secretary and so the entire Agbalanze was bound by the action as put forward by the 1st Respondent as head of the organization.

It is settled law that the failure to obtain leave to sue in a representative capacity does not vitiate the validity of the action. The mere fact that the court holds that the plaintiff has held himself out as representing others cannot and does not

amount to the court making a person represent other people. It is only if leave is given or an order is made by the court for representation that it can logically be argued that the court is making a person represent other people.

Therefore the Agbalanze was bound upon the action as mouthed by the 1st Respondent as he was representing the Society. He was not acting on his own and the situation is not changed because no leave was sought and obtained before such a representation was made. (p. 601 C)

JUDGMENTS - Error - Effect

6. From these guides stated above as embedded in the judicial authorities I have followed, the Appellant has not been able to show how he was prejudiced or how a miscarriage of justice was occasioned by the failure of the trial judge to consider all his exhibits. It has to be reiterated that it is not every error that would vitiate a judgment since if what the court had done met the minimum standard of a good judgment and nothing to show that a miscarriage of justice had taken place then that judgment will stand, the peculiar style utilized by the judge notwithstanding. That is what had happened in this case leading to the endorsement by the Court of Appeal. (p. 607 D)

Pleadings - Purpose of

7. Also cannot be ignored the issue of the use of the pleadings in relation to the evidence as the Appellant had stated above, It is as if the Court of trial ought not to have referred to the pleadings.

The logic of the rigid rule of pleadings and evidence is based on fairness which fairness is tested by the immutable maxim, audi alteram partem. It follows therefore that the fundamental rule is that each party is given an opportunity to be heard and so no one is expected to prepare for the unknown. The objective of pleading is that either party is given the opportunity or window to prepare his evidence and arguments upon the issues raised by the pleadings and this prevents either side from being taken by surprise. In other words, a case cannot be prepared or contested by either side from an envi-

ronment of ambush and in keeping with this position each party must confine his evidence to only those issues pleaded since there is no room for surprise. (p. 607 G)

PLEADINGS - Binding nature

8. Parties are bound by their pleadings and evidence which is at variance with the averments in the pleadings goes to no issue and should be disregarded by the court. Similarly, evidence in respect of material facts which are not pleaded goes to no issue at trial and should be discountenanced by court. Even when such evidence has been wrongly admitted, the trial court should disregard it as irrelevant to the issues properly raised by the pleadings as it is not open to a party to depart from his pleadings and put up an entirely new case at the hearing. (p. 608 B)

FAIR HEARING - Test

9. A distinction exists in the test of fairness in appeal proceedings as against fairness in proceedings at the Court of first instance. While in the Court of first instance the true test of a fair hearing is the impression of a reasonable person who was present at the trial, whether from his observation, justice has been done in the case, the true test of fair hearing in the Court of Appeal is whether having regard to the rules of Court and the law, justice has been done to the parties. (p. 608 F)

FAIR HEARING - Principles

10. It cannot be over flogged, the cardinal principle of fair hearing and a hearing is taken to be fair when all parties to the dispute are given a hearing or an opportunity of a hearing. If one of the parties is refused a hearing or not given an opportunity to be heard, the hearing cannot qualify as fair hearing. Without fair hearing the principles of natural justice are jettisoned and without the principles of natural justice the concept of the Rule of Law cannot be established and grow in the society. (p. 608 H)

NOTABLE POINTS OF INTEREST

PETER-ODILI JSC

1. Steps in writing judgment

While a trial court has uninhibited discretion in the style of writing its judgment. There are some steps it must follow in reaching a fair judgment which include the following:- B

(a) it should start by first considering the evidence led by the plaintiff to see whether he has led evidence on all the material issues he needs to prove. At this point, there is no question of proof or belief or non-belief of the witness. If the plaintiff failed to lead evidence or if the evidence led by him is so patently unsatisfactory, then he has not made out a prima facie case in which case the trial court does not need to consider the case of the defendant; C

(b) the next step is for the trial Court to evaluate the evidence and in so doing, it was to bear in mind the following processes:- D

(i) on whom the onus of proof lies; and

(ii) whether the particular type of evidence called requires any special approach;

(c) after evaluating the evidence, the trial Court should then make its findings which having regard to the party on whom the onus lies, then determine its ultimate effect. E

It is to be said that any other approach by the trial court different from the methods above stated will give an unfair advantage to the defendants and create an unfair trial with the implication F that the court was unfair in trial to one of the parties to the dispute.

It is note-worthy that a trial court while writing its judgment has to display a clear understanding of the facts in the case, the issues involved and the relevant applicable laws. Again, the court of trial is expected to draw the correct conclusion and an appropriate finding G on the evidence before it. Then follows that the judgment would show a fair and even handed treatment of the materials proffered by the parties before that court. It is for these cautionary steps that a trial court is enjoined not to start its judgment by first considering the defendant's case and its weakness unless it has first considered the H plaintiff's case otherwise it could produce a situation of a pre-judgment before all the facts and materials necessary have been taken in by the court in a balanced process. (p. 605 F)

2. Interpretation of law to extend to rules and regulations of communities

On the last point, I would want to commend what the Onitsha Community had put in place for the good order of their society which
 B other communities would do well to imbibe for the peace and tranquility of various communities in our country. This may be an appropriate stage to state loud and clear that the interpretation of “law” as prescribed under Section 45 of the Constitution cannot be restricted
 C only to statutes of Parliament. It would include the rules and regulations guiding communities which assist them in the maintenance of peace and tranquility. This will certainly minimize those anti social behaviours which spill over to outside specific boundaries creating a breakdown of law and order thereby overloading the security agencies
 D beyond their tour of duty. (p. 609 E)

REPRESENTATION

Chudi Obieze, Udoka Ekwealo (Mrs.) Sylvester N. Odili,
 Kingsley Nnajiaka, Onome Okorodudu, for the Appellant
 E Ben Osaka, I. Ogbogu, for the Respondents

CASES REFERRED TO

- Elufoye v. Halilu (1993) 6 NWLR (pt. 301) 570
- Mortune v. Balonwu (2005) NWLR (pt. 655) 87
- F Raji v. Coker (1981) 5 SC 197
- Onyeso v. Nwadike (1996) 9 NWLR (pt. 231) 240
- Amon v. Raphael Truck & Sons Ltd (1956) 1 All ER 273
- Ige v. Farinde (1994) 7 NWLR (pt. 354) 42
- G Green v. Green (1987) 3 NWLR (pt. 61) 480
- Otapo v. Sumonu (1987) 5 SC 228
- Musa v. Peoples Redemption Party (PRP) (1981) 2 NCLR 763
- Aromire v. Awoyemi (1972) 1 All NLR (pt. 1) 101
- Lajumoke v. Doherty (1969) 1 NMLR 281
- H Otapo v. Sunmonu (1987) 5 SC 228
- Emegokwue v. Okadigbo (1973) 4 SC 113
- Orizu v. Anyaegbunam (1978) 5 SC 21
- Pascutto v. Adecentro (Nig.) Ltd (1997) 11 NWLR (pt. 529) 467

STATUTE REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, ss. 40, 45, 318(1)

LEAD JUDGMENT BY PETER-ODILI JSC

The Appellant as Plaintiff in Suit No. 0/1/2005 in the High Court of Anambra State sitting in Ihiala sued the Respondents as Defendants. That High Court per Anigbogu J dismissed the suit as lacking in merit. Dissatisfied with the decision, the Appellant appealed to the Court of Appeal, Enugu Division which on the 8th July, 2008 after a full hearing dismissed the appeal hence the appeal before the Supreme Court.

FACTS RELEVANT TO THE APPEAL: The Appellant as Plaintiff had claimed as follows in the Statement of Claim:-

“a) A declaration that the Defendants do not have the authority and power to stop the Plaintiff from participating in Ozo Title ceremonies and from enjoying his rights and privileges as an Ozo titled man at every Ozo title ceremony so long as he is not in breach of any Ozo rules and the Agbalanze Onitsha Constitution.

b) An order restraining the Defendants, their agents, privies, workmen and assigns whether by themselves or by others from stopping or interfering with the Plaintiff’s participation in and enjoyment of Ozo title ceremonies as well as his rights and privileges attendant thereto.

c) An order directing the Defendants to pay over to the Plaintiff all his Ozo dues from the 26th December, 2004 up to the time the Defendants or their successors shall have lifted and stopped the unlawful ban.

d) An order nullifying Section 26 (d) of the Agbalanze Onitsha Constitution as being in conflict with the Constitution of the Federal Republic of Nigeria, 1999.

e) N500,000.00 (Five Hundred Thousand Naira) being general damages for depriving the Plaintiff by his Constitutional rights of Freedom of association and Assembly.”

The case as put forward by the Appellant was that he was a regular member of Agbalanze Society of Onitsha which is an association of titled men, having been initiated in 1984. On 26th December, 2004, when on invitation he attended a function of the association

he was summoned to the Executive table, where the Respondents through the 1st Respondent who was the president of the association asked him to leave the function as he had been ostracized. Appellant demanded a document to evidence the action but the 3rd Respondent who was the Secretary of the association asked him to comply with the directive of the president and that the other Respondents were privy and agreeable to the decision.

Though the Appellant emphasized that he was not told the reasons for being asked to withdraw from the functions of the association that was belied both in the pleadings and evidence. Appellant testified himself and called one witness, his nephew and tendered several exhibits, viz:-

- (i) Exhibit A - Constitution of the Agbalanze Society of Onitsha.
- (ii) Exhibit B - Receipt for payment of dues of the association by the Appellant.
- (iii) Exhibit C - Invitation extended to the Appellant to attend the ceremony.
- (iv) Exhibit D - Statement of Claim in Suit No. 0/287/2002.
- Exhibit E - Statement of Claim in Suit No. 0/648/2003.
- Exhibit F - Copy of process in suit No. 0/191m/2002.
- (vii) Exhibit G - Counter affidavit in Suit No. 0/1/2005 in opposition to motion for injunction.

Respondents joined issues with the Appellant by virtue of a Statement of Defence and pleaded that following the successful emergence of Obi Alfred Nnaemeka Achebe as the Obi of Onitsha, a few individuals numbering about 50 embarked on activities considered inimical to the peace and harmony of the community. The Appellant was identified with the group taken as rebellious and the group purportedly conferred the title of "AJIE Ukadiugwu" on one Dr. Gabriel Emodi a few days after the interment of Dr. Ukpabi Aska while the obsequies were still being observed.

Under the Onitsha custom, only the Obi of Onitsha enjoyed the prerogative of conferring a title on an Onitsha indigene and this usurpation of the rights of the Obi and the denigration of the Onitsha customs and tradition created a restive situation in the community as people gathered and resolved to react violently. Peace was maintained when the "Ugwunaobakankpa" kindred group to which the Appellant belonged and which the Appellant based his Ozo title group

met and resolved to take disciplinary actions against the appellant and those in their group, After hearing from them the Ugwunaobakankpa took a decision suspending their activities in the community until they purged themselves of their contempt.

The said kindred as well as others proceeded to the Onitsha indigenous community where the entire community including the Ozo society adopted the decision of the kindred groups. That was the situation on ground when on 26th December 2004 the Appellant in a perceived defiance of the Onitsha Community's decision to which the Agbalanze Society formed an integral part thereof attended the function of the association.

Respondents called four witnesses and tendered some documents, viz:-

"(i) EXHIBIT H - Proceedings in Native Court suit No. 169/26 and 170 wherein the Appellant's father who was a Chief of Onitsha testified that -

(a) Conferment of chieftaincy title in Onitsha is the exclusive preserve of the Obi of Onitsha.

(b) It would be an abomination for a person other than the Obi to purport to perform the rites.

(c) Their family was within the Ugwunaobakankpa kindred of which he was the head at the time.

(ii) EXHIBIT K - Resolution of the Ugwunaobakankpa kindred on the matter of disciplinary action taken against the Appellant and others.

(iii) EXHIBIT L - Resolution of the Onitsha indigenous community on the matter of discipline of Appellant and others."

The learned trial judge duly considered the pleadings and evidence led and dismissed the Appellant's case holding that the Agbanlanze or Ozo Society as part of the Onitsha Indigenous community was bound to maintain its decisions and that the Appellant had not challenged the action of his purported ostracism by the Onitsha indigenous community and thus "knocked on the wrong door."

On appeal, the Court affirmed the decision of the trial Court.

On the 18th November, 2013 day of hearing, learned counsel for the Appellant, Mr. Chudi Obieze adopted the Brief of Argument he settled and filed on 20/3/09. In it were couched six issues for

determination, as follows:-

1. Whether the decision by the respondents, made on 26/12/04 asking the appellant to withdraw from the Ozo Ceremony, complied with the Agbalanze Onitsha Constitution, Exhibit A, and whether the Appellant joined issues with the Respondents' in the pleadings with respect to the method of decision taking by Agbalanze Onitsha?

2. Whether the Appellant's right of fair hearing as provided of the Agbalanze Onitsha Constitution and guaranteed by the 1999 Constitution of the Federal Republic of Nigeria, was not breached by the Respondents, and whether the Court of Appeal was correct in holding, that such a complaint should be directed at the Obi-in-Council and not the Respondents?

3. Is the Agbalanze Onitsha bound from the provisions of its Constitution, Exhibit A, to implement the decisions of the Obi-in-Council?

4. Is Ostracism approved by the 1999 Constitution of the Federal Republic of Nigeria, or is it unconstitutional?

5. Whether the Court of Appeal was correct, when it held that Article 26 (d) of Exhibit A is a recognized procedural provision, which did not curtail a Plaintiff's right to court?

6. Was the Court of Appeal correct, when it held that the trial court properly evaluated the evidence presented before it?

Mr. Chudi Obieze of counsel also adopted the Reply Brief filed on 8/12/09.

Learned counsel for the Respondents, Mr. Ben Osaka adopted the Brief of Argument of the Respondents settled by Dr. Onyechi Ikpeazu SAN, filed on 2/7/09 and deemed filed on 23/9/09.

For the Respondents were crafted four issues for determination stated as follows:-

1. Whether the Court of Appeal was right when it held that the Respondents properly considered themselves bound to implement the disciplinary actions taken against the Appellant. Grounds 3, 4, 5, 8, 11, 12 and 14.

2. Whether the Court of Appeal was right when it held that the Appellant failed to establish that his right to freedom of association was violated by the Respondents. Grounds 6, 7, 10, 13 and 15.

3. Whether the Court of Appeal was right in holding that the

learned trial judge appreciated the point on which issues were joined and duly evaluated the evidence led by the parties. Grounds 9, 16 and 17.

4. Whether the Court of Appeal abandoned issue 2 raised by the Appellant. Ground 2.

The issues as crafted by the Respondent seem easier for me to utilize in the determination of the appeal and so I adopt them to so do. B

ISSUES 1 AND 2:

These issues raise the question whether the Respondents properly considered themselves bound to implement the disciplinary actions taken against the Appellant and if his fair hearing rights were not infringed. C

Mr. Obieze, learned counsel for the Appellant referred to the prayer 24 (a) in their pleading and evidence in Court of the Appellant with reference to Exhibit A, the Agbalanze Onitsha Constitution. He also referred to the evidence of the Appellant and that the Respondents had not afforded the Appellant the right to hear his side of the story they heard before asking him to leave the Ozo ceremony he was present at. That what transpired was the 1st Respondent acting “summarily” in ordering the Appellant to leave the ceremony. He said this procedure was not provided for by the Constitution of the Agbalanze, Exhibit A. E

It was further submitted for the Appellant that since the Appellant is a member of Agbalanze Onitsha, which body has a constitution, Exhibit A which had to be complied with by the Respondents if there was an allegation of misconduct against a member and in this instance the Appellant. That the Agbalanze Society cannot run under the excuse that another body tried the Appellant, so long as they implemented the sanction imposed on the Appellant by that other body especially when that body, the Onitsha Indigenous Community failed to afford the Appellant a fair hearing. F

Mr. Obieze went on to contend that the actions taken against the Appellant by the Respondents amounted to ostracism which by its definition means the act of temporary banishment by popular vote without trial and yet the learned trial judge failed to consider the constitutionality of that act. That by so doing, the Appellant was denied fair hearing and the court should have so considered the matter H

which failure by the trial court ought to have been redressed by the Court below.

It was further submitted, for the Appellant that the Agbalanze Onitsha Association, as an association is not an indigene of Onitsha in order to be bound by the decisions of the Onitsha Community and/or Obi-In-Council as such decisions can only bind human beings such as individual members of the Agbalanze Onitsha in their individual capacities. That the Agbalanze Society is independent of the Obi-In-Council and so not bound by the decisions of the Obi-In-Council to ostracize any one. Also that the Obi-In-Council is an amorphous body not known to law.

Mr. Osaka, learned counsel for the Respondent going along with their Brief of Argument contended that fundamental rights are not absolute but relative since the interest of public order is of utmost importance if it is reasonably justified in a democratic society. He cited Section 45 of the Constitution of the Federal Republic of Nigeria 1999. That it is not the law that only statutes are subject to the exception in the application of the fundamental rights of an individual. That it is not only the laws enacted by the legislature that are for enforcement since regulations are covered when the occasions occur. He cited *Elufoye v. Halilu* (1993) 6 NWLR (Pt. 301) 570 at 599 - 600.

Learned counsel for the Respondents further submitted that the Appellant's principal claims on which the ancillary orders were founded are declaratory in nature and the law is settled that in such a suit the plaintiff must succeed on the strength of his own case and not on the presumed weakness of the defence. That this principle applies even in the face of admission on the part of the defence or failure to controvert the Plaintiff's case. He cited *Mortune v. Balonwu* (2005) NWLR (Pt. 655) 87; *Raji v. Gbadebo Coker* (1981) 5 SC 197, *Onyeso v. Nwadike* (1996) 9 NWLR (Pt. 231) 240 - 241.

Mr. Osaka of counsel said it is conceded that in certain instances the weakness of the defence may support the plaintiff's case, but such cannot be the case in this instance where evidence of the Appellant seeks reliance. That Appellants argument and evidence are in conflict with his pleading and so the case should fail since a party is not allowed at any stage of a case and without amendment being made with leave of court to alter his case. By the same token, learned

counsel for the Respondents said the appeal should fail.

For the Respondents was contended that from the evidence of the Appellant, it was the decision of the Onitsha Community including the Obi - In - Council that was the subject matter of the actions of the Respondents and so the Appellant's failure to join the Onitsha Indigenous Community and the Obi-In-Council was fatal. B The reason being that the issue of whether the Appellant was accorded fair hearing during the proceedings that brought about the decisions in Exhibits K and L cannot be fully and effectually made in the absence of the authors of those instruments. He cited *Re Faleke Mogaji* (1986) 2 SC 431; *Amon v. Raphael Truck & Sons Ltd* (1956) C 1 All ER 273; *Ige v. Farinde* (1994) 7 NWLR (Pt. 354) 42 at 64 - 65; *Green v. Green* (1987) 3 NWLR (Pt. 61) 480.

It was further stated for the Respondents that the evidence offered by the Appellant failed to support the pleadings but enhanced D the Respondent's case as there was awareness on the part of the Appellant of the deliberations among the Agbalanze which resulted in the announcement of a decision by the 1st Respondent.

That the Appellant did not exclude any member of Agbalanze Onitsha in his allegations as constituted in the Statement of Claim. E Therefore, when the Appellant pleaded and gave evidence to the effect that the respondents ostracized him and acted as agents of the Obi-In-Council in that process, it was an indictment on all the members of Agbalanze Onitsha including those from whom he heard the F alleged evidence supplied by PW2, as well as himself. He said the same principle applied to Defendants in an action defended in a representative capacity, He relied on *Otapo v. Sumonu* (1987) 5 SC 228 at 305 - 306.

The Reply on points of law of the Appellant was actually a G recap of the earlier arguments in the Brief of Argument of the Appellants and takes umbrage of a few minor mistakes of the Respondents as to how or who tendered a particular exhibit. There is therefore no point going into them since the substance of the arguments of the Appellant was properly addressed in the Brief of Argument and the H submissions in Court.

In my view the main thrust of the case of the Appellant against the Respondents is that the Respondents do not have the authority and power to stop the Appellant from participating in Ozo Title Cer-

emonies and from enjoying his rights and privileges as an Ozo titled man at every Ozo Title Ceremony, so long as he is not in breach of any Ozo Rules and the Agbalanze Onitsha Constitution.

The stance of the Respondents is that the Appellant as well as some others within Onitsha Community committed acts of rebellion against the constituted authority of the Obi of Onitsha. For the reason above the Ugwunaobakankpa Kindred group to which the Appellant belonged met and decided to take disciplinary actions against the Appellant and those others with whom he acted against the position of the Obi-In-Council and thereby suspended them. That said kindred then proceeded to channel the matter of the rebellion and their suspension of the persons to the Onitsha indigenous community where the entire community including the Ozo Society or Association adopted the sanction imposed by the kindred groups.

The situation above was on ground when on the 26th December, 2004 the Appellant came to the Agbalanze Society to participate at their function and was told he could not participate with other members of the Society having been ostracized by the Onitsha Community to which the Agbalanze Society was an integral part.

This seems an appropriate point at which the salient parts of the judgment of the Court of Appeal would be recast in order to bring to freshness what is being challenged herein. I would provide their decision in bullet point style for ease of reference. They are thus:-

1. Contrary to the contention of the Appellant, contrary to his pleadings and evidence that the act complained of was the unilateral act of the 1st Respondent, a careful perusal of the pleadings and evidence showed that the decision complained of by the Appellant was that of the entire class represented by the named Respondents.

2. On the issue of Appellant not being accorded a fair hearing by the Respondents before the decision compelling him to withdraw from the activities of the society was effected. The Court below held that the necessity of fair hearing should be directed towards the Obi-in-Council which had him suspended from all customary activities including that of the Respondents just like any other individual or group of individuals who are members of Onitsha larger indigenous community and duty bound to comply with the decision of the Obi-In-Council and the Community.

3. On whether or not the Respondents were bound to implement the decision of the Obi-In-Council and the Onitsha Community the Court below was of the view that the Constitution of the Respondents enjoined them to implement all such decision and so it cannot be said that the fundamental right of the Appellant was violated in the prevailing circumstance. B

4. The Court of Appeal held that the trial court was right in holding that the Appellant should first challenge the decision of the Obi-In-Council which precipitated the action of the Respondents and in that vein, the Appellants clearly had knocked on the wrong door. C

5. That Article 26 (d) of the Constitution of the Respondents had not violated the fundamental rights of the Appellant and same was not curtailed as the Appellant posited.

6. That the trial court had duly and properly considered the issues and evaluated the evidence and had made the right conclusion. D

As earlier shown the Appellant is of the view that the Agbalanze Onitsha of which he is a member and at whose meeting or assembly he was asked to withdraw, acted outside their Association's Constitution. I would recast Article 4 (6) of the said Constitution which was admitted as Exhibit A. It states as follows:- E

"As a matter of deliberate and conscious policy, to refrain from any acts which could be reasonable roles or functions traditionally or conventionally appropriate to the OBI IN COUNCIL" F

Article 4(4) of the same Constitution of the Agbalanze provides that *"each Ozo Kindred to identify and take effectual steps to pre-empt and abort any development capable of creating widespread dissension, fictionalization or acrimony with Agbalanze Onitsha in particular and the Onitsha indigenes community in general."* G

What I see from the Constitutional provisions of the Agbalanze in respect to its members and even the society itself is that the Agbalanze as a group or as the individuals within the group must abide with the rules and regulations of the general Onitsha Community and that the Obi-in-Council is the Supreme Body to which all must pay obeisance. Therefore any act that would be regarded or seen as an affront on that Supreme Authority of the Obi-In-Council must be resisted and the Agbalanze distance itself from such act so that the good order in the Community stemming from a single recognized author- H

it is adhered to which would entail the peace and tranquility to which all would enjoy. The opposite of what has been provided for and can be seen from the spirit guiding the Agbalanze Onitsha encapsulated in its Constitution would be a Community of diverse associations each operating independently and without accounting to any one or any superior authority. A situation that would lead to a lack of cohesion in the Society. The Appellant has made much of the breach by the Association of his fundamental human rights as guaranteed by the Constitution. Just like the two Courts below answered, my answer herein is that there is no basis for that claim of the Appellant nor is his freedom of association as enshrined in the Nigerian Constitution 1999 infringed in view of the provisions of Section 45 of the 1999 Constitution which I shall restate below.

"45 (1) Nothing in Sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society -

(a) In the interest of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedom of other persons."

The implication of what I am trying to put across is that the rights of the Appellant cannot be granted in isolation of the rights of other persons within his community.

It is in the light of the facts above, that when the Appellant in pleading and in evidence sought to restrict the action taken against him to only the Agbalanze or I dare say the 1st Defendant who had asked him to withdraw from the assembly, he was merely scratching the surface of what was playing out from a larger picture. As what the Agbalanze Society was in effect telling him was that since he was not in good standing with the general Onitsha Community whose head was the Obi who rules in Council, then the result is that he would not be welcomed to associate within the Agbalanze which does not operate either outside the general Onitsha Community or that of the Obi-In-Council.

It is to be stated that when the Appellant entered and became a full member of the Agbalanze Society, he did so with the full knowledge and freewill to adhere to the rules and regu-

lations guiding it. Therefore, it is not for him to pick and choose which aspect suits him at a given time and which he is at liberty to do away with. To wish to so choose is to first disengage from the association otherwise, he is bound wholly and entirely to what has been provided by the association for the association or members on how its operations are to be conducted. B

In this regard, I would like to apply the principle as enunciated in the case of:- Alhaji Balarabe Musa v. Peoples Redemption Party (PRP) (1981) 2 NCLR 763 at 769 per Adefarasin CJ:-

“The Court would not interfere in a case like this one where members of a voluntary association have come to a decision within the provisions of their Constitution even if the decision is unreasonable, Circumstances have not arisen by which the court ought to intervene. I am therefore not inclined to quash a resolution of the PRP that PRP Governors should no longer attend institutionalized meeting of Governors. To my mind that resolution does not amount to a violation of the fundamental rights provided for under Sections 32, 36, 37 and 38 of the Constitution. It is my view that it is still open for the Applicant to attend any meeting he may wish and no one may stop him. But so far as the party is concerned, it is to have the right to discipline its members. As a voluntary association, it has the right to lay down its own decisions even when they are unreasonable. They should be obeyed or the member in disobedience is entitled to quit. The party is in its own right supreme over its own affairs. This must be said loudly and clearly, unless it has violated its own Constitutional provisions the court would not interfere. The court will not substitute its own will for that of a political party or any other voluntary association. Those who join clubs, or associations or political parties must be made aware of the perils of membership. The majority will must prevail whether it is reasonable or unreasonable.” C D E F G

The situation as I see on ground is that for the Appellant to seek the articulation of his grievance on his ostracism, he ought not as he has done to approach the matter of destroying the plant by merely removing leaves, branches or even the stem. Rather, he should start with the root and proceed in his suit against those whose presence are necessary for the effectual and complete determination of the suit. H

The reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action, and the question to be settled therefore must be a question in the action which cannot be effectually and completely settled unless he is a party. Ige v. Farinde (1994) 7 NWLR (Pt. 354) 42 at 66.

The law is settled that the court will not generally compel a plaintiff to proceed against a party whom he has no desire to prosecute unless:-

(a) Where a very strong case is made out, showing that in the particular case justice cannot be done and the case cannot be properly determined without the new defendant being brought in; or

(b) When the plaintiff's case or the existing defendant's case cannot be very effectually and completely determined without the joinder.

See Ige v. Farinde (1994) 7 NWLR (Pt. 354) 42 at 66 (SC); Aromire v. Awoyemi (1972) 1 All NLR (Pt. 1) 101 at 108; Lajumoke v. Doherty (1969) 1 NMLR 281.

A "necessary party" to a proceeding is a party whose presence is essential for the effectual and complete determination of the claim before the court. It is a party in the absence of whom the claim cannot be effectually and completely determined. Ige v. Farinde (1994) 7 NWLR (Pt. 354) 42.

Therefore, the Court below was correct that the Appellant set a case against the wrong persons or in their words, "knocked at the wrong door." Any action on the ostracism without the Obi-In-Council and the Onitsha Community is a beating about the bush. The action taken against the Respondents being the representatives of the Agbalanze Onitsha is just not it, not that they could not be brought in but that would be in company of the Obi-In-Council and the Onitsha Community since they are the instrument of making known to the Appellant, that is if he did not know before that, since the Obi-In-Council had had him ostracized, he could not relate with the Agbalanze. But the action against the Agbalanze Onitsha would not have the effect of a determination effectually and completely which is to be the fate of every proceeding before

court to avoid a multiplicity of actions and see that there is an end to litigation.

From what is available therefore, the Court of Appeal was right when it held that the Respondents properly considered themselves bound to implement the disciplinary actions against the Appellant. Also, the Court below was right when it held that the Appellant failed to establish that his right to freedom of association was violated by the Respondents since the Agbalanze or the Respondents had not gone outside the stipulations in their Constitution to which the individual members including the Appellant and the group were bound.

The appellant had also contended that the 1st Respondent acted on his own motion when he asked the Appellant to withdraw from the Assembly of the Agbalanze and so the Agbalanze was not bound by the decision of the 1st Respondent. This contention is not borne out of the pleadings and evidence. From what is available to court, the 1st Respondent as chairman was merely acting as the mouth piece of the Organization. This is shown from the reiteration by the Secretary of the Society for the Appellant to take a leave from them. Also the other members clearly were privy and in support of the action as expressed by the chairman and Secretary and so the entire Agbalanze was bound by the action as put forward by the 1st Respondent as head of the organization.

It is settled law that the failure to obtain leave to sue in a representative capacity does not vitiate the validity of the action. The mere fact that the court holds that the plaintiff has held himself out as representing others cannot and does not amount to the court making a person represent other people. It is only if leave is given or an order is made by the court for representation that it can logically be argued that the court is making a person represent other people. See Otapo v. Sunmonu (1987) 5 SC 228 at 244-245.

Therefore the Agbalanze was bound upon the action as mouthed by the 1st Respondent as he was representing the Society. He was not acting on his own and the situation is not changed because no leave was sought and obtained before such a representation was made.

The two issues are resolved against the Appellant.

ISSUES 3 AND 4:

These two issues ask the questions whether the Court of Appeal was right in saying the trial court appreciated the point on which issues were joined and duly evaluated the evidence led by the parties. Also whether the Court of Appeal abandoned Issue 2 raised by the Appellant.

Canvassing for his side of the divide learned counsel for the Appellant said the Appellant pleaded at paragraphs 11, 15 and 16 of the Statement of Claim that he was ostracized by the Respondents and evidence led along those lines. That the Respondents by paragraph 10 (ii) of the Statement of Defence denied the ostracism of the Appellant and led evidence on that. He said both the trial Court and the Court of Appeal found that the Appellant was indeed ostracized and that it was erroneous of the Court of Appeal to hold that the ostracism was not unconstitutional.

Mr. Obieze of counsel said that the actions shown in Exhibits K and L were in contempt of judicial proceedings being acts targeted at those who instituted Court actions to challenge the alleged installation of Nnanyelugo Alfred Achebe as the Obi of Onitsha. That in refusing to interfere in this case the Court of Appeal held that the decision implemented was within the provisions of Exhibit A, the Agbalanze Onitsha Constitution.

He contended further that Section 45 of the 1999 Constitution of Nigeria as well as the proviso to Section 40 of the same Constitution is the only derogation therein. That Section 45 provides that nothing in Section 40 of the 1999 Constitution shall invalidate any law that is reasonably justifiable in a democratic society, in the interest of defence, public safety, public order, public morality or public health etc. That a “law” that is contained in that provision can only be a law within the meaning and intendment of Section 318 (1) of the 1999 Constitution and that law as enacted by the House of Assembly of a State, which the decision of the Respondents does not fall into.

Learned counsel for the Appellant said the Court of Appeal was wrong to hold that the Appellant should have sued another body that did not ask Appellant to withdraw from the Ozo Society. That the appellant had no exchange with the Obi-In-Council and/or the Onitsha Indigenous Community whom the Court of Appeal said he

should sue. Also that the Court of Appeal erred when it held that the trial Court properly evaluated the evidence before it.

In response, Mr. Ben Osaka of counsel for the Respondents contended that parties are bound by their pleadings and evidence not supported by the pleadings go to no issue and must be disregarded. That the trial court and up held by the Court of Appeal was to apply the above principle to the prevailing circumstances which was in order. He cited *George v. Dominion Floor Mills Ltd* (1963) 1 SCNLR 117; *Emegokwue v. Okadigbo* (1973) 4 SC 113; *Orizu v. Anyaegbunam* (1978) 5 SC 21; *Pascutto v. Adecentro (Nig.) Ltd* (1997) 11 NWLR (Pt. 529) 467. B C

It was also submitted for the Respondents that a dispassionate appraisal of the judgment of the judge as found by the Court of Appeal will disclose that he narrowed the issues in line with the pleadings and attended to the relevant evidence led on those narrow issues and duly evaluated same. The fact that the trial judge did not make reference to every document tendered particularly those that dealt with the tussle over the Kingship of Onitsha is immaterial where consideration of those exhibits was not germane to the settled issues. That the Appellant had not shown a miscarriage of justice in the failure of the trial Court to consider all the Exhibits. He cited *Dahiru v. Kamale* (2005) 9 NWLR (Pt. 929) 8; *Duru v. Nwosu* (1989) 4 NWLR (Pt. 113) 24; *Ciroma v. Ali* (1999) 2 NWLR (Pt. 590) 317; *Trade Bank Plc v. Chami* (2003) 13 NWLR (Pt. 836) 156 at 195. D E

Learned counsel for the Respondent submitted that what Appellant classified as abandonment of his issue in that court was really a rephrasing of the issue for that court to easily handle the question embedded in the issue. That the Court was right in what it did and the conclusion it arrived at. F

The grouse of the Appellant here and now is that the Court of trial merely considered the pleadings and did not evaluate the evidence. This position the Court of Appeal did not accept. The trial court had stated in judgment as follows:- G

"In reply Chudi Obieze Esq. of counsel for the Plaintiff urged the court to hold that the decision to send the Plaintiff away was solely taken by DW1 acting, in counsel's words, as "the Judge, the jury and the enforcer." He also stressed the evidence of the Plaintiff that he was not told why he was sent away." H

Taking the last part first, the court believes from the evidence and pleadings of the Plaintiff that he was duly told why he was being sent away. He pleaded and testified to the fact that he was told that the Obi-In-Council had ostracized him and that he should not attend future Ozo ceremonies so long as the ostracism placed on him by the Obi-In-Council is still in place.

It was based on the knowledge of the grounds upon which he was asked to leave that he pleaded at paragraph 15 of his Statement of Claim and also testified before me that -

"It is unconstitutional for the Defendants to enforce an ostracism imposed by the Obi-In-Council on the Plaintiff when such an enforcement is not sanctioned by the constitution of Agbalanze Onitsha."

It seems to me necessary to further quote the learned trial judge on what he did with the testimonies in relation to the pleadings before him. I would hereunder restate the salient portions of the judgment thus:-

"Both the Plaintiff and the Defendants are agreed on the issues that led to the decisions of the Onitsha Indigenous Community and Ugwunaobakankpa Kindred as contained on Exhibits L and K respectively. The issues are that the Plaintiff is alleged to have participated in a ceremony at the residence of Ezenwa Olisa Mortune on 28th November, 2006 where the said Mortune conferred on and installed one Dr. Gabriel Emodi Oziziaani Obi as the Ajie Ukadigwu of Onitsha to take the place of the late Ajie Ukadiugwu Ukpabi Asika, which action was viewed by Onitsha people as a usurpation of the functions of the reigning Obi of Onitsha an abomination and a grave violation of the custom and tradition of Onitsha people."

They are both agreed that (sic) the both the Ugwunaobakankpa Kindred and the Onitsha Indigenous Community took the decision to ostracize the Plaintiff and some other persons as a result of their involvement in the said installation of Dr. Emodi as Ajie by Ezenwa Olisa Mortune."

They are equally agreed that the actions of Olisa Mortune, Dr. Gabriel Emodi, the Plaintiff stem from the fact that these persons do not recognize Igwe Alfred Achebe as the Obi of Onitsha."

The Appellant's position on the lack of proper evaluation of the evidence by the trial court as affirmed by the Court of Appeal is

not supported by the materials available.

Firstly, it was the appellant who tendered the decisions of the Onitsha Indigenous Community and the Ugwunaobankpa kindred when he introduced Exhibit G, the Respondents' counter affidavit where the documents were earlier exhibited:-

Secondly, the same Appellant testified that the signatories to Exhibits K and L which informed the Appellant and his group that since they were subverting order in Onitsha Town, they should refrain from activities of the town including "Ozo", Obibi, "Itu Ugo" which are privileges of title holders, had no right over him.

An objective appraisal of the judgment of the trial judge as found by the Court below will show that the Court of first instance kept within the issues in line with the pleadings and attended to the relevant evidence led on those issues and appropriately evaluated them for use in his decision. This is not detracted from the fact that he did not refer to every document tendered including those that had to do with the tussle over the Kingship of Onitsha which really is not germane to the issues for the determination of the case before court especially since the dispute over the Kingship is sub judice before another court.

What I see in the ground of the Appellant is really on the method adopted by the judge in the writing of his judgment.

To tackle this attack on the judgment of the trial court is to go into what is required in a valid judgment and whether or not what the trial judge did met the necessary standard. I would refer to Trade Bank Plc v. Chami (2003) 13 NWLR (Pt. 836) 158 CA.

While a trial court has uninhibited discretion in the style of writing its judgment. There are some steps it must follow in reaching a fair judgment which include the following:-

(a) it should start by first considering the evidence led by the plaintiff to see whether he has led evidence on all the material issues he needs to prove. At this point, there is no question of proof or belief or non-belief of the witness. If the plaintiff failed to lead evidence or if the evidence led by him is so patently unsatisfactory, then he has not made out a prima facie case in which case the trial court does not need to consider the case of the defendant;

(b) the next step is for the trial Court to evaluate the evidence and in so doing, it was to bear in mind the following pro-

cesses:-

(i) on whom the onus of proof lies; and

(ii) whether the particular type of evidence called requires any special approach;

(c) after evaluating the evidence, the trial Court should then make its findings which having regard to the party on whom the onus lies, then determine its ultimate effect.

It is to be said that any other approach by the trial court different from the methods above stated will give an unfair advantage to the defendants and create an unfair trial with the implication that the court was unfair in trial to one of the parties to the dispute. See *Anuforo v. Obilor* (1997) 12 NWLR (Pt. 530) 661.

It is note-worthy that a trial court while writing its judgment has to display a clear understanding of the facts in the case, the issues involved and the relevant applicable laws. Again, the court of trial is expected to draw the correct conclusion and an appropriate finding on the evidence before it. Then follows that the judgment would show a fair and even handed treatment of the materials proffered by the parties before that court. It is for these cautionary steps that a trial court is enjoined not to start its judgment by first considering the defendant's case and its weakness unless it has first considered the plaintiff's case otherwise it could produce a situation of a pre-judgment before all the facts and materials necessary have been taken in by the court in a balanced process. See *Trade Bank Plc v. Chami* (2003) 13 NWLR (Pt. 836) 158 at 196; *Mogaji v. Odojin* (1978) 4 SC 9; *Anuforo v. Obilor* (1997) 11 NWLR (Pt. 530) 661; *Okpokpo v. Uko* (1997) 11 NWLR (Pt. 527) 94; *Ogundulu v. Philips* (1973) 1 NMLR 267; *Asiemo v. Amos* (1975) 2 SC 57; *Ojogbue v. Nnubia* (1972) 6 SC 227.

It is trite that there is no hard and fast rule or set standard in the style or writing of a judgment. Every judge has the freedom to use the style or method suitable for his purpose, I dare say a peculiar style which enables him perform that duty of judgment writing without undue fuss or stress. In doing that however, it is necessary to remind himself that the components of a proper judgment must be present and equally show that the judgment was a fair, impassionate consideration of how the verdict came to be open from his evaluation of the materials put up by the parties. *Trade Bank Plc v. Chami*

(2003) 13 NWLR (Pt. 836) 158 at 195; Duru v. Nwosu (1989) 4 NWLR (Pt. 113) 24; Crioma v. Ali (1999) 2 NWLR (Pt. 590) 317; N.B.C. Plc v. Borgundu (1999) 2 NWLR (Pt. 591) 408; Sanusi v. Ameyogun (1992) 4 NWLR (Pt. 237) 527.

I find it difficult to resist what this Court said in the case of: Duru v. Nwosu (1989) 4 NWLR (Pt. 113) 24 at 55 per Nnaemeka-Agu, JSC:

“This is why I think it is not too late to say that there is no set standard or set approach to the writing of judgments. For over the years not only have definite parts of a good judgment emerged although they remain usually unnamed, but in particular, there is now only one method for evaluation of evidence in a civil case. Every good judgment begins with an introduction of the parties and the nature of the action, states the issues in controversy, summons up the evidence called by each party, resolves the issues in controversy, and, based upon such resolution of issues, reached a verdict and makes consequential orders.”

From these guides stated above as embedded in the judicial authorities I have followed, the Appellant has not been able to show how he was prejudiced or how a miscarriage of justice was occasioned by the failure of the trial judge to consider all his exhibits. It has to be reiterated that it is not every error that would vitiate a judgment since if what the court had done met the minimum standard of a good judgment and nothing to show that a miscarriage of justice had taken place then that judgment will stand, the peculiar style utilized by the judge notwithstanding. That is what had happened in this case leading to the endorsement by the Court of Appeal.

Also cannot be ignored the issue of the use of the pleadings in relation to the evidence as the Appellant had stated above, It is as if the Court of trial ought not to have referred to the pleadings.

The logic of the rigid rule of pleadings and evidence is based on fairness which fairness is tested by the immutable maxim, audi alteram partem. It follows therefore that the fundamental rule is that each party is given an opportunity to be heard and so no one is expected to prepare for the unknown. The objective of pleading is that either party is given the op-

portunity or window to prepare his evidence and arguments upon the issues raised by the pleadings and this prevents either side from being taken by surprise. In other words, a case cannot be prepared or contested by either side from an environment of ambush and in keeping with this position each party must confine his evidence to only those issues pleaded since there is no room for surprise. Pascutto v. Adecentro (Nig.) Ltd (1997) 11 NWLR (Pt. 529) 467 at 481- 482.

Parties are bound by their pleadings and evidence which is at variance with the averments in the pleadings goes to no issue and should be disregarded by the court. Similarly, evidence in respect of material facts which are not pleaded goes to no issue at trial and should be discountenanced by court. Even when such evidence has been wrongly admitted, the trial court should disregard it as irrelevant to the issues properly raised by the pleadings as it is not open to a party to depart from his pleadings and put up an entirely new case at the hearing. Emegokwue v. Okadigbo (1973) 4 SC 113; Ekpenyong v. Ayi (1973) ECLSR 411; Odumosu v. A. C. B. (1976) 11 SC 261; Njoku v. Eme (1973) 5 SC 293; NIPC Ltd v. Thompson Organisation Ltd (1969) NMLR 99.

The Appellant had raised the issue of being denied his right of fair hearing as provided in the Agbalanze Onitsha Constitution and the 1999 Nigerian Constitution especially section 36 (1) thereof.

A distinction exists in the test of fairness in appeal proceedings as against fairness in proceedings at the Court of first instance. While in the Court of first instance the true test of a fair hearing is the impression of a reasonable person who was present at the trial, whether from his observation, justice has been done in the case, the true test of fair hearing in the Court of Appeal is whether having regard to the rules of Court and the law, justice has been done to the parties. See Alhaji Chief Yekini Otapo (1987) 5 SC 228 at 260 per Obaseki, JSC.

It cannot be over flogged, the cardinal principle of fair hearing and a hearing is taken to be fair when all parties to the dispute are given a hearing or an opportunity of a hearing. If one of the parties is refused a hearing or not given an opportunity to be heard, the hearing cannot qualify as fair hearing.

Without fair hearing the principles of natural justice are jettisoned and without the principles of natural justice the concept of the Rule of Law cannot be established and grow in the society. See *Otapo v. Sunmonu* (1987) 5 SC 228 at 259; In *Ex-Parte Olakunrin* (1985) 1 NMLR 652 at 668.

From the facts of this case as concurrently found by the two Courts below, the Appellant has not been able to establish how his right to fair hearing by the Agbalanze Onitsha had been negatively affected or how his right of freedom of association infringed upon since those rights are not absolute and must operate within the general community to which certain norms to which Appellant and the rest of the members of the Community must conform. This not forgetting the Constitutional provisions of the Agbalanze to which Appellant belonged which laid down in clear terms, that they were subordinated to the Obi-In-Council and the Onitsha Indigenous Community to which they owed allegiance. Therefore, when the Appellant conducted himself outside the rules of the Community which reacted through the Obi-In-Council and the action taken against him, so if he was aggrieved as he is positing, he was taken on a wrong route to getting his voice heard on the matter since he has not approached his grievance against whom he should sue. Shouting on fair hearing without the proper party is an act in futility.

On the last point, I would want to commend what the Onitsha Community had put in place for the good order of their society which other communities would do well to imbibe for the peace and tranquility of various communities in our country. This may be an appropriate stage to state loud and clear that the interpretation of “law” as prescribed under Section 45 of the Constitution cannot be restricted only to statutes of Parliament. It would include the rules and regulations guiding communities which assist them in the maintenance of peace and tranquility. This will certainly minimize those anti social behaviours which spill over to outside specific boundaries creating a breakdown of law and order thereby overloading the security agencies beyond their tour of duty.

The Issues 3 and 4 resolved against the Appellant along with the other issues 1 and 2 going the same way, it is clear that nothing has happened upon which the concurrent findings of the two Courts below can be upset, disturbed or interfered with.

In the final analysis, the appeal lacks merit and I hereby without hesitation dismiss it while I affirm the judgment of the Court below, which affirmed the decision of the trial High Court.

I order N100,000.00 costs to be paid to the Respondents by the Appellant.

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FABIYI JSC

I have read in advance the judgment just delivered by my learned brother - Peter-Odili, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and deserves an order of dismissal.

I wish to chip in a few words of my own in support. The appellant, an Ozo title holder claimed at the trial court that he was ostracized as a member of Agbalanze Society of Onitsha at a function on 26th December, 2004. The appellant along with one Mortune conferred the title of 'Ajie Ukadiugwu' on Gabriel Emordi against Onitsha custom as only the Obi of Onitsha could so do. As extant in Exhibit 'H', a Native court proceedings in 1926, the appellant's father testified that installation of a Chief was the exclusive prerogative of the Obi of Onitsha and that it was an abomination for any other person to purport to do so and that any person, who before the advent of the Europeans indulged in such sordid act, will be lynched. The appellant's kindred group-Ugwunobamkpa suspended the appellant until he purged himself. The decision proceeded to the Obi-in-Council which sat with the entire Onitsha indigenes community as extant in Exhibit L and elected to discipline the appellant by imposing the requisite traditional sanction. Agbalanze society to which the appellant belonged, was part of the exercise and steps taken. The respondents considered themselves bound to implement disciplinary actions taken against the appellant by Onitsha indigenous community and Obi-in-Council.

It was submitted on behalf of the respondents that the action of the appellant as constituted could not have justified a determination as to whether the Onitsha indigenous community, Ugwunobamkpa kindred and the Obi-in-Council afforded the appellant right to be heard. It was contended that as the appellant failed to join them the matter cannot be fully and effectually determined in

H

their absence. The cases of *Ige v. Farinde* (1994) 7 NWLR (Pt. 354) 42 at 64-65 and *Green v. Green* (1957) 3 NWLR (Pt. 61) 480 were cited, *inter alia*.

It occurs to me that the respondents appear to be on a firm stand. The courts below were right when they found that the appellant 'knocked at the wrong door', as it were. As shown, necessary parties were not joined. In their absence the claim of the appellant cannot be fully and effectively determined. Refer to *Ige v. Farinde* (supra) and *Green v. Green* (supra).

Lastly, the two courts below made concurrent findings of fact which appear pragmatic and not perverse. I cannot interfere with same in the prevailing circumstance. See *Anaeze v. Anyaso* (1993) 5 NWLR (pt. 291) 1; *Echi & Ors. v. Nnamani & Ors.* (2000) 5 SC 62.

For the above which has the semblance of the tip of an iceberg and of course the detailed reasons adumbrated in the lead Judgment, I too feel that the appeal lacks merit and should be dismissed. I order accordingly. I endorse all the consequential orders contained in the lead judgment.

RHODES-VIVOUR JSC

I have had the benefit of reading in draft the leading judgment of my learned brother, M. U. Peter-Odili, JSC. I agree with the conclusion that the appeal lacks merit and should be dismissed.

The full facts and circumstances have already been set out in the judgment, and so it need not be repeated. I must observe that the appellant was sanctioned and ostracized by his kindred group called Ugwunobanokpa. This act by his kindred group was endorsed by the obi-in-Council. The learned trial judge found that necessary parties to wit: Ugwunobanokpa, and Obi-in-Council were not sued by the appellant and so his claim to being denied fair hearing must fail. This reasoning and subsequent decision dismissing the appellants case was correctly affirmed by the Court of Appeal.

There are two concurrent finding of facts of the lower courts on the issue of the necessary parties to be before the court before the appellant's claims can be properly considered. It has always been the practice of this court in such circumstances to decline to review the evidence a third time unless there is proof of miscarriage of justice or

a violation of some principle of law or procedure, or if the finding is/ was perverse. See *Cameroon Airlines v. Otutuizu* 2011 12 SC (Pt. iii) p.200, *Olowu v. Nig. Navy* 2011 12 SC (Pt. ii) p.1, *Arowolo v. Olowookere & 2 Ors.* 2011 11-12 SC (Pt. ii) p.98, *Ochiba v. State* 2011 12 SC (Pt. iv) p.79.

B In this case the dismissal of the appellant's claims was done after proper evaluation of evidence and there is no justification whatsoever in interfering with the judgment of the Court of Appeal.

C For these brief reasons and the comprehensive judgment of my learned brother, M. U. Peter-Odili, JSC. I, dismiss the appeal and abide by the order on costs, ordered in the leading judgment.

MUHAMMAD JSC

D I read in draft the lead judgment of my learned brother Peter-Odili JSC. I agree with the reasons and conclusion articulated in the lead judgment that the appeal lacks merit and deserves to be dismissed.

E In support of the very comprehensive judgment I take the privilege of emphasizing in my own words the principle which is overriding in the determination of the appeal.

F It occurs to me that what the appellant seeks of us is the reversal of the concurrent findings of the two courts below that his action is not properly constituted in the absence of the necessary parties thereto.

G The appellant, an Ozo title holder, had commenced action at the trial court asserting the fact of his being ostracized from the Agbalanze society of which he was a member. It was also his case that he was not heard before the suspension was meted out on the 26th December, 2004.

H The respondents as defendants contended that the appellant and one Mortune had, in conferring the title of Ajie Ukadiugwu on Gabriel Emordi, committed an abomination which in the past, by Exhibit "H", justified not only appellant's suspension but his being lynched. Under Onitsha, only the Obi of Onitsha could install a chief. By Exhibit "L" which respondents also rely on, the decision to discipline the appellant was that of the Obi-in-council arrived at in a meeting with the entire members of the Onitsha community in attendance.

Members of the Agbalanze society participated in the deliberations at the Onitsha community meeting held at the instance of the Obi. They considered themselves bound to implement the decision to discipline the appellant. Appellant, they asserted, had the opportunity of being heard.

Following the contention of the respondents that the appellant's suit, in the absence of his Ugwunobankpa kindred and the Obi-in-council, cannot be effectively determined, the trial court acceded to respondents' plea and struck out the action, a decision which the lower court affirmed.

The two courts are right in their concurrent findings that a plaintiff cannot proceed in his matter in the absence of necessary parties. From the evidence on record it is manifest that the Obi-in-council as well as appellant's Ugwunobankpa kindred in the Agbalanze society are necessary parties without whom appellant's action cannot be effectually and completely determined. See *Kalu v. Uzor* (2004) 12 NWLR (Pt. 886) 1 at 33 and *The Registered Trustees of NACHPH & Ors v. MHWUN & Ors* (2008) LPELR-SC 201/2005. The lower court's decision which has proceeded on correct principle cannot, therefore, be said to be perverse. It cannot be interfered with. See *Eholor v. Osayande* (1992) NWLR (Pt. 249) 524 and *Ebolor v. Osayande* (1992) LPELR-8053 (SC).

It is for the foregoing and the fuller reasons in the lead judgment that I also dismiss the unmeritorious appeal and abide by the consequential orders contained in the lead judgment including the one on costs.

OKORO JSC

I had a preview of the judgment of my learned brother, Mary Ukaego Peter-Odili, JSC just delivered with which I agree both in the reasoning and the conclusion that this appeal is devoid of any scintilla of merit and ought to be dismissed. My learned brother has admirably resolved all the salient issues decoded for the determination of this appeal. However, I shall make a few comments only in support of the judgment.

The Appellant's case is that he was a regular member of Agbalanze Society of Onitsha which is an association of titled men.

According to him, he was initiated in 1984. On 26th December, 2004, he attended a function of the association. No sooner than he arrived, he was summoned to the executive table, where the Respondents, acting through the 1st Respondent as President directed him to leave the function and that he had been ostracized. When the Appellant demanded evidence of their action, the 3rd Respondent who is the secretary of the association urged him to comply with the directive of the president and that the other Respondents were privy to the decision.

It was however the stand of the Respondents that following the successful emergence of Obi Alfred Nnaemeka Achebe as the Obi of Onitsha, some individuals numbering about 50, including the Appellant, embarked on activities which were inimical to the peace and harmony of the community. That the Appellant illegally conferred the title of “Ajie Ukaduigwu” on one Dr. Gabriel Emordi immediately after the burial of Dr. Ukpabi Asika. This was against the custom of Onitsha people as it was only the Obi who could confer such title. In a Native court proceedings in 1926 (Exhibit H), the father of the Appellant had testified that installation of a Chief was the exclusive function of the Obi of Onitsha and that it was an abomination for any other person to usurp that function. That before now, the Appellant could have been stoned to death.

It was their further assertion that the Appellant’s kindred group called Ugwunobanokpa suspended the Appellant until he purged himself. The Obi-in-Council who sat with the entire Onitsha indigenes decided to discipline the Appellant with a traditional sanction.

Agbalanze society which the Appellant said he was a member was part of the decision to sanction the Appellant. The Respondents said they were bound to enforce the decision of the Obi-in-Council. According to them, the decision to sanction the Appellant was done by his kindred and endorsed by the Obi-in-Council and not by the Agbalanze Society or the Respondents.

Based on the above facts, the learned trial judge held that the Appellant failed to sue the Onitsha indigenous community or the Obi-in-Council in respect of their decision to ostracize the Appellant and that he “knocked on the wrong door.” The Appellant was not satisfied with that decision wherein he appealed to the Court of Appeal.

The Court of Appeal dismissed the appeal and upheld the decision of the learned trial judge. The Appellant has now appealed to this court.

The gist of the complaint of the Appellant tends to put the blame of his misfortune on the President of Agbalanze Onitsha who, in my opinion was acting on behalf of the Association and not in his personal capacity. And that is why the Appellant sued him and others *“for themselves and as representing Agbalanze Onitsha.”* Therefore, any action taken by him in his capacity as President of Agbalanze Onitsha is a collective action of the Association. It must be noted that it was the Appellant who sued them in representative capacity. In a representative action, it is not only the named Plaintiff or Defendant who are the parties to the action. The others who are not named but whom the Plaintiff or Defendant purports to represent are also parties to the action. They are parties because they are also to be bound by the outcome of the litigation. See *Otapo v. Sunmonu* (1987) 5 SC 228, *Mozie v. Mbamalu* (2006) 15 NWLR (Pt. 1003) 466; *Ayinde v. Akanji* (1988) 1 NWLR (Pt. 68) 70.

I am surprised that the Appellant decided to sue the Respondents in the first place. This is so because the Appellant told the trial court that the decision of the Obi-in-Council is binding on all Onitsha indigenes. Hear him at page 147 lines 16 - 21, of the record of appeal:

“I am familiar with the system of administration in Onitsha. The Obi-in-Council is at the top of the hierarchy of administration. I do not agree that the Obi-in-Council are the custodians of Onitsha tradition and custom. Agbalanze has a role to play in the administration of Onitsha. The decision of Obi-in-Council is binding on all Onitsha Indigenes.” (Words in italics mine for emphasis)

From the very words from the mouth of the Appellant, there is therefore no medium of doubt that the administration of the Onitsha Community rests on the Obi-in-Council and that the Agbalanze is duty bound to implement the decisions of the Obi-in-Council which in a sense, are the decisions of the Onitsha Community being an association of Onitsha indigenes.

In this matter, I agree entirely with the court below that the Appellant “knocked on the wrong door.” The issues canvassed by the Appellant are issues which he ought to have placed at the door

step of the Obi-in-Council. Definitely not on the Respondents. The Appellant in my view is behaving like the proverbial chicken which turned its neck from the person who slaughtered it and looked towards the man who merely removed the feathers. In the instant case, it was the Obi-in-Council which imposed the punishment on the Appellant and according to him, *“the decision of the Obi-in-Council is binding on all Onitsha indigenes.”* It was therefore not out of place for the Respondents to abide by the decision of the community as it affects the Appellant. All the arguments relating to fair hearing, the constitution of Agbalanze vis-à-vis the 1999 Constitution and others are of no moment in view of the facts of this case.

Based on the above, and the more detailed reasons given in the illuminating judgment of my learned brother, Mary Ukaego Peter-Odili, JSC, I agree that the court below came to the right decision in affirming the judgment of the learned trial judge. The appeal, as it turns out, is devoid of any scintilla of merit and is also dismissed by me. I abide by the order as to costs in the lead judgment.

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