

SUPREME COURT OF NIGERIA  
FRIDAY 11TH APRIL, 2014. SC. 65/2001  
CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,  
B. RHODES-VIVOUR, K. B. AKA'AH, J. I. OKORO, JJSC

PRINCE TAJUDEEN OLARENWAJU

(Representing Aketula Ruling

House of Ikire)

..... APPELLANT

AND

1. SIKIRU OYESOMI

2. C.A. OGUNMUYIWA

3. DAUDA LALEKE

(Representing Ladekan Ruling

House of Ikire)

4. PRINCE ATANDA OYEGUNLE

(Representing Onisokan Ruling

House of Ikire)

5. ALHAJI ASIRU ISHOLA

6. ALHAJI MURITALA FALANA

..... RESPONDENTS

(Both Representing Disamu Ruling

House of Ikire)

7. IREWOLE LOCAL GOVERNMENT  
COUNCIL

8. ATTORNEY-GENERAL  
OF OSUN STATE

9. CHIEF DAUDA ARO

10. CHIEF RAFIU MORAKINYO OKE

(Both Representing the Akire

Chieftaincy King Makers)

11. THE GOVERNOR OF  
OSUN STATE

12. OBA OLATUNDE FALABI

(Representing Lambeloye

Ruling House)

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APPEALS - Grounds - Objection - Whether misdirection is of law or fact or mixed law and fact is only relevant - When objector contends that appellant did not obtain leave - Before filing grounds (H1)

CUSTOMARY LAW - Traditional throne - Qualification - To the throne is subject to custom of the people concerned - Which is a fact to be proved by evidence - Save where judicially noticed (H2)

CHIEFTAINCY MATTERS - Registered declarations - Purpose - Is to stop the need for frequent calling of evidence in proof of custom and tradition - In relation to any particular recognized chieftaincy throne (H3)

CHIEFTAINCY MATTERS - Registered declaration - Enactment of - It is duty of executive arm of a State - And where valid - It is deemed to be the customary law regulating selection to throne (H4)

CHIEFTAINCY MATTERS - Registered declaration - Interpretation - Duty of court is to apply provisions of the declaration to facts of the case - As established by evidence (H5)

CHIEFTAINCY MATTERS - Registered declaration - Setting aside - Although court cannot promulgate the declaration - But can set it aside where the same does not correctly declare - Chieftaincy custom and tradition of area concerned (H6)

CHIEFTAINCY MATTERS - Registered declaration - Fair hearing - Court can invalidate the declaration where the making breaches right to fair hearing - Or where it offends any Constitutional provision (H7)

CHIEFTAINCY MATTERS - Ruling house - Recognition of - For family to be recognized as ruling house - It must satisfy chieftaincy committee that it has generally been recognized as such (H8)

APPEALS - Court - Finding - Failure to challenge - As there is no appeal against finding that Aketula was one of direct sons of Kuje - Respondents are deemed to have accepted the finding as correct (H9)

CHIEFTAINCY MATTERS - Traditional throne - Selection - Basis - Only members of ruling house for a particular chieftaincy - Can compete for the throne whenever vacancy exists (H10)

CHIEFTAINCY MATTERS - Throne - Rotational appointment - Where succession is regulated by rotation - Contest for the throne is limited to candidates from ruling house - Whose title it is to occupy the stool (H11)

### FACTS

Before the High Court of Osun (then Oyo) State, plaintiffs/1<sup>st</sup> - 6<sup>th</sup> respondents (representatives of Ladekan, Onisokan and Disamu ruling houses of Akire of Ikire Chieftaincy) commenced this action seeking inter alia for a declaration nullifying the inclusion of Aketula house as a ruling house in the Akire of Ikire Chieftaincy Declaration as the inclusion was in breach of Ikire Customary Law and Tradition. On the other side, 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> defendants/9<sup>th</sup>, 10<sup>th</sup> and 12<sup>th</sup> respondents counter-claimed against 1<sup>st</sup> - 6<sup>th</sup> respondents and 6<sup>th</sup> defendant/appellant. They counter-claim that the 1958 Akire Chieftaincy Ruling House Declaration was not made in accordance with section 4(4) of the Chiefs Law of the State and in breach of the rule of natural justice and therefore defective and void. They also counter-claimed for injunction restraining 1<sup>st</sup> - 6<sup>th</sup> respondents from making use of the said Chieftaincy Declaration and appointing and installing anybody from either Ladekan or Aketula families to fill the vacant stool of Akire of Ikire. The bone of contention in this case is that the controversy by the four ruling houses of Disamu, Ladekan, Lambeloye and Onisokan to the 1958 Chieftaincy Declaration of the Western Regional Government which included Aketula as the 5<sup>th</sup> ruling house to the Akire of Ikire stool led to the setting up of the Obasa Commission of Inquiry by the State Government.

It was recommended by the commission that appellant's ancestor (Aketula) was not a direct son of Kuje (father of the ancestors of the four ruling houses) but son of Disamu. The recommendation was accepted by the Government which directed the Chieftaincy Committee of Iwo Local Government in 1976 to amend the 1958 Declaration. The directive was not carried out thereby leaving the 1958 Chieftaincy Declaration as the existing registered declaration in respect of the Akire of Ikire Chieftaincy Stool. In 1987, the reigning Akire of Ikire passed on and this resulted in tussle for the throne by the contesting ruling houses including Aketula (appellant's ruling house).

Appellant's contention is that his ancestor Aketula was a direct son of Kuje and thus qualified for the throne. At the end of the hearing, the court relying on the rule in *Kojo v. Bonsie* held that Aketula was a son of Disamu who was direct son of Kuje. The court went further to hold that to have included Aketula (who was directly not a son of Kuje) as one of the five ruling houses for the Akire of Ikire Chieftaincy in the 1958 Declaration was a violation of section 4(4) of the Chiefs Law. 1<sup>st</sup> - 6<sup>th</sup> respondents' claims were therefore partly granted. Claim 1(a) in the counter-claim was granted with some amendment. Dissatisfied, appellant appealed to the Court of Appeal Ibadan Division. In its judgment, the court faulted the reliance of the trial court on the case of *Kojo v. Bonsie* in settling the dispute. The court although accepted that Aketula was a direct son of Kuje, but held that it was not a ruling house. The appeal was therefore dismissed. Aggrieved further, appellant appealed to Supreme Court.

#### D ISSUE FOR DETERMINATION

Does the holding by the lower court that Aketula is one of the five direct sons of Kuje qualify his family as one of the ruling houses of Akire of Ikire Chieftaincy so as to validate the 1958 declaration, exhibit "A" having regards to the provisions of section 4(4) of the Chiefs Law?

**HELD** (Unanimously allowing the appeal per ON-  
F NOGHEN JSC)

APPEALS - Grounds - Objection

1. I have carefully gone through the grounds of appeal complained of and the submissions of both counsel and am satisfied that the grounds are proper in law. To me the question whether a misdirection is of law or fact or mix law and fact is only relevant when the contention of an objector to such a ground(s) is that appellant did not obtain the leave of the court before filing or arguing the grounds in the brief. (p. 1435 A)

H CUSTOMARY LAW - Traditional throne - Qualification

2. It is settled law that the issue as to who is qualified to ascend any traditional throne or stool is subject to the customary law and tradi-

tions of the people concerned and that customary law is a question of fact to be proved by calling evidence unless frequent proof of same has made the customary law to attain the legal status of notoriety thereby rendering same judicially noticeable. (p. 1440 A)

CHIEFTAINCY MATTERS - Registered declarations - Purpose B

3. Chieftaincy Declarations came into existence to stop the need for frequent calling of evidence in proof of the customary law and traditions of the people in relation to any particular recognized chieftaincy title/stool or throne.

The purpose of a registered Chieftaincy Declaration is to embody in a legally binding written statement of fact, the customary law of the relevant area in which the method of regulating the nomination and selection of a candidate to fill a vacancy is clearly stated so as to avoid uncertainty. C

The declaration is therefore in the eyes of the law, the tradition, customary law and usages pertaining to the selection and appointment to a particular chieftaincy stool which, of necessity, dispenses with the required need of proof by oral evidence of the relevant custom, tradition and usages each time the need arises to determine the matter/succession to the stool or throne or chieftaincy title. (p. 1440 C/G) D

CHIEFTAINCY MATTERS - Registered declaration - Enactment of

4. It is also settled law that the duty/function/responsibility of making chieftaincy declarations lies with the executive arm of the relevant State government and is usually exercised by a Chieftaincy Committee on behalf of that government and where a declaration in respect of a recognized chieftaincy is validly made and registered, the matter therein stated is deemed to be the customary law regulating the selection of a person to be the holder of the recognized chieftaincy to the exclusion of any other customary usage or rule. (p. 1440 E) F

CHIEFTAINCY MATTERS - Registered declaration - Interpretation H

5. Where such a chieftaincy declaration exists, the duty of the Court is to apply the provisions of the declaration to the facts of the case, as established by evidence, particularly as the court has no power to assume the functions of the Chieftaincy Committee as regards the making or amendment of customary law governing the selection and

appointment of traditional chief. (p. 1441 A)

CHIEFTAINCY MATTERS - Registered declaration - Setting aside

6. Though the court has no power to promulgate declaration of customary law, it has the competence to see whether a Chieftaincy Declaration is in conformity with prevailing customary law and accordingly declare it invalid if it does not. The court therefore has power to set aside a registered declaration that does not correctly declare the chieftaincy custom and tradition of the area concerned.
- From the above exposition of the law, it is very clear that the court has the vires to declare exhibit 'A' invalid or set same aside if the court comes to the conclusion that it should so order. (p. 1441 D)

CHIEFTAINCY MATTERS - Registered declaration - Fair hearing

7. What then are the circumstances in which the court can declare or set aside a registered chieftaincy declaration, such as exhibit 'A'? This court has held that the circumstances in which the court will invalidate a registered chieftaincy declaration include a situation where, in the process of the making of the declaration those who ought to be heard were not so heard or where the making of that declaration is in breach of the right to fair hearing or where it offends any Constitutional provision or Act of the National Assembly or Law of a State etc. (p. 1441 G)

CHIEFTAINCY MATTERS - Ruling house - Recognition of

8. I agree with the lower courts that under the provisions of section 4(4) of the Chiefs Law, supra, for a family/house to be recognized or declared a ruling house it must satisfy the committee that it has generally been recognized as such by the community associated with the chieftaincy, in this case, the Ikire community. (p. 1443 E)

Court - Finding - Failure to challenge

9. There is no appeal against the finding by the lower court that Aketula was one of the direct sons of Kuje, the founder of Akire of Ikire chieftaincy title. The above being the case, it is settled law that the respondents are deemed to have accepted the said finding as being correct and indisputable. (p. 1444 A)

CHIEFTAINCY MATTERS - Traditional throne - Selection - Basis

10. It is settled law that only members of a ruling house for a particular chieftaincy or stool or throne can compete for the title or stool/throne whenever a vacancy exists.

The above being the case, I hold the strong view that the provision in section 4(4) of the Chiefs Law which enacts, inter alia, B

***“...no family is declared as a ruling house which is not generally recognized as such at the time of making the declaration by the Community...”*** simply means that the family to be declared a ruling house must be recognized as one qualified to present a candidate for appointment to the title/stool/throne concerned not that the candidate so presented for the contest must win or have won the coveted title; that is why the fact that none of the past 15 Akires came from the Aketula may be irrelevant for the purpose of section 4(4) of the Chiefs Law as regards Aketula house. What is relevant is whether Aketula House had been presenting candidates to contest for the stool whenever the occasion demands.(pp.1444 G/1445 B) C

CHIEFTAINCY MATTERS - Throne - Rotational appointment E

11. Where, however, succession to the stool is regulated by a recognized pattern of rotation, the contest for the title or stool is usually limited to candidates from the ruling house whose title it is to occupy the stool/throne. It follows therefore, that no one can be a candidate for appointment/selection for a Chieftaincy title, stool or throne except he is a member of a ruling house whose turn it is to occupy the stool/throne, where succession to same is governed by rotation. F

In a situation where there is no recognized pattern of rotation however, the contest is free for all qualified members of the ruling house or houses of the chieftaincy concerned. In such a situation, it is the principle of survival of the fittest that operates for a successful candidate to emerge. (p. 1444 H) G

## REPRESENTATION H

E. ABIODUN ESQ. with O. THANNI ESQ., for the Appellant

J. A. ADEBOYE ESQ for 1st - 6th respondents

CHIEF MICHAEL ABAYOMI, BISADE ALIYU and YETUNDE OL-AWALE, for 8th & 11th respondents

OLANIYI KOSIRE ESQ for 9th, 10th & 12th respondents

CASES REFERRED TO

- Kojo v. Bonsie (1957) 1 WLR 1223  
Kalu v. Mbake (1988) 3 NWLR (pt. 80) 86  
B Nwadike v. Ibekwe (1987) 11-12 SCNJ 72  
Maj. Umoru (Rtd.) v. Zibiri (2003) 6 SCNJ 290  
Adigun v. A-G Oyo State (1987) 1 NWLR (pt. 53) 678  
Edewor v. Umegba (1987) 1 NWLR (pt. 50) 313  
C Imonikhe v. A-G Bendel State (1992) 6 NWLR (pt. 248) 396  
Agbetola v. Lagos Exco (1991) 6 SCN 51  
Mafimisebi v. Ehuwa (2007) 2 NWLR (pt. 1018) 385  
Ajakaiye v. Idehai (1994) 8 NWLR (pt. 364) 504  
Afolabi v. Governor Oyo State (1985) 9 SC 117  
Olowu v. Olowu (1985) 3 NWLR (pt. 13) 372  
D Agbai v. Okogbue (1991) 7 NWLR (pt. 204) 391  
Oladele v. Aromoloran II (1996) 6 NWLR (pt. 453) 180  
Ikine v. Edjerode (2001) 18 NWLR (pt. 745) 446

STATUTE REFERRED TO

- E Chiefs Law of Oyo State Cap. 21 of 1978, ss. 4(4), 8

LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal  
F in appeal No. CA/I/56/901 delivered by the Ibadan Division of the  
Court on the 8th day of May, 2000 in which the Court dismissed the  
appeal of appellant against the judgment of the High Court of Oyo  
State, Holden at Ife Judicial Division in suit No. HIF/99/87 delivered  
on the 9th day of May, 1990 granting the claims of the then plaintiffs  
and the counter claim of the 3rd, 4th and 7th defendants.

G This appeal arose from a Chieftaincy dispute involving the  
IKIRE Stool.

The facts of the case include the following: One Kujelanyo  
shortened to “KUJE” was the original founder of the stool. He had  
four children initially through four wives. The children were Disamu  
who was the eldest; Lambeloye; Ladekan and Onisokan; that in his  
H old age Kuje was given a new wife who later begot another son named  
Aketula whose paternity is said to have been in dispute as some of



the parties to the action claim that he was the son of Disamu - one of the direct sons of KUJE. The parties however, agreed that the mother of Aketula was Kuje's wife and that Aketula was born in the life time of Kuje though the respondents contend that at the time of his birth, Kuje was too old to father a child. However, it is the four sons of Kuje that are said to constitute the ruling houses of Akire/Ikire Stool/Chieftaincy to the exclusion of Aketula and his descendants. B

On the other hand, it is the case of appellant, who was the 6th defendant at the trial, that Aketula, his ancestor, was the direct son of Kuje. C

In 1958, however, the Akire of Ikire Chieftaincy Declaration, exhibit "A" was made by the then Western Region government, which identified the ruling houses of Akire of Ikire Chieftaincy to be five to wit: Lambeloye; Ladekan; Disamu; Onisokan and Aketula resulting in the other four ruling houses protesting to the government against the recognition of Aketula: appellant's ruling house. The government then set up a Commission of Inquiry known as Obasa Commission of Inquiry to inquire into the controversy. The Commission agreed with the four ruling houses that appellant's ancestor Aketula was not a direct son of Kuje, the father of the ancestors of the four ruling houses but of Disamu and consequently recommended the four ruling houses for recognition as the ruling houses for the Akire of Ikire Chieftaincy. D E

The recommendation was accepted by the government which directed the Chieftaincy Committee of Iwo Local Government to amend the 1958 declaration. The directive was given in 1976 but no such amendment was made. F

In 1987, the reigning Akire of Ikire joined his ancestors resulting in a tussle for the throne by the contesting ruling houses including Aketula, the appellant's ruling house, which also resulted in the action giving rise to the appeal. G

The plaintiffs at the trial court are the representatives of three of the four ruling houses of Akire of Ikire Chieftaincy namely Ladekan, Disamu and Onisokan while the 7th defendant is from the 4th ruling house of Lambeloye. The 3rd defendant represented the Akire of Ikire Chieftaincy Kingmakers. The 3rd, 4th and 7th defendants however counter claimed against the plaintiffs and the 6th defendant who is appellant in this Court. H

The claims of the plaintiffs is as follows:

“(1) A declaration that the inclusion of Aketula House as a Ruling House in the Akire of Ikire Chieftaincy Declaration is erroneous in law and in breach of Ikire Customary Law and Tradition and therefore null and void and of no effect:

- (2) A declaration that the Recommendation of Obasa Public Enquiry into Akire of Ikire Chieftaincy Title as regards:-
- (a) The number and identity of ruling houses;
  - (b) The order of rotation;
  - (c) The number and identity of Kingmakers represents the true traditional, correct and customary positions of Akire of Ikire Ruling Houses.”

On the other hand, the 3rd, 4th and 7th defendants counter claimed, inter alia, as follows:-

- “(a) That the 1958 Akire Chieftaincy Ruling House Declaration was not made in accordance to section 4(4) of the Chiefs Law of Oyo State and in breach of the rule of natural justice and therefore defective and void as it was not made according to Ikire Native Law and custom and had been so found by the first, second and fifth defendants, and therefore could not be used for the selection, appointment and installation of a new Akire of Ikire the Stool of which is now vacant, as the inclusion of Aketula family which had never been a distinct ruling house in the 1958 Akire Chieftaincy ruling house declaration and also the exclusion of two important Kingmakers and one Ejemu from the 1958 Declaration and failure of the Chieftaincy Committee to give the ruling houses the opportunity of being heard before the declaration was preferred and approved.

- (b) The order of rotation among the Akire of Ikire Chieftaincy Ruling Houses as recommended by the Obasa Commission of Enquiry and accepted by the Oyo State Executive Council was wrongful; unreasonable, inequitable and against the rule of Natural Justice as the Commission did not resolve the order of rotation on the substantial evidence before it, but based its conclusion on irrelevant and unreasonable facts which did not stand the test of time and therefore the recommendation and acceptance of it was illegal and not made according to Ikire Native Law and custom when the order of rotation among the Akire of Ikire Chieftaincy Ruling Houses should be as follows.

- (1) Lambeloye

- (2) Ladekan
- (3) Disamu
- (4) Onisokan.

(c) Injunction restraining the plaintiffs, the first, the second and fifth defendants from making use of the 1958 Akire of Ikire Chieftaincy House Declaration and appointing/installing anybody from either Ladekan or Aketula families, to fill the vacant stool of Akire of Ikire.” B

It is common ground that there had been fifteen (15) Akires of Ikire since inception of the chieftaincy and that none of them has come from Aketula House: that the yardstick for qualification and/or recognition as a ruling house in respect of the Akire of Ikire Chieftaincy to enable it produce a candidate for appointment/installation as Akire of Ikire is that its lineal ancestor was a direct son of Kuje; that prior to the 1958 declaration, there was no recognized order of rotation for the stool of Akire of Ikire as the contest for the vacant stool, whenever it occurred was a matter of survival of the fittest; that the 1958 Chieftaincy Declaration resulted in protests by the plaintiffs/respondents herein and the 3rd, 4th and 7th defendants/counter claimants/respondents resulting in the Obasa Commission of Enquiry which looked into their complaints; that the recommendations of the said Commission of Enquiry though accepted by the government which in turn instructed the appropriate Chieftaincy Committee to effect the necessary amendments to the 1958 Chieftaincy Declaration was never put into effect thereby leaving the 1958 Chieftaincy Declaration as the existing registered declaration in respect of the Akire of Ikire Chieftaincy Stool. C  
D  
E  
F

At the conclusion of trial, the trial Judge found as follows:-

- (a) that Aketula’s mother was Kuje’s wife; G
- (b) that there is nothing to suggest that Aketula was not born during the life time of Kuje;
- (c) that the presumption that follows from the established facts is that Aketula was Kuje’s son;
- (d) that Aketula’s house had produced two Asalus - the head of Ikire Princes, and. H
- (e) that the evidence tendering to bastardize Aketula as being a son of Disamu was neither cogent nor strong enough to rebut the presumption of legitimacy.

The trial court then proceeded to examine the competing traditional history of the respondents and invoked the rule in *Kojo v. Bonsie* (1957) 1 WLR 1223 at 1226 by resorting to events in recent history with regards to the fact that out of fifteen (15) Akires, none came from Aketula ruling house and consequently concluded that Aketula was a son of Disamu, Kuje's son and not a direct son of Kuje and that to have included Aketula Ruling House as one of the five ruling houses for the Akire of Ikire Chieftaincy in the 1958 declaration was a violation of section 4(4) of the Chiefs Law.

Finally, the court granted claims 1 and 2 of the plaintiffs while claims 2(b), 3 and 4 were dismissed.

On the counter claim of the 3rd, 4th and 7th defendants/respondents, claim 1(a) was granted subject to the deletion of the words

"in breach of the rule of natural justice" and "void" in the third to fourth lines of the claim and the words "failure of the Chieftaincy committee to give the ruling houses the opportunity of being heard before the declaration was prepared and approved", while counter claim 1(b) was granted subject to the excision of the words "and against the rule of natural justice."

Appellant was dissatisfied with that judgment and consequently appealed to the Court of Appeal, Ibadan Division against same which court, in a judgment now on appeal before this court, held, inter alia, that the trial court was in error in applying the rule in *Kojo v. Bonsie* to the competing traditional evidence in the case particularly as the finding of that court on the traditional evidence that Aketula was a direct son of Kuje is more probable than that Aketula was a son of Disamu, Kuje's son as contended by the respondents; that the trial court haven found that it was probable Aketula was a direct son of Kuje settled the dispute as to the paternity of Aketula as a direct son of Kuje; that evidence on the pattern of distribution of the previous fifteen (15) Akires prior to the 1958 Declaration shows that there was no established order of rotation; that under the provisions of section 4(4) of the Chief Law, the mere fact of proof of a family that it is entitled to be declared a ruling house without more would not suffice; that to qualify for such a declaration a family must satisfy the Chieftaincy Committee that it has generally been recognized as such by the community associated with the Chieftaincy and that there was

no evidence that Aketula house was recognized as a ruling house by the Ikire Community in 1958 when the said declaration was made and dismissed the appeal and affirmed the decision of the trial court.

The above judgment, as stated earlier in this judgment gave rise to the instant appeal, the issues for the determination of which have been settled by learned counsel for appellant, EMMANUEL ABIODUN ESQ in the amended appellant brief filed on 17/2/11 as follows:-

“1. Whether there can be any declaration of the Customary Law relating to the selection and appointment of Akire of Ikire outside of the Akire of Ikire Chieftaincy Declaration 1958 (Exhibit ‘A’) in the circumstances of the case now on appeal as affirmed by the Court of Appeal? C

2. Whether or not the court below can affirm the judgment of the trial court granting declaration which were tantamount to an amendment of the Akire of Ikire Chieftaincy Declaration 1958? D

3. Whether the provisions of section 4(4) of the Chiefs Law can be resorted to lead evidence to establish that the Akire of Ikire Chieftaincy Declaration 1958 contains a declaration contrary to the customary law relating to Akire of Ikire Chieftaincy in the circumstances of this case? E

4. Whether without applying the Akire of Ikire Chieftaincy Declaration 1958, it can be said that on the findings of the Court of Appeal, the pleadings before the trial court and the totality of the evidence, the plaintiffs/respondents and the 3rd, 4th and 7th defendants/respondents have proved by cogent evidence that Aketula House is not a Ruling House for the production of a candidate for appointment as the Akire of Ikire? F

5. Whether on the pleadings in this case there is any issue G joined between the parties to this case as to how and/or when a recognized Ruling House for the production of a candidate for the appointment as Akire of Ikire loss its recognition as such by the Ikire Community?”

On the other hand, learned counsel for 1st - 6th respondents, J.A. ADEBOYE ESQ submitted three issues for the determination of the appeal in the Further Amended Respondents Brief of argument filed on 26th October, 2010. H

The issues are as follows:-

“a. Whether or not the provisions of section 4.4 of the Oyo State Law Cap. 21 were properly applied to resolve the issues in dispute in this case on appeal.

B b. Whether or not the trial court’s judgment confirmed by the lower court was based on Obasa Commission of enquiry recommendation and acceptance by the Governor and the Local Government Council in Exhibit B, C and D.

C c. Having regard to section 4.4 of Oyo State Chief Law 1978 Cap. 21, the reliefs claimed and the evidence adduced on record did the inclusion of Aketula House not vitiate the Akire of Ikire Chieftaincy Declaration and rendered it null and void. On behalf of the 8th and 11th respondents, CHIEF MICHAEL A. B. ALIYU submitted a single issue for determination in the Amended 8th and 11th Respondents Brief of Argument filed on 1/4/10.

The issue is:

D “Whether a supposedly ruling house to wit Aketula, which had neither produced any Akire before nor recognized in the remote past as a ruling house, can be so recognized in the 1958 Akire of Ikire Chieftaincy Declaration without infringing section 4(4) of the Chiefs Law of Oyo State.”

E Three issues were formulated by CHIEF A. O. FADUGBA of counsel for the 9th, 10th and 12th respondents in the further amended respondents brief of argument filed on 7/6/10 as follows:-

F “Whether Aketula family, the appellant’s family was properly included as a ruling House according to native law and custom of Ikire in the Akire Chieftaincy Declaration 1958 Exhibit ‘A’ having regard to section 4(1), 4(2) particularly section 4.4 of Oyo State Chief Law Cap 2.1

G Whether Aketula family, the appellant’s family was ever accepted and recognized as Akire Ruling House for the production of candidate for appointment as an Akire from the inception of Akire Royal Dynasty over 400 years.

Whether the lower court confirmed the trial court’s findings and judgment on the bases (sic) of Obasa Commission of enquiry recommendation.”

H It should, however be noted that learned counsel for 1st - 6th respondents raised preliminary objections against the appeal which objections have been argued in the respondent brief of argument.

On the other hand, counsel for 9th, 10th and 12th respondents indicated at page 10 of his brief the intention to rely on preliminary objection “attached to the motion papers filed on 22nd June, 2005 pending before the Supreme Court” but failed to state the nature of the objection, the grounds on which it (they) is (are) based nor did he proffer any argument in support of the said objection in the respondents brief filed in accordance with the rules and practice of this court. B

The above being the case, it is my considered view that there is no competent objection by the 9th, 10th and 12th respondents before this court worthy of any consideration. The purported objection is therefore deemed abandoned or non-existent. C

On the objection of 1st - 6th respondents, it is the submission of learned counsel that grounds 1, 1(a) and 2 of the amended grounds of appeal are not competent as the alleged misdirection complained of are the findings of fact and that any error relating to such findings are not misdirection, relying on *Kalu v. Mbake* (1988) 3 NWLR (pt. 80) 86; *Nwadike v. Ibekwe & ors* (1987) 11 - 12 SCNJ 72 at 100; that the alleged misdirection in law is actually of mixed law and fact as revealed by the particulars supplied. D E

It is his further submission that the grounds do not show the way the lower court misdirected itself nor the effect of the said misdirection on that court’s decision, relying on *Major L. Z. Umoru (RTD) vs. Alhaji Abubakar Zibiri* (2003) 6 SCNJ 290. F

It is also the submission of learned counsel that issues 4 and 5 based on the amended grounds 1, 1(a), and 2 are not related to the grounds as the two issues substantially deal with burden of proof and failure to join the question of recognition as an issue which do not relate to the complaints in the said grounds. Counsel then submitted that the said issues are incompetent and consequently liable to be struck out. G

Learned counsel further submitted that ground 4, also of the amended grounds of appeal, is incompetent for being vague as neither the ground nor the particulars thereof contain or indicate the alleged error of law committed by the lower court and that issues 4 & 5 are not related to ground 4. H

It is also the contention of counsel that issue Nos 1 and 2 are not related to grounds 3, 5 and 6 and consequently incompetent; that

issue 3 is also not related to ground 7 and consequently incompetent, learned counsel opined and finally urged the court to strike out the appeal for being incompetent.

Learned counsel for appellant reacted to the objection by filing what he describes as “Amended Appellant’s Answer to Preliminary Objection by the 1st - 6th respondents” which also contains his reply to the respondent brief on 17/9/13 in which he submitted that grounds 1, 1(a) and 2 of the amended grounds of appeal are competent and that the particulars thereof go to show how and why the lower court came to a wrong decision; that issues 4 and 5 cover grounds 1, 1(a) and 2 which deal with the state of the pleadings and evidence without relying on the 1958 Declaration; that the grounds are based on onus of proof, that ground 4 is also competent as same is not vague and that issues 4 and 5 are covered by grounds 1, 2 and 4 of the amended grounds of appeal; that issues 1 and 2 relate to grounds 3, 5 and 6 as they deal with issues outside section 4(4) of the Oyo State Chiefs Law and Obasa Commission of Enquiry; that issue 5 clearly relates to ground 7 and urged the court to overrule the objection.

The amended grounds of appeal are seven in total and are contained in ten pages. I will however reproduce grounds 1, 1(a) and 2 for ease of reference and consideration. These are as follows:-

“The Court of Appeal in its majority judgment misdirected itself in law when it held thus:

“There is no proof before the trial court that Aketula house was so recognized as a ruling house by the Ikire Community in 1958 when the Akire of Ikire Chieftaincy Declaration was made. Nor was there any proof that it was even so recognized in the remote past”

And thereby came to a wrong decision by dismissing the appellant’s appeal against the judgment of the trial court.

“PARTICULARS OF ERROR

(a) It is common ground and indeed the trial court found that the criterion for the establishment of the ruling house for the Akire of Ikire Chieftaincy was that each of the ruling houses was named after each of the direct sons of Kuje the founder of Akire of Ikire Chieftaincy title.

(b) The trial court found having tested the competing traditional history for the appellant and the others by the rule laid down



in *Kojo v. Bonsie* (1957) 1 WLR 1223 at 1226 held that the case of the other parties that Aketula was not a direct son of Kuje was more probable than the case of the appellant that Aketula was a direct son.

(c) The Court below held that on the state of pleadings and the evidence before the court, the trial court had no difficulty in preferring the traditional history put forth by the defendant/appellant to that of the plaintiff/respondents and the 3rd and 7th defendants/respondents. In the competing versions of the traditional history therefore there was no conflict in the strict sense of the word to warrant the trial judge's recourse to the rule in *Kojo v. Bonsie*. It was held that the trial Judge was wrong to invoke that principle. In essence, the Court of Appeal held that the trial court found that the traditional history for the appellant established that Aketula was a direct son of Kuje.

(d) The unassailable fact that from the finding of the court below referred to in (c) above is that Aketula is a direct son of Kuje the founder of Akire of Ikire Chieftaincy title.

(e) On the premise of the fact stated in (a) above, it is an indisputable fact that the appellant has established by evidence that Aketula is a ruling house for the production of a candidate for the Akire of Ikire Chieftaincy title.

1a. The Court of Appeal in its majority judgment misdirected itself in law by non-direction to the case of the plaintiffs/respondents in the trial court when it dismissed the 6th defendant/appellant's appeal because it held:

"There is no proof before the trial court that Aketula house was so recognized as a ruling house by the Ikire Community in 1958 when the Akire of Ikire Chieftaincy Declaration was made. Nor was there any proof that it was even so recognized in the remote past"

And thereby came to a wrong decision.

"PARTICULARS OF MISDIRECTION IN LAW BY NON-DIRECTION

(a) The main plank of the respondents' case in the trial court was that Aketula was not a direct son of Kuje the founder of Ikire and of Akire of Ikire dynasty but a son of one of his four sons a contention which the trial court accepted but which finding on the point was upturned by the lower court.

(b) The basis or foundation of the respondent's contention that Aketula house was not a ruling house for the presentation of a

candidate for appointment as Akire of Ikire Chieftaincy title was that Aketula was not a direct son of Kuje the founder of Akire of Ikire Chieftaincy dynasty and once that basis or foundation collapses any structure super-imposed on it must necessarily collapse too.

2. The Court of Appeal misdirected itself in law when it held:  
 B “It is my view that on the question of propriety or otherwise of the inclusion of the Aketula House as one of the ruling houses in Akire of Ikire Chieftaincy Declaration 1958, the learned trial Judge was perfectly in order when he considered the established fact of the  
 C House not having produced any of the past 15 Akires in the light of section 4(4) of the Chiefs Law Cap, 21 of the Laws of Oyo State 1978.”

“PARTICULARS

(a) The complaint of the appellant was not whether the trial court was right or wrong to consider the non-production of any of the  
 D past 15 Akires by Aketula House but that the production of a reigning Akire is a different thing from producing a candidate for contest - for the vacant stool of Akire in the spirit of section 2 of the Chiefs Law.

(b) What the trial court found was that it was only a prima facie evidence.

E (c) There is abundant evidence before the trial Court of Aketula’s participation in previous contests for the filling of the vacant stool of Akire of Ikire.”

It is the opinion of the learned counsel for 1st - 6th respondents objectors that the above grounds of appeal are not misdirection in law but findings of fact and if such findings are erroneous they cannot be described as misdirection and that the said findings are at best of mixed law and fact.

I have carefully gone through the grounds of appeal complained of and the submissions of both counsel and am satisfied that  
 G the grounds are proper in law. To me the question whether a misdirection is of law or fact or mix law and fact is only relevant when the contention of an objector to such a ground(s) is that appellant did not obtain the leave of the court before filing or arguing the grounds in the brief.

H In the instant case, the 1st - 6th respondents are not complaining that the grounds being of fact and or mix law and fact as they contend, leave of court was needed and that same was not sought

or obtained.

Secondly it is not the contention of counsel that the grounds of appeal complained of do not arise from the judgment of lower court on appeal or that they do not constitute the ratio decidendi of the said judgment.

In short, I consider the objection a complete waste of the precious time of the court as same has no merit whatsoever and is consequently overruled. <sup>B</sup>

Learned counsel for appellant argued issues 1 and 2 together and submitted that since there is exhibit 'A', a registered declaration of the Customary Law regulating the Akire of Ikire Chieftaincy, the evidence needed to establish that fact becomes straight forward as same is contained in the said registered declaration, exhibit 'A'. For the above submission, Counsel cited and relied on *Adigun v. A-G Oyo State* (1987) 1 NWLR (pt. 53) 678 at 698; that where a declaration in respect of a recognized Chieftaincy is registered, as in the instant case, the matters therein stated are deemed to be the customary law regulating the selection of a person to be the holder of that Chieftaincy to the exclusion of other customary usage or rule, relying on *Edewor v. Umegba* (1987) 1 NWLR (pt. 50) 313 at 327; that exhibit 'A' is exhaustive of the customary law pertaining to the number of the Ruling Houses of the Akire of Ikire Chieftaincy title which should not be jettisoned as urged by the respondents. <sup>C</sup>

It is the submission of counsel that the recommendations of the Obasa Public Enquiry into Akire of Ikire Chieftaincy title 1976 have no evidential value in this case under any law whatsoever as they are matters upon which the Chieftaincy Committee of the Council and the Governor concerned are to take action in accordance with the provision of section 10 of the Chiefs Law which they failed to do; that the trial court in granting the declaration as to the recommendations of the Obasa Commission of Enquiry wrongly assumed the functions of the Chieftaincy Committee and the Governor under the relevant laws and that the lower court wrongly affirmed the said decision. <sup>E</sup>

Counsel then urged the court to resolve issues 1 and 2 in favour of appellant. <sup>F</sup>

On issue 3, it is the submission of counsel for appellant that the provisions of section 4(4) of the Chiefs Law cannot be used to admit evidence to show that the Customary Law in a registered declaration <sup>G</sup>

is contrary to the customary law envisaged by the provisions of section 4(4) of the said law, relying on *Imonikhe v. A-G Bendel State* (1992) 6 NWLR (pt. 248) 396 at 410 - 411; that a registered declaration is not an ordinary subsidiary legislation as held by the lower court as what it states as being the relevant customary law is unassailable by virtue of the provisions of section 9 of the said Chiefs Law, even if the customary law or usage provided therein is faulty; that where the declaration contains what section 4(4) of the Chiefs Law forbids, the solution lies in amendment of the registered registration and urged the court to resolve the issue in favour of appellant.

It is the submission of learned counsel in relation to issues 4 and 5 that where there is no registered declaration making it necessary for evidence to be adduced of the customary law relating to the chieftaincy, it can only be ascertained by reference to the pleadings of the parties and evidence thereon; that it is a common ground in the pleadings that recognition or establishment of a ruling house for the Akire of Ikire Chieftaincy is that the lineal ancestor of the descendants of the ruling house must be a direct son of Kuje, and that the lower court found that Aketula's House was founded by a direct son of Kuje; that the lower court also found that there was no ordered rotation of the chieftaincy among the ruling houses which can explain why Aketula House failed to produce any of the 15 Akires of Ikire and that the courts cannot exercise the power conferred on the Chieftaincy Committee under section 4(4) of the Chiefs Law and urged the court to resolve the issues in favour of appellant and allow the appeal.

Learned counsel for 1st - 6th respondents responded to the above issues by arguing issues 2 & 4 together, which for purposes of emphasis are as follows:-

2. Whether or not the provisions of section 4(4) of the Oyo State Law Cap. 21 were properly applied to resolve the issue in dispute in this case on appeal.

4. Having regard to section 4(4) of Oyo State Chief Law 1978 Cap. 21 the reliefs claimed and the evidence adduced on record did the inclusion of Aketula House not vitiate the Akire of Ikire Chieftaincy Declaration as rendered it null and void?

It is the submission of learned counsel that the finding by the lower court that Aketula was one of the direct sons of Kuje, without

more does not qualify Aketula to be one of the ruling houses for the Akire of Ikire Chieftaincy title having regard to the provisions of section 4(4) of the Oyo State Chiefs Law Cap 21 of 1978. It is the further submission of counsel that the registration of exhibit 'A' under section 8 of the Chiefs Law does not preclude the reopening of the matter by evidence to determine the validity of the said declaration and that the provisions of section 4(4) of the Chiefs Law is not a mere directive to the Chieftaincy Committee and that the correct interpretation of the provisions of sections 4(1), 4(2), 4(3) and 4(4) of the said Law supports the above submission.

Counsel then proceeded to reproduce the above provisions of the law and submitted that section 4(4) is the bedrock of the power or jurisdiction of the Chieftaincy Committee and that it lays down two categories of families to be excluded from Chieftaincy declaration namely a family which is not generally recognized as a ruling house at the time of making the declaration by the community and a family which has been in the remote past so recognized but is not recognized at the time of making the declaration. Counsel then submitted that it is the case of the respondents that Aketula's house has from inception of Akire of Ikire Royal Dynasty never been a ruling house and that evidence was thus needed to establish whether the Chieftaincy Committee complied with the provisions of section 4(4) of the law in the making of the 1958 declaration; that the validity of exhibit 'A' was questioned by the respondents as the same was said not to have been made in accordance with the native law and custom of the people as provided in the said section 4(4) of the law; that the authorities cited and relied upon by counsel for appellant deal with validly made registered declarations and consequently irrelevant in the determination of the instant case; that where a registered declaration is found to contravene the sections of the Chiefs Law, it can be challenged, relying on *Agbetola v. Lagos Exco* (1991) 6 SCN 51 AT 14 - 18 and urged the court to resolve the issues against appellant.

On his issue 2, learned counsel submitted that, there is nowhere in the trial court's judgment that the court based its decision on the recommendation of the Obasa Enquiry into the Akire of Ikire chieftaincy title in 1976; that the trial court gave judgment on the reliefs claimed not on the Obasa recommendation; that even if the judgment as affirmed by the lower court was so based, counsel for

appellant has not shown that the same has resulted in any miscarriage of justice, relying on *Kraus Thompson Organisation Ltd v. University of Calabar* (2004) 4 SCN J. 121.

As stated earlier in this judgment, learned counsel for 8th and 11th respondents submitted a single issue for the determination of the appeal and submitted that for a chieftaincy declaration to be valid, it must be registered; reflect the true custom of the people; exhaustive of the customary law of the community as far as appointment to the stool is concerned; at the time of its making every ruling house must have been given fair hearing, not necessarily oral; it must not be against the principal law to wit, in this case, the Chiefs Law and must not be retrospective in a way that it will impair any vested right acquired under the existing law or declaration and neither must it create a new duty or obligation in respect of transactions already past.

For the above submissions, learned counsel cited and relied on the following cases: *Agbetoba v. LSEC* (1991) 4 NWLR (pt. 188) 664 at 687; *Mafimisebi v. Ehuwa* (2007) 2 NWLR (pt. 1018) 385; *Adegun v. A-G, Oyo State* (1987) 1 All NLR 111 at 133, *Edewor v. Uwegba* (1981) 1 NWLR (pt. 50) 313 at 350; *Ajakaiye v. Idehai* (1994) 8 NWLR (pt. 364) 504 and *Afolabi v. Governor, Oyo State* (1985) 9 SC 117.

It is the further submission of counsel that the lower courts found that exhibit 'A' satisfied all the conditions except that being a subsidiary legislation was against the provisions of the Chiefs Law, Cap 21 section 4(4) thereof by including a house, Aketula, which was found not to be recognized as a ruling house in the remote past nor produced an Akire; that the real issue in contention is whether Aketula was recognized in the remote past as a ruling house in Ikire before the 1958 declaration which the lower courts have found to the contrary; that the lower courts did not make a new declaration by their decisions but subjected exhibit 'A', the 1958 declaration to the search light of the provisions of section 4(4) of the Chiefs Law and urged the court to resolve the issue against the appellant.

On his part, learned counsel for the 9th, 10th and 12th respondents agreed with counsel for 1st - 6th respondents that the issues under consideration centre on the interpretation of the provisions of the Chiefs Law, particularly sections 3; 4(1); 4(2) and 4(4) thereof which counsel proceeded to reproduce. It is the further submission

of learned counsel that though it is settled law that a validly made Chieftaincy Declaration of a recognized chieftaincy is deemed to be the true custom of the recognized chieftaincy in question within the meaning of section 9 of the Oyo State Chiefs Law and has the force of law, a defective or invalid registered chieftaincy declaration which is inconsistent with the enabling law is not so regarded/recognized by law; that appellant's family name was wrongly included in exhibit 'A' as one of the ruling houses contrary to sections 4(2) and 4(4) of the said Chiefs Law; that "Aketula whether considered and accepted as the direct son of Kuje, the ancestor of the 4 established and undisputed Ruling House or not, is not a criterion conferring or making Aketula family of (sic) (an?) Akire Ruling House except the family is so recognized and accepted by the established Ruling Houses, the Kingmakers and the community from the inception of the Royal Dynasty for over 400 years when fifteen Akires had reigned and none came from Aketula family. The family could not emerge in 1958 to be a ruling house."

Finally, counsel urged the court to resolve the issues against appellant.

I hold the strong view that the main issue for consideration and which constitutes the pivot of the appeal is simply: does the holding by the lower court that Aketula is one of the five direct sons of Kuje qualify his family as one of the ruling houses of Akire of Ikire Chieftaincy so as to validate the 1958 declaration, exhibit "A" having regards to the provisions of section 4(4) of the Chiefs Law?

It is settled law that the issue as to who is qualified to ascend any traditional throne or stool is subject to the customary law and traditions of the people concerned and that customary law is a question of fact to be proved by calling evidence unless frequent proof of same has made the customary law to attain the legal status of notoriety thereby rendering same judicially noticeable.

Chieftaincy Declarations came into existence to stop the need for frequent calling of evidence in proof of the customary law and traditions of the people in relation to any particular recognized chieftaincy title/stool or throne.

The purpose of a registered Chieftaincy Declaration is to embody in a legally binding written statement of fact, the customary law of the relevant area in which the method of regulating the nom-



ination and selection of a candidate to fill a vacancy is clearly stated so as to avoid uncertainty. *Olowu v. Olowu* (1985) 3 NWLR (pt. 13) 372; *Agbai v. Okogbue* (1991) 7 NWLR (pt. 204) 391; *Mafimisebi v. Ehuwa* (2007) 2 NWLR (pt. 1018) 385.

It is also settled law that the duty/function/responsibility of making chieftaincy declarations lies with the executive arm of the relevant State government and is usually exercised by a Chieftaincy Committee on behalf of that government and where a declaration in respect of a recognized chieftaincy is validly made and registered, the matter therein stated is deemed to be the customary law regulating the selection of a person to be the holder of the recognized chieftaincy to the exclusion of any other customary usage or rule. The declaration is therefore in the eyes of the law, the tradition, customary law and usages pertaining to the selection and appointment to a particular chieftaincy stool which, of necessity, dispenses with the required need of proof by oral evidence of the relevant custom, tradition and usages each time the need arises to determine the matter/succession to the stool or throne or chieftaincy title.

Where such a chieftaincy declaration exists, the duty of the Court is to apply the provisions of the declaration to the facts of the case, as established by evidence, particularly as the court has no power to assume the functions of the Chieftaincy Committee as regards the making or amendment of customary law governing the selection and appointment of traditional chief. *Oladele v. Aromoloran* II (1996) 6 NWLR (pt. 453) 180; *Ikine v. Edjerode* (2001) 18 NWLR (pt. 745) 446; *Adigun v. A-G Oyo State* (1987) 1 NWLR (pt. 53) 678.

In the instant case, there is no doubt that exhibit 'A' is a registered Chieftaincy Declaration in relation to the Akire of Ikire Chieftaincy Stool made in 1958 and that the said declaration has not been amended even though the Obasa Committee of Enquiry so recommended and the government of Oyo State approved same.

Though the court has no power to promulgate declaration of customary law, it has the competence to see whether a Chieftaincy Declaration is in conformity with prevailing customary law and accordingly declare it invalid if it does not. The court therefore has power to set aside a registered declaration that does not correctly declare the chieftaincy custom and tradition of the area concerned. See *Fasade v. Babalola* (2003) 11 NWLR (pt 830) 26; *Adigun v. A-G,*



Oyo State supra; Ajakaiye v. Idehai (1994) 8 NWLR (pt. 364) 504; Eguamwense v. Amaghizemwen (1993) 9 NWLR (pt. 315) 1; Aku v. Aneku (1991) 8 NWLR (pt. 209) 280.

From the above exposition of the law, it is very clear that the court has the vires to declare exhibit 'A' invalid or set same aside if the court comes to the conclusion that it should so order. B

What then are the circumstances in which the court can declare or set aside a registered chieftaincy declaration, such as exhibit 'A'? This court has held that the circumstances in which the court will invalidate a registered chieftaincy declaration include a situation C where, in the process of the making of the declaration those who ought to be heard were not so heard or where the making of that declaration is in breach of the right to fair hearing or where it offends any Constitutional provision or Act of the National Assembly or Law of a State etc. Obala of Ofan-Aiyegbaju v. Adesina (1999) 2 NWLR D (pt. 590) 163; Adigun v. A-G, Oyo State, supra.

In the instant case, the lower courts relied on the provisions of section 4(4) of the Chiefs Law of Oyo State, 1978 to set aside the inclusion of Aketula House as one of the ruling houses for the Akire of Ikire Chieftaincy Stool in the Akire of Ikire Chieftaincy Declaration, 1958. E

The said section 4(4) of the said Law provides as follows:

"In exercise of their powers under this section a Committee shall ensure that no family is declared as a ruling house which is not F generally recognized as such at the time of making the declaration by the community with which the Chief concerned is associated, and in particular shall not declare as a ruling house a family which has been in the remote past so recognized but is not recognized at the time of making the declaration." G

The reason for so holding is said to be that Aketula House was not generally recognized as a ruling house at the time of the making of the declaration by the community. The question is whether the lower courts are right in holding the above opinion, particularly as no Akire of Ikire, out of the past fifteen (15) Akires had come from Aketula house. H

In contending that the lower courts are wrong in their holding, learned counsel for appellant submitted that the provisions of section 4(4) supra, "are directives to the Chieftaincy Committee exercising

their power under the Chiefs Law to prepare and make a Chieftaincy declaration. It is submitted they do not apply to courts whose business, as is decided in *Adigun v. A-G, Oyo State* in (1987) 1 NWLR (pt. 53) page 678 at 702 is not to make declaration of customary law relating to the selection of Chiefs under the Chiefs Law but to ascertain from the evidence and make a finding of what the customary law is and apply the law for the purpose of claims for declaration...”

I do not agree on the above submission with the greatest respect to learned counsel.

The provision of section 4(4) of the Chiefs Law, *supra* is very clear and unambiguous. It imposes a duty on the Chieftaincy Committee, in the making of a chieftaincy declaration not to declare any family which is not generally recognized as a ruling house by the community at the time of making of the declaration and which has been in the remote past so recognized but is not recognized at the time of the making of the declaration.

At page 108 to 109 of the record, the learned trial Judge found as follows:-

“There is no way the Aketula house can in 1958 be recognized as ruling house entitled to provide a candidate for appointment as an Akire when as at that time after 15 Akires had been appointed from four ruling houses in the entire life of the Chieftaincy none had come from Aketula. To have included Aketula house as one of the ruling houses entitled to provide a candidate for appointment as Akire is no doubt clearly a violation of section 4(4) of the Chiefs Law.”

The above finding was affirmed by the lower court at pages 281 - 282 of the record with the court concluding that the mere fact or proof that a family is entitled to be declared a ruling house without more would not suffice; that to qualify for a declaration as a ruling house under the said section 4(4), the family must satisfy the Committee that it has generally been recognized as such by the community associated with the chieftaincy and which appellant failed to establish.

Whether the lower courts are right in the above holdings remains the question.

I agree with the lower courts that under the provisions of section 4(4) of the Chiefs Law, *supra*, for a family/house to be recognized or declared a ruling house it must satisfy the committee that it

has generally been recognized as such by the community associated with the chieftaincy, in this case, the Ikire community. However, in the instant case, the case of the respondents as to why Aketula house was not recognized as ruling house is that the paternity of Aketula was in dispute in the sense that Aketula was said to be a son of one of the direct sons of Kuje, the founder of Ikire and the Akire of Ikire Chieftaincy; that only the direct sons of Kuje constitute the four ruling houses of Ikire and that none of the 15 Akires who ascended the throne came from Aketula house. The lower court however set aside the finding by the trial court that Aketula was not the son of Kuje by holding that he was. I am of the strong view and I agree with the submission of counsel for appellant that the lower court haven so found and having regard to the fact that the foundation for recognition of the four ruling houses is their ancestors being the direct sons of Kuje which also qualifies Aketula, Aketula is qualified to be one of the ruling houses of Akire of Ikire Chieftaincy as evidenced in exhibit "A".

There is no appeal against the finding by the lower court that Aketula was one of the direct sons of Kuje, the founder of Akire of Ikire chieftaincy title. The above being the case, it is settled law that the respondents are deemed to have accepted the said finding as being correct and indisputable.

What then are the consequences of that finding of fact?

It is the submission of learned counsel for the respondents that it is not enough for the court to find that Aketula was one of the direct sons of Kuje because to satisfy the requirements of the provisions of section 4(4) of the Chiefs Law, appellant has the duty to prove that at the time the chieftaincy declaration of 1958 was made Aketula house was recognized by the Ikire community as one of the ruling houses for that chieftaincy and that Aketula house has never, in the history of the Chieftaincy produced an Akire. To counter that contention, learned Counsel for appellant has argued that what matters is not that Aketula house did not produce any of the 15 Akires of the past but that it participated in the contests for the appointment of the Akires but lost due to the fact that there was no recognized pattern of rotation for succession to the stool and that the contest was usually so intense that it was a survival of the fittest. The lower courts agreed with the contention that there was no recognized pattern of

rotation of succession among the ruling houses. I agree with them as the pattern of distribution of the past 15 Akires among the four ruling houses, prior to the 1958 declaration lends credence to that finding. To me, that finding also lends credence to the case of appellant that competition for the stool at that time was a matter of survival of the  
B fittest.

It is settled law that only members of a ruling house for a particular chieftaincy or stool or throne can compete for the title or stool/throne whenever a vacancy exists. Where, however, succession  
C to the stool is regulated by a recognized pattern of rotation, the contest for the title or stool is usually limited to candidates from the ruling house whose title it is to occupy the stool/throne. It follows therefore, that no one can be a candidate for appointment/selection for a Chieftaincy title, stool or throne except he is a member of a ruling house whose turn it is to occupy the stool/throne, where succession  
D to same is governed by rotation.

In a situation where there is no recognized pattern of rotation however, the contest is free for all qualified members of the ruling house or houses of the chieftaincy concerned. In such a situation, it is the principle of survival of the fittest that operates for a successful  
E candidate to emerge.

The above being the case, I hold the strong view that the provision in section 4(4) of the Chiefs Law which enacts, inter alia,  
“**...no family is declared as a ruling house which is**  
F **not generally recognized as such at the time of making the declaration by the Community...**” simply means that the family to be declared a ruling house must be recognized as one qualified to present a candidate for appointment to the title/stool/throne concerned not that the candidate so presented for the contest must win or have won the coveted title; that is why the fact that none of the past  
G 15 Akires came from the Aketula may be irrelevant for the purpose of section 4(4) of the Chiefs Law as regards Aketula house. What is relevant is whether Aketula House had been presenting candidates to contest for the stool whenever the occasion demands.

There is evidence that they have been doing so. The name of a past contestant from Aketula house was mentioned by the last  
H Akire who also presided over the making of exhibit ‘A’ in 1958, at page 193 of exhibit ‘B’, where the following dialogue took place:

“Adewuyi: Olugboye and Otekola contested the stool together?

Akire: Yes

Adewuyi: This Otekola is from Aketula house?

Akire: Yes.”

Aketula house had thus been nominating a candidate to contest the stool which had always been won by the fittest. To hold otherwise would make nonsense of the finding, at last, that Aketula was one of the five direct sons of Kuje, the founder of Akire of Ikire Chieftaincy title which is a qualification to ascend that stool/throne just like the other four sons. It would be giving Aketula something with one hand while taking it away with the other hand. It would be strange that a house that has produced two ASALUS - head of the princes of Ikire - cannot ascend the throne of which he is a prince!! A recognized prince of Ikire but without the hope or possibility of ascending the throne of his father!! Is it possible that by the customs of the Yoruba race a prince cannot ascend the throne of his father? That will not be justice.

In the case of Adefulu v. Oyesile (1989) 20 NSCC (pt. 111) 371 at 401, this court held thus:

“As a valid nomination by the Ruling House is a sine quo non for either valid submission for selection by the Kingmakers or its approval by the Governor, it follows that any purported selection by the Kingmakers or its approval by the Governor of a person not nominated by the Ruling House is an exercise in futility. The maxim is: *ex nihili nihili fit*” - per Nnaemeka Agu, JSC.

In the circumstances, I hold the view that the inclusion of Aketula house as one of the five ruling houses for the Akire of Ikire Chieftaincy in the 1958 declaration was not in violation of section 4(4) of the Chiefs Law as found by the trial court and affirmed by the lower court.

It is in evidence that the 1958 declaration, exhibit ‘A’ has not been amended in anyway by the appropriate authority and consequently remains the customary law applicable to the nomination, appointment etc of an Akire of Ikire and applicable to the facts of this case.

In the final analysis, I find merit in the appeal which is consequently allowed by me.

Costs follow event, as is usually said but to promote reconciliation among the ruling houses and people of Ikire, I order that parties bear their costs.

Appeal is allowed. The judgments of the lower courts are hereby set aside.

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### GALADIMA JSC

I have had the opportunity of reading in draft the judgment delivered by my learned brother, ONNOGHEN JSC. I am quite satisfied that he had properly examined all the issues raised in the appeal and with due regard to the facts and the relevant chiefs laws in this appeal.

Let me therefore ask particularly, in the circumstances and for the purposes of this appeal, whither lies the justice in this case, if a recognized Prince from Atekula House which had been known to present candidates to contest for the Akire stool, whenever there was vacancy, cannot be allowed to ascend to the throne of his father. I firmly hold that the inclusion of Atekula House as one of the Five Ruling Houses of the Akire Chieftaincy in the 1958 Declaration was not in violation of Section 4(4) of the 1958 Chiefs Law as found by the learned trial judge and affirmed by the Court of Appeal.

The 1958 Declaration has not been amended by any appropriate authority; it remains the dependable Customary Law, applicable to the nomination, confirmation and appointment of AKIRE of IKIRE.

It is in view of the foregoing and the detailed reasons in the leading judgment that I too, find merit in this appeal, and it is allowed. Accordingly, the judgments of the two lower courts are hereby set aside. I make no order as to costs.

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### RHODES-VIVOUR JSC

Ikire is a small Yoruba town in Nigeria. It was founded by Kujelanyo. He had five sons Lambeloye, Ladekan, Disamu, Onisokan, and in his twilight years he had a son named Aketula. In Ikire there exists the Akire of Ikire Chieftaincy stool. In 1958, the now defunct

Government of Western Region made the Akire of Ikire Chieftaincy Declaration. In that Declaration five Ruling Houses were identified for the purposes of choosing an Akire of Ikire. These live houses represent the five sons of Kujelanyo namely, Lambeloye, Ladekan, Disamu, Onisokan and Aketula. Four of these Ruling houses kicked against the recognition of Aketula as a Ruling House and so the Western Region Government set up a Commission of Inquiry to resolve the issue of Ruling Houses in Ikire. B

That Commission found that Kujelanyo had four sons and that there were four Ruling Houses, that Aketula was a grandson C of Kujelanyo, and a son of Disamu. The Government accepted the Commission's findings and directed the chieftaincy committee to amend the 1958 Declaration. No amendments were made despite directives given in 1976.

When the Government of the day accepts the commissions of Inquiry's findings, Government is expected to express its acceptance in a White Paper. A White Paper is a public statement of Government policy. A White Paper in this case should state that the Government accepts the Commission's findings and a directive to the Chieftaincy Committee that amendments be made to the 1958 Declaration to reflect Government's acceptance of the findings of the Commission of Inquiry. Correspondence from the Governor's office to the Chieftaincy Committee or any other form of notification to the said Committee to amend the 1958 Declaration is worthless. In the absence of a White Paper it is no longer conclusive that the Government of the now defunct Western Region accepted the Commission of Inquiry's findings and that to my mind explains why the 1958 Declaration was never amended. The 1958 Declaration is the only legislation approved and registered in respect of Akire of Ikire Chieftaincy Stool. D E F G

It is only after a White Paper is issued to show that Government accepts a Commission of Inquiry's findings that appropriate legislation is made that will show the true intentions of the Government. H

In 1987 there was the need to choose an Akire of Ikire with the death of the reigning one. The Aketula Ruling House was to take part in the selection process by putting forward a candidate of its own. The live issue is:

Whether the Aketula Ruling House is a Ruling House to be

considered when choosing an Akire of Ikire.

Both courts below found that Aketula is not a Ruling House, but the Court of Appeal found and correctly too, that Aketula is a son of Kujelanyo, a fact not disputed as there is no appeal on that fact. In the absence of an appeal on that fact it is established that Aketula  
B is a son of Kujelanyo. The finding is inviolate.

Both Courts below relied on section 4(4) of the Chiefs Law of Oyo State, 1978 to set aside the 1958 Declaration which named Aketula House as one of the Ruling Houses for the Ikire Chieftaincy  
C stool. Section 4(4) supra reads:

“In exercise of their powers under this section a Committee shall ensure that no family is declared as a ruling house which is not generally recognized as such at the time of making the declaration by the community with which the Chief concerned is associated, and in particular shall not declare as a ruling house a family which has been  
D in the remote past so recognized but is not recognized at the time of making the declaration.”

The above is a provision of a legislation. The chiefs law of Oyo State. 1978. It is well settled that where the words used are clear and there is no ambiguity they should be interpreted as they  
E are, given their plain meaning, thereby avoiding embellishments in whatever form. See *Mobil v F.B.I.R.* 1977 3 SC p.53  
*Toriola v. Williams* 1982 7 SC p. 27

To my mind section 4(4) supra means that before the Committee declares a family a Ruling House to be considered in the  
F selection of an Akire of Ikire such a family must be recognized by the people of Ikire at the time the Committee makes the declaration. Such recognition is conclusive where it can be shown that the family participated in the selection of an Akire of Ikire by sponsoring its own candidate.

The five Ruling Houses of which Aketula is one of them does not adopt the rotation process for the selection of an Akire of Ikire, rather the selection boils down to survival of the fittest, and that explains why the Aketula House has been unsuccessful despite taking part in the selection of the past Akires’ of Ikire. The fact that Aketula  
G Ruling House produced two heads of the princes of Ikire and that  
H Aketula is one of the sons of the founder of Ikire, Kujelanyo, shows beyond any lingering doubt that the Akire of Ikire declaration of



1958 is not contrary to section 4(4) of the Chiefs Law. Both courts below were in the circumstances wrong. Aketula is a biological son of the founder of Ikire, Kujelanyo. He has equal rights as his brothers, Lambeloye, Ladekan, Disamu and Onisokan to produce candidates for the stool of Akire of Ikire.

For these brief reasons, as well as those comprehensively given by my learned brother Onnoghen, JSC I would allow the appeal. B

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#### AKA' AHS JSC

My learned brother, Onnoghen JSC, made a copy of his leading judgment available to me in draft which I read. He scrupulously dealt with the issues arising in the appeal. I am in complete agreement with his reasoning and conclusion that the appeal is meritorious and should be allowed. The preliminary objection raised as to the grounds of appeal being of mixed law and fact has no merit and is accordingly overruled. C

The objection could be of consequence if the attack is that the grounds of appeal are incompetent because leave of court was not sought before they were filed. But since this is not the basis for the objection, it fails and is accordingly overruled. E

The facts leading to this appeal are as follows:

The controversy by the four ruling houses of Disamu, Ladekan, Lambeloye and Onisokan to the 1958 Chieftaincy Declaration of the Western Regional Government which included Aketula as the 5th Ruling House to the Akire of Ikire stool led to the setting up of the Obasa Commission of Inquiry by the Oyo State Government. That Commission recommended that the appellant's ancestor, Aketula was not a direct son of Kujelanyo which was shortened to Kuje, the father of the ancestors of the four ruling houses but of Disamu. The recommendation was accepted by the Government which directed the Chieftaincy Committee of Iwo Local Government in 1976 to amend the 1958 Declaration but it was not effected. In 1987, the reigning Akire of Ikire passed on and this resulted in tussle for the throne by the contesting ruling houses including Aketula, the appellant's ruling house and this led to the action culminating in this appeal. F  
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The 1st - 5th Plaintiffs being the head and representatives of the Ladekan Ruling House of Ikire took out a Writ of Summons on

25/11/1987 in Suit No. HIF/99/87 in the Ile - Ife Judicial Division of the then Oyo State High Court against the Irewole Local Government, the Attorney - General of Oyo State, Chief Liasu Oyekunle the Asalu of Ikire, Chief N. M. Ladapo, the Baase of Ikire and the Military Governor of Oyo State. The plaintiffs' sought the following declarations and injunctive reliefs:-

(1) A declaration that the purported inclusion of AKETULA HOUSE in the Akire of Ikire Chieftaincy Declaration 1958 as a separate and distinct Ruling House is erroneous in Law and in breach of Ikire Customary Law and Tradition and therefore null and void and of no effect.

(2) A declaration that the Recommendation of Mr. B. A. Obasa's Public Enquiry into AKIRE of IKIRE Chieftaincy Title in 1976 as regards to:-

(a) The Number and identity of Ruling House (sic)

(b) The Order of Rotation Represents the true traditional, correct and customary positions of the Akire of Ikire Ruling House.

(3) A further declaration that the Plaintiffs' Ruling House 'LADEKAN' is the next entitled and eligible to provide a suitable candidate for the new vacant stool of Akire of Ikire.

(4) An Order of injunction restraining all the Defendants, their agents, servants, privies and any other person or persons acting through them from calling for nominations, appointing, approving and/or installing of any candidate or candidates from any other Ruling Houses except from the Plaintiffs' ruling House 'LADEKAN'.

In the suit the 3rd and 4th Defendants represented the Akire Chieftaincy King Makers. On 17/2/1988 the Court granted an application substituting Chief Liasu Oyekunle, the Asalu of Ikire with Chief Samuel Ayoola, the Are of Ikire.

On the same date the Court granted the application for Prince Buraimo Olanrewaju representing the Aketula Ruling House to be joined as 6th Defendant while Murano Oyebami representing Lambeloye Ruling House was joined as 7th Defendant. Alhaji Raimi Owolabi, Head of Onisokan Ruling House, Alhaji Kasali and Rasaki Ogunlowo both representing Disamu Ruling House were joined as 6th, 7th and 8th Plaintiffs respectively.

Although the plaintiffs at the trial court represented three of the four ruling houses of Akire of Ikire Chieftaincy namely Ladekan,

Disamu and Onisokan, the 7th defendant who represented Lambeloye ruling house joined the 3rd and 4th defendants to counter claim against the plaintiffs and 6th defendant (now appellant) for the following reliefs:-

“(a) That the 1958 Akire Chieftaincy Ruling House Declaration was not made in accordance to section 4 (4) of the Chiefs Law of Oyo State and in breach of the rule of natural justice and therefore defective and void as it was not made according to Ikire Native Law and Custom and had been so found by the first, second and fifth defendants, and therefore could not be used for the selection, appointment and installation of a new Akire of Ikire, the stool of which is now vacant, as the inclusion of Aketula family which had never been a distinct ruling house in the 1958 Akire Chieftaincy ruling house declaration and also the exclusion of two important King Makers that is Chief Oosa, the head of Akire of Ikire King Makers and one Ejemu from the 1958 Declaration and failure of the Chieftaincy Committee to give the ruling houses the opportunity of being heard before the declaration was prepared and approved.

(b) The Order of rotation among the Akire of Ikire Chieftaincy Ruling House as recommended by the Oyo State Executive Council was wrongful, unreasonable, inequitable and against the rule of Natural justice as the Commission did not resolve the order of rotation on the substantial evidence before it but based its conclusion on irrelevant and unreasonable facts which did not stand the test of time and therefore the recommendation and acceptance of it was illegal and not made according to Ikire native law and custom when the order of rotation among the Akire of Ikire Chieftaincy Ruling Houses should be as follows:-

- (1) Lambeloye
- (2) Ladekan
- (3) Disamu
- (4) Onisokan

2. Injunction restraining the Plaintiffs, the first, the second and fifth defendants from making use (sic) the 1958 Akire of Ikire Chieftaincy House Declaration and appointing and installing anybody from either Ladekan or Aketula families to fill the vacant stool of Akire of Ikire”.

The facts which are not in contention are that since the found-

ing of the Akire Chieftaincy, there have been fifteen (15) Akires of Ikire and none of them came from Aketula but the yardstick for qualification and/or recognition as a ruling house to enable it produce a candidate for appointment/installation as Akire of Ikire is that its lineal ancestor was a direct son of Kuje and prior to the 1958 declaration  
 B there was no recognised order of rotation for the stool. Whenever the stool became vacant, whoever emerged as the Akire of Ikire was a matter of the survival of the fittest. The 1958 Chieftaincy Declaration resulted in protests by the 3rd, 4th and 7th defendants/counter  
 C claimants and this led to the setting up of the Obasa Commission of Enquiry whose recommendations were accepted by the Oyo State Government which in turn directed the Chieftaincy Committee of Iwo Local Government to amend the 1958 declaration but was not carried out since 1976.

The impediment to Aketula being considered a Ruling House  
 D was that he was not a direct son of Kuje but Disamu. However the evidence adduced pointed to the fact that Aketula was born to Kuje in his old age by his youngest wife and no evidence was produced to show that Kuje disowned him as his child. Since Aketula was a  
 E direct son of Kuje he qualified to be a ruling house and indeed that house had produced two Asalus - the head of Ikire princes but none succeeded in becoming the Akire of Ikire. If that was the case, since the 1958 Declaration sought to introduce order in the appointment/  
 F installation of the Akire of Ikire by making the succession to rotate amongst the Ruling Houses, the argument by the 3rd, 4th and 7th defendants, that it was contrary to the Ikire Native Law and custom to make Aketula a Ruling House since it had never produced an Akire flies in the face of reason and common sense. If the argument were  
 G to hold water, one of the Ruling Houses would manipulate itself to producing the Akires of Ikire to the exclusion of the other ruling houses but if the rotational principle as ingrained by the 1958 Declaration is allowed to take root, it will in the long run benefit not only Aketula Ruling House but also the other four ruling houses.

It is for this reason and the more elaborate reasons articulated in the leading judgment of my learned brother, Onnoghen JSC that I  
 H find merit in the appeal and I hereby allow it. I equally abide by the order for parties to bear their respective costs.

OKORO JSC

I have had a preview of the illuminating judgment of my learned brother, W. S. N. Onnoghen, JSC, just delivered with which I am in total agreement that this appeal is meritorious and ought to be allowed. My learned brother has meticulously and quite efficiently dealt with all the salient issues submitted for the determination of this appeal and nothing appears left to be said. However, I propose to make a few comments in support of the judgment only.

The facts, briefly put are as follows: In order to reduce the acrimony and disputes surrounding the succession to various paramount chieftaincies in the old Western Region, the government directed the various chieftaincy committees of the Local Governments to identify and make declarations in respect of the identified ruling houses.

Akire of Ikire Chieftaincy stool was one of which declaration was made. This was done in 1958 wherein five (5) ruling houses were identified including the Appellant. There was a protest by the other four ruling houses against the inclusion of the Appellant as a ruling house. Obasa Commission of Inquiry was set up which deleted the Appellants family. This was accepted by the government and a directive given for the committee to amend the 1958 declaration. No such amendment has been made till date though the directive was given since 1976. So, in 1987, the incumbent Akire died. The Appellant, based on the 1958 declaration, forwarded a candidate to be considered. The Respondents went to court. The plank of the Respondents' claim at the trial court was for:

“(1) A declaration that the inclusion of Aketula House as a Ruling House in the Akire of Ikire Chieftaincy Declaration is erroneous in law and in breach of Ikire Customary Law and Tradition and therefore null and void and of no effect.

(2) A declaration that the Recommendation of Obasa Public Enquiry into Akire of Ikire Chieftaincy Title as regards:-

- (a) The number and identity of ruling houses;
- (b) The order of rotation;
- (c) The number of identity of Kingmakers represents the

true traditional, correct and customary positions of Akire of Ikire Ruling houses.”

From the evidence adduced before the trial court, the only qualification for a person to become the Akire of Ikire was to be a direct son of Kuje the progenitor of the parties herein who founded the stool. The Respondents’ grouse against the Appellant is that Aketula, their ancestor was not a direct son of Kuje but that he was the son of Disamu who was a direct son of Kuje. In other words, if it can be shown that Aketula was a biological and direct son of Kuje, then his descendants are entitled to be recognized as a Ruling House. The learned trial judge found as a fact that Aketula was a direct son of Kuje. This finding was accepted and affirmed by the Court of Appeal.

Let me look at the matter more closely. The learned trial judge held that Aketula was a direct son of Kuje like the other four Ruling Houses. Also, that there is nothing to suggest that Aketula was not born during the life of Kuje and that Kuje properly married the mother of Aketula. This is what the learned trial judge said:-

“The evidence tending to bastardize Aketula as being the son of Disamu, Kuje’s own son, is neither cogent nor strong enough to rebut the presumption of legitimacy.”

In spite of the above weighty findings of the learned trial judge, he nonetheless invoked the Rule in KOJO V. BONSIE (1957) 1, WLR 1223 by referring to events in recent years to wit; that out of the past 15 Akires of Ikire, none had come from Aketula House and he therefore came to the conclusion that the events in recent years made the case of the Respondents more probable that Aketula was a son of Disamu, Kuje’s first son and not a direct son of Kuje as contended by the Appellant. Thus, the Appellant herein was excluded from being a Ruling Family.

In its judgment the Court of Appeal faulted the reliance of the learned trial judge on the case of KOJO V. BONSIE (supra) in the following words:

“In the competing versions of the traditional history therefore, there was no conflict in the strict sense of the word to warrant the learned trial Judge’s recourse to the rule in KOJO V. BONSIE... In my view, the Learned Trial Judge was wrong to invoke the principle in KOJO V. BONSIE.”

In other words, the Court of Appeal accepted Aketula as the son of Kuje as was done by the learned trial judge.

This is a concurrent finding of fact by the two lower courts. It is well settled now in a plethora of authorities that findings on facts, particularly those dependent on belief or non-belief of witnesses are matters peculiarly within the province of the trial court. B

Where such findings have been affirmed on appeal and there is sufficient evidence to support such concurrent findings of fact, it is the policy of this court not to disturb such findings. They can only be disturbed where they are perverse, or based on improper evaluation of evidence, or it is apparent that the trial court has not taken proper advantage of its seeing and hearing the witnesses, or otherwise, there is an apparent error on the record or, generally, some miscarriage of justice. See MAINAGGE V. GWAMMA (2004) 14 NWLR (pt. 893) 323, OGUNBIYI V. ADEWUNMI (1988) 5 NWLR (pt. 93) 215, IGWEGO V. EZEUGO (1992) 6 NWLR (pt. 249) 561, ARE V. IPAYE (1990) 3 SC. (pt.11) 109, ENANG V. ADU (1991) 11 - 12 SC 25, OJOMU v. AJAO (1983) 2 SCNLR 156. C D

I have carefully appraised the issues raised in the briefs filed in respect of this appeal and have found nothing to shake the above findings of fact by the two lower courts. The trial court deviated to use the rule in KOJO V. BONSIE (supra) to decide the case and was reprimanded by the Court of Appeal as set out earlier in this judgment. E F

But the Court of Appeal also fell into the same error. For me, the concurrent finding of the two lower courts that Aketula was a direct son of Kuje was key to the determination of this case. Since the only reason given for excluding the Appellant from being a chieftaincy family was that his ancestor Aketula was not a direct son of Kuje, and the two lower courts having found that Aketula was a direct and biological son of Kuje, the 1958 Chieftaincy Declaration made in respect of Akire of Ikire Chieftaincy Stool ought to have been upheld. The recourse to other extraneous matters to decide the case by the two lower courts was uncalled for. G H

In view of the fact that evidence on record shows that the 1958 Declaration in respect of Akire of Ikire Chieftaincy Stool has not been amended or repealed, it subsists which means that there are five Ruling Houses in respect of Akire of Ikire Chieftaincy Stool

for which the Appellant is one of them.

Based on the above and the more detailed reasons given in the lead judgment I agree that this appeal has merit. I accordingly allow this appeal. I abide by the order as to costs made in the lead judgment.

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