

SUPREME COURT OF NIGERIA
FRIDAY 6TH JUNE, 2014. SC. 236/2006
CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,
B. RHODES-VIVOUR, K. B. AKA'AH, J. I. OKORO, JJSC

SIKIRU OLAIDE OKULEYE APPELLANT
(for and on behalf of himself and
other members of the Demoku/Aboki
Ruling House of the Olisa
Chieftaincy Family)
AND
1. ALHAJI RASHEED
ADEOYE ADESANYA
2. ATTORNEY-GENERAL
OF OGUN STATE RESPONDENTS

CHIEFTAINCY MATTERS - Ruling house - Party who relies on traditional history - To assert that he is a member of ruling house - Must plead genealogy - And his pleadings must be supported by evidence (H1)

EVIDENCE - Credibility of - Evidence is reliable and compelling and must be acted on - When it goes through cross examination and remains reliable (H2)

CHIEFTAINCY MATTERS - Evidence - Admissibility - Unlike evidence of appellants - Testimony of 1st respondent in relation to the ruling house - Cannot be faulted as it was unshaken in cross examination (H3)

LEGAL PRACTITIONERS - Address - Weight - Closing speech by counsel no matter how brilliant - Never takes the place of legal proof - As there can be no substitute for evidence (H4)

FACTS

Before the High Court of Ogun State Ijebu-Ode, plaintiff/appellant (suing in representative capacity) commenced this action against defendants/respondents claiming inter alia for a declaration

that 1st respondent is not a member of the Demoku/Aboki Ruling House of the Olisa of Ijebu-Ode Chieftaincy and that he is therefore not entitled to be nominated and/or appointed as the Olisa of Ijebu-Ode. The action is centered on the succession to the throne of Olisa of Ijebu-Ode. Dispute arose between both sides following the death of the immediate past occupant of the aforementioned traditional stool in the community. There was thus an urgent need to appoint a successor to the throne. The mantle fell on the Demoku/Aboki Ruling House to nominate the successor to the throne.

Appellant's contention is that his family people are members of the Demoku/Aboki Ruling House and are therefore entitled to present a candidate for the Olisa stool. Appellants in the circumstance argued that 1st respondent is not a member of the said Ruling House and so not qualified to be nominated and appointed as the Olisa of Ijebu-Ode. 1st respondent contended that he is a member of the Ruling House and is therefore entitled to be appointed to the said throne. At the hearing, appellant called three witnesses in support of his case, while respondents called two witnesses. Fourteen documents were admitted as exhibits. At the end of hearing, the court held that 1st respondent is a member of the Ruling House and was validly appointed as successor to the throne. Appellant's action was thus dismissed. Aggrieved, appellant appealed to the Court of Appeal Ibadan Division. The court dismissed the appeal and affirmed the decision of the trial court. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the Court of Appeal was right in affirming the decision of the trial court preferring the evidence of traditional history given by DW1 to that given by the plaintiff's witnesses on the evolution of the Demoku/Aboki Ruling House of the Olisa Chieftaincy and whether the court is right in its conclusion that the 1st respondent is a member of the said ruling house and therefore entitled to be nominated and appointed as the Olisa of Ijebu-Ode.

HELD (Unanimously dismissing the appeal per

RHODES-VIVOUR JSC)

CHIEFTAINCY MATTERS - Ruling house

1. A party who relies on Traditional History to assert that he is a member of the Demoku/Aboki Ruling House of the Olisa Chieftaincy must plead the names of his ancestors, and link them to the said Ruling House so as to show to the satisfaction of the court, a continuous chain of devolution. That is to say they must plead genealogy. After this is done there must be tried and tested evidence to establish the traditional history pleaded. Both sides pleaded genealogy, but that is not enough. The position of the law is that pleadings must be proved by oral evidence.

A party who relies on Traditional History to assert that he is a member of a Ruling House must plead the names of his ancestors and link them to the said Ruling House to disclose a continuous chain of devolution. He must plead genealogy. The pleadings must be supported by credible evidence to establish such traditional history. (pp. 2559 G/2562 B)

EVIDENCE - Credibility of

2. Proceedings in civil proceedings commences with evidence in chief. The plaintiff states his case on oath as he understands it. Thereafter he is subject to cross-examination by counsel for the defendant. Cross-examination is to test the credibility of testimony given in evidence in chief. Re-examination is an opportunity for the witnesses to restore credibility to his testimony. Cases are hardly won on testimony from evidence in chief. Evidence is reliable and compelling and must be acted on when it goes through cross-examination and remains reliable. (p. 2561 H)

Evidence - Admissibility

3. The testimony of the plaintiffs now appellants collapsed under cross-examination. They were unable to show that they belong to the Demoku/Aboki Ruling House or that they are

descendants of Rade. Their testimony was confused as to their own origins, depicting themselves as strangers to Rade family. On the other hand, the testimony of DW1 was straight to the point when he said that the 1st defendant ascended the Olisa chieftaincy by virtue of his being a member of the Rade family. A testimony that was unshaken in cross-examination and was arrived at after the DW1 traced his genealogy linking his ancestors to the Demoku/Aboki Ruling House to the satisfaction of the two courts below and this court. The testimony of the appellants on their genealogy is not credible. On the other hand that of the 1st respondent cannot be faulted. It is compelling and very credible. (p. 2562 C)

LEGAL PRACTITIONERS - Address - Weight

4. I must comment on the observation of the Court of Appeal on the brilliant address of learned counsel for the appellants. The closing speech by counsel no matter how brilliant, and alluring never takes the place of legal proof required. There can be no substitute for evidence. The appellants would have succeeded if they were able to lead credible evidence to support their pleadings on their genealogy. This case collapsed under cross-examination. No matter how brilliant an address on their behalf may be the case can no longer be salvaged, and this is due to the fact that the only evidence from them ended up as very unreliable. (p. 2563 E)

NOTABLE POINT OF INTEREST

RHODES-VIVOUR JSC

1. Chieftaincy matters to be filed timeously

I must observe that the appointment of the 1st respondent as Olisa was approved by the Governor of Ogun State on 28/7/93. It took the appellants about six months thereafter to file this case on 17/1/94. Such matters are to be filed timeously. A delay of about six months raises grave doubts that the appellants are only trying to see if they have a chance. The courts are not set up for such antics. (p. 2564 B)

REPRESENTATION

A. I. Adebayo Esq., for the Appellant
O. Oshodi Esq. with T. Adebayo Esq., B. B. Lawal Esq., O. Ben Orotense Esq. and O. C. Obayuwana Esq., for the 1st Respondent
A. Akeredolu (Mrs.) A.G. Ogun State with A. N. Shuru Esq. and B. Amawu Esq., for the 2nd Respondent

B

CASES REFERRED TO

Mogaji v. Odojin (1978) 4 SC 91
A-G Ekiti State v. Daramola (2003) 10 NWLR (pt. 827) 104
Akande v. Adisa (2012) 5 SC (pt. i) 1
Ohochukwu v. A-G Rivers (2012) 2 SC (pt. ii) 103
R. Benkay Nig. Ltd v. Cadbury Nig. Ltd (2012) 3 SC (pt. iii) 169
Military Gov. of Lagos State v. Adeyiga (2012) 2 SC (pt. i) 68
Arowolo v. Olowookere (2011) 11-12 SC (pt. ii) 98
Chukujekwu v. Olarere (1992) 2 NWLR (pt. 221) 86
Bello v. NBN (1992) 6 NWLR (pt. 246) 206
Ishola v. Ajoboye (1998) 1 NWLR (pt. 532) 74
Ojibah v. Ojibah (1991) 1 NWLR (pt. 191) 296
Enang v. Adu (1981) 11-12 SC 25
Nwadike v. Ibekwe (1987) 4 NWLR (pt. 67) 718
Ebolor v. Osayande (1992) 7 SCNJ 217

C

D

E

STATUTE REFERRED TO

Chiefs Law Cap. 20 Laws of Ogun State of Nigeria 1978, s. 15(1)(a)(d)

F

LEAD JUDGMENT BY RHODES-VIVOUR JSC

The appellants' as plaintiffs claim against the respondents in an Ijebu Ode High Court was for:

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(i) A declaration that the 1st respondent is not a member of the Demoku/Aboki Ruling House of the Olisa of Ijebu-Ode Chieftaincy and that he is therefore not entitled to be nominated and/or appointed as the Olisa of Ijebu-Ode.

(ii) A declaration that the Late Chief Stephen Babalola Kuku was neither the Head of the Demoku/Aboki Ruling House nor the Head of the Olisa of Ijebu-Ode Chieftaincy family and that he was therefore not entitled to convene a meeting of the said Ruling House for the purpose of nominating a candidate for appointment to the

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vacant stool of Olisa of Ijebu-Ode, not to present any candidate and in particular the 1st Defendant hereof to the Awujale of Ijebuland for his consent and that any purported presentation of the 1st defendant as the Olisa of Ijebu-Ode by the said late Chief Stephen Babalola Kuku is a nullity.

B (iii) A declaration that the traditional kingmakers of the Olisa of Ijebu-Ode Chieftaincy family under the Registered Declaration have not appointed the 1st defendant to the vacant stool of Olisa of Ijebu-Ode pursuant to the Registered Declaration for the Olisa of Ijebu-Ode Chieftaincy and as required by the Chiefs Law Cap, 20
C Laws of Ogun State of Nigeria.

(iv) A declaration that membership of the appropriate Ruling House and an appointment by the traditional kingmakers of Olisa of Ijebu-Ode Chieftaincy are conditions precedent to an approval of
D the candidature of an Olisa by the Ogun State Executive Council, and that in the absence of such membership and appointment - the purported approval conveyed by the office of the Executive Governor of Ogun State in its letter reference No.5/26/T/2 dated 29th July, 1993 is a nullity.

E (v) A declaration that the 2nd plaintiff having been properly nominated by the Demoku/Aboki Ruling House and having been properly appointed by the kingmakers is entitled to be considered for approval by the Ogun State Government after the consent of the
F Awujale of Ijebuland would have been obtained thereto.

(vi) An order quashing the purported installation of the 1st defendant as the Olisa of Ijebu-Ode.

(vii) An order of perpetual injunction restraining the 1st Defendant from parading himself or from exercising any power and/or
G authority and from enjoying any benefit as the Olisa of Ijebu-Ode.

At the inception of the case there were four plaintiffs and three defendants. The 1st to 3rd plaintiffs were Alhaji Rabiun Adekoya Olayemi, Prince Salau A. Mabadeje, and Prince Kunle Surakatu Mustafa Buraimoh, while the 2nd defendant was Chief Stephen
H Babalola Kuku. All of them are now dead. After amendments to pleadings trial was concluded on a 2nd further amended statement of claim filed on the 17th of November 1999. The 1st defendant's statement of defence filed on the 23rd of June 1999. The 2nd defendant's statement of defence filed on the 5th July 1999. State-

ment of defence for 3rd defendant filed on the 14th day of March, 1995.

Reply to 1st defendant's statement of defence filed on the 17th of November 1999, and Reply to 2nd defendant's statement of defence filed on the 17th of November 1999.

At the trial which commenced on the 17th of January, 2000, the plaintiffs called three witnesses, while the defendants called two witnesses, fourteen documents were admitted as exhibits.

The facts are these. On the 5th of August, 1991 Henry Fowakan, the Olisa of Ijebu-Ode from Wunumo Matuluku Ruling House died. After the death of Henry Fowakan, it was the turn of the Demoku/Aboki Ruling House to nominate the next Olisa of Ijebu-Ode. The Secretary of Ijebu-Ode Local Government informed the Demoku/Aboki Ruling House that it was their turn to present a candidate. So, on the 22nd of May, 1993 Chief S. B. Kuku, (the 2nd defendant now dead) the Head of the Demoku/Aboki Ruling House convened a meeting at which the secretary of Ijebu-Ode Local Government was present as an observer. At the meeting the 1st respondent, Alhaji Rasheed A. Adesanya was nominated to become the Olisa. On the 24th of May, 1993 the kingmakers of the Olisa of Ijebu-Ode chieftaincy met and appointed the 1st defendant Olisa of Ijebu-Ode. The Awujale of Ijebuland subsequently consented to the appointment.

Thereafter the Executive Council of Ogun State approved the appointment of the 1st Respondent as the Olisa of Ijebu-Ode with effect from the 28th day of July, 1993. The action arose when there was the urgent need to appoint an Olisa after the death of Olisa Henry Fawakan. The appellants' case is that they are members of the Demoku/Aboki Ruling House and are entitled to present a candidate for the Olisa stool. They say that the 1st defendant is not a member of the said Ruling House and so not qualified to be nominated and appointed as the Olisa of Ijebu-Ode.

Dismissing the appellants' claim the learned trial judge said:

"...that 1st defendant descended from the Demoku branch and therefore is a member of the Demoku/Aboki Ruling House. He was qualified to be appointed and was validly nominated and appointed from the Ruling House. This declaration must be refused and it therefore fails."

Dissatisfied with the judgment of the learned trial judge, the

appellants lodged an appeal. It was heard by Ibadan Division of the Court of Appeal. On the 24th of April, 2006 that court affirmed the decision of the trial court. It found that the trial court was correct. That the Demoku/Aboki Ruling House has two branches Rade and Demokun and the plaintiffs do not come from either of them, but
 B the 1st defendant comes from the Demokun branch and so was qualified to be appointed Olisa of Ijebu-Ode. This appeal is against that judgment. In accordance with Rules of this court briefs were filed and exchanged. The appellant's brief was deemed duly filed and served
 C on the 15th of July 2009. The 1st respondent's brief was deemed duly filed and served on 24th of March, 2014, and the 2nd respondent's brief duly filed and served also on the 24th of March, 2014.

Learned counsel for the appellant formulated four issues for
 D determination. They are:

1. Whether the Court of Appeal was right in affirming the decision of the trial court preferring the evidence of traditional history given by DW1 to that given by the plaintiff's witnesses on the evolution of the Demoku/Aboki Ruling House of the Olisa Chieftaincy and
 E whether the court is right in its conclusion that the 1st respondent is a member of the said ruling house and therefore entitled to be nominated and appointed as the Olisa of Ijebu-Ode.

2. Whether the Court of Appeal was correct or showed any
 F appreciation of the case in holding that the decision of the trial court that Chief Stephen Babalola Kuku was the head of the entire Olisa Chieftaincy rather than being the head of the Demoku/Aboki Ruling House thereof, did not affect the judgment.

3. Whether having regard to the provisions of the Olisa of Ijebu-
 G Ode Chieftaincy declaration exhibit 1 the kingmakers have a role to play in the appointment of the Olisa, and if so whether their being denied a role in the appointment process of the 1st respondent vitiated that appointment contrary to the decision of the Court of Appeal.

H 4. Whether the lower court was correct in describing the attendance of the Secretary to the Ijebu-Ode Local Government at the meetings of the Demoku/Aboki Ruling House and the Olisa Chieftaincy kingmakers meetings as mere presence at Family meetings and whether it was right to have decided that such attendance did not

vitiating the decisions at the meetings to appoint the 1st respondent as the Olisa, having regard to the provision of sub-section 15(1)(d) of the Ogun State Chieftaincy Laws and the proceedings at the meetings evidenced in exhibit 11 and 12 tendered at the trial.

Learned counsel for the 1st respondent also formulated four issues for determination. They read:

1. Whether in view of the appellant's pleadings, evidence at the trial and even the summary of his case in this appeal, the Court of Appeal was right in holding that the appellant has failed to establish the gravamen of his case that only the descendants of Chief Rade of which he claimed to be one, could succeed through Adelu (Rade's son) to become the Olisa and the effect of such a finding in law on this court.

2. Whether if only for the purpose of argument, the appellants having failed to establish the threshold of their case that they are the only relatives/descendants of Olisa through Chief Rade are entitled to become the Olisa, the Head of Olisa Chieftaincy has any role to play in the appointment of the Olisa?

3. Whether PW3 having admitted that Chief Stephen Babalola Kuku was the Head of the Demoku/Aboki Ruling House and in the absence of any other person as the rival Head of the Ruling House, the said Chief Stephen Babalola Kuku performed or played his role creditably in the installation of the 1st respondent as the Olisa?

4. Whether the mere presence of the Secretary to the Local Government at the meetings of the Ruling House violated the Chieftaincy Law.

Three issues were formulated for determination by learned counsel for the 2nd respondent. They are:

1. Whether the Court of Appeal was right in affirming the decision and findings of the trial judge with regard to the evidence given by the parties on the history of Demoku/Aboki Ruling House, the headship and the membership thereof of the 1st respondent.

2. Whether the provisions of the Olisa of Ijebu-Ode Chieftaincy Declaration were complied with in the appointment of the 1st respondent.

3. Whether the fact that there was no written authorization in the council's file for the secretary of competent council to attend the meeting of /Demoku/Aboki Ruling House vitiates the meeting of the

Ruling House.

I have examined the issues formulated by counsel and I am satisfied with the issues formulated by learned counsel for the appellant. I must observe that issue No. 1 is the substance of this appeal. If this court finds that both courts below were correct in their findings B that the appellants were not authentic members of the Demoki/Aboki Ruling House, and that the 1st respondent was a member of the said Ruling House that alone would be enough to settle the appeal and it would be unnecessary to consider any of the other issues.

C At the hearing of the appeal on the 24th of March, 2014 learned counsel for the appellant, Mr. A. I. Adebayo adopted the appellant's brief deemed duly filed and served on the 15th of July, 2009. He urged this court to allow the appeal.

D Learned counsel for the 1st respondent, Mr. O. Oshobi adopted the 1st respondent's brief deemed duly filed and served on the 24th of March, 2014. He urged this court to affirm concurrent findings of fact and dismiss the appeal.

E Learned counsel for the 2nd respondent, Mrs. A. Akeredolu, adopted the 2nd respondents brief deemed duly filed and served on the 24th of March, 2014. She observed that at the very best the appellants belong to a break away faction of the Demoku/Aboki Ruling House. She urged this court to dismiss the appeal with substantial costs.

ISSUE 1

F Whether the Court of Appeal was right in affirming the decision of the trial court preferring the evidence of traditional history given by DW1 to that given by the plaintiff's witnesses on the evolution of the Demoku/Aboki Ruling House of the Olisa Chieftaincy and G whether the court is right in its conclusion that the 1st respondent is a member of the said Ruling House and therefore entitled to be nominated and appointed as the Olisa of Ijebu-Ode.

H Learned counsel for the appellant observed that it was wrong for the learned trial judge to come to the conclusion that the 1st defendant was a member of the Demoku/Aboki Ruling House without examining the evidence of traditional History on both sides. He further observed that the learned trial judge did not refer to evidence offered in proof of facts pleaded before concluding that the plaintiffs were not member of the Demoku/Aboki Ruling House but the 1st

defendant was a member of the said Ruling House. Reliance was placed on the evidence of PW1 and PW2 Mogaji v. Odofin (1978) 4 SC P. 91.

Concluding he submitted that the findings of the two lower courts were clearly perverse as they cannot be justified by the totality of evidence before the courts. He urged this court to reverse the findings of the courts below as they have led to a miscarriage of justice.

Learned counsel for the 1st respondent observed that both courts below were correct to conclude that the appellant failed to establish the gravamen of his case that he is a descendant of Demoku/Aboki. Relying on A-G for Ekiti State v. Daramola (2003) 10 NWLR Pt. 827 p. 104.

He submitted that once that crucial finding is made the issue is settled. He urged this court to dismiss the appeal on this point.

Learned counsel for the 2nd respondent observed that on a close scrutiny of PW1 and PW3's testimony it is clear that they are confused as to their own origins, she observed that Chief Stephen Kuku was the Head of the Demoku/Aboki Ruling House, and that both courts below were correct in their findings that the Demoku/Aboki Ruling House consists of two branches and the 1st respondent is from the Demoku branch. Concluding she submitted that this court should not disturb concurrent findings of fact that the 1st respondent is a member of the Demoku/Aboki Ruling House, while the appellant is not a member of the said Ruling House. She urged us to resolve this issue in favour of the Respondents.

If pleadings are to be of any use the parties must be held bound by them. See Akande v. Adisa & anor (2012) 5 SC (Pt. i) P. 1, Ohochukwu v. A.G. Rivers State & 2 Ors. (2012) 2 SC (Pt. ii) P. 103.

The case for the appellants is that they are members of the Demoku/Aboki Ruling House, and they should be considered to fill the vacant stool of Olisa of Ijebu-Ode, and not the 1st respondent who is not a member of the Demoku/Aboki Ruling House. ***A party who relies on Traditional History to assert that he is a member of the Demoku/Aboki Ruling House of the Olisa Chieftaincy must plead the names of his ancestors, and link them to the said Ruling House so as to show to the satisfaction of the court, a continuous chain of devolution. That is to say they***

must plead genealogy. After this is done there must be tried and tested evidence to establish the traditional history pleaded. Both sides pleaded genealogy, but that is not enough. The position of the law is that pleadings must be proved by oral evidence.

Before the Court of Appeal affirmed the decision of the trial court it examined testimony of witnesses as follows: PW1 Sikiru Olaide Okuleye was interested in becoming Olisa. In cross-examination he said:

"I do not know the names of Rade's wives and never knew where they came from and when they married Rade. Neither my mother nor any of my great grandmother downward had any room at Isado. However my ancestor being a son of Rade must have a room in Isado. I also do not know where Olowonirekende's room was in Isado. Also I do not know anything about Rade family house at Isado. I do not know the apartment of Adesanya in Isado. None of the Otulanas and Olowonirekende ever met me at Isado, I do not know the name of Adelu's mother and never knew her origin or when she married Rade. Ademoku and Aboki are not the same."

The Court then considered the testimony of PW3 in cross-examination: He said

"I am related to Rade family though Adelu. I do not know where the Rade family is situated. The only Rade family I know is based at Isado. I have never been to Isado Rade family house though I am Rade Family. Rade is male and I do not know from where he came but he had four wives but never knew their names. I do not know Adelu's mother."

PW3 in further testimony said:

"I have never been to Isado Rade's family house. Nobody in Isado knows me as a member of Rade family. I have never attended the Olisa family meeting at Ilisa. I am not aware of any record where my grandmother father or myself have been described as being members of Rade family. While it is true that Kuku's mother had a room in our family house at Isado I do not know why my own section has none in the family house."

The Court of Appeal, after examining the above testimony which was given under cross-examination, concluded that the appellants depicted themselves as strangers to Rade family, observing that the appellant's relationship to Rade family through Adelu is a figment

of their own fantasy and imagination. The Court of Appeal examined the genealogy of the 1st defendant which was also pleaded and examined evidence in support of pleadings and concluded as follows:

"To my mind the evidence of DW1 appears plausible as it is not coloured. The learned trial judge had the duty to evaluate evidence gathered by him. This duty, he carried out creditably in my considered opinion. He correctly ascribed due probative value to evidence garnered by him. I shall not interfere with his findings." B

Learned counsel for the appellant in his submissions was of the view that the learned trial judge did not refer to evidence offered in proof of facts pleaded before concluding that the plaintiffs were not members of the Demoku/Aboki Ruling House. C

Before I give an answer to the above I must make further reference to extracts from PW1 and PW3's testimony. D
PW1 said:

"Chief Stephen Babalola Kuku was a member of the Ruling House before his death. Myself and these already mentioned are members of the Rade family of Ijebu-Ode. I know the 1st defendant in this case who is also a descendant of Rade family of Ijebu-Ode." E

Under cross-examination PW3 said:

"I am related to Rade family through Adelu. I do not know where the Rade family is situated, the only Rade family is based at Isado. I have never been to Isado Rade family house though I am Rade family. Rade is male and I do not know where he came, but he had four wives but never their names. I do not know Adelu's mother." F

Demoku/Aboki Ruling House has two branches. They are Rade and Demoku or Ademokun. To be qualified to be nominated for appointment as Olisa of Ijebu-Ode in the exercise conducted after the demise of the late Olisa, a candidate had to be a member of Demoku/Aboki Ruling House, as it was the turn of that Ruling House to produce the Olisa. G

Now, back to the answer for learned counsel for the appellant's question. ***Proceedings in civil proceedings commences with evidence in chief. The plaintiff states his case on oath as he understands it. Thereafter he is subject to cross-examination by counsel for the defendant. Cross-examination is to test the credibility of testimony given in evidence in chief. Re-exami*** H

nation is an opportunity for the witnesses to restore credibility to his testimony. Cases are hardly won on testimony from evidence in chief. Evidence is reliable and compelling and must be acted on when it goes through cross-examination and remains reliable.

B A party who relies on Traditional History to assert that he is a member of a Ruling House must plead the names of his ancestors and link them to the said Ruling House to disclose a continuous chain of devolution. He must plead genealogy. The pleadings must be supported by credible evidence to establish such traditional history.

C The testimony of the plaintiffs now appellants collapsed under cross-examination. They were unable to show that they belong to the Demoku/Aboki Ruling House or that they are descendants of Rade. Their testimony was confused as to their own origins, depicting themselves as strangers to Rade family. On the other hand, the testimony of DW1 was straight to the point when he said that the 1st defendant ascended the Olisa chieftaincy by virtue of his being a member of the Rade family. A testimony that was unshaken in cross-examination and was arrived at after the DW1 traced his genealogy linking his ancestors to the Demoku/Aboki Ruling House to the satisfaction of the two courts below and this court. The testimony of the appellants on their genealogy is not credible. On the other hand that of the 1st respondent cannot be faulted. It is compelling and very credible.

G This court would not upset concurrent findings of the two courts below unless the findings are perverse, or there is a miscarriage of justice, or improper exercise of judicial discretion has been established in the courts below. R. Benkay Nig. Ltd v. Cadbury Nig. Ltd (2012) 3 SC (Pt. iii) P. 169, Mil. Gov. of Lagos State & 4 Ors. v. Adeyiga & 6 Ors. (2012) 2 SC (Pt. i) P. 68, Arowolo v. Olowookere & 2 Ors. (2011) 11 - 12 SC (Pt. ii) P. 98.

H In this case the trial court found that the plaintiffs now appellant are not members of the Demoku/Aboki Ruling House. This finding was affirmed by the Court of Appeal. The appellant has been unable to show why this court should interfere with the decisions of the courts below. Would there be any need to consider issues 2, 3,

and 4 after this court has found that the plaintiffs'/appellants are not members of the Demoku/Aboki Ruling House, but the 1st respondent is a member of the said Ruling House?

The facts in this case are not unlike facts in A-G Ekiti State v. Daramola (2003) 10 NWLR Pt. 827 P. 104

In that case the action arose when the stool of Ajero of Ijero had to be filled by a candidate presented by the Arojoye Ruling House. The plaintiffs claimed to be entitled to bring the action by virtue of their membership of the Akate family which they claimed was a stock of the Arojoye Ruling House. This court found that Akata family was not a member of Arojoye Ruling House and so the plaintiffs were not members of the Ruling House settles the matter.

Applying the reasoning above to the facts of this case, it is clear that since the plaintiff's/appellant's claim to membership of the Demoku/Aboki Ruling House was not sustained, their right to challenge the nomination of the 1st respondent and his subsequent appointment as Olisa of Ijebu-Ode falls flat. Since they failed to prove the former the latter surely cannot be considered.

I must comment on the observation of the Court of Appeal on the brilliant address of learned counsel for the appellants. The closing speech by counsel no matter how brilliant, and alluring never takes the place of legal proof required. There can be no substitute for evidence. See Chukujekwu v. Olarere (1992) 2 NWLR Pt. 221 P. 86, Bello v. NBN (1992) 6 NWLR Pt. 246 P. 206, Ishola v. Ajoboye (1998) 1 NWLR Pt. 532 P. 74.

The appellants would have succeeded if they were able to lead credible evidence to support their pleadings on their genealogy. This case collapsed under cross-examination. No matter how brilliant an address on their behalf may be the case can no longer be salvaged, and this is due to the fact that the only evidence from them ended up as very unreliable.

Both sides agree that it is the turn of Demoku/Aboki Ruling House to nominate one of its own to be Olisa of Ijebu-Ode. An Olisa is presented by the Demoku/Aboki Ruling House and appointed by the kingmakers subject to consent by the Awujale and approval by the Governor of Ogun State. The 1st respondent, Alhaji Rasheed Adeoye Adesanya was presented to the kingmakers by the Demoku/

Aboki Ruling House as their sole candidate. The kingmakers approved his candidature and appointed him Olisa. The Awujale, the Oba of Ijebu-Ode consented to the appointment which was subsequently approved by the Executive Council of Ogun State in accordance with the Chiefs Law. Documentary evidence to wit: Exhibits 3, 7, 8, 9, 10, 11, 11A, 12 and 13 support the fact that the appointment of the 1st respondent as Olisa of Ijebu-Ode was properly done.

I must observe that the appointment of the 1st respondent as Olisa was approved by the Governor of Ogun State on 28/7/93. It took the appellants about six months thereafter to file this case on 17/1/94. Such matters are to be filed timeously. A delay of about six months raises grave doubts that the appellants are only trying to see if they have a chance. The courts are not set up for such antics.

There is no merit in this appeal. The appeal is dismissed with costs of N100,000 in favour of the Respondents.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead Judgment of my learned brother RHODES-VIVOUR JSC just delivered.

I agree with his reasoning and conclusion that the appeal lacks merit and ought to be dismissed.

My learned brother has dealt exhaustively with the issues submitted for the determination of the appeal leaving no stone un-turned. In the circumstance I have nothing to add.

The appeal is dismissed for want of merit.

I abide by the consequential orders made in the said lead Judgment including the order as to costs.

GALADIMA JSC

I have read before now the Lead Judgment just delivered by my learned brother RHODES-VIVOUR, JSC. He has dealt thoroughly and quite lucidly, with the salient issues submitted for determination of this appeal. I shall support the appeal with emphasis on the following observations. First, the summary of the facts of the matter.

On 5/8/1991 the last Olisa of Ijebu Ode, HENRY FOWOKAN from WUNUMO MOTULUKU Ruling House passed on. It then be-

come the turn of DEMOKU/ABOKI Ruling House to present a candidate to fill in the vacant stool. Vide the provisions of Section 15(1)(a) of the Chiefs Laws of Ogun State of Nigeria the secretary Ijebu-Ode Local Government issued Exhibit 9, calling on the said Demoku/Aboki Ruling House to present a candidate to fill the vacancy.

By Exhibit 10, the Head of the family was mandated to convene a meeting of the Ruling House to nominate a Candidate for appointment as Olisa on 23/9/1993. Chief Stephen Babalola Kuku, as a head of the Ruling House convened the meeting at which the Local Government Secretary was present as an observer as provided by Section 15(d) of the Chiefs Law. At the meeting 1st defendant was nominated to occupy the vacant seat of Olisa.

On 24/5/1993 when the meeting of the Kingmakers was held, 1st respondent was appointed the substantive Olisa. Exhibit 13 was the Awujale of Ijebu-Ode's letter in which he subsequently consented to the appointment. Without further hesitation the Executive Council of Ogun State Government approved Olisa's appointment with effect from 28/7/1997.

Dissatisfied with the appointment, the appellants herein as, plaintiffs, initiated an action at the Ogun State High Court, HOLDEN at IJEBU-ODE. The fulcrum of their case is that the 1st Defendant/Respondent herein is not member of Demoku/Aboki Ruling House and therefore not eligible to be appointed Olisa.

In his considered judgment, the learned trial judge held that the plaintiffs failed to establish that the 1st defendant was not a member of the Demoku/Aboki Ruling House. On appeal the Court of Appeal dismissed the claims of the plaintiffs.

This is a further appeal by the same appellants against the Judgment of the Court of Appeal delivered on 24/4/2006.

I have observed that the gravamen of the Appellants' case is that they are the only descendant of Rade who are entitled to succeed to the Chieftaincy of Demoku/Aboki through Rade's son, Adelu. However, the two lower courts found that the Appellants failed to establish this claim. The courts found that Chief Stephen Babalola Kuku was the Head of Demoku/Aboki Ruling House and that the relevant processes were complied with in the nomination to the installation of the 1st Respondent.

On pages 80 - 81 and 87 of the record, the appellant as Pw1,

during Cross-Examination, stated clearly that he and the 1st Respondent are members of the same Rade Family. He stated as follows:

“Myself and those already mentioned are members of Rade family of Ijebu-Ode. I know the 1st defendant in this case, who is also a descendant of Rade family of Ijebu-Ode.”

B Applying the Rule in ATTORNEY-GENERAL FOR EKITI STATE v. DARAMOLA (2003) 10 NWLR (Pt. 827) 104 at 129, I hold that since the appellants have failed to establish their claim that they are also members of Ruling family, I hold that the concurrent findings of fact of the two lower courts that the 1st Respondent is a member of the Ruling house and was duly appointed Olisa of Ijebu-Ode, cannot be faulted and must be allowed to stand.

C In view of the above reasons adumbrated above and for the fullers reasons set out in the lead judgment I too, hold that this appeal D lacks merit. It is hereby dismissed. I abide by the order on costs.

AKA’AHS JSC

E I was privileged to read the judgment just delivered by my learned brother, Rhodes-Vivour JSC with which I agree.

After the death of Henry Fowakan (who was the- Olisa of Ijebu Ode) on 5/8/1991 it was the turn of Demoku/Aboki Ruling House to nominate the person who would be made the next Olisa of Ijebu-Ode. The Secretary of Ijebu-Ode Local Government then wrote informing the Demoku/Aboki Ruling House that it was their turn to present a candidate. Chief S. B. Kuku, the head of that House convened a meeting for the purpose of nominating the candidate with the Secretary of Ijebu-Ode Local Government in attendance as an observer. At the meeting, Alhaji Rasheed A. Adesanya, who is the 1st respondent in this appeal was nominated and on 24/5/1993 the kingmakers of the Olisa of Ijebu-Ode met and appointed him as the Olisa of Ijebu - Ode which subsequently received the consent and blessing of the Awujale of Ijebuland. The appointment was approved by the Executive Council of Ogun State and the appointment took effect from 28/7/1993. The appellants who claimed to belong to the Demoku/Aboki Ruling instituted the action in the High Court of Ogun State holden in Ijebu - Ode Judicial Division in Suit No. HCT/11/94 claiming the following reliefs in paragraph 43 of the 2nd Further

Amended Statement of Claim:-

(i) A DECLARATION that the 1st respondent is not a member of the Demoku/Aboki Ruling House of the Olisa of Ijebu-Ode Chieftaincy and that he is therefore not entitled to be nominated and/or appointed as the Olisa of Ijebu-Ode.

(ii) A DECLARATION that the Late Chief Stephen Babalola Kuku was neither the Head of the Demoku/Aboki Ruling House nor the Head of the Olisa of Ijebu-Ode Chieftaincy Family and that he was therefore not entitled to convene a meeting of the said Ruling House for the purpose of nominating a candidate for appointment to the vacant stool of Olisa of Ijebu-Ode, nor to present any candidate and in particular the 1st Defendant hereof to the Awujale of Ijebuland for his consent and that any purported presentation of the 1st defendant as the Olisa of Ijebu-Ode by the said late Chief Stephen Babalola Kuku is a nullity.

(iii) A DECLARATION that the traditional kingmakers of the Olisa of Ijebu-Ode Chieftaincy Family under the Registered Declaration have not appointed the 1st defendant to the vacant stool of Olisa of Ijebu-Ode pursuant to the Registered Declaration for the Olisa of Ijebu-Ode Chieftaincy and as required by the Chiefs Law Cap. 20 Laws of Ogun State of Nigeria.

(iv) A DECLARATION that membership of the appropriate Ruling House and an appointment by the traditional kingmakers of Olisa of Ijebu-Ode Chieftaincy are conditions precedent to an approval of the candidature of an Olisa by the Ogun State Executive Council, and that in the absence of such membership and appointment - the purported approval conveyed by the office of the Executive Governor of Ogun State in its letter reference No. 5/26/T/2 dated 29th July, 1993 is a nullity.

(v) A DECLARATION that the 2nd plaintiff having been properly nominated by the Demoku/Aboki Ruling house and having been properly appointed by the kingmakers is entitled to be considered for approval by the Ogun State Government after the consent of the Awujale of Ijebuland would have been obtained thereto.

(vi) AN ORDER quashing the purported installation of the 1st defendant as the Olisa of Ijebu-Ode.

(vii) AN ORDER of perpetual injunction restraining the 1st Defendant from parading himself or from exercising any power and/

or authority and from enjoying any benefit as the Olisa of Ijebu-Ode.

The parties called witnesses and tendered several exhibits. Three witnesses testified for the plaintiffs while two witnesses were called by the defence. The case put forward by the Plaintiffs is that they are members of the Demoku/Aboki Ruling House but denied that the 1st defendant was a member of the said Ruling House and so was not qualified to be nominated and appointed as the Olisa of Ijebu-Ode and they are the ones who are entitled to present the candidate for the Olisa stool. In dismissing the Plaintiffs' claim the learned trial Judge made the following findings at page 136 of the record:-

"It is clear from the evidence of PW3 that there were two factions of the Demoku/Aboki Ruling House. One under the headship of the usual Head Chief Stephen Kuku with whom was the Secretary of the Ruling House and a new one later formed under 1st plaintiff with one Mabadeje as Secretary. There is nothing to show that the Plaintiffs' faction is the accepted Ruling House or that they enjoyed the support of the majority of the members."

He concluded as follows on page 137:-

"In view of the above Chief Stephen Kuku is held to be the Head of the Demoku/Aboki Ruling House and not the 1st Plaintiff who merely heads a splinter group at the material time when the 1st Defendant was appointed the Olisa of Ijebu-Ode. Therefore in view of the Ruling House meeting held under the auspices and headship of Chief Kuku as evidenced by Exhibit 11 and 11A, that Ruling House cannot complain about that appointment. Since it was the turn of the Ruling House which actually exercised its right by holding a valid meeting under the head of the family at which the 1st defendant was also duly nominated and eventually appointed. Therefore I hold that the Ruling House cannot bring this action and as such 1st Plaintiff has no locus standi to bring this action on behalf of that Ruling House which cannot now complain".

These findings and conclusion which flowed naturally from the evidence adduced both oral and documentary was affirmed by the court below. I too do not see any reason to disturb those findings and conclusion reached.

Since there is a concurrent findings of fact made by the learned trial Judge and the court below this court has no reason to interfere as the said findings and conclusion reached are not perverse.

It is on account of this and the more detailed reasons contained in the judgement of my learned brother, Rhodes-Vivour JSC that I too find no merit in the appeal and dismiss it accordingly. I also award costs of N100,000.00 in favour of the respondents.

B

OKORO JSC

I have had the privilege of reading in draft the judgment of my learned brother, Bode Rhodes-Vivour, JSC just delivered with which I agree with both the reasons advanced and the conclusion that this appeal lacks merit and ought to be dismissed. My learned brother has admirably and quite efficiently resolved all the salient issues submitted for the determination of this appeal. I however wish to say a few words of mine in support of the judgment.

The Olisa of Ijebu-Ode Chieftaincy is a recognized one. Part 2 of the Chiefs Law Cap. 20, Laws of Ogun State of Nigeria, 1978 is applicable to it. An approved Registered Declaration applicable to Olisa chieftaincy is Exhibit 1. There are seven (7) Ruling Houses in the said exhibit 1.

On 5th August, 1991, the last Olisa, Henry Fowokan from Wunumo Matuluku Ruling House passed on. It became the turn of Demoku/Aboki Ruling House to present a candidate to fill the vacancy. Vide the provisions of Section 15(1)(a) of the Chiefs Law, the Secretary of Ijebu-Ode Local Government issued exhibit 9 calling on Demoku/Aboki Ruling House to present a candidate to fill the vacancy. By exhibit 10, the head of Demoku/Aboki Ruling House was mandated to convene a meeting of the Ruling House to nominate a candidate for appointment as the Olisa. On 23/5/93, Chief Stephen Babalola Kuku, as head of the Ruling House, convened the meeting at which the Secretary of Ijebu-Ode Local Government was present as an observer as dictated by Section 15(d) of the Chiefs Law. At the meeting, the 1st defendant was nominated to fill the vacancy of Olisa.

At a meeting of the kingmakers on 24/5/93, the 1st defendant was appointed as Olisa. The Awujale of Ijebu-Ode subsequently consented to the appointment vide his letter which is exhibit 13. The Executive Council of Ogun State Government approved the appointment with effect from 28th July, 1997.

The plaintiffs were not satisfied with the appointment and con-

sequently initiated the action which has given birth to this appeal. The gist of their case is that the 1st defendant/Respondent is not a member of Demoku/Aboki Ruling House and therefore not eligible to be appointed Olisa.

In his judgment, the learned trial judge held that the plaintiffs failed to establish that the 1st defendant was not a member of the Ruling House. An appeal to the Court of Appeal was dismissed.

It is pertinent to state here that the case of the Appellants at the trial court was that the 1st respondent was not a member of their family and as such could not be nominated and/or appointed Olisa. But during cross-examination on pages 80 - 81 of the record, the appellant as PW1 stated clearly that he and the 1st respondent are members of the same Rade family. I shall reproduce that aspect as follows:

"Myself and those already mentioned are members of Rade family of Ijebu-Ode. I know the 1st defendant in this case who is also a descendant of Rade family of Ijebu-Ode."

Also, on pp 87 - 88 of the said record, the appellant also stated as follows:

"Also, I do not know anything about Rade family house at Isado. I do not know the apartment of Adesanya in Isado."

Even, earlier, still on page 87 of the record, the PW1 also made starting revelation as follows:

"The plaintiffs are members of Rade family. The plaintiffs never received any notice of Rade family meeting and as such I have never appeared or attended Rade family meeting. I do not know why notice of the Rade family meeting were not (see) sent to me. I have never seen a notice of meeting, seen any Rade family meeting neither my mother nor any of my great grandfather downward had any room in Isado."

I can go on and on bringing out evidence from the appellants which clearly show that they are strangers from Rade and that it is the 1st Respondent who is actually a member of Rade family and of the Ruling House. Earlier, the PW1 and he and 1st Respondent are members of Rade family. The trial court found as a fact that the appellants failed to prove that the 1st respondent was not a member of the ruling house. He held the 1st respondent is a member of the said house. The court below also held that the 1st respondent is a mem-

ber of the ruling house. This is a concurrent finding of fact of the two lower courts. By a long line of decided cases, this court has consistently made it clear that it will not disturb concurrent findings of fact of the two lower courts unless or is shown to be perverse, or that there is some miscarriage of justice or a violation of some important principles of law or procedure which, if corrected, the finding cannot stand. See *Ojibah v. Ojibah* (1991) 1 NWLR (Pt. 191) 296, *Etowa Enang v. Fidelis Ikor Adu* (1981) 11 - 12 SC 25, *Nwadike v. Ibekwe* (1987) 4 NWLR (Pt. 67) 718 *Ebolor v. Osayande* (1992) 7 SCNJ 217.

The Appellants who do not even know Rade's family house in Isado talk less of having a room there clearly exposed themselves as strangers to the said family and to the stool. They not only failed to establish that the 1st respondent was not a member of the ruling house but by their evidence made the case of the 1st Respondent stronger that he is a member of the Ruling family. For me, the two lower courts were right to hold that the 1st Respondent is a member of the ruling house and was duly appointed Olisa of Ijebu-Ode. If anything, it is the appellants who failed to prove that they are also members of the ruling family.

It is on the above comments and the fuller reasons enunciated in the lead judgment of my learned brother, Rhodes-Vivour, JSC, that I agree that this appeal lacks merit. It is hereby dismissed by me.

I abide by the order as to costs.