

**SUPREME COURT OF NIGERIA**  
FRIDAY 13TH FEBRUARY, 2015. SC. 92/2005  
**CORAM:- I. T. MUHAMMAD, J. A. FABIYI,**  
**M. D. MUHAMMAD, C. B. OGUNBIYI,**  
**K. M. O. KEKERE-EKUN, JJSC**

GOYANG KAYILI ..... APPELLANT  
AND  
1. ESLY YILBUK  
2. ATTORNEY-GENERAL  
PLATEAU STATE ..... RESPONDENTS  
3. PANKSHIN LOCAL  
GOVERNMENT

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JURISDICTION - Fundamentality of - It is so fundamental that the absence of same renders any proceeding conducted - As null and void and without any legal effect whatsoever (H1)

COURTS - State HC - Jurisdiction - Constitution 1999 s. 272(1) - The court has unlimited jurisdiction to hear and determine - Any civil proceeding in which the existence of legal right is in issue (H2)

CONSTITUTIONAL LAW - Constitution - Supremacy - State HC - Jurisdiction - In view of the supremacy of the Constitution - Any law which tends to limit jurisdiction of the court - Is null and void (H3)

COURTS - State HC - Jurisdiction - Chieftaincy matter - Chiefs Law s. 3(2) that ousts unlimited jurisdiction of the court is null and void - Hence the court has jurisdiction to entertain the matter (H4)

CHIEFTAINCY MATTERS - Evidence - Unchallenged - Evidence of series of letters of complaint made without a response - Is a matter court is enjoined to act on as unchallenged evidence (H5)

CHIEFTAINCY MATTERS - Court - Jurisdiction - Condition for the court to assume jurisdiction in the matter - Exists with the obvious complaints lodged which received no response (H6)

APPEALS - Finding - Failure to appeal - As there is no further appeal to SC against the order made by CA - Dismissing appellant's cross appeal - The finding is binding on all the parties (H7)

CHIEFTAINCY MATTERS - Evidence - Admitted fact - Weight - The fact of rotation of the chieftaincy title having been admitted - It is deemed as proved and needed no further proof (H8)

PLEADINGS - Binding nature - In view of the state of the pleadings and evidence adduced - CA rightly held that allegation relating to murder was baseless - And that trial court's finding was perverse (H9)

DOCUMENTS - Public document - Admissibility - Evidence Act ss. 111 & 112 - For the admissibility of exhibits E, 1, 2 & 3 - There must be certified true copy of each of them (H10)

EVIDENCE - Oral evidence - Admissibility - If oral evidence given in witness box is unchallenged - It must be accepted as establishing the facts therein stated (H11)

EVIDENCE - Consent document - Admissibility - Reliance is not totally placed on document put in evidence by consent - As court must still consider the weight to be attached to same (H12)

APPEALS - Actions - Consistency of - Appeal being a continuation of the original claim - CA rightly resolved issues that emanated from claim in the trial court (H13)

ORDERS OF COURT - Justice - Need to uphold - Pursuant to Plateau State HC Rules O. 47 r. 1 - Order made by CA did not make new case for the parties - Rather it was made to do justice (H14)

EVIDENCE - Contradiction - Weight - Where there are material contradictions - Court is enjoined to reject the entire evidence - As it cannot pick and choose which of the conflicting versions to follow (H15)

**FACTS**

Before the High Court of Plateau, plaintiff/1st respondent and two others (now deceased) in a representative capacity commenced this action against 1<sup>st</sup> defendant/appellant and 2<sup>nd</sup> and 3<sup>rd</sup> defendants/2<sup>nd</sup> and 3<sup>rd</sup> respondents, seeking inter alia for a declaration that the purported appointment and installation of appellant by 3<sup>rd</sup> respondent and the confirmation of same by 2<sup>nd</sup> respondent, as the village head of Somji is a nullity and for a declaration that 1<sup>st</sup> respondent and Neha family is the sole house to aspire to the throne of the village head of Somji. 1<sup>st</sup> respondent's contention is that he is a member of the Neha family of Somji village who is one of the two ruling houses in the said village. 1<sup>st</sup> respondent stated that ascension to the throne of the village head is rotational.

Following the death of the village head, 1<sup>st</sup> respondent contends that it is the turn of the Neha family to produce the next village head. When appellant was appointed to the throne, 1<sup>st</sup> respondent wrote several protest letters to 2<sup>nd</sup> and 3<sup>rd</sup> respondents. No action was taken. At the trial, the parties adduced evidence to support their cases. At the end of hearing, the court held in favour of 1<sup>st</sup> respondent but stated that the Neha family cannot ascend the throne unless they pay compensation for assisting in the murder of a past village head of Somji. Dissatisfied, 1<sup>st</sup> respondent appealed to the Court of Appeal. The court allowed the appeal and held that it is the turn of the Neha family to ascend the throne. Aggrieved, appellant appealed to the Supreme Court.

**ISSUES FOR DETERMINATION**

i) Whether the trial High Court Pankshin lacked the jurisdiction to entertain Suit No. PLD/J.192/82 as instituted by the then Plaintiffs.

ii) Whether the plaintiffs proved the fact of rotation at the trial and whether this fact is still in issue in view of the finding of the trial court on the issue which has not been appealed against.

iii) Whether in view of the holding of the trial court that Neha is a Ruling House in Somji for the purpose of the stool of village Head of Somji and that the stool is rotational between all the Ruling Houses and there is no cross appeal against these findings of the trial court, the Respondents were not entitled to the reliefs being appealed against.

iv) Whether the finding of the lower court that the kingmakers

of Somji for the purpose of the stool of village Head of Somji are the council of elders of Somji and the traditional Chief Priest of Somji together with the Chief of Bolkon is perverse.

**B HELD** (Unanimously dismissing the appeal and cross-appeal per **OGUNBIYI JSC**)

*JURISDICTION - Fundamentalality of*

**1. The law is well settled on the question of jurisdiction of a court which is so fundamental that the absence of same renders any proceeding conducted as null and void and without any legal effect whatsoever.**

**Absence of jurisdiction therefore is fatal and consequential and renders a proceeding of no effect.**

**D It is the plaintiff's claim in a matter that determines the jurisdiction of the court.** (p. 641 G)

*COURTS - State HC - Jurisdiction*

**E 2. By the provisions of Section 236(1) of the 1979 Constitution which is same as section 272(1) of the 1999 constitution, the High Court of a State has unlimited jurisdiction to hear and determine any civil proceeding in which the existence of a legal right, power, duty, liability, interest, obligation or claim is in issue.** (p. 644 G)

*Constitution - Supremacy*

**G 3. The constitution is also held as supreme by virtue of section 1(i) of the 1979 provision which is also same in the 1999 constitution. The effect is if any law is inconsistent with the provisions of the constitution, the other law shall to the extent of the inconsistency be void while the Constitution shall prevail. In view of the supremacy of the Constitution therefore, any law which tends to limit the jurisdiction of the State High Court or vests the judicial powers of the Federation on a State Governor is null and void.**

**H In otherwords, no law other than the Constitution itself can limit the unlimited jurisdiction of the State High Court or**

**vest the judicial powers of the Federation on the State Governor.**

**It is elementary but pertinent to state that the provision of the Chiefs law came into effect in 1963 while the Constitution governing the cause of action came into effect 1979 with Section 1(3) giving it the effect of supremacy over all other laws, without any exception. The Chiefs law, without more, is subordinate and must bow to the Constitutional supremacy.** (pp. 644 H/645 G)

*COURTS - State HC - Jurisdiction - Chieftaincy matter*

**4. As rightly submitted by the learned counsel for the 1st respondent, Section 3(2) of the Chiefs law which purports to oust the unlimited jurisdiction of the State High Court and confer same on the Governor is no doubt unconstitutional, null and void. It follows therefore that all the cases cited by the counsel for the appellant as authorities for the proposition that the High Court of a State has no jurisdiction to entertain chieftaincy matters are clearly distinguishable and inapplicable to the case at hand. This is primarily because none of the cases cited by the learned counsel deal with the interpretation of Section 3(2) of the Chiefs Law in question. For all intent and purpose therefore, Section 3(2) of Chiefs Law of Northern Nigeria, 1963 is not only unconstitutional, but it also offends the Constitution in seeking to place the governor a judge in his own case. Plethora of decided authorities are trite and have declared such stands as null and void.**

**The 1st issue is, in the result resolved against the appellant and hold that the trial court had jurisdiction to entertain the case before it. Hence, the appeal from its decision was properly brought before the lower court.** (pp. 645 H/647 F)

*Evidence - Unchallenged*

**5. In other words, it is clearly documented on the record before us that when the Chieftaincy dispute arose, the plaintiffs wrote a letter of protest to Pankshin Local Government which as a result caused its traditional council to investigate the is-**

*sue of contention. The outcome of the investigation was a report with which the plaintiffs were not satisfied and therefore lodged a protest to the same Local Government which set up another committee which upon reviewing the report of the traditional council, did affirm same accordingly. The plaintiffs*  
*B were again dissatisfied with the report of the second committee and wrote several letters of protest to the ministry in charge of Chieftaincy affairs but without any response despite several reminders. The unchallenged evidence of P.W. 6 by name*  
*C Esly Bombom at pages 75 - 80 is in confirmation wherein series of letters of complaint were identified and admitted in evidence as exhibits. The law is trite and enjoins a court to act on an unchallenged evidence. It is also a matter of common knowledge that the Local Government as well as the Ministry*  
*D in charge of Chieftaincy affairs are organs of government through which the Governor acts; hence their action is therefore deemed to be the action of the Governor. It is further on record that in spite of the repeated series of complaints lodged by the plaintiffs to the Governor, there was no effective action*  
*E taken or any response. (p. 646 F)*

*Court - Jurisdiction*

*6. The Constitution has provided an opportunity for aggrieved*  
*F persons to ventilate their grievances in a court of law which is empowered to determine any civil proceeding in which the existence of a legal right, power, duty, liability, interest, obligation or claim is in issue. This right is guaranteed and cannot be taken away or be made subject to any other legislation*  
*G whatever. As rightly submitted on behalf of the 1st respondent therefore, the condition for the court to assume jurisdiction in this case exists with the obvious complaints lodged and which had not been attended to by the Governor. The refusal to act by the Governor should not be used against the*  
*H plaintiff/1st respondent. It was enough that the various steps which were taken for purpose of seeking redress were not addressed. (p. 647 C)*

*APPEALS - Finding - Failure to appeal*

**7. More significantly, by paragraph 41 of the Statement of Defence, the appellant admitted paragraph 42 of the amended statement of claim on the existence of the two ruling houses. It is pertinent to reflect that the trial court at page 130 of the record (supra) declared in favour of Neha being a ruling house. The 1st Defendant who is now appellant in this court cross appealed against the said finding of the trial High court, that Neha is a Ruling House for the purpose of the stool of village Head of Somji, to the Court of Appeal, but his cross appeal was dismissed. There is no further appeal to this court against the order made by the lower court which dismissed the appellant's cross appeal. It follows therefore that the said finding is binding on all the parties as rightly submitted by the 1st respondent's counsel.** (p. 652 E)

*Evidence - Admitted fact - Weight*

**8. By the state of pleadings at the trial court, the fact of rotation as feature of Somji Chieftaincy was an admitted fact and as rightly submitted by counsel to the 1st respondent; hence issues were therefore not joined on the fact of rotation with the fact having been admitted. It is deemed proved and needed no further proof.**

**From the foregoing, it follows that relief 48(b) of the plaintiffs' claim to the effect that Neha Ruling House is the sole house or have the right to aspire to the stool after the demise of Nde Boyi Goshit, is founded on the custom of rotation that, if the immediate Chief is from Nees and the next House Neha has an eligible candidate, then it will be their (Neha's) sole right to produce a candidate to occupy the stool. Therefore, contrary to the submission by the appellant's counsel, the said relief cannot be interpreted as if Neha is the only recognized Ruling house in Somji.** (pp. 653 A/655 F)

*PLEADINGS - Binding nature*

**9. As rightly held by the lower court, there was no pleading or any evidence led by any witness to show that Neha Ruling House assisted or aided the Bam people as alleged. The pay-**

**ment of compensation sought to ascribe to the NEHA Ruling House was certainly without any foundation but probably invented primarily with the intention of depriving the Neha Ruling House of their right to the office. It is not open for a court to make out a case for any party. That assertion was a mere and baseless calculation which was not part of the case of the parties before the trial court.**

**In the circumstances of the foregoing, and in view of the state of pleadings and the evidence adduced before the trial court, the court below was not in error when it held and concluded that the allegation relating the murder of Kankalak could not be ascribed to Neha Ruling House. I therefore endorse the view held by the lower court that the finding by the trial court was grossly perverse and I so hold.** (p. 656 G)

**D** *DOCUMENTS - Public document - Admissibility*

**10. As rightly conceived by the lower court a close and crucial examination of Exhibits E, 1, 2 and 3 appear to show that the Exhibits are public documents under Section 109 of the Evidence Act. This is because they are documents relating to records of acts of Pankshin Local Government Traditional council. For purpose of admissibility into evidence, there must be certified True copy of each of the report as provided by Sections 111 and 112, of Evidence Act, Cap 112 Laws of the Federation 1990.**

**If however and taken for granted or assuming that the Exhibits E, 1, 2 and 3 are not public documents within the meaning of section 109 of the Evidence Act, they will still be subject to section 91 of the same Act since the makers were not called to give evidence and also in the absence of any foundation laid for their admissibility.**

**By the very nature of the facts contained therein the documents, they are made relevant to the facts in issue and rendering their admission as proper.** (p. 657 H)

*EVIDENCE - Oral evidence - Admissibility*

**11. It is pertinent and intriguing to highlight also that all the oral evidence restated above was not challenged by the ap-**

**pellant. The effect of unchallenged evidence is very well stated and trite. The trial court, despite the said unchallenged credible oral evidence given by the Plaintiff/Respondent's witnesses, did equate same with Exhibits E, 1, 2 and 3, the reports of the various committees which were set up by Pankshin Local Government Traditional Council supra. It is obvious that the learned trial judge failed to consider the unchallenged oral evidence by the witnesses for the plaintiffs/respondent along side with the Exhibits E, 1, 2 and 3. The lower court was certainly very much in order when it held that the trial court was in error in its failure to consider and gravely too, the error which from all consideration extended to the court arriving at three ruling houses to the stool of village head of somji. In other words there are not three but two ruling Houses to the stool of village head of Somji namely Neha and Nees only. I seek to emphasize the position of the law further that if an oral evidence given in the witness box is unchallenged, it must be accepted as establishing the facts therein stated.**

(p. 659 D)

*EVIDENCE - Consent document - Admissibility*

**12. The same cannot however be said in respect of a document put in evidence by consent or by the court in the absence of the maker, under Section 91 of the Evidence Act. The court, as stated earlier, must still consider the weight to be attached to such documentary evidence.** (p. 659 H)

*Actions - Consistency of*

**13. The law is trite and well settled that an appeal is a continuation of the original claim and the lower court as rightly submitted by the appellant's counsel is obliged to resolve issues that emanated from the claim in the trial court. The cornerstone of the plaintiffs/respondent's case was the findings by the trial court that Neha is a Ruling House and is eligible to produce a candidate to occupy the stool of village Head of Somji. That fact cannot now be erased but is very well established. Contrary to the contention held by the learned counsel for the appellant, all the reliefs claimed in the Court**

**of Appeal are as a consequence of the reliefs partially granted by the High Court; they are not independent and different but came sequentially as a result of the trial court failing to make the order in respect thereof, had proper consideration been given to the case. Put differently, the orders are natural having**  
**B flowed as a result of the outcome of the case presented before the trial court. (pp. 660 G/662 B)**

*Justice - Need to uphold*

**14. Furthermore and even in the face of Order 47 Rule 1 of the**  
**C Plateau State High Court (Civil Procedure) Rules 1987, it is open to the court in all causes and matters to make any order which it considers necessary for doing justice whether or not such order has been expressly asked for by the person entitled to the benefit therefrom.**  
**D**

**The error made by the trial court was appropriately remedied by the lower court in invoking the provision of Order 47 rule 1 of the High Court (Civil procedure) Rules supra. Contrary to the wrong contention conceived by the appellant's**  
**E counsel, the order made did not amount to making a new case for the parties; rather they were made to do justice in the circumstance of the case, which is the foundation and cornerstone of our judicial system and the Constitution.**

**Moreover, the law has also hitherto enjoined the Court of Appeal on the authority of Section 15 of the Court of Appeal Act 2004, formerly Section 16 of the 1976 Act to make any order necessary for determining the real question in controversy in an appeal and can as well make an interim order**  
**F or grant any injunction which the court below is authorized to make. The orders were made for purpose of doing justice to parties in pursuant to the statutes as stated. They needed not specifically be claimed; they are obvious and should be made as a consequence. (p. 662 E)**  
**G**

**H**  
*EVIDENCE - Contradiction - Weight*

**15. As rightly conceived and held by the lower court, it is overwhelming on the evidence on record that the plaintiffs/respondent and their witnesses are very consistent on their evidence**

*which is free of material contradictions. The same cannot however be said of the evidence by the Defendant/appellant and his witnesses, whose evidence is materially conflicting and lacking in credibility. The lower court was right when it rejected the Defendant/appellant's story. The law is well positioned that where there are material contradictions in the evidence adduced by a party, the court is enjoined to reject the entire evidence as it cannot pick and choose which of the conflicting versions to follow. The entire evidence must be rejected. The lower court, I hold was right, when having reviewed the entire evidence, it rejected that of the Defendant/appellant and preferred those of the plaintiffs/respondent on the issue of the kingmakers and the king making process of Somji. It is not true, as wrongly submitted on behalf of the appellants, that there were material contradictions in the evidence of the respondents on this point. The court does not reject the evidence of a party simply on minor contradictions. This is moreso especially in situations where proof is based on evidence of traditional history, as it is in the case at hand; there are bound to be slips in the evidence of witnesses; absence of such would certainly give reason for casting doubts on the credibility and the truth of the witnesses. Traditional history of witnesses cannot come out in mathematical exactness or exactitude. The Court of Appeal was on a sound footing and could not be faulted when it preferred the evidence of the plaintiffs/respondent on this issue as against that of the Defendant/appellant.* (p. 666 C)

## NOTABLE POINT OF INTEREST

### KEKERE-EKUN JSC

#### *1. Legal remedies must be exhausted before litigation*

The position of the law is that where a statute provides a legal line of action for the determination of an issue, the aggrieved party must exhaust all the remedies in the law before going to court. (p. 671 H)

### REPRESENTATION

S. S. Obende appears with M. A. Dawam, for the Appellant

Jim Gotom, E. G. Pwajok Esq., G. D. Fwomjom DPP Plateau State,  
for the Respondents

**CASES REFERRED TO**

- Madukolu v. Nkemdilim (1962) SCNLR 31  
 B SPDC Nig. Ltd. v. Isaiah (2001) 11 NWLR (pt. 723) 168  
 Peenok Invest. Ltd. v. Hotel Presidential Ltd. (198) 4 NCLR 122  
 Mozie v. Mbamalu (2006) All FWLR (pt. 341) 1200  
 Amaechi v. INEC (No. 1) (2007) 18 NWLR (pt. 106) 42  
 C Akinfolarin v. Akinola (1994) 3 NWLR (pt. 335) 659  
 Adeyemi v. Opeyori (1976) 9-10 SC 31  
 Babalola v. Oshogbo L. G. (2003) 10 NWLR (pt. 829) 465  
 Oladoye v. Administrator Osun State (1996) 10 NWLR (pt. 475) 38  
 Ogologo v. Uche (2005) 7 SCNJ 577  
 D Balogun v. Ode (2007) 4 NWLR (pt. 1023) 1  
 Kanada v. Governor of Kaduna State (1986) 4 NWLR (pt. 35) 361  
 Mogaji v. Cadbury (1985) 2 NWLR (pt. 7) 393  
 A-G of the Federation v. Sode (1990) 1 NWLR (pt. 128) 500  
 Military Governor Bendel State v. Ezaga (1990) 5 NWLR (pt. 154)  
 E 19

**STATUTES & RULES REFERRED TO**

- Chiefs (Appointment & Deposition) Law Cap 20 LFN 1963, s. 3(2)  
 F Constitution of the Federal Republic of Nigeria 1999, ss. 5, 6, 272(1)  
 Constitution of the Federal Republic of Nigeria 1979, s. 236(1)  
 Court of Appeal Act 2004, s. 15  
 Evidence Act Cap 112 LFN 1990, ss. 75, 91, 109, 111, 112  
 High Court (Civil Procedure) Rules of Plateau State 1987, O. 47 r. 1  
 G

**LEAD JUDGMENT BY OGUNBIYI JSC**

- Briefly and for purpose of understanding the background  
 history the appeal now before us, it is pertinent to state that the 1st  
 respondent together with two other persons now deceased, whose  
 H names have been struck out of the appeal at the lower court, insti-  
 tuted Suit No. PLD/J.192/87 against the present appellant as well as  
 the 2nd and 3rd respondents at the High Court Jos but was later  
 transferred to Pankshin High Court which heard and determined the  
 suit. At the trial court, the 1st respondent as well as the two other

persons now deceased were the Plaintiffs while the appellant and the 2nd and 3rd respondents in this court were the defendants. The suit at the trial High Court was instituted in a representative capacity on behalf of the initiators and members of Neha Family of Somji.

The case of the plaintiffs/1st respondent before the trial court was that at all material times to the action they are members of Neha family of Somji village in Kabwir District of Pankshin Local Government Area. B

The Neha family is one of the two ruling houses in Somji village by virtue of which fact the plaintiffs are entitled to the throne of the village Head of Somji. On the 5th of September, 1984, the stool of the village Head of Somji became vacant on the death of the then incumbent, Nde Boyi Goshit. He was buried on the 6th of September, 1984 and there was a need to appoint a new village head of the village. C

According to the plaintiffs/respondent there are two Ruling Houses in Somji village, namely Neha and Nees and the stool is rotational. The last village head, Boyi Goshit came from Nees family and it was therefore the turn of Neha family to produce a candidate to the stool. D

The 1st Defendant/Appellant Goyang Kayili from Nees family was appointed by Nees family despite protest from Neha family and the 3rd defendant/respondent subsequently confirmed the appointment. The plaintiffs/respondent protested the selection of the 1st defendant/appellant as the village head of Somji by writing several letters to the 2nd and 3rd defendants/respondents. No action was taken thereon. E

The 1st defendant/appellant was officially installed and presented with a letter of appointment as the village head of Somji on the 24th September, 1987. Hence, the plaintiffs/respondent instituted this action, now on appeal before us. F

In paragraph 48 of the Amended Statement of Claim, the plaintiffs/respondent claimed as follows:- G

*“(a) A declaration that the purported election, selection or appointment and installation of the 1st defendant by 3rd defendant and the confirmation of same by the 2nd defendant, as the village head of Somji is null and void and of no effect. H*

*(b) A declaration that the plaintiffs and Neha family is the*

sole house or have right to aspire to the throne of the village head Somji.

(c) A perpetual injunction restraining the 1st defendant by himself, his servants, agents and/or privies from parading himself or him and performing any duty pertaining (sic) or attaching to the office of the village head of Somji and/or holding himself or him out in any way as the village head of Somji.

(d) A perpetual injunction restraining the 2nd and 3rd defendants, their servants, agents and/or privies from holding in any way, the 1st defendant as the village head of Somji or approving or if approved, from regarding such approval as valid, the selection, election of appointment of the 1st defendant as the village head of Somji, and from installing him or if installed, regarding as valid his installation, as village head of Somji or in any way dealing with him as the said village head of Somji. ”

Pleadings were filed and exchanged. Evidence, both oral and documentary was adduced before the trial court. At the conclusion of the trial, the learned trial judge found against the plaintiffs. In its judgment delivered on the 7th July, 1993, the trial court held that Neha Ruling House of which the plaintiffs belong is one of the Ruling Houses in Somji for the purpose of the stool of village Head of Somji and that the stool rotates between the Ruling Houses; that members of Neha Ruling House cannot ascend the throne unless they pay compensation for assisting the people of Bam to kill Kankalak a past village Head of Somji.

The plaintiffs were dissatisfied with that part of the decision of the High Court Pankshin that they cannot ascend the throne of village Head of Somji though they belong to a ruling House and the stool rotates between all the Ruling Houses of Somji and appealed against the decision to the Court of Appeal Jos Division. The lower court allowed the appeal by the plaintiffs/appellant before it and held that having proved that they belong to a Ruling House in Somji and the stool of village Head of Somji is rotational, it is now the turn of their Ruling House, to exclusively occupy the stool. The 1st defendant/appellant now in turn is also dissatisfied with the decision of the Court of Appeal, hence the appeal to this court, with leave granted on the 27th February, 2007. The appellant originally filed nine grounds of appeal and one additional ground was filed with the leave

of this court also granted on the 26th November, 2007 wherein the appellant was allowed to raise a fresh issue by way of ground ten as contained in the amended notice and grounds of appeal. This appeal is therefore argued on the basis of the ten grounds of appeal.

Briefly, the statement of material facts in this case are that the 1st Defendant/appellant, Goyang Kayili was selected as the village head of Somji. The stool of the village head of Somji is a Chieftaincy stool, which evolved through the native law and custom of the Somji people. The selection of the 1st defendant/appellant was approved by the Governor of Plateau State, after which he was installed. The plaintiffs/respondent commenced this action at the trial court on the ground that the Neha ruling house, to which they belong, is the sole house entitled to the stool of the village head of Somji. C

It was the plaintiffs' averment that the stool of the village head of Somji was founded by Wus Pus, who upon his demise was succeeded by Wuryep Pus, and finally by Ndam Wuryep, all of them from Neha ruling house in quick consecutive succession. The plaintiffs contend further that upon the demise of Ndam Wuryep, the stool rotated to the Nees ruling house because Neha ruling house had no strong adult male to fill the vacancy. The plaintiffs went further to plead that Ndam Wuryep was succeeded by the son of his blood sister, by name Kushada whose father was from Nees family. In otherwords, the plaintiffs showed how the stool was transferred through Kushada to Nees family and Kushada therefore marked the beginning of the reign of Nees family down to Boyi Goshit, the last village head. These chiefs who ruled in quick consecutive succession from Nees ruling house were said to have been installed duly as their counter-parts in the Neha ruling house. E F

It was the plaintiffs' argument at the trial court that their agitation for the stool to revert back to Neha ruling house was refused. They also contended that the traditional selectors did not know of the selection of the 1st defendant/appellant and finally that Neha ruling house is the sole family to fill the vacant stool. G

The 1st Defendant/appellant denied the plaintiffs/respondent's claim and contended that there are three ruling houses in Somji, to wit, Nees, Bam and Jimi. That his selection as the village head of Somji, was by the traditional selectors in accordance with the native law and custom of Somji. The 1st defendant pleaded who the tradi- H

tional selectors for the stool are. The 2nd and 3rd defendants/respondents also denied plaintiffs claim. Parties led oral evidence in support of their respective positions.

The trial court came to the conclusion that plaintiffs claim had not been proved and dismissed same. The plaintiffs appealed to  
B the Court of Appeal upon five grounds of appeal.

In reversing the judgment of the trial court, the lower court ruled that the plaintiffs proved their case to entitle them to judgment. In addition, the lower court held that the traditional selectors were  
C not those pleaded by the defendants but the elders relied upon by the plaintiffs. In setting aside the selection of the 1st defendant, the lower court directed that a fresh selection be conducted exclusively for persons of the Neha Ruling House. This appeal therefore is against the said judgment of the Court of Appeal.

D In accordance with the Rules of Court, briefs of arguments were exchanged between parties. On the main appeal, the appellants' brief was filed on the 5th December, 2007 and the reply brief filed also on the 14th January, 2013. In response to the foregoing brief, the 1st respondent filed a brief of argument on the 25th January, 2011 but deemed properly filed on the 27th November, 2012.  
E No brief was filed on behalf of the 2nd and 3rd respondents.

On the cross appeal however, the appellant/cross respondent did not file any brief of argument. The 1st Respondent/Cross  
F Respondent's brief of argument to the cross appeal was filed on the 3rd January, 2013.

On behalf of the 2nd and 3rd respondents/cross respondents, also, a brief was filed on the 3rd January, 2013.

On the 18th November, 2014 at the hearing of the appeal  
G and cross appeal, all counsel adopted their respective briefs of arguments. On the one hand, Mr. S. S. Obende represented the appellant and adopted and relied on the two appellants' brief filed. Counsel urged that the appeal be allowed and the judgment of Court of Appeal should be set aside. Since the appellant did not file any brief  
H in respect of the cross appeal, the counsel did not urge for any order from the court in respect thereof. On the other hand however, Mr. Gotom represented the 1st respondent and in adopting and relying on their brief filed, the learned counsel urged in favour of dismissing the appeal.

Also in adopting their cross respondent's brief of argument, counsel urged that the cross appeal be dismissed and the judgment of the lower court should be affirmed.

On behalf of the 2nd and 3rd respondents/cross appellants, their counsel, Mr. Pwajok adopted and relied on their cross appellant's brief of argument and submitted in favour of allowing both the appeal and the cross-appeal. B

Both the appellant and the 1st respondent each formulated four issues which are very much identical and similar in substance. I will adopt the formulation by the 1st respondent which reproductions are as follows:- C

i) Whether the trial High Court Pankshin lacked the jurisdiction to entertain Suit No. PLD/J.192/82 as instituted by the then Plaintiffs.

ii) Whether the plaintiffs proved the fact of rotation at the trial and whether this fact is still in issue in view of the finding of the trial court on the issue which has not been appealed against. D

iii) Whether in view of the holding of the trial court that Neha is a Ruling House in Somji for the purpose of the stool of village Head of Somji and that the stool is rotational between all the Ruling Houses and there is no cross appeal against these findings of the trial court, the Respondents were not entitled to the reliefs being appealed against. E

iv) Whether the finding of the lower court that the kingmakers of Somji for the purpose of the stool of village Head of Somji are the council of elders of Somji and the traditional Chief Priest of Somji together with the Chief of Bolkon is perverse. F

The 1st issue questions the propriety of the trial court in entertaining the Suit PLD/J/192/87 instituted before it by the then plaintiffs. In otherwords, whether the trial court had the jurisdiction to G entertain the suit?

***The law is well settled on the question of jurisdiction of a court which is so fundamental that the absence of same renders any proceeding conducted as null and void and without any legal effect whatsoever.*** The locus H

classicus case of Madukolu V. Nkemdilim (1962) SCNLR 31; SPDC Nig. Ltd. V. Isaiah (2001) 11 NWLR (pt.723) 168 and Peenok Investment Ltd. V. Hotel presidential Ltd. (198) 4 NCLR 122 are all well in point. See also Mozie V. Mbamalu (2006) All FWLR (pt. 341)

1200 at 1232. ***Absence of jurisdiction therefore is fatal and consequential and renders a proceeding of no effect.***

***It is the plaintiff's claim in a matter that determines the jurisdiction of the court.*** See Rt. Hon. Chibuike Rotimi Amaechi v. INEC (No. 1) (2007) 18 NWLR (pt.106) 42 at 48. See also Akinfolarin v. V. Akinola (1994) 3 NWLR (pt. 335) 659 and Adeyemi V. Opeyori (1976) 9-10 SC 31 at 51.

The learned counsel representing the appellant restated the features that must exist before a court can properly be constituted for the exercise of its jurisdiction; that the trial court lacked the requisite capacity to entertain the plaintiffs' suit, as its jurisdiction was completely ousted in respect of matters, relating the determination as to whether or not the selection of the 1st defendant/appellant is in accordance with the customary law of the people. The appellant's submission is anchored on the provision of Section 3 of the Chiefs (Appointment and Deposition) Law, Cap 20 Laws of the Federation of Nigeria 1963, which section confers power on the Governor to conduct an inquiry for the purpose of determining whether the appointment of a Chief is in accordance with native law and custom. It is the submission by the appellant further that the Governor is not expected to initiate the inquiry except a dispute is invoked by an aggrieved party; that this provision deprives the court of its competence and jurisdiction to hear a matter, to which section 3 of the Chiefs law is applicable, without evidence of compliance with the law, by inviting the Governor to exercise his powers as a sole judge. The cases of Babalola v. Oshogbo Local Government (2003) 10 NWLR (pt 829) 465 and Oladoye v. Administrator, Osun State (1996) 10 NWLR (pt 475) 38 were cited as a precondition necessary before instituting an action in court, in respect of the appointment of a Chief, as it relates to the question whether the appointment is in accordance with native law and custom.

Also, in re-iterating the purport of Section 3 of Chiefs Law as a provision, the counsel informs that an exclusive power is conferred on the Governor as the prescribed authority, to determine the question as to whether the selection of a chief is made in accordance with native law and custom; that the condition precedent to invoking the jurisdiction of the court, is an evidence that the Governor has resolved the dispute whether the selection is in accordance with such

native law and custom. It is further submitted by counsel that where such power is exercised by the Governor, the jurisdiction of the court can only be invoked in its supervisory capacity by way of proceedings initiated by means of judicial review of the decision of the Governor; that the jurisdiction of the court is therefore completely ousted until the Governor makes his findings which must be predicated on the review of his decision. The case of *Ogologo v. Uche* (2005) 7 SCNJ 577 at 592 a decision of this court was cited in support. B

On the totality of the said issue, the appellant strongly submits the absence of jurisdiction by the trial court in usurping the function and authority ascribed to the Governor of Plateau State by section 3, Chiefs law under reference. The counsel urged that the appeal in the circumstance should therefore be allowed and the judgment of the lower court be set aside while the plaintiffs' suit at the trial court should be struck out. C D

In response on behalf of the 1st respondent, the counsel related copiously to the Constitutional provision which vests unlimited jurisdiction in the State High Court to hear and determine any civil proceeding in which the existence of a legal right, power, duty, liability, interest, obligation or claim is in issue, and that any law which tends to limit the jurisdiction of the state High court or vests the judicial powers of the Federation on a state Governor is null and void. It is the submission of counsel therefore that section 3(2) of the chiefs (Appointment and deposition) Law Cap 20, Laws of Northern Nigeria 1963 which purports to oust the unlimited jurisdiction of the State High Court and confer same on the Governor is no doubt unconstitutional, null and void; that the law cannot be relied upon for the proposition that the state High Court has no jurisdiction to determine chieftaincy dispute; that none of the cases cited by the learned counsel for the appellant, deal with the interpretation of Section 3(2) of the Chiefs Law in question and which is the existing applicable law in plateau state and governing appointment and deposition of Chiefs. E F G

Submitting further, it is the counsel's contention that even if taken for granted, the provision of Section 3(2) applies, he holds the view strongly that the condition expected for the court to assume jurisdiction in this case exists having regard to the background situations of the events and various stages of happenings before the plaintiffs finally instituted the Suit in Court. H

In summary, it is the submission of counsel that the High Court did not lack the jurisdiction to entertain suit No. PLD/J.192/87 because by virtue of Section 236(1) of the 1979 constitution, now Section 272(1) of the 1999 Constitution, Section 3(2) of the Chiefs (Appointment and Deposition) Law of Northern Nigeria 1963 which purports to oust the jurisdiction of the State High Court with respect to chieftaincy dispute is unconstitutional, null and void. The counsel has urged, in the circumstance that the issue be resolved against the appellant and hold that the High Court had the jurisdiction to entertain and hear Suit No. PLD/J.192/87.

The 1st issue is challenging the jurisdictional competence of the trial court in entertaining the Suit and ultimately the propriety of the lower court which the appellant submits did err in entertaining an appeal against a judgment which is a nullity. For the determination as to whether or not the trial court had jurisdiction, recourse must be had to the provision of Section 3(2) of the Chiefs (Appointment and Deposition) law of Northern Nigeria 1963 vis-à-vis the constitutional provision and its supremacy.

It is apparent that the cause of action in this matter arose long after the coming into force of the Constitution of the Federal Republic of Nigeria 1979 and it therefore governs the case. Section 6 of the 1979 constitution is in pari materia with Section 6 of the 1999 Constitution and vests the judicial powers of the Federation in the Courts while Section 5 of both Constitutions vest the executive powers of the Federation and state in the President and Governor respectively.

The Constitution is very clear and specific on separation of the powers between the arms of government to wit the Executive, Legislator and the Judiciary at both Federal and State levels; thus the Executive cannot exercise or usurp the powers of the Judiciary and vice versa.

***By the provisions of Section 236(1) of the 1979 Constitution which is same as section 272(1) of the 1999 constitution, the High Court of a State has unlimited jurisdiction to hear and determine any civil proceeding in which the existence of a legal right, power, duty, liability, interest, obligation or claim is in issue. The constitution is also held as supreme by virtue of section 1(i) of the 1979 provision which is also***

**same in the 1999 constitution. The effect is if any law is inconsistent with the provisions of the constitution, the other law shall to the extent of the inconsistency be void while the Constitution shall prevail. In view of the supremacy of the Constitution therefore, any law which tends to limit the jurisdiction of the State High Court or vests the judicial powers of the Federation on a State Governor is null and void.** B

**In otherwords, no law other than the Constitution itself can limit the unlimited jurisdiction of the State High Court or vest the judicial powers of the Federation on the State Governor.** C  
Several authorities were referred to by the learned counsel for the 1st respondent in particular the case of Balogun V. Ode (2007) 4 NWLR (pt. 1023) 1 at 15 - 16 which held thus:

*“Any law (including a Chieftaincy declaration) of a state which amounted to a removal or purported to remove chieftaincy questions or matters from the jurisdiction of a state High Court was inconsistent with the provision of Section 236(1) of the 1979 Constitution of the Federal Republic of Nigeria.”*

The following authorities are also supporting the same principle:- Kanada V. Governor of Kaduna State (1986) 4 NWLR (pt. E 35) 361; Military Governor of Ondo State V. Adewunmi (1988) 3 NWLR (pt.82) 280; Attorney-General of the Federation V. Sode (1990) 1 NWLR (pt. 128), 500; Military Governor Bendel State V. Ezaga (1990) 5 NWLR (Pt. 154) 19 and Military Governor Ondo State V. Kolawole (2000) FWLR (Pt. 3) 395. F

The reproduction of Section 3(2) of the Chiefs Law provides as follows:-

*“...In the case of any dispute, the Governor, after due inquiry and consultation with the persons concerned in the selection, shall be the sole judge as to whether any appointment of a Chief has been made in accordance with native law and custom.”* G

**It is elementary but pertinent to state that the provision of the Chiefs law came into effect in 1963 while the Constitution governing the cause of action came into effect 1979 with Section 1(3) giving it the effect of supremacy over all other laws, without any exception. The Chiefs law, without more, is subordinate and must bow to the Constitutional supremacy.** H

**As rightly submitted by the learned counsel for the 1st**

**respondent, Section 3(2) of the Chiefs law which purports to oust the unlimited jurisdiction of the State High Court and confer same on the Governor is no doubt unconstitutional, null and void. It follows therefore that all the cases cited by the counsel for the appellant as authorities for the proposition that the High Court of a State has no jurisdiction to entertain chieftaincy matters are clearly distinguishable and inapplicable to the case at hand. This is primarily because none of the cases cited by the learned counsel deal with the interpretation of Section 3(2) of the Chiefs Law in question.** For instance, the issue of jurisdiction raised in the case of Babalola V. Osogbo Local Government (2003) 10 NWLR (Pt. 829) 465, cited by the appellant's counsel relates to the failure to serve pre-action notice and not absence of jurisdiction in Chieftaincy dispute.

It is also intriguing but relevant when the other side of the coin is taken into consideration had the supremacy of the constitution not overruled as a determining factor. In other words, whether the said Section 3(2) of Chiefs law would have applied and ousted the trial court's jurisdiction. The determination will have to take into consideration the background situational circumstances of the case right from the time the stool of the village head of Somji became vacant and the appellant was duly selected, installed and subsequently presented with a letter of appointment. The steps taken and which progressively led to the development preceding the institution of the cause of action will determine whether or not the condition for the court to assume jurisdiction in the case existed. These steps have been well spelt out in the appellant's brief of argument.

**In other words, it is clearly documented on the record before us that when the Chieftaincy dispute arose, the plaintiffs wrote a letter of protest to Pankshin Local Government which as a result caused its traditional council to investigate the issue of contention. The outcome of the investigation was a report with which the plaintiffs were not satisfied and therefore lodged a protest to the same Local Government which set up another committee which upon reviewing the report of the traditional council, did affirm same accordingly. The plaintiffs were again dissatisfied with the report of the second committee and wrote several letters of protest to the ministry in**

*charge of Chieftaincy affairs but without any response despite several reminders. The unchallenged evidence of P.W. 6 by name Esly Bombom at pages 75 - 80 is in confirmation wherein series of letters of complaint were identified and admitted in evidence as exhibits. The law is trite and enjoins a court to act on an unchallenged evidence. It is also a matter of common knowledge that the Local Government as well as the Ministry in charge of Chieftaincy affairs are organs of government through which the Governor acts; hence their action is therefore deemed to be the action of the Governor. It is further on record that in spite of the repeated series of complaints lodged by the plaintiffs to the Governor, there was no effective action taken or any response.* B  
C

*The Constitution has provided an opportunity for aggrieved persons to ventilate their grievances in a court of law which is empowered to determine any civil proceeding in which the existence of a legal right, power, duty, liability, interest, obligation or claim is in issue. This right is guaranteed and cannot be taken away or be made subject to any other legislation whatever. As rightly submitted on behalf of the 1st respondent therefore, the condition for the court to assume jurisdiction in this case exists with the obvious complaints lodged and which had not been attended to by the Governor. The refusal to act by the Governor should not be used against the plaintiff/1st respondent. It was enough that the various steps which were taken for purpose of seeking redress were not addressed.* D  
E  
F

*For all intent and purpose therefore, Section 3(2) of Chiefs Law of Northern Nigeria, 1963 is not only unconstitutional, but it also offends the Constitution in seeking to place the governor a judge in his own case. Plethora of decided authorities are trite and have declared such stands as null and void.* G

*The 1st issue is, in the result resolved against the appellant and hold that the trial court had jurisdiction to entertain the case before it. Hence, the appeal from its decision was properly brought before the lower court.* H

Issues 2 and 3 are closely related and will be treated together.

While the former alleges that the lower court erred in awarding the 1st respondent the reliefs not claimed, the latter issue poses a question whether the 1st respondent now before us did prove his assertion that the stool of the village head of Somji is rotational?

In summary, the appellant's counsel submitted succinctly the following arguments in support of the said two issues; that the reliefs awarded by the lower court were not sought by the plaintiffs in the trial court in their statement of claim; that the plaintiffs as appellant in the lower court made a claim totally different from that canvassed in the trial court. It is the counsel's further submission that the appeal before the lower court being a continuation of the original claim, the court was therefore obliged to resolve only issues that emanated from the claim before the trial court. See the cases of *Abang V. Effiong & Ors.* (1976) 1 SC 17, *Abaye V. Ofili* (1986) 1 NWLR (pt. 15) 134, *A. D. G. Anambra State V. Okafor* (1992) 2 NWLR (Pt.224) 395 and *NIPOL Ltd. V. Bioku Invest and Pro. Co. Ltd.* (1992) 3 NWLR (PT. 232) 727. Counsel also submits that the plaintiffs did not prove that the stool of the village head of Somji is rotational in the absence of any pleadings or evidence led as to the manner of rotation; that a claim for rotation is established where the evidence shows that the stool moves from one house to the other in alternate succession, from Group A, to B to C and D. See *Buraimoh V. Esa & Os* (1990) 2 NSCC 1 at 6 - 7 and *Kimdey & Ors. V. Mil. Governor Gongola State & Ors.* (1988) NSCC Vol. 19 (pt. 1) 827 at 842. He submits further that the only evidence led by the plaintiffs showed that each ruling house had produced candidates who were selected as Chiefs in quick successions; that in order to prove a custom in this situation, it is mandatory that the plaintiffs lead evidence from witnesses belonging to the community to show that they regard the custom as binding on them, Counsel cited *Oladele V. Aromolaran II* (1996) 6 NWLR (Pt. 453) 180 and *Olagbemiro V. Ajagunbade III* (1990) 3 NWLR (Pt. 136) 37. In the final submission counsel resolved that the only evidence of the next ruling house taking over is when the immediate ruling house has no adult male to succeed the demised Chief.

The court in the circumstance is urged to resolve issues 2 and 3 therefore in favour of the appellant since the plaintiffs/respondent failed to discharge the burden of proof on them by proving that the stool of the village head of Somji is rotational.

In response to the foregoing, issues the 1st respondent's counsel relied copiously on the pleadings and evidence before the court wherein the issue of rotation as a feature of Somji Chieftaincy was an admitted fact between the parties and that the trial court was right when it upheld the concept of rotation. Without much ado, counsel in the circumstance, strongly urged the court to uphold the custom of rotation as a feature of Somji Chieftaincy since the holding of the trial court that: *"Neha Ruling House cannot take its turn, because they assisted Bam people to murder Kankalak and must first pay fine"*, is perverse.

In further submission, counsel also re-iterates that the orders made by the Court of Appeal flowed from the claims of the plaintiffs in the amended statement of claim and that the said decision of the trial court has not been appealed against. Further still, it is his submission that by Order 47 Rule (1) of the High Court (Civil Procedure) Rules of Plateau State 1987 and Sections 15, previously 16 of the Court of Appeal Act 2004 and 1976 respectively, the orders are justified. He submits as true therefore, that from Kushada to Nde Boyi Goshit, Nees Ruling House produced several Chiefs of Somji in succession but that the plaintiffs in their pleadings and evidence before the court gave an explanation as to why Nees Ruling House were allowed to produce such number of Chiefs in succession against the custom of rotation; that the explanation was primarily because there were no eligible persons from Neha to ascend the throne and after enjoying the stool in succession for many years, members of Nees Ruling House turned around and denied the fact that Neha is also a Ruling House and this was what led to a dispute culminating into the case now before the court. Counsel submits therefore that the fact of absence of eligible candidates alone cannot be a negation of the admissions of the parties and the finding of the trial court that the chieftaincy of Somji is rotational among the Ruling Houses of Somji.

It is the submission of counsel therefore that the orders made by the Court of Appeal are not a departure from the claims of the plaintiffs on the amended statement of claim and do not also amount to making a new case for the parties; that both parties were ad idem that there are two Ruling Houses not three for the purpose of the stool of village Head of Somji which rotates between the Ruling Houses. In the result, the court is urged for a dismissal of the two

issues therefore.

On the pleadings before the trial court, the plaintiffs' claims as distilled from the amended statement of claim are to the effect that the selection and installation of the 1st Defendant, now appellant in this court, is null and void because it is the exclusive turn of Neha B Ruling House to select and present a candidate for installation as village Head of Somji. The plaintiffs also sought an order of perpetual injunction restraining the 1st Defendant/appellant from parading himself about as village Head of Somji and as well sought an C order of perpetual injunction restraining the 2nd and 3rd Defendants from recognizing the 1st Defendant/appellant as village Head of Somji.

At page 125 of the record of appeal, the learned trial judge in his judgment held and said:-

D *"I find that the evidence of the plaintiffs and their witnesses is consistent regarding the tree of succession from Pus to Boyi Goshit. I do not find the same in the evidence of the Defence witnesses..."*

*There is therefore a material contradiction in the evidence of the Defence witnesses vis-à-vis D.W.2, D.W.3 and even D. W. 5 (1st E Defendant) who said that the first village head of Somji was DALDO. I find that most of the Defence witnesses could not trace the tree of succession from the 1st Chief to the last one."*

However at page 133 - 134 of the record the trial judge had F this conclusion to make:-

*"On the whole I find that the plaintiffs have only succeeded in establishing that Neha is a Ruling House in Somji. They could not however establish that the stool is exclusively the turn of NEHA Ruling House since NEHA House has not paid compensation for aiding G the murder of KANKALAK by BAM people. They therefore lost their turn to succeed after the death of BOYI GOSHIT the last Chief of Somji."*

From the foregoing findings by the trial court, two facts are established:- that Neha House to which the plaintiffs belong is a Ruling House for the purpose of the stool of village of Head of Somji; H the next point of contention and raised by the 2nd issue is whether the plaintiffs did prove the fact of rotation at the trial court which calls for recourse to be had to the pleadings of parties. In other words, the reproduction of paragraphs 28, 29, 31, 42 and 44 of the plaintiff's

amended statement of claim are in point and which succinctly informs that by the customs and traditions of the people, the stool of village head of Somji rotates among the two Ruling houses of Somji. The reproduction of paragraphs 28, 29, 31, 42 and 44 state as follows:-

*“28. The Divisional officer (D.O.) in charge of Pankshin Division (as it then was) was informed of the incident and ruled that barring death, where a person was dethroned, the family of the dethroned shall select another as rotation shall apply only on death.*

*29. Bako Pangang therefore took to his Chieftaincy paraphanalla and handed these over to Kabwir as recognition of their authority and as evidence of his right to the throne on the death of Boyi Goshit.*

*31. Boyi Goshit died on the 5th of September, 1984 and Neha family immediately rushed to Kabwir to inform the District Head of the death. Kabwir wrote the Nees family to stay matters. Reliance shall be placed on the said letter and the 1st defendant is hereby given notice to produce same.*

*(a) Before Boyi Goshit died, he told all the village heads in Kabwir district at a meeting to settle Somi Chieftaincy dispute that whenever he dies the Neha ruling house should produce a village head for Somji because Neha is a ruling house in Somji and is entitle to rule.*

*(b) The present District Head of Kabwir (Nde Golong Kabwir) Maurice Goki through a Notice of invitation to a meeting dated 14th December 1989 invited all the ruling houses in Somji to a meeting. The said Notice of invitation to the meeting is hereby pleaded and reliance shall be placed on it at the trial.*

*42. The two ruling houses of Somji village rule by rotation.*

*44. The plaintiffs being members of Neha family, are entitled to be elected, appointed village head of Somji on death of Boyi Goshit.”*

At pages 40 - 42 and 44 of the record, the 1st Defendant now appellant in response to the foregoing paragraphs replied on his statement of defence at paragraphs 5, 6, 7, 8, 9, 25 also 41 and admitted the fact of rotation as a feature of Somji Chieftaincy as pleaded by the plaintiffs. The paragraphs said:-

*“5. That the first defendant denies paragraphs 2, 5, 6 and 7*

*of the claim. In further answer to the above paragraphs the first defendant avers that one Daldo was the founder of Somji Village and the first village head of Somji.*

*6. That the late Daldo had two children called Barwan and Som. That Barwan established the NEES family ruling House while Som established the BAM ruling House. That Somji has only two ruling Houses.*

*7. That Barwan ruled after the death of his father Daldo from the NEES Ruling House. Later Som also ruled from the Bam Ruling House.*

*8. That after the death of Som of the BAM Ruling House Kushada Barwan ascended the throne from the NEES Ruling House, and after his death Giwa, Som from the BAM ruling House also ascended the throne of the village head of Somji.*

*9. That the two ruling houses of Somji are known and called NEES and BAM. They are blood brothers and the leadership rotates from one ruling house to the other.*

*25. That since the payment of the compensation the leadership will rotate to BAM ruling house when next the throne is vacant."*

***More significantly, by paragraph 41 of the Statement of Defence, the appellant admitted paragraph 42 of the amended statement of claim on the existence of the two ruling houses. It is pertinent to reflect that the trial court at page 130 of the record (supra) declared in favour of Neha being a ruling house. The 1st Defendant who is now appellant in this court cross appealed against the said finding of the trial High court, that Neha is a Ruling House for the purpose of the stool of village Head of Somji, to the Court of Appeal, but his cross appeal was dismissed. There is no further appeal to this court against the order made by the lower court which dismissed the appellant's cross appeal. It follows therefore that the said finding is binding on all the parties as rightly submitted by the 1st respondent's counsel.***

The parties also on their pleadings conceded that there are two ruling houses in Somji. The logical deduction is that the two ruling houses are: Neha on the one hand while Nees/BAM must be one on the other hand. This I say on the authority of paragraph 6 of the statement of defence wherein Nees and Bam ruling houses are chil-

dren of the same father by name Daldo and are therefore blood brothers and belonging to the same ruling house.

***By the state of pleadings at the trial court, the fact of rotation as feature of Somji Chieftaincy was an admitted fact and as rightly submitted by counsel to the 1st respondent; hence issues were therefore not joined on the fact of rotation with the fact having been admitted. It is deemed proved and needed no further proof.*** Section 75 of the Evidence Act and the case of Adedeji V. Oloso (2007) 2 NWLR (PT. 1026) 133 at 159 are well in support of admitted facts which needed no further proof.

In addition to the admission on the pleadings, the evidence led before the trial court was overwhelming in support of the fact of rotation. Prominent in support are the witnesses P.W. 1 and P.W. 6 at pages 49 - 57 and 75 respectively. The evidence of D. W. 1, D. W. 2 and D. W. 3 at pages 88, 91 and 92 respectively are also in confirmation. It is conclusive therefore that the evidence of rotation is of a general consensus by the parties.

At pages 133 - 134 of the record reproduced supra, the trial court in its judgment agreed with the plaintiffs that the stool is rotational but went ahead to hold that Neha could not however establish that the stool is exclusively the turn of Neha Ruling House since it has not paid compensation for aiding the murder of Kankalak by Bam people, so they lost their turn to succeed after the death of Boyi Goshit.

On the question as to why Nees Ruling House produced several Chiefs of Somji in succession against the custom of rotation, the fact is only a confirmation that the practice of rotation is not strictly adhered to as if it is a Decree established like the laws of Medes and Persians. It only suggests that where a particular Ruling House is unable to produce eligible candidates to ascend the office at particular times and in successions, when it is their turn, the other ruling house can produce Chiefs for purpose of fulfilling such successions.

On the fact of rotation, the counsel for the appellant cited the cases of Buraimoh V. Esa & Ors (1990) 2 NSCC 1 and Kimdey & Ors. V. Mil Governor Gongola State & Ors. (1988) NSCC Vol. 19 (pt. 1) 827 at 842. As rightly submitted on behalf of the 1st respondent, the cases are inapplicable to the one at hand because the people of Somji have proved that by their custom, there are instances where

rotation may not be strictly followed and adhered to. The same is not the case with those cases under reference and they do not aid the appellant's case.

The learned counsel for the appellant also made reference to page 201 of the record wherein the lower court held that the plaintiffs did establish the rotational stool of the village head of Somji. In the view of counsel there was no pleading upon which the finding of the lower court was based. In other words, that there was no evidence led to establish the issue of rotation.

With all respect to the submission of counsel, it would appear as if he had completely misconceived the judgment of the lower court at pages 200 and 201 of the record wherein the concept of rotation was fully testified to and the reason why the lower court endorsed the findings by the trial court and said:-

*"The learned trial judge found at page 128 of the record of appeal that the 1st Defendant/Respondent came from NEES Ruling House. The learned trial judge also found that the stool of village Head of Somji was once occupied by NEHA Ruling House which held the stool in succession until it was given to KUSHADA from NEES Ruling House. He also found that NEES Ruling House has since been holding the stool in quick succession from KUSHADA to BOYT GOSHIT, the last village Head of Somji and that there were several frantic efforts by the NEHA Ruling House to get back the stool, but on each occasion was met with promise which was never fulfilled. The learned trial judge then found that the stool of the village Head of Somji is rotational among the Ruling Houses. I agree in toto with those findings by the learned trial judge. The findings are supported by credible evidence led before the trial court by the parties. There is evidence that NEHA Ruling House ruled for some years and thereafter the NEES Ruling House ruled for many years and that the stool is rotational."*

In my view, it is not correct as submitted by the appellant's counsel that there was no evidence led to establish the issue of rotation. The evidence is overwhelming and positive when recourse is had to the testimonies of parties and their witnesses. For instance, it is on record before the trial court that the Plaintiff/Respondent pleaded and proved that Ndam Wuryep was succeeded by the son of his full blood sister by name Kushada whose father was from Nees family. In

other words the plaintiffs/now 1st respondent showed how the stool was transferred through Kushada to Nees family and Kushada thereby marked the beginning of the reign of Nees family down to Boyi Goshit, the last village head. The lower court could not therefore be faulted in its view that the evidence of the plaintiffs/1st respondent and their witnesses was very consistent regarding the line of succession from pus to Boyi Goshit. The same however could not be said of the Defendant/appellant on his evidence. For instance D.W.1 testified that the founder of Somji was one called Gosomji who had two sons by name Bam and Nees. D.W.2 in his evidence however contradicted the appellant wherein he said the first village Head of Somji was Kankalak. The witness neither knew Gosomji nor could he say who succeeded Kankalak on the throne. He only knew Gowon and Boyi Goshit as the last village head of Somji. D.W.3 on his part knew Goshit only whom he said was the first village head of Somji.

The Defendant/appellant now before us testified as D.W.5 and gave evidence that the 1st village Head of Somji was one Daldo. The totality of the Defendants/appellant's witnesses, himself inclusive, had confirmed that none of them could trace the tree of succession from the first village Head to the last one.

In the course of this judgment the fact has been explained as to why Nees Ruling House produced Chiefs of Somji in succession against the custom of rotation. The fact which has not been challenged cannot now be a negation of the clear findings of rotation. In my view, the lower court was on a sound footing and reasoning when it reviewed as it did, the evidence before the trial court and I also endorse.

***From the foregoing, it follows that relief 48(b) of the plaintiffs' claim to the effect that Neha Ruling House is the sole house or have the right to aspire to the stool after the demise of Nde Boyi Goshit, is founded on the custom of rotation that, if the immediate Chief is from Nees and the next House Neha has an eligible candidate, then it will be their (Neha's) sole right to produce a candidate to occupy the stool. Therefore, contrary to the submission by the appellant's counsel, the said relief cannot be interpreted as if Neha is the only recognized Ruling house in Somji.***

For purpose of recapitulation the following facts are well settled;

that is to say that Neha is a Ruling House for the purpose of the stool of village Head of Somji; that there are two ruling houses in Somji namely (a) Neha and (b) Nees and Bam are blood brothers and therefore they belong to the same Ruling House, which evidence was not contradicted); that the selection to the chieftaincy of Somji is rotational between the two Ruling houses - Neha and Nees.

The trial court in its judgment agreed with the plaintiffs that the stool is rotational but however went ahead to hold that the Nena Ruling House could not establish that the stool was exclusively the turn of its Ruling House, since it had not paid compensation for aiding the murder of Kankalak by Bam people and that it had lost its turn to succeed after the death of Boyi Goshit.

At page 204 of the record, the lower court opined that:

*"It is my view that the NEHA Ruling house has proved that the stool was exclusively the turn of NEHA Ruling House on the death of Boyi Goshit..."*

It is submitted on behalf of the appellant that the proof of the foregoing assertion is on the plaintiffs; that none of the plaintiff's witnesses testified positively as to the exclusive nature of the turn of the NEHA family to produce a candidate for the stool; that the only evidence by P.W.6 on which the lower court relied was not sufficient.

It is pertinent to emphasize that there was no evidence on record before the trial court that people of Neha Ruling House aided Bam people in murder of Kankalak and must pay compensation before they ascend the throne. To the contrary, it was admitted by both parties at the trial court that it was Bam people without the assistance of any family that assassinated Kankalak and for that reason, Bam people were driven out of Somji. The issue as to who murdered Kankalak was an admitted fact therefore and which needed no further proof. Section 75 of the Evidence Act is in point on facts admitted.

***As rightly held by the lower court, there was no pleading or any evidence led by any witness to show that Neha Ruling House assisted or aided the Bam people as alleged. The payment of compensation sought to ascribe to the NEHA Ruling House was certainly without any foundation but probably invented primarily with the intention of depriving the Neha Ruling House of their right to the office. It is not open for a***

***court to make out a case for any party. That assertion was a mere and baseless calculation which was not part of the case of the parties before the trial court.*** See the case of Akinsumi V. Adio (1997) 8 NWLR part 516 page 277 where it was held that a court is not competent to make a case for any of the parties; to do so will be against all known principles of fair hearing or fair trial. ***In the circumstances of the foregoing, and in view of the state of pleadings and the evidence adduced before the trial court, the court below was not in error when it held and concluded that the allegation relating the murder of Kankalak could not be ascribed to Neha Ruling House. I therefore endorse the view held by the lower court that the finding by the trial court was grossly perverse and I so hold.***

Crucial to the judgment of the trial court was the document Exhibit E which raised an assertion and accusing Neha Ruling House in assisting Bam people in the assassination of Kankalak. Exhibit E is a copy of the report of the committee set up by the Pankshin Traditional council headed by the District Head of Kabwir, Nde Maurice Danbaba to investigate the instability caused by the installation of the 1st Defendant/appellant as the village head of Somji.

Also considered closely alongside Exhibit E were Exhibits 1, 2 and 3. In short, Exhibit 1 was a report of the minutes of the meeting of the Pankshin Local Government Traditional council where Exhibit E was considered by the Traditional council. The council further set up another committee headed by the District Head of Langkang, Nuhu Dashwep. The Committee was requested to confirm the report of the previous committee headed by the District Head of Kabwir as contained in Exhibit E. The committee sat and wrote a Report confirming what was contained in Exhibit E. The said report was tendered as Exhibit 2, being a copy of the report of a committee set up by Pankshin Traditional Council. Exhibit 3 is also a copy of the minutes of the meeting of the same Pankshin Traditional council which considered the Reports i.e. Exhibit E and 2.

***As rightly conceived by the lower court a close and crucial examination of Exhibits E, 1, 2 and 3 appear to show that the Exhibits are public documents under Section 109 of the Evidence Act. This is because they are documents relating to records of acts of Pankshin Local Government Traditional***

**council. For purpose of admissibility into evidence, there must be certified True copy of each of the report as provided by Sections 111 and 112, of Evidence Act, Cap 112 Laws of the Federation 1990.**

**If however and taken for granted or assuming that the Exhibits E, 1, 2 and 3 are not public documents within the meaning of section 109 of the Evidence Act, they will still be subject to section 91 of the same Act since the makers were not called to give evidence and also in the absence of any foundation laid for their admissibility.**

**By the very nature of the facts contained therein the documents, they are made relevant to the facts in issue and rendering their admission as proper.** See Dr. Ufere Torti V. Chief Chris Ukpabi (1994) 1 SC 370 at 412. The considering factor in the circumstance is the weight to be attached to the evidence as tendered. In the case of Ayeni V. Dada (1978) SC 35 at 51 for instance, this court held in a similar circumstance that while admissibility of a document may be made under the Evidence Act, the weight to be attached to its contents is another matter.

The law was very well stated and expounded per Agbaje, JSC in the case of Attorney-General of Oyo State & other v. Fairlakes Hotels Ltd. & Other (1989) 5 NWLR (pt. 121) 255 at 282-283 as follows:-

*“Oral evidence and a document in evidence under section 90 of the Evidence Act, cannot on the authorities receive the same treatment when it comes to the matter of evaluating such evidence.*

*The former, if unchallenged, must, on the authorities, be accepted as establishing the facts therein stated. As regards the latter, documents admitted by the consent or by the court in the absence of their maker under Section 90 of the Evidence Act, the court still has, on the authorities, a duty to consider the weight to be attached to such documentary evidence before coming to the conclusion as to whether or not it establishes the facts stated therein...”*

It is on record that Exhibit E, 1, 2 and 3 were tendered by consent of both counsel and admitted across the bar. Although they are seemingly public documents, they are not however, judicial proceedings and their makers were not called to give evidence thereon.

It is also on record that oral evidence exists before the trial

court by the plaintiffs/respondent tracing the founder and first village head of Somji to Pus who was succeeded by his son, Wuryep and who in turn was succeeded by his own son, Ndam. The plaintiffs/respondent also led oral evidence to the effect that the first three village Heads of Somji i.e. Pus, Wuryep and Ndam were from Neha Ruling House. They further showed through their witnesses that after the death of Ndam, the Neha family transferred the stool to Kushada who was the son of Ndam's full blood sister. Also in their further evidence, Kushada was the first village Head of Somji from Nees family. Thus the trace of village Headship of Somji in Nees family from Kushada down to the last village head, Boyi Goshit. It was also the plaintiffs/respondent's evidence that after the 4th village Head from Nees family died the Neha family had been fighting to have the Chieftaincy back to Neha family.

***It is pertinent and intriguing to highlight also that all the oral evidence restated above was not challenged by the appellant. The effect of unchallenged evidence is very well stated and trite. The trial court, despite the said unchallenged credible oral evidence given by the Plaintiff/Respondent's witnesses, did equate same with Exhibits E, 1, 2 and 3, the reports of the various committees which were set up by Pankshin Local Government Traditional Council supra. It is obvious that the learned trial judge failed to consider the unchallenged oral evidence by the witnesses for the plaintiffs/respondent along side with the Exhibits E, 1, 2 and 3. The lower court was certainly very much in order when it held that the trial court was in error in its failure to consider and gravely too, the error which from all consideration extended to the court arriving at three ruling houses to the stool of village head of somji. In other words there are not three but two ruling Houses to the stool of village head of Somji namely Neha and Nees only. I seek to emphasize the position of the law further that if an oral evidence given in the witness box is unchallenged, it must be accepted as establishing the facts therein stated. The same cannot however be said in respect of a document put in evidence by consent or by the court in the absence of the maker, under Section 91 of the Evidence Act. The court, as stated earlier, must still consider the weight to be attached to such***

**documentary evidence.** See again Attorney-General Oyo State V. Fair lakes Hotels Ltd. (No. 2) Supra at page 283.

In further recapitulation and for purpose of emphasis, Exhibit E was adhered to conclusively by the trial court in its judgment, although the facts of the allegation contained therein were not pleaded, as rightly held by the lower court. In the absence of the makers of the documents not called to give evidence thereon, there was therefore no cross examination on the contents. The lower court also rightly held that Exhibit E is neither a court proceeding nor was it tendered on oath. It has been held in the course of this judgment that the document cannot be relied upon so as to supersede the unchallenged credible oral evidence led by the parties at the trial. See Section 76 of the Evidence Act. The lower court, in my view, was on a solid foundation and could not be faulted when it held:

*“that the contents of Exhibit E to the effect that the Neha Ruling House aided the Bam people in assassinating Kankalak and must pay compensation before they could be entitled to produce a candidate to be enthroned as the village head of Somji, cannot be relied upon and jettison the unchallenged credible evidence before the court that the Neha Ruling House is the next Ruling house to produce a village Head of Somji.”*

I also so hold.

In otherwords, it is conclusive and apparent that the Neha Ruling House had proved on the balance of probability that the stool was exclusively the turn of their Ruling House on the death of Boyi Goshit, the last village Head of Somji and thus their exclusion was improper as rightly concluded by the lower court.

On behalf of the appellant, it was also submitted that the lower court awarded reliefs which were not sought on the plaintiffs’ statement of claim at the trial court.

***The law is trite and well settled that an appeal is a continuation of the original claim and the lower court as rightly submitted by the appellant’s counsel is obliged to resolve issues that emanated from the claim in the trial court.*** It is the submission by the counsel for the appellant for instance that the plaintiffs did not only change the nature of their reliefs in the trial court but that they completely departed from the state of their pleadings; that reliefs 4(b) and (c) in their notice of appeal before the lower court

were completely different and alien from the ones sought before the trial court per paragraph 48(b); that in the circumstance, the counsel has called on this court to interfere with the findings of the lower court for the reasons that the reliefs granted were not sought in the trial court and also that no leave was sought and obtained from the lower court to incorporate them in the Notice of Appeal. B

In response, it is submitted on behalf of the 1st respondent that contrary to the contention put forward by the appellant, the plaintiffs did not depart from their reliefs in the High Court, when they appealed before the lower court; that all the reliefs sought at the Court of Appeal flowed from the reliefs in the High court which were granted in part by the High Court. C

The reliefs sought by the plaintiffs/respondent at the trial court are all spelt out and reproduced in the course of this judgment. The following facts are also proved conclusively in the course of the judgment that:- D

Neha is a ruling House for the purpose of the stool of village head of Somji; that there are two Ruling Houses in Somji namely Neha and Nees Ruling houses and that the Chieftaincy is rotational between the two Ruling Houses; that it is now the turn of Neha Ruling House to present a candidate for installation as village head (chief) of Somji. E

In otherwords, with the stool now being declared an exclusive turn of the Neha Ruling House it follows naturally that the purported nomination, selection and/or election as well as appointment and installation of the 1st defendant/appellant is null and void and of no effect as rightly confirmed by the lower court. The court also proceeded to make a consequential order that a fresh election be made for the stool of the village head of Somji and that the selection is to be restricted to the Neha Ruling House alone. F G

For all intent and purpose, there could not have been a different conclusion expected on the outcome of this appeal. In otherwords and as rightly submitted by the counsel for the 1st respondent. All the orders made by the court below are a consequence of the finding of the trial High court that Neha is a Ruling House in Somji for the purpose of the stool, of village Head of somji and the stool is rotational among the Ruling Houses of Somji. If Neha is a ruling house, and the stool is rotational, equity demands that they H

take their turn; and if it is their turn, Nees Ruling House cannot, while it is the turn of Neha Ruling House select and present a candidate to occupy the stool of village Head of Somji. The reliefs ordered by the Court of Appeal in the circumstance, are a natural consequence of the finding of the trial court that Neha is a Ruling House and which  
 B has not been appealed against. It is therefore binding on all the parties.

*The cornerstone of the plaintiffs/respondent's case was the findings by the trial court that Neha is a Ruling House and is eligible to produce a candidate to occupy the stool of village Head of Somji. That fact cannot now be erased but is very well established. Contrary to the contention held by the learned counsel for the appellant, all the reliefs claimed in the Court of Appeal are as a consequence of the reliefs partially  
 C granted by the High Court; they are not independent and different but came sequentially as a result of the trial court failing to make the order in respect thereof, had proper consideration been given to the case. Put differently, the orders are natural having flowed as a result of the outcome of the case  
 D presented before the trial court.*

*Furthermore and even in the face of Order 47 Rule 1 of the Plateau State High Court (Civil Procedure) Rules 1987, it is open to the court in all causes and matters to make any order which it considers necessary for doing justice whether  
 E or not such order has been expressly asked for by the person entitled to the benefit therefrom.*

*The error made by the trial court was appropriately remedied by the lower court in invoking the provision of Order 47 rule 1 of the High Court (Civil procedure) Rules supra. Contrary to the wrong contention conceived by the appellant's counsel, the order made did not amount to making a new case for the parties; rather they were made to do justice in the circumstance of the case, which is the foundation and corner-  
 F stone of our judicial system and the Constitution.*

*Moreover, the law has also hitherto enjoined the Court of Appeal on the authority of Section 15 of the Court of Appeal Act 2004, formerly Section 16 of the 1976 Act to make any order necessary for determining the real question in con-*

***trovery in an appeal and can as well make an interim order or grant any injunction which the court below is authorized to make. The orders were made for purpose of doing justice to parties in pursuant to the statutes as stated. They needed not specifically be claimed; they are obvious and should be made as a consequence.***

B

Even in the face of repetition, it has been declared in the course of this judgment that rotation applies and Neha Ruling House should take its turn to present a candidate to occupy the stool; the consequential effect is that the selection of 1st Defendant/Appellant from the Nees Ruling House is not proper.

C

In my view and as rightly held by the lower court, and I also hold, the justice of this case will best be served that his purported selection and installation should be, and is hereby nullified so that Neha Ruling House can take its turn in accordance with the established custom.

D

The orders made by the Court of Appeal are not a departure from the claims of the Plaintiffs on the amended statement of claim and do not also amount to making a new case for the parties. The submission by the appellant's counsel in that respect is grossly misconceived.

E

Issues 2 and 3 are therefore resolved against the appellant.

The 4th and last issue challenges the findings of the lower court, which the appellant submits as perverse, that the kingmakers or selectors of the stool of the village head of Somji are the council of elders of the ruling houses.

F

The appellant's counsel, for purpose of substantiating the foregoing issue submitted emphatically that there is nothing from the evidence of the defence witnesses to show that the elders of the Ruling Houses select the Chief; it is therefore difficult to ascertain which evidence the lower court relied on for its conclusion, that "*the kingmakers or selectors are the council of elders of the ruling houses.*"

G

In summary it is the submission of counsel that the plaintiffs, evidence was inconsistent and contradictory as to how the next ruling house produced the village head of Somji. Also that the plaintiffs did not plead or lead evidence to establish who the traditional selectors to the stool of the village head of Somji are; that the plaintiffs/respondent's evidence of the selectors in one breath supported that

H

of the defendant/appellant and in another breath contradicted each other.

The counsel submits finally that the selection of the 1st defendant/appellant was in accordance with the customary law of the people of Somji.

B In contradicting the appellant's submission, the 1st respondent related to a portion of the trial court's judgment which accepted the method of selection as described by D.W.1. The plaintiffs were unhappy with that decision and appealed successfully to the lower court which allowed same and reversed the decision of the trial court, and held that the real kingmakers or selectors are the council of elders of the Ruling Houses. In summary, it is the submission of counsel therefore that, contrary to the appellant's contention, the finding of the Court of Appeal relating the kingmakers of Somji as council of D elders (supra) is not perverse as same is supported by the admissible evidence placed before the trial court. He urged in favour of dismissing this appeal and affirms the decision of the lower court in its entirety.

E said:- At page 211 of the record of appeal the lower court held and

*"When the evidence led by the Appellants is considered along with the conflicting evidence led by the Respondents witnesses, it seems to me and I so hold that the real kingmakers or selectors are the council of elders of the Ruling Houses who select one among F princes and present same to the so called six (6) title holders as a candidate for installation, whereby the village Head of Bolkon and the Sim Wari would present the candidate with traditional spear (i.e. staff of office) and the tradition costumes."* (Emphasis is supplied).

G It is pertinent to note that the lower court arrived at its decision as a result of its findings that the appellant before it and now respondent before us presented consistent and credible evidence before the trial court as against the respondent before it who is now the appellant before us, whose evidence was characterized as conflicting. The determination of this issue calls for a review of the H evidence by the witnesses of both parties, given before the trial court.

For instance, the plaintiffs before the trial court testified that it is the council of elders from the two Ruling Houses that will select a new Chief from the next Ruling House and when he has been so

selected, he will be presented to the Sim Wari, who is the traditional chief priest of Somji and the Sim Wari along with the chief of Bolkon will then install the new chief after which he will be presented to the District Head of Kabwir who will in turn present him to the District Officer, now Chairman of Pankshin Local Government. The evidence in reference was that led by P.W.1, P.W.2, P.W.4 and P.W.6. B

From the evidence of P.W.4 and P.W.6 (among other witnesses) for instance, the Respondents led evidence to prove the mode of selection of the village Head of Somji and who does the selection and installation as per the custom. In particular, the witness P.W.4 C plays an important role in the installation of the village head of Somji. In otherwords, while the council of elders of each of the Ruling Houses are the selectors, the village head of Bolkon and the Sim Wari will do the installation.

On the side of the defendants/appellant and their witnesses D however, the evidence on who the kingmakers are and how the village Head of Somji is selected and installed is materially conflicting as rightly observed by the lower court. In otherwords, their evidence of the number of kingmakers, who the kingmakers are and how a village head of Somji is selected and installed are at variance with one E another. For instance, while D.W.1 said there are 6 kingmakers, D.W. 2 said there are 7. D.w.3 also had a different story and put his figure at 5. D.W.4 agrees with D. W. 1 for 6. As if the contradiction in the number of kingmakers is not enough, each of the witnesses gave a F conflicting evidence of who the kingmakers are. D. W. 2 went further to say that the elders of the ruling houses appoint the kingmakers, and the kingmakers would assemble and select the new Chief. He again that when a village head dies, the kingmakers would ask the ruling houses to present a candidate. G

D.W.3 in his evidence said that when a village head of Somji dies, the Godengwa would send for the kingmakers. The kingmakers would assemble and then ask Godengwa to give them a prince to select. There is a problem as to who is to select the new Chief between Godengwa and the kingmakers. H

Also in his evidence, D.W.4 stated that on the 4th day after the burial, kingmakers would ask for a candidate from the elders of the ruling houses and three (3) elders would stand and show the candidate.

D.w.4 also gave the names of six (6) title holders as kingmakers and said that himself who is not a title holder is also a kingmaker. It is intriguing that almost each of the Defendants/appellant's witnesses gave a conflicting version of who the kingmakers are. The record at pages 85 - 97 would bear out in reference.

B It is evident that the evidence of D.W.2 and D.W.4 supports in material particular the contention by the plaintiffs/respondent now before us. Both witnesses stated in their respective evidence that a council of elders from the Ruling Houses select and present a candidate to the persons they referred to as kingmakers, and they cannot  
C refuse the choice of the elders.

***As rightly conceived and held by the lower court, it is overwhelming on the evidence on record that the plaintiffs/respondent and their witnesses are very consistent on their  
D evidence which is free of material contradictions. The same cannot however be said of the evidence by the Defendant/appellant and his witnesses, whose evidence is materially conflicting and lacking in credibility. The lower court was right when it rejected the Defendant/appellant's story. The law is  
E well positioned that where there are material contradictions in the evidence adduced by a party, the court is enjoined to reject the entire evidence as it cannot pick and choose which of the conflicting versions to follow. The entire evidence must be rejected.*** See Mogaji V. Cadbury (1985) 2 NWLR (pt. 7) 393.  
F

***The lower court, I hold was right, when having reviewed the entire evidence, it rejected that of the Defendant/appellant and preferred those of the plaintiffs/respondent on the issue of the kingmakers and the king making process of Somji.  
G It is not true, as wrongly submitted on behalf of the appellants, that there were material contradictions in the evidence of the respondents on this point. The court does not reject the evidence of a party simply on minor contradictions. This is moreso especially in situations where proof is based on  
H evidence of traditional history, as it is in the case at hand; there are bound to be slips in the evidence of witnesses; absence of such would certainly give reason for casting doubts on the credibility and the truth of the witnesses. Traditional history of witnesses cannot come out in mathematical exactness or ex-***

**actitude.** See Ezekwesili V. Onwuangu (1998) 3 NWLR (pt .541) 217 at 245.

***The Court of Appeal was on a sound footing and could not be faulted when it preferred the evidence of the plaintiffs/respondent on this issue as against that of the Defendant/appellant.***

In the same vein, and like the sum of issues 1, 2 and 3 (supra), issue no. 4 is also devoid of any merit and is hereby dismissed accordingly.

In the result and with all the issues resolved against the appellant, the totality of the appeal is lacking in merit and dismissed. On the issue of costs, I make an order that each party should bear its costs of prosecuting this appeal.

Appeal is hereby dismissed with no order made as to costs.

On the Cross Appeal:-

The 2nd and 3rd respondent in the main appeal occupied the same position as 2nd and 3rd respondents in the court below which reversed the judgment of the trial court and ruled that the plaintiffs/respondent had proved their case and were entitled to judgment. In otherwords, the Court of Appeal allowed the appeal and held that having proved that they (plaintiffs/appellant before it and 1st respondent/cross respondent in this court) belong to a Ruling House in Somji and the stool of village Head of Somji is rotational and it is now the turn of their Ruling House, it is therefore their exclusive right to occupy the stool.

On the one hand the 1st defendant/respondent/appellant before us felt dissatisfied with the judgment of the Court of Appeal and hence filed the main appeal in this court. The 2nd and 3rd respondents/cross appellants are in total support of the said appeal and urged in favour of allowing same thereof.

On the other hand however, the 2nd and 3rd respondents/cross appellants were dissatisfied also with the same judgment of the lower court and did file their notice of cross appeal on the 16th November, 2011 containing three grounds of appeal and their particulars.

In accordance with the rules of court the cross appellant filed their joint cross appellants' brief of argument on the 16th November, 2011 but deemed properly filed on the 27th November, 2012. The

1st respondent/cross respondent's brief of argument to the cross appeal was also filed on the 3rd January, 2013. No brief was filed on behalf of the appellant/1st cross respondent.

At the hearing of the cross appeal, counsel relied on their respective briefs of arguments. While Mr. Pwajok representing the cross appellants urged in favour of allowing the cross appeal, Mr. Gotom on behalf of the 1st respondent/cross respondent submitted against the cross appeal as lacking in merit and that it should be dismissed.

The three issues raised for determination in the cross appeal are as follows:-

#### ISSUES FOR DETERMINATION

*"1. Whether the court has jurisdiction to entertain this suit, having regard to the fact that all avenues prescribed by the relevant statute have not been exhausted. (GROUND 3)*

*2. Whether the case as made out by the 1st Respondent was that ascension to the stool of the village head of Somji was rotational to warrant judgment being entered for the 1st Respondent/Cross Respondent by the court below when his claim was clearly that NEHA and NEES are the Ruling Houses of Somji village, any member of which can aspire to the throne of Somji village. (GROUND 1)*

*3. Whether the documents which were admitted in evidence without objection should not have probative value ascribed to them. (GROUND 2)"*

Without having to dissipate energy or belabour effort unnecessarily, I will point out quickly that the issues raised and argued in the 2nd and 3rd Respondents/cross appellants brief of argument are substantially the same as those raised and argued in the appellant's brief of argument. There cannot be a different approach to resolving the issues; rather, the obvious is for the cross appeal to suffer the same fate as the main appeal. In otherwords, and as rightly submitted by the counsel Mr. Gotom, the cross appeal, like the main appeal is totally devoid of any merit and should be dismissed. I so hold and dismiss the cross appeal therefore with no order made as to costs.

On the totality of the appeal and cross appeal, both are hereby dismissed with no order made as to costs.

**I. T. MUHAMMAD JSC**

I read in advance the judgment just delivered by my learned brother, Ogunbiyi, JSC. I agree with my lord's reasoning and conclusion which I adopt. I abide by all orders made in the lead judgment.

B

**FABIYI JSC**

I have had a preview of the judgment just delivered by my learned brother - Ogunbiyi, JSC. I agree with the reasons therein adumbrated to arrive at the final conclusion that both the main appeal as well as the cross appeal should be dismissed for want of merit. C

The lead judgment is all embracing and very comprehensive indeed. Let me say a word or two on my own part and I shall be done.

I wish to observe it at this point in time that it is not the business of the court to make declaration of customary law relating to the selection or appointment of chiefs. But it is the business of the court to make a finding of what the customary law is and apply the law for declaration. Under the Evidence Act, a customary law is a matter of fact to be pleaded and proved by evidence unless it has been judicially noticed. The case of Lipede v. Sonekan (1995) 1 NWLR (Pt. 374) 668 is in point. D E

The court below, based on the pleadings and admitted facts, as well as the credible evidence adduced, found that there are two ruling houses in Somji to wit: Nees and Neha. It further found that the chieftaincy stool is rotational. This means that it moves alternately. After Nees House, it should be the turn of Neha House. The court below accordingly ordered that it is the turn of Neha to take its rightful turn, as at now on the passing on of Boyi Goshit from Nees House. That is how it should be as it is fair and equitable enough. In its real essence, there should be no complaint. F G

The position of the court below can hardly be faulted by any uncommitted mind. I am at one with the stance taken by the court below without any atom of hesitation. H

The appellants complained that the court below made a consequential order to prop the decision of the court. The complaint, to my mind to no avail. A court can make an order which appears incidental and necessary for a proper and final determination of a

cause before it. It can be made, though not claimed, so as to obviate further or later dispute between the parties. See: Nneji v. Chukwu (1988) 3 NWLR (Pt 78) 184 at 208. The court below made a consequential or incidental order that Neha House should have the sole leeway to produce the current candidate to occupy the chieftaincy stool in Somji. It was rightly made.

I endorse same.

My learned brother said it all. For my above observations and the detailed reasons in the lead judgment which I respectfully adopt, I too feel that the main appeal as well as the cross appeal lack merit and both deserve to be dismissed. I order accordingly. I abide by the order on costs.

***M. D. MUHAMMAD JSC***

I have read in draft the comprehensive lead judgment of my learned brother Ogunbiyi, JSC. I agree with his lordship that it is the primary duty of the trial court to evaluate evidence and draw the right conclusions. An appellate court, in spite of the fact that it has to deal with very cold facts same having been reduced to writing and made the record of the trial court's proceedings, re-evaluates evidence if it is established that the trial court had fumbled. Thus in the case at hand the lower court having correctly found that the trial court's decision is speculative has done not only the needful but also the necessary exercise of revisiting the evidence on record. The court's conclusion at page 211 of the record of appeal is beyond reproach. It must endure!

More importantly, for the very exhaustive reasons advanced in the lead judgment, I also find no merit in the appeal as well as the cross appeal which virtually raises the same issues for determination formulated in the appeal. I dismiss both and I abide by the consequential orders made in the lead judgment including those on costs.

***KEKERE-EKUN JSC***

This is an appeal against the judgment of the court of Appeal, Jos Division delivered on 23/6/2003, setting aside the judgment of the Plateau State High Court sitting at Pankshin delivered on 7/7/

1993. I am in complete agreement with the reasoning and conclusion of my learned brother, OGUNBIYI, JSC that the appeal and cross appeal should be dismissed for lacking merit. I make the following contribution in support of the lead judgment and for emphasis.

The facts and circumstances that led to this appeal have been fully set out in the lead judgment. I adopt the summary as mine. B

With regard to the first issue for determination, it is the appellant's contention that the plaintiff's claim is in respect of a chieftaincy dispute, which revolves around the selection of the 1st defendant as village head and the applicable customary law. Learned counsel for the appellant contends that section 3(2) of the chiefs (Appointment and Deposition) Law Cap. 20 Laws of Northern Nigeria 1963 (hereinafter referred to as the Chiefs Law), then applicable in Plateau State is the applicable law. It provides: C

*"... In the case of any dispute the Governor after due enquiry and consultation with the persons concerned in the selection shall be the sole judge as to whether any appointment of a chief has been made in accordance with native law and custom."* D

He submitted that this provision ousts the court's jurisdiction to hear any matter to which Section 3 is applicable. E

Learned counsel for the 1st respondent submitted, inter alia, that having regard to the provisions of Sections 5 and 6 of the constitution of the Federal Republic of Nigeria, 1999 (as amended), there is a clear separation of powers between the Executive and Judicial arms of government. He argued that section 3 (2) of the Chiefs Law 1963, to the extent that it purports to vest judicial powers in the Governor of a state is unconstitutional, null and void. He argued further that having regard to the fact that the suit is against the Attorney-General of Plateau state through whom the Governor can sue or be sued, it means in effect that the Governor is a party to the suit and cannot be a judge in his own cause. He contended that even if it is conceded that submission of the dispute to the Governor is a condition precedent to invoking the court's jurisdiction, it is in evidence that the plaintiffs wrote a letter of complaint (Exhibit C) to the commissioner for Local Government and chieftaincy Affairs, an agent of the Governor, to which there was no response. F G H

The position of the law is that where a statute provides a legal line of action for the determination of an issue, the aggrieved party

must exhaust all the remedies in the law before going to court. See: Eguamwense v. Amaghizenwem (1993) 9 NWLR (pt. 315) 1; Aribisala v. Ogunyemi (2005) 6 NWLR (pt. 921) 212 @ 231 - 232 G-B; Ogologo v. Uche (2005) 14 NWLR (pt. 945) 226 @ 245 E; Owoseni v. Faloye (2005) 14 NWLR (pt. 946) 719 @ 740 G-H. However, unless the statute specifically so provides in clear and unambiguous language, the jurisdiction of the court is not ousted. See: Balogun V. Ode (2007) 4 NWLR (pt. 1023) 1 @ 16 - 17 F-B; Barclays Bank v. C.B.N. (1976) ALL NLR 409; Peenok Investments Ltd. v. Hotel Presidential Ltd. (1983) NCLR 122; Kotoye v. Saraki (1994) 7 NWLR (Pt.357) 414. In the case of: Owoseni V. Faloye (supra) at 757 B this court held thus:

*“Laws which provide some procedural steps to be taken to resolve a dispute before embarking on actual litigation are not and cannot be treated or categorized as ousting the jurisdiction of the court ...”*

The invocation of the court’s jurisdiction is merely delayed until the steps prescribed by the statute have been complied with. This is so particularly having regard to the provisions of Section 236 (1) of the 1979 constitution, which was the constitution in force at the time the cause of action arose. The section conferred unlimited jurisdiction on the High Court of a state to hear and determine *“any civil proceedings in which the existence of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue ...”* A chieftaincy dispute certainly falls within the confines of the provision. As rightly submitted by learned counsel for the 1st respondent, any law purporting to oust the jurisdiction of the court would, to the extent of its inconsistency with the provisions of the constitution, be null and void and of no effect. See: Military Governor of Ondo State v. Adewunmi (1988) 3 NWLR (pt. 82) 280; Osagie II v. Offor (1998) 3 NWLR (pt. 541) 205; (1998) 1-2 SC 150; A.G. Ondo State v. A.G. Federation & Ors (2002) 9 NWLR (pt. 772) 222; National Union of Electricity Employees & anor v. B.P.E (2010) 7 NWLR (Pt.1194) 538.

By making provision for the resolution of disputes by the prescribed authority a condition precedent to approaching the court for redress, the intention of the lawmakers is to reduce the number of such disputes that eventually find their way into court. It is a means of alternative dispute resolution to reduce congestion of cases before

the court. Such provision cannot however oust the jurisdiction of the court and confer judicial powers on the Governor or prescribed authority.

In his pleading and evidence at the trial, the 1st respondent stated that his family wrote several letters to the 3rd respondent (Pankshin Local Government) through the Permanent Secretary, Ministry of Local Government, Jos. In reaction to the letters the 3rd respondent set up two different panels in July and October 1986. The first panel set up in July submitted a report. The plaintiffs were dissatisfied with the report and protested to the same 3rd respondent, which set up a second committee to review the report. They were dissatisfied with the composition of the second committee and rejected its report. In general they were not happy with the way the 3rd respondent was handling the matter. They therefore wrote a petition to the permanent Secretary, Plateau State Ministry for Local Government and copied the secretary to the Military Government and Head of service vide Exhibit C dated 18/3/1987. They also sent reminders. They did not receive any response to their petition and this is why they instituted this action in court. In my view, the failure of the Governor to act in this case cannot be a bar to the 1st respondent and his family seeking redress in a court of law, I therefore agree entirely with my learned brother in the lead judgment that the trial court had the requisite jurisdiction to entertain the suit. See also: Section 6(6) (a) and (b) of the 1999 constitution (in pari materia with section 6 (6) (a) and (b) of the 1979 Constitution). I also resolve this issue against the appellant.

With regard to issue 2, there is no doubt that a court of law is not a charitable institution or Father Christmas and this court has held time and again that a court of law has no jurisdiction to grant a relief not claimed. See: A.G. Abia State V. A.G, Federation (2006) 16 NWLR (pt. 1005) 265; Agbi v. Ogbeh (2006) 11 NWLR (pt. 990) 65; Shena Security Co. Ltd. v. Afropak (Nig) Ltd. & ors. (2008) 34 NSCQR pt. II 287. In the instant case, however, having given careful consideration to the reliefs claimed in the amended statement of claim, the notice of appeal at the lower court and the reliefs granted in the judgment appealed against, I do not agree with learned counsel for the appellant that the reliefs granted altered the nature of the case as fought at the trial court. The lower court set aside the judgment of

the trial court and entered judgment in favour of the appellant (now 1st respondent) as follows:

1. *“That NEHA is a ruling house for the purpose of the stool of the village head of Somji.*

2. *That there are two (2) ruling houses in Somji, namely (a) NEHA and (b) NEES ruling houses and that the said chieftaincy is rotational between the two (2) ruling houses.*

3. *That it is now the turn of NEHA Ruling House to present a candidate for installation as the village head (chief) of Somji to the exclusion of NEES Ruling House, known by other various names as JIMI and BAM.*

4. *That the purported nomination, selection and/or election as well as appointment and installation of the 1st defendant/respondent as confirmed by the lower court is null and void and of no effect; and*

5. *It shall be and it is hereby ordered that fresh election for the stool of the village head (chief) of Somji, restricting same to NEHA Ruling House be conducted for the purpose of installing a new village head (chief) of Somji.”*

The first two reliefs granted arose from the decision of the trial court, particularly the finding that there are three Ruling Houses in Somji, Relief 3 is founded on paragraph 48 (b) of the Amended statement of claim. Relief 4 is based on relief 48 (a) while relief 5 is consequential to relief 4. I also resolve this issue against the appellant.

With regard to issue 3, the appellant contends that the 1st respondent did not prove that succession is by rotation. He submitted that the evidence shows that one family produces the village head until there is no strong male contender when it then shifts to the other family. The 1st respondent, on the other hand contends that appellant in his pleadings admitted that succession is by rotation and that the admitted fact requires no further proof. In paragraph 41 of the Statement of Defence the appellant admits paragraph 42 of the Amended statement of claim only to the extent that rotation is between the two ruling houses of BAM and JIMI, while the 1st respondent contends that rotation is between NEHA and NEES.

The argument of the 1st respondent is that it was agreed that after the death of Boyi Goshit the throne would go to the NEHA Ruling House. Both sides agree on the pleadings that the stool is

rotational.

The only difference is that the appellant contends that rotation is between BAM and JIMI while the 1st respondent contends that rotation is between NEES and NEHA, I agree with learned counsel for the 1st respondent that the fact of rotation having been admitted in the pleadings, it requires no further proof. There is no appear B against the finding of the court of Appeal that the two Ruling Houses are NEHA and NEES. The appellant has therefore failed to advance any cogent reason for this court to interfere with the decision. I accordingly resolve this issue against the appellant.

Having compared the evidence red on both sides, I agree with C my learned brother that issue 4 must be answered in the negative. DW2 and DW4 confirmed the evidence of PW4 to the effect that it is the elders of each ruling house that meet to select a new chief. The evidence of the defence witnesses, as rightly observed by the lower D court, was laden with contradictions, I also resolve this issue against the appellant and agree with my learned brother, Ogunbiyi, JSC that the appeal lacks merit. I also dismiss it accordingly.

#### Cross Appeal

The traditional role of a respondent in an appeal is to support E the judgment appealed against. If he wants to depart from this traditional role by attacking the judgment he must file a cross appeal. See: Obasanjo V. Buhari (2003) 17 NWLR (Pt.850) 510 @ 554 - 555; Imoniyame Holdings Ltd. & Anor. V. Soneb Enterprises Ltd. & F Ors. (2010) 4 NWLR (Pt.1185) 561 @ 579. If he supports the judgment but wants it affirmed on grounds other than those relied upon by the court, he must file a respondent's notice as required by the rules of this court. See: Organ V. N.L.N.G. Ltd. & Anor, (2013) 16 NWLR (Pt. 1381) 506 @ 530 C - G; Obi V. INEC (2007) ALL FWLR G (Pt. 378) 1116 @ 1198 - 1199; (2007) 11 NWLR (Pt.1046) 560.

In the instant case, the 2nd and 3rd respondents are conceding to the appeal. They are urging the court to allow the appeal. Grounds 1 and 3 of the Notice of Cross Appeal and Issues 1 and 2 in the Cross-Appellant's brief raise issues already dealt with in the main H appeal. Since they are conceding to the appeal, their cross-appeal amounts to an academic exercise and an abuse of the court's process. I agree with my learned brother in the lead judgment that the cross appeal is completely lacking in merit and should be dismissed, I

hereby dismiss it.

In conclusion and for the fuller reasons ably advanced in the lead judgment I hereby dismiss both the main appeal and the cross appeal. I abide by the order on costs.

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