

SUPREME COURT OF NIGERIA

FRIDAY 5TH JUNE, 2015. SC. 54/2012, SC. 335/2012(R)

**CORAM:- I. T. MUHAMMAD, O. RHODES-VIVOUR,
N. S. NGWUTA, O. ARIWOOLA, J. I. OKORO, JJSC**

1. CHIEF UJILE D. NGERE

2. A. W. MBOSOWO

..... APPELLANTS

(For themselves and as Representatives
of the entire People of Ngere Family of
Ngo Town)

AND

1. CHIEF JOB WILLIAM

OKURUKET 'XIV'

2. PASTOR FINEFACE AARON

OKURUKET

..... RESPONDENTS

3. NNADI PAUL IBOTILE

4. SIMEON AYAYI

(For themselves and as representatives
of the entire people of Unwule Royal
House of Ngo Town)

ACTIONS - Consolidation of - Conditions - Are inter alia that the suits must be pending in same court - And the right to relief claimed in each action - Arose out of the same transaction (H1)

ACTIONS - Consolidation of - Purpose of - Consolidation is made for expediency and convenience - But where it will result to confusion - Consolidation will not be ordered (H2)

APPEALS - Consolidation - Allegation of inconvenience - Proof - Respondents failed to establish how they would be confused - If the two appeals are heard and determined together (H3)

FACTS

Before the Supreme Court are pending two appeals. Appeal No.335/2012 challenges the Court of Appeal order for retrial, while Appeal No. SC.54/2012 arose from the judgment from which retrial order was made. The dispute between the parties relates to leader-

ship of a community. Appellants are seeking for an order consolidating the two appeals for hearing on the merits. Application for consolidation was supported by 10 paragraph affidavit. Appellants argued that it will be in the interest of justice and smooth administration of justice to hear both appeals together.

Learned counsel to appellants urged the court to hear both appeals together, but that Appeal No. SC.335/2012 should be considered first, as the step may obviate the need for delay in hearing Appeal No. SC.54/2012. Respondents filed counter-affidavit in opposition, contending that both decisions of the Court of Appeal in SC.54/2012 and SC.335/2012 are final decisions on different issues. Respondents stated further that two separate records of appeal were filed in respect of the two appeals which are radically different in contents. Respondents maintained that they do not object to the hearing of Appeal No. SC.335/2012 first, but it will be against the interest of respondents if both appeals are heard together as that would amount to cross-examination of the issues.

HELD (Unanimously ruling that appeal No. SC.335/2012 should be heard before appeal no. SC.54/2012 per **MUHAMMAD JSC**)

ACTIONS - Consolidation of - Conditions

1. Although the grant or refusal of an application for consolidation is purely at the discretion of a Judge, there are general conditions, in addition to any that may be laid by Rules of Court in a particular situation that may be satisfied before the exercise of such discretion:

a. the cases/suits to be consolidated must be pending in the same court;

b. there is/are some common question(s) of law or fact bearing sufficient importance in proportion to the rest of the subject matter(s) of the actions to render it desirable that all the suits/cases sought to be consolidated be disposed of at the same time;

c. the same common question(s) of law or fact in each of the actions could conveniently be disposed of in the same pro-

ceeding;

d. the right to relief claimed in each action arises out of the same transaction or series of transactions, and or

e. for any other reason it is desirable to order consolidation. (p. 2224 H)

ACTIONS - Consolidation of - Purpose of

2. Thus, consolidation of suits/cases is generally made for expediency and convenience such that suits/cases having same and common characteristics of law or facts or arising from common transaction may be heard and determined at the same time in order to avoid multiplicity of actions and to economize time and costs. However, where from the nature of the claims, the issues and the constitution of the parties in the actions, consolidation will cause confusion to the question(s) in controversy or will cause embarrassment or injustice to one of the parties, it will not be ordered. This principle holds true even where the parties have consented to the consolidation.

I earlier on stated the general conditions/requirements for the grant of consolidation of actions by way of suits, cases, petitions or appeals. I think, I should mention on equal footing, that where from the nature of the claims/reliefs sought, the issues or the constitution of the parties in the actions, consolidation will cause intractable confusion to the question(s) in controversy, or it will cause embarrassment or injustice to one of the parties, then it will not be ordered. Further, a court will not consolidate actions which have no common question of law or actions where the rights or reliefs claimed do not relate to the same subject matter. This principle of law holds true even where the parties have consented to the consolidation.

It is very clear to me from the affidavit evidence set out above that the two appeals originated from the same or common source or historical antecedent. The tussle is run almost between same parties. It will certainly save the parties and court a lot of time and resources and circumstances of the appeals have furnished the desired convenience and expediency, such

that both can be heard and determined simultaneously. However, I am carried by the mutual consent shown by both parties that appeal No. SC.335/2012 is preferred to be heard and determined first. Thus, an order to that effect cannot be objected by any of the parties to both appeals.

B (pp. 2225 E/2230 G)

APPEALS - Consolidation - Allegation of inconvenience - Proof

3. In their counter affidavit (paragraphs 2 and 6) the respondents stated that they would be gravely inconvenienced and confusion would result to their prejudice, if the two appeals are heard and determined together. With respect to the respondents and their learned senior counsel, the claim of inconvenience and confusion which would result against them remains a mere speculation or assertion. It has not been shown how the inconvenience and 'confusion' would affect them as no proof has been clearly shown to establish such a claim. The law is still very sound and clear that he who asserts must prove (Section 135(1) of the Evidence Act). (p. 2231 B)

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NOTABLE POINT OF INTEREST

MUHAMMAD JSC

1. Consolidation of appeals – Meaning of

F My Lords, what I understand the applicant to be asking is to consolidate or merge the two appeals so that both can be heard and determined together. Consolidation, generally, means to make solid or firm, to unite, compress or pack together and form into a more compact mass, body, or system. While defining “Consolidated appeal,” G Campbell Black in his Blacks Law Dictionary, Sixth Edition, page 308, states:

H *“If two or more persons are entitled to appeal from a judgment or order of a district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Court of Appeals upon its own motion or upon a motion of a party, or by stipulation of the parties to*

the several appeals.”

Equally, merger or fusion is the process of absorption of one thing or right into another such as where a case merges or fuses into another. (p. 2223 H)

REPRESENTATION

A. Akoni, SAN with Ben-Omotehinse; L. Dunkwu (Miss.), for the Appellants

Chief U. N. Udenchukwu, SAN, with F. A. Eneawaji; A. S. Akingbade and C. J. Mbachu, for the Respondents

CASES REFERRED TO

Kutse v. Balefur (1994) 4 NWLR (pt. 337) 196

Obiekweife v. Unumma (1957) SCNR 331

Toriola v. Williams (1982) 7 SC 27

Ifediora v. Ume (1988) 2 NWLR (pt. 74) 5

Balogun v. Lagos Executive Development Board (1963) LLR 13

Enigwe v. Akaigwe (1992) 2 NWLR (pt. 225) 505

Iloabuchi v. Ebigbo (2000) 8 NWLR (pt. 668) 197

Okwuagbala v. Ikwueme (2010) 19 NWLR (pt. 1226) 54

Diab Nasr v. Complete Home Enterprises Nig Ltd (1977) 5 SC (Re-print) 1

Payne v. British Time Recorder Co. (1921) 2 KB 16

STATUTE REFERRED TO

Evidence Act, s. 135(1)

BOOK REFERRED TO

Blacks Law Dictionary Sixth Edition, p. 308

LEAD JUDGMENT BY MUHAMMAD JSC

This is an application by the applicants who are the appellants in Appeal No. SC.54/2012 as well as in Appeal No. SC.335/2012. The respondents to the application herein, are same respondents in the aforementioned appeals.

In the application on hand, the applicants ask this court to grant the following relief:

“AN ORDER directing that APPEALS NO.SC.54/2012 (Chief

Ujile D. Ngere & Anor v. Chief Job William Okuruket "XIV" and Anor) and SC.335/2012 (Chief Ujile D. Ngere & Anor v. Chief Job William Okuruket "XIV" & Ors) which are currently pending before this Honourable Court be heard and determined together on the merits; AND for such further order(s) as this Honourable Court may
B *deem fit to make in the circumstances of this case."*

The applicants furnished grounds in support of the application as follows:

a. *"The two appeals originate from a dispute between the ap-*
C *pellants and the respondents as to the rightful person/family entitled to occupy the traditional chieftaincy stool of the Ngo community in Andoni, Rivers States designated in local dialect as Okan Ama of Ngo since sometime before or around 1970.*

b. *The Honourable Court had granted an order for acceler-*
D *ated hearing in respect of Appeal No. SC.54/2012 on 18th February, 2014 and the said appeal has been fixed for 28th October, 2014 for hearing.*

c. *Appeal No. SC.54/2012 is challenging proceedings which emanated from the order of re-trial made by the lower court in CA/*
E *PH/210/1990 (and which proceedings led to a re-trial at the trial court and an appeal against that trial in CA/PH/240/2007).*

d. *Whereas Appeal No. SC.335/2012 challenging the order of re-trial itself made by the lower court in CA/PH/210/1990. So whilst*
F *they are distinct appeals challenging distinct decisions of the Court of Appeal, the appeals are inextricably interrelated and interwoven.*

e. *Indeed, the determination of the substantive issues raised in Appeal No. SC.335/2012 may conclusively determine the instant Appeal No. SC.54/2012.*

f. *In the light of the foregoing, it is therefore in the interest of smooth, convenient and efficient administration of justice to hear and determine both Appeals Nos. SC.54/2012 and SC.335/2012 together, in order to enable the Honourable Court conveniently de-*
G *termine the issues relating to the said appeals and avert the possibility*
H *of delivering conflicting judgments in respect of both appeals.*

g. *Both parties to the appeals have duly filed and exchanged their briefs of arguments in respect of the two appeals.*

h. *The respondents cannot be prejudiced by the grant of this application in any manner whatsoever."*

Moving the Motion, learned senior counsel for the applicant, Mr. Akoni, stated that the Motion was supported by a 10 paragraph affidavit deposed to by one Lynda Dunkwu from the Law Firm of Messrs. Babalakin & Co. That it will be in the interest and smooth administration of justice to hear both appeals together. The underlying dispute between the parties is the same which relates to the leadership of a community. The learned SAN stated further that SC.335/2012 challenges the order of re-trial made by the Court of Appeal in its judgment of 7/07/94. SC.54/2012, on the other hand, is against the judgment of the Court of Appeal in respect of the re-trial conducted by the trial court. B C

The learned SAN stated that the disposal of SC.335/2012 in favour of the applicant may render the hearing of SC.54/2012, no longer necessary. However, in the event that both appeals are heard together then it will obviate the need for further delay in hearing SC.54/2012 for which an order, accelerating its hearing was made by this court on 18/2/14. The learned SAN urged that the two appeals should be heard together but that SC.335/2012 should be considered first. He urged the court to grant his application. D

Learned SAN for the respondents, Mr. Udechukwu, while opposing the Motion, stated that he filed a counter-affidavit on 24/10/14 which he adopted. He stated that both decisions of the Court of Appeal in SC.54/2012 and SC.335/2012 are final decisions on different issues. That two separate records of appeal were filed in respect of the two appeals which are radically different in contents. He said he did not object to the hearing of SC.335/2012 first if the applicants want it like that, but it will be against the interest of the respondents if both appeals are heard together as that would amount to cross-examination of the issues. E F G

My noble Lordships, although this is an application for a merger or consolidation of two appeals: SC.54/2012 and SC.335/2012, for the purpose of hearing and determining both simultaneously, I think there is need to bring to the fore relevant facts giving rise to each of the two appeals with a view to observing the similarities and the dissimilarities between the two, and ipso facto, the possibilities or otherwise of hearing and determining both together. H

The Notice of Appeal to this court in SC.54/2012 was filed at the court below on 1st June, 2012 (pp 841 - 854 of Record of Ap-

peal thereof). Parties in that Notice of Appeal were reflected as follows:

“BETWEEN:

Mr. Abiebu Nicodemus

Dogood Philip

B *Oboada Asitogho*

Chief Ujile D. Ngere

A. W. Mbosowo

(for themselves and as representatives of the entire people of Ngere

C *Family of Ngo Town)*

AND

Chief Job William Okuruket “XIV”

Pastor Fineface Aaron Okuruket

Nnadi Paul Ibotile

D *Simon Ayayi*

(for themselves and as representatives of the entire people of Uwuile Royal House Of Ngo Town). ”

The Notice of Appeal to this court in SC.335/2012, was filed at the court below on 23rd of May, 2014 (pp 393 - 392 of Record of Appeal).

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The parties in this appeal as born by the Notice of Appeal are:

1. Chief Ujile D. Ngere

2. A. W. Mbosowo

(for themselves and as representatives of the entire people of Ngere Family of Ngo Town)

F

AND

1. Chief Job William Okuruket “XIV”

2. Pastor Fineface Aaron Okuruket

G 3. Nnadi Paul Ibotile

4. Simeon Ayayi

(for themselves and as representatives of the entire people of Uwuile Royal House of Ngo Town).”

It is to be observed that Chief U. D. Ngere and Mr. A. W. Mbosowo, were part of the appellants in SC.54/2012 whereas both were the appellants in SC.335/2012. The respondents remain the same in both appeals. In SC.54/2012, the respondents as plaintiffs at the trial court, sued for themselves and in a representative capacity. The then defendants were in the persons of Chief Harry Ngere, Abiebu

H

Nicodemus; Dogood Philip and Oboado Asitogho (who were for themselves and on behalf of others). The respondents claimed some declaratory reliefs in relation to the traditional chieftaincy stool of the Ngo Community in Adoni, Rivers State. The respondents as plaintiffs at the trial court were claiming some six (6) declaratory reliefs against the appellants/defendants. At the end of hearing, the learned trial judge delivered his judgment on the 14th of December, 2006. He granted prayers 1 and 2 of the Further Amended Statement of Claim while he dismissed prayers 3 - 6 of the same statement of claim (page 463 of the record). The respondents were dissatisfied.

They appealed to the court below. The court below allowed the appeal and granted prayers 3 - 6. Dissatisfied the appellants appealed to this court. This is what gave rise to appeal SC.54/2012.

The genesis of SC.335/2012, started in 1986, when the respondents, herein, instituted suit No. BHC/41/1986. During the pendency of that suit at the trial court, the appellants herein, filed an application before the trial court seeking for an order dismissing the respondents' claim and raised objection to the competence of the trial court to entertain same on the ground that by virtue of the Chieftaincy Edict No.5 of 1978, the jurisdiction of the trial court was ousted. In response, the respondents filed a counter affidavit to the said application. In its ruling of 9th June, 1987 the trial court overruled the respondents' Preliminary Objection and ordered the appellants (as defendants) to file their defence. After settlement of pleadings, trial commenced and, at the end, the learned trial judge found that he lacked jurisdiction to entertain the suit. He consequently, struck out the suit.

Dissatisfied with the ruling, the respondents appealed to the court below. After reviewing the whole processes involved in the appeal, the court below allowed the appeal, nullified the judgment of the trial court and ordered for a retrial before the trial court.

Dissatisfied further, the appellants filed an appeal to this court. This is what gave rise to SC.335/2012.

My Lords, what I understand the applicant to be asking is to consolidate or merge the two appeals so that both can be heard and determined together. Consolidation, generally, means to make solid or firm, to unite, compress or pack together and form into a more compact mass, body, or system. While defining "Consolidated ap-

peal,” Campbell Black in his Blacks Law Dictionary, Sixth Edition, page 308, states:

“If two or more persons are entitled to appeal from a judgment or order of a district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or
B may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Court of Appeals upon its own motion or upon a motion of a party, or by stipulation of the parties to the several appeals.”

C Equally, merger or fusion is the process of absorption of one thing or right into another such as where a case merges or fuses into another. I came across a captivating definition of “consolidation,” by Musdapher, JCA (as he then was), in the case of Kutse v. Balefur
D (1994) 4 NWLR (Pt.337) 196 at page 209 E - G, where he, inter alia, stated:

“Now Consolidation of actions is the process whereby two or more distinct actions pending in the same court are by order of court joined and tried together at the same time. The actions though separate and distinct are tried simultaneously in the same proceeding.
E Although, consolidated actions are tried and determined in the same proceeding, each remains a separate and distinct action and has its own judgment given separately at the end of the common trial.”

F The main aim of consolidation has been spelt out by this court in the case of NASR V. C.H.E Ltd. (1977) 5 SC 11.

“The main purpose of consolidation it has been said, is to save costs and time, and therefore will not usually be ordered unless there is some common question of law or fact bearing sufficient importance in proportion to the rest of the subject matter of the actions to render it desirable that the whole should be disposed of at the same time. See Payne V. British Time Recorder Co. (1921) 2 KB 16. Per Irikefe, JSC at para 11 thereof. See also: Lediju v. Odulaja (1943) 17
G NLR 15.

H **Although the grant or refusal of an application for consolidation is purely at the discretion of a Judge, there are general conditions, in addition to any that may be laid by Rules of Court in a particular situation that may be satisfied before the exercise of such discretion:**

a. the cases/suits to be consolidated must be pending in the same court;

b. there is/are some common question(s) of law or fact bearing sufficient importance in proportion to the rest of the subject matter(s) of the actions to render it desirable that all the suits/cases sought to be consolidated be disposed of at the same time;

c. the same common question(s) of law or fact in each of the actions could conveniently be disposed of in the same proceeding;

d. the right to relief claimed in each action arises out of the same transaction or series of transactions, and or

e. for any other reason it is desirable to order consolidation.

The above requirements or conditions were earlier applied by this Court in several appeals such as appeals Nos SC.53/1981; SC.55/1981 and SC.57/1981. See also (1982) 1 - 2 SC 13; Nasr v. C. H. E. (Nig.) Ltd (supra), Obiekweife v. Unumma (1957) SCNR 331; Toriola v. Williams (1982) 7 SC 27.

Thus, consolidation of suits/cases is generally made for expediency and convenience such that suits/cases having same and common characteristics of law or facts or arising from common transaction may be heard and determined at the same time in order to avoid multiplicity of actions and to economize time and costs. See: Ifediora v Ume (1988) 2 NWLR (Pt.74) 5. ***However, where from the nature of the claims, the issues and the constitution of the parties in the actions, consolidation will cause confusion to the question(s) in controversy or will cause embarrassment or injustice to one of the parties, it will not be ordered. This principle holds true even where the parties have consented to the consolidation.*** See Balogun v. Lagos Executive Development Board (1963) LLR 13; Enigwe v. Akaigwe (1992) 2 NWLR (Pt.225) 505.

Now, having set out the general principles governing consolidation of actions, I think it is ripe for me to consider the circumstances in the appeals on hand. From the affidavit evidence in support of this application and the counter affidavit, the applicant deposed to the following facts, among others:

“3b. The background to this action dates back to sometime in 1970 when both the predecessors of the appellants and the respondents, together with certain other indigenes of Ngo all laid claim to the Okan Ama of Ngo. a traditional stool of the Ngo community in Andoni, Rivers State.

B c. As a result, on 27th April, 1971, the Honourable Commissioner for Home Affairs and Social Welfare of the then Government of South Eastern State of Nigeria declared a dispute over the ‘Ngo’ village Headship.

C Consequently, the said Commissioner appointed one E. A. Udoh as Sole Commissioner to enquire into the Ngo Village Headship dispute.

D d. After a fully attended public hearing by the people of Ngo (including the appellants and respondents families), the Sole Commissioner produced a report (which was accepted by the Government) wherein he unequivocally recommended that the 1st appellant’s predecessor/family be recognised by the then Government of South Eastern State of Nigeria as the rightful and traditional village Head and/or Okan Ama of Ngo.

E e. By a letter dated 14th October, 1972, the government of South Eastern State of Nigeria through its Ministry of Home Affairs and Social Welfare wrote affirming its acceptance of the E. A. Udoh’s Report.

F f. Consequently, the government of South Eastern State of Nigeria issued a “Certificate of Recognition as a Traditional Ruler” dated 1st April, 1975 to the 1st appellant’s predecessor in which the said predecessor was unequivocally recognised as the Village Head, Ngo in Ngo Clan.

G g. However, in 1978 the 1st Respondent, attempted to question the 1st appellant’s predecessor’s status as the Okan Ama/Village Head of Ngo when he filed a Statement of Claim dated 28th September, 1978 with Suit No. PHC/203/78. This suit was dismissed owing to the state of the law at that time ousted the jurisdiction of the
H courts from entertaining such an action.

h. Again, in 1986 the respondents herein instituted suit No. BHC/41/1986 claiming that the cause of action for the suit was a letter written by the 1st appellant’s predecessor in which the said predecessor referred to himself as the Okan Ama of Ngo.

i. Upon commencement of suit No. BHC/41/1986, the appellants objected to same inter alia on the ground that the trial court lacked the jurisdiction to entertain the suit based on the provisions of the Chieftaincy Edit No. 5 of 1978 which had ousted the jurisdiction of the court.

j. The trial Court per Ichoku J. delivered its ruling and found it premature to determine whether or not it had jurisdiction to entertain the claim. B

The trial court rather held that upon conclusion of trial it would be better placed to determine the issue of jurisdiction.

k. Consequently, the High Court proceeded to trial and after having received evidence and hearing the testimony of the witnesses, the court found that indeed it was not seized of jurisdiction to entertain the respondents' claims and accordingly struck out the suit. C

Notwithstanding the foregoing and having held that it lacked D jurisdiction, the learned trial judge went ahead to determine the substantive suit and delivered a judgment on the merit in favour of the appellants.

l. Aggrieved, the respondents appealed to the Court of Appeal contending that the trial judge overruled its earlier decision (assuming jurisdiction) and sat on appeal over its earlier decision. The Court of Appeal in its judgment delivered on 7th July, 1994 agreed with this contention and set aside the entire judgment of the High Court (including the judgment on the merit) and ordered a re-trial. E

m. Howbeit, the appellants recently obtained the leave of this court on 9th May, 2014, to appeal against the order of re-trial. It is this appeal that is before your Lordship's court as Appeal No. SC.335/2012. Briefs of arguments have been fixed for hearing of the substantive appeal. F

n. On the other hand, following the order of re-trial made by the Court of Appeal in its judgment, the appellants and respondents also returned to the High Court for a trial de novo. Upon conclusion of that trial, the High Court delivered its judgment and refused to grant the crucial and fundamental reliefs sought by the respondents. G
The respondents subsequently lodged an appeal against the judgment to the Court of Appeal. The Court of Appeal allowed the respondents' appeal by granting the main reliefs sought by the respondents. H

o. The appellant aggrieved, appealed against that judgment to this Honourable Court. It is that appeal that has culminated into the present appeal viz. SC.54/2012 (i.e. the instant appeal).

p. Thus Appeal No. SC.54/2012 is challenging proceedings which emanated from the order of re-trial made by the lower court in CA/PH/210/1990 (and which proceedings led to a retrial at the trial court and an appeal against that trial in CA/PH/240/2007.

q. Whereas appeal No. SC.335/2012 is challenging the order of re-trial itself made by the lower court in CA/PH/210/1990.

4. I know as a fact that briefs of arguments have been filed and exchanged by the parties herein in respect of both appeals. However, an order for accelerated hearing was made by this Honourable Court on 18th February, 2014, in respect of the instant appeal No. SC.54/2012 which has been fixed for hearing on 28th October, 2014.

5. I know for a fact that the determination of the substantive issues raised in Appeal No. SC/335/2012 (for which no date has been fixed) may conclusively determine the instant Appeal No. SC.54/2012 or better still dispense of the need to hear same.

6. I know as a fact that hearing the two appeals separately and in piecemeal may expose this Honourable Court to a potential risk of having to prepare two different considered judgments that may conflict with each other owing to the fact that a decision on one of the appeals will ultimately impinge on the other.

7. I verily believe that hearing Appeal Nos. SC.54/2012 and SC.335/2012 will be most convenient to the parties because it would afford the parties the opportunity of holistically addressing their grievances and arguing their appeals before the court.

8. I verily believe that it is in the interest of smooth, convenient and efficient administration of justice to hear and determine both Appeal Nos. SC.54/2012 and SC.335/2012 together, as this will enable the Honourable court conveniently determine the issues relating to the said appeals and avert the possibility of delivering conflicting judgments in respect of both appeals.”

In the counter affidavit filed by the learned SAN for respondents, the following facts were deposed to:

“2. That the respondents would be gravely inconvenienced if the appellant’s application for joinder of Appeal No. SC.54/2012; Chief Ujile D. Ngere & Anor. V. Chief Job William Okuruket ‘XIV’ &

Anor. and Appeal No. SC.335/2012; Chief Ujile D. Ngere & Anor v. Chief Job William Okuruket 'XIV' & 3 Ors are granted.

3. *That the appellants have not even placed before the Supreme Court sufficient materials to enable the Supreme Court to judicially consider this application properly.*

4. *That the record of appeal in Appeal No. SC.54/2012, the evidence, both documentary and oral in that case are radically different from the record of appeal in Appeal No. SC.335/2012, the evidence both documentary and oral.*

5. *That the issues in contention in both appeals are radically different and the judgments of the Court of Appeal appealed against in both appeals are totally different.*

6. *That if both appeals are consolidated for hearing before the Supreme Court, confusion would result to the prejudice of the respondents.*

7. *That I verily believe that the judicious thing to do is to hear appeal No. SC.335/2012 first and dispose of it and subject to the outcome, Appeal No. SC.54/2012 may either be appropriate for determination or otherwise become irrelevant and academic.*

8. *That it would be open to the appellants to elect to pursue their appeal in appeal No. SC.54/2012 if their appeal in Appeal No. SC.335/2012 fails.*

9. *That on the other hand, the appellants may elect to reconsider their position and withdraw their appeal in Appeal No. SC.54/2012 if the appellants appeal in Appeal No. SC.335/2012 succeeds.*

10 *That to consolidate both appeals, the peculiar circumstances of each case notwithstanding, would enable the appellants to colour the argument in Appeal No. SC.54/2012 by reference to the irrelevant unpleaded evidence given in Appeal No. SC.335/2012, including rejected documents in Appeal No. SC.54/2012 which were admitted in Appeal No. SC.335/2012 as if the records are the same.*

11. *That it is in the interest of justice that Appeal No. SC.335/2012 be separately decided first and subject to the outcome, the parties may decide their positions vis-à-vis Appeal No. SC.54/201 2."*

Thus, in view of the above depositions, I hereby make the following findings:

i. Parties in both appeals laid claim to the traditional stool of the Ngo community in Andoni, Rivers State

ii. There were decisions by the trial court assuming jurisdiction at first instance but it later declined jurisdiction over the subject matter in trial in compliance with state Edict No. 5 of 1978 and the suit was struck out.

B iii. On appeal to the court below by the respondents the appeal was allowed. The entire judgment of the trial court was set aside and a re-trial order made.

iv. As a result of the re-trial order, the parties returned to the trial court for the said de novo trial.

C v. Upon conclusion of the de novo trial, the trial court refused to grant the main reliefs sought by the respondents.

vi. There was another appeal by the respondents to the court below which allowed the appeal by granting the main reliefs sought by the respondents. This was on 7th July, 1994.

D vii. The appellants lodged an appeal against the judgment as in (vi) above to this court which is numbered as SC.54/2012. Thus, this appeal challenges the proceedings which emanated from the retrial order made by the court below.

E viii. As a result of the judgment of the court below delivered on the 7th of July, 1994, as in (vi) above, the appellants sought and obtained leave from this court (9/5/14) to appeal against the order of re-trial. This appeal is numbered as SC.335/2012.

F ix. From the affidavit evidence, all briefs of argument in support of the two appeals have been settled.

G x. Both learned SAN for the applicants and the learned SAN for the respondents from the addresses to the court and from the affidavit evidence (paragraph 5 of the affidavit in support) and (paragraph 7 of the respondents' counter affidavit) are not opposed to hearing appeal No. SC.335/2012 first which may determine the hearing of appeal No. SC.54/2012.

H ***I earlier on stated the general conditions/requirements for the grant of consolidation of actions by way of suits, cases, petitions or appeals. I think, I should mention on equal footing, that where from the nature of the claims/reliefs sought, the issues or the constitution of the parties in the actions, consolidation will cause intractable confusion to the question(s) in controversy, or it will cause embarrassment or injustice to one of the parties, then it will not be ordered. Further, a court***

will not consolidate actions which have no common question of law or actions where the rights or reliefs claimed do not relate to the same subject matter. This principle of law holds true even where the parties have consented to the consolidation. See *Balogun v. Lagos Executive Development Board* (supra); *Enigwe v. Akaigwe* (supra). B

In their counter affidavit (paragraphs 2 and 6) the respondents stated that they would be gravely inconvenienced and confusion would result to their prejudice, if the two appeals are heard and determined together. With respect to the respondents and their learned senior counsel, the claim of inconvenience and confusion which would result against them remains a mere speculation or assertion. It has not been shown how the inconvenience and 'confusion' would affect them as no proof has been clearly shown to establish such a claim. The law is still very sound and clear that he who asserts must prove (Section 135(1) of the Evidence Act). C D

It is very clear to me from the affidavit evidence set out above that the two appeals originated from the same or common source or historical antecedent. The tussle is run almost between same parties. It will certainly save the parties and court a lot of time and resources and circumstances of the appeals have furnished the desired convenience and expediency, such that both can be heard and determined simultaneously. However, I am carried by the mutual consent shown by both parties that appeal No. SC.335/2012 is preferred to be heard and determined first. Thus, an order to that effect cannot be objected by any of the parties to both appeals. E F

Accordingly, I hereby order that appeal No. SC.335/2012 shall be heard and determined first and soon thereafter, if the need arises, appeal No. SC.54/2012 shall be given a date for hearing as may appear convenient to the court. The applicants may at their earliest convenience, approach the court's Registry for a possible date for hearing appeal No. SC.335/2012. G H

I make no order as to costs.

RHODES-VIVOUR JSC

Before this court are appeals Nos. SC.335/2012 and SC.54/2012. Counsel on both sides are in agreement that appeal No.SC.335/2012 should be taken first and once determined SC.54/2012 may become unnecessary.

B Appeal No.335/2012 challenges the Court of Appeal order for retrial, while Appeal No. SC.54/2012 arose from the judgment from which retrial order was made.

I agree with my learned brother Muhammad, JSC that Appeal No.SC.335/2012 should be taken first, thereafter Appeal. No. SC.54/2012 may be heard if the need still arises.

NGWUTA JSC

D I have read with delight the lead ruling just delivered by my learned brother, Muhammad, JSC. I entirely agree with the reasoning leading to the conclusion that Appeal No. SC.335/2012 though later in time be heard before the earlier one SC.54/2012.

E Appeal No. SC.335/2012 challenges the order for retrial made by the Court below whereas Appeal No. SC.54/2012 arose from the judgment resulting from the re-trial ordered by the Court below.

In other words, Appeal No. SC.335/2012 is the foundation, as it were, upon which Appeal No. SC.54/2012 stands. If the foundation (SC.335/2012) is faulty, the superstructure (SC.54/2012) cannot stand.

F In my humble view, the prudent thing to do in the circumstance is to hear Appeal No. 335/2012 and the result thereof will determine whether or not Appeal No. SC.54/2012 will be determined on the merit.

I think that instead of expending so much energy and resources by the court and both parties, the simple thing to do would have been to ask that the later appeal be determined before the earlier one, as the parties have agreed to do.

H I adopt the order made in the lead ruling that Appeal No.SC.335/2012 be heard and determined before the hearing and determination of Appeal No. SC.54/2012, if need be.

The facts of this motion amply justify the Biblical order that the first shall be the last. Parties to bear their respective costs.

ARIWOOLA JSC

My learned brother I. T. Muhammad, JSC obliged me with a copy of the draft lead ruling just delivered

I am in agreement with the reasoning and the conclusion arrived thereat. I have nothing new to add as I adopt the whole ruling as my own. I abide by the consequential order in the said ruling and also make no order on costs.

OKORO JSC

I have had the privilege of reading before now the Ruling just delivered by my learned brother, Ibrahim Tanko Muhammad, JSC with which I agree with the reasons adduced and the conclusions reached therein. My learned brother has meticulously and quite efficiently determined all the salient issues arising from the arguments of both senior counsel in this application and there appears nothing left to be said. However, I shall make a few comments in support of the ruling only.

There are two appeals pending before this court in which the applicants in the instant motion are appellants.

The respondents to this motion are also respondents in the two appeals numbered SC.54/2012 and SC.335/2012 respectively. In both appeals, briefs have been filed and exchanged. Thus, in the motion filed on 22nd October, 2014 the appellants are praying for -

“AN ORDER directing that Appeals No.SC.54/2012 Ujile D. Ngere & anor v Chief Job William Okuruket “XIV” and anor) and SC.335/2012 (Chief Ujile D. Ngere & anor v Chief Job William Okuruket “xiv” & 3 ors) which are currently pending before this Honourable Court be and determined together on the merits.”

The grounds for the application and the affidavit in support and in opposition to the motion are well encapsulated in the lead ruling and I do not intend to repeat the exercise here.

Now, consolidation of suits is usually granted if a court is satisfied that the issues in the suits sought to be consolidated can be resolved in one joint proceeding rather than in separate proceeding. The decision to order consolidation is arrived at if the court is satisfied that some common questions of law or fact arise in both or all of the

causes or matters, or the rights to relief are claimed in respect of or arise out of the same transactions or for some other reasons it is desirable to make an order under the rules of court. See *Iloabuchi v Ebigbo* (2000) 8 NWLR (Pt 668) 197, *Okwuagbala v Ikwueme* (2010) 19 NWLR (Pt 1226) 54, *Diab Nasr v Complete Home Enterprises B Nig Ltd* (1977) 5 SC (Reprint) 1, *Payne v British Time Recorder Co.* (1921) 2 KB p. 16.

The facts in support of the instant application discloses that if appeal No. SC.335/2012 is heard and determined first, the other appeal, i.e. SC.54/2012 may become unnecessary. Both senior counsel for the two parties have conceded that appeal No.SC.335/2012 to be taken first. I agree that this is the only reasonable path to take in the circumstance of this case. The Appellants in appeal No.SC.54/2012 have a choice what to do with it after the judgment in SC.335/2012.

In sum, I also order the appeal No.SC.335/2012 shall be heard and determined first and if the appellants in SC.54/2012 so desire, date shall be given for the hearing of the second appeal. I abide by other orders made in the lead Ruling. I also make no order as to costs.

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