

SUPREME COURT OF NIGERIA
FRIDAY 15TH JULY, 2013. SC. 343/2012
**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-
ENEH, J. A. FABIYI, B. RHODES-VIVOUR,
K. B. AKA'AH, JJSC**

1. ARAGBIJI OF IRAGBIJI
OBA RASHEED AYOTUNDE OLABOMI
(Substituted by Order of Court dated 25/9/08)
2. MURAINA OYELAMI APPELLANTS
AND
1. OLABODE OYEWOLE
(For himself and on behalf
of Eesa family of Iragbiji)
2. THE MILITARY ADMINISTRATOR
OSUN STATE OF NIGERIA
3. ATTORNEY-GENERAL AND
COMMISSIONER FOR JUSTICE
OSUN STATE RESPONDENTS

JUDGMENTS - Declaratory judgment - Meaning - Is one that proclaims existence of legal relationship - But does not contain any order which may be enforced (H1)

JUDGMENTS - Executory judgment - Meaning - Is one that states the respective rights of parties - And also orders defendant to act in a particular way - Or refrain from interfering with plaintiff's rights (H2)

APPEALS - Grounds - Competence of - By virtue of Constitution 1999 s. 233(2)(a) - Appeal will lie as of right to SC on ground 7 - Which questions the jurisdiction of CA to determine the suit (H3)

JURISDICTION - Fundamentality of - Once issue of jurisdiction is raised - All proceedings abate until resolved - As proceedings conducted without jurisdiction amount to nullity (H4)

SUPREME COURT - Stay of execution - Grant of - SC may by virtue of s. 24 of its Act - Order stay of execution either unconditionally

- Or conditionally subject to rules of the court (H5)

FACTS

Defendants/appellants by way of a Motion on Notice brought before the Supreme Court of Nigeria pursuant to sections 22 and 24 of the Supreme Court Act LFN 2004, Order 2 rule 28(1) of the Supreme Court Rules 1985 and under the inherent jurisdiction of the Court, is praying for an order to stay execution of the judgment of the Court of Appeal pending the hearing and determination of the appeal filed by appellants in Supreme Court. Appellants also ask for an injunction restraining plaintiffs/respondents from taking steps to actualize the declaratory reliefs awarded by the Court of Appeal in its judgment. A sixteen paragraph affidavit was deposed to in support of the application. 1st respondent deposed a six paragraph counter-affidavit in opposition. At the hearing, appellants withdrew prayer two in their application and the same was accordingly struck out.

The genesis of the matter is that 2nd appellant was confirmed by the Boripe Local Government in Osun State as the Eesa of Iragbiji. Dissatisfied with the appointment, plaintiff/1st respondent who is of the view that he is the rightful person to be confirmed as the Eesa of Iragbiji filed a suit before the High Court of Osun State, wherein he claimed against appellants jointly and severally inter alia, for declaration that 2nd appellant not being a member of Eesa family ruling house of Iragbiji cannot lawfully hold the title of Eesa of Iragbiji. The Court dismissed the claims. An appeal was filed at the Court of Appeal by 1st respondent. The Court allowed the appeal and set aside the appointment of 2nd appellant as the Eesa of Iragbiji. 2nd appellant was also restrained from further parading himself as such. Aggrieved, appellant appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the appellants/applicants are entitled to an order for stay of execution of the judgment of the Court of Appeal pending the outcome of their appeal to this court.

HELD (Unanimously granting the application for stay of execution per ***RHODES-VIVOUR JSC***)

Declaratory judgment - Meaning

1. A declaratory judgment or order is one that proclaims or declares the existence of a legal relationship, but does not contain any order which may be enforced against the defendant. Once rights declared in a declaratory judgment are infringed, fresh proceedings are needed for enforcement. Declaratory judgments cannot be enforced by execution, as there is nothing to enforce. So where a court delivers a declaratory judgment, the party appealing may be granted an injunction if he deserves it but never a stay of execution pending the determination of the appeal. (p. 3106 B)

Executory judgment - Meaning

2. An executory judgment or order is one that states the respective rights of the parties and goes the extra mile to order the defendant to act in a particular way or refrain from interfering with the plaintiffs' rights, e.g. to pay damages or as in this case to stop parading himself as the Eesa of Iragbiji. A stay of execution pending appeal is granted where the judgment is executory. I must observe though that an injunction or a stay of execution merely suspends the rights of the successful party until the appeal is decided.

My lords, the trial High Court dismissed all the claims. The judgment was upset on appeal, and all the claims were granted. The grant of prayer 5 restrained the 2nd appellant/applicant from further parading himself as the Eesa of Iragbiji. Prayer 5 is a restraining order and it can be the subject matter of an application for stay of execution. A stay of execution of the judgment of the Court of Appeal can be granted on these facts. (p. 3106 E)

APPEALS - Grounds - Competence of

3. It is clear that ground 7 questions whether the Courts below had jurisdiction to hear and determine the suit. Jurisdiction is a question of law, and by virtue of section 233(2)(a) of the constitution, an appeal would lie to this court as of right on this ground. Furthermore this ground alone can sustain the appeal. Accordingly the appeal is competent even if leave was

not obtained for the other grounds of appeal. The notice of appeal filed by the appellants/applicants is competent.
(p. 3108 A)

JURISDICTION - Fundamentality of

- B **4. Jurisdiction is a threshold matter. Once raised all proceedings abate until it is resolved. Proceedings conducted without jurisdiction amount to a nullity. There is nothing as useless as conducting a trial flawlessly only to find out that the court had no jurisdiction to hear the matter. That explains why the issue of jurisdiction can be taken at any stage of the proceedings, at trial, on appeal and even in the Supreme Court for the first time.** (p. 3108 C)

D *SUPREME COURT - Stay of execution - Grant of*

- 5. By section 24 of the Supreme Court Act, this court may order a stay of execution either unconditionally or upon the performance of such conditions as may be imposed in accordance with the rules of the court. So once, as in this case, this court is satisfied that it has become necessary in determining the real question in controversy it can make any order to achieve that purpose. Ground 7 in the notice of appeal complains of lack of jurisdiction of both courts below to hear this case and it prima facie appears so, it becomes mandatory that this Court ensures that parties remain in status quo ante bellum until the issue of jurisdiction and/or the substantive appeal is resolved.**

- F **Accordingly an order to stay execution granted by the Court of Appeal is hereby ordered. Application succeeds.**
G (p. 3109 D)

REPRESENTATION

- H Professor W. Egbewole with H. T. Oloyede, K. F. Osho, N. Anyaegbunam, S. Lamidi, for the Appellants/Applicants
B. Abdul-Raheem, for the 1st Respondent
W. Adejumbi - Assistant Chief Counsel Osun State Ministry of Justice, for the 2nd and 3rd Respondents

CASES REFERRED TO

- Oyeyemi v. Irewole L.G. (1993) 1 NWLR (pt. 270) 462
Martins v. Nicanner Food Co. Ltd. (1988) 2 NWLR (pt. 74) 75
Ajomale v. Yaduat (No. 2) (1991) 5 NWLR (pt. 191) 266
Okoya v. Santilli (1990) 2 NWLR (pt. 131) 173
Shodeinde v. The Registered Trustees of Ahmadiyya Movement-In- B
Islam (1980) 1-2 SC 163
A-G Anambra State v. A-G Federation (1993) 6 NWLR (pt. 302)
692
Biariko v. Edeh-Ogwuile (2001) 12 NWLR (pt. 726) 235 C
Olatunde v. Abidogun (2001) 18 NWLR (pt. 746) 712
Ejuetami v. Olaiya (2001) 18 NWLR (pt. 746) 572
Madukolu v. Nkemdilim (1962) 2 SCNL 341

STATUTES & RULES REFERRED TO

- Supreme Court Act Cap. 15 LFN 2004, ss. 22, 24 D
Chiefs Law of Oyo State (applicable in Osun State), s. 22
Constitution of the Federal Republic of Nigeria 1999, s. 233(2)(a)
Supreme Court Rules 1985, O. 2 r. 28(1)

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LEAD JUDGMENT BY RHODES-VIVOUR JSC

The appellants/applicants motion on notice filed on the 31st day of August 2012 and brought under sections 22 and 24 of the Supreme Court Act, Cap. 15, Laws of the Federation of Nigeria, 2004, Order 2 rule 28(1) of the Supreme Court Rules 1985 and F
under the inherent jurisdiction of this court is for:

1. An order of this honourable court staying the execution of the judgment of the court below delivered on the 25th day of June, 2012 pending the hearing and determination of the appellants/ap- G
plicants appeal before this honourable court.

2. An order of injunction restraining the respondents from taking steps to actualize the declaratory reliefs awarded by the court below in its judgment of 25th day of June, 2012 pending the hearing and determination of the appellants/applicants appeal in this hon- H
ourable court.

In support of the application is a 16 paragraph affidavit deposed to by Taiwo Esther Akintunde, a legal practitioner in chambers of learned counsel for the appellants/applicants.

Abass Bashir, a litigation clerk in the legal firm of learned counsel for the 1st respondent deposed to a 6 paragraph counter affidavit on behalf of the 1st respondent.

Learned counsel for the 2nd respondent, Mr. W. Adejumobi did not file a counter affidavit. At the hearing of the application on the 2011 day of June 2013 learned counsel for the appellants/applicants professor W. Egbewole withdraw prayer No.2 on the motion paper. It was accordingly struck out.

The facts are these. On the 7th day of January, 1992 the 2nd defendant/2nd appellant/applicant, Mr. Muraina Oyelami was confirmed by the Boriye Local Government (in Osun State) as the Eesa of Iragbiji. Dissatisfied, the plaintiff/1st respondent, Mr. Olabode Oyewole who was, and is still of the view that he is the rightful person to be confirmed as the Eesa of Iragbiji filed a suit wherein he claimed against the defendants/appellants/applicants jointly and severally:

1. Declaration that the 2nd defendant not being a member of Eesa family ruling house of Iragbiji cannot lawfully hold the title of Eesa chieftaincy of Iragbiji.

2. Declaration that by the custom and tradition of Iragbiji the plaintiff's family (the Eesa family of Iragbiji) is the only competent family to choose and or nominate family to fill any vacancy into the Eesa of Iragbiji Chieftaincy.

3. Declaration that the purported appointment and installation of the 2nd defendant as the Eesa of Iragbiji by the 1st defendant is wrongful, irregular, against the custom and tradition relating to the Eesa of Iragbiji chieftaincy and is therefore null and void and of no effect.

4. Declaration that the purported approval by the 3rd defendant of Arorno as a ruling house for the purpose of Eesa chieftaincy is wrongful, irregular contrary to the custom and tradition relating to the Eesa Chieftaincy of Iragbiji.

5. An order of injunction restraining the 2nd defendant by himself, his servants and or agents from parading himself as the Eesa of Iragbiji.

An Ikirun High Court Osun State presided over by R.O. Yusuf. J. dismissed all the claims in these words:

"...In all and having regard to the evidence and exhibits and all the declarations sought by the plaintiff were not proved and same

are refused. Plaintiffs claims fail and same is dismissed...”

This judgment was upset on appeal. This is what the Court of Appeal said in the penultimate paragraph of its judgment delivered on the 25th day of June, 2012.

“...In conclusion the appeal succeeds. The judgment of the High Courts of Osun State Holden at Ikirun in suit No.HIK/5/97 delivered on 9/10/98 is hereby set aside. The plaintiff’s claims as per paragraph 49 of his amended statement of claim are hereby granted as prayed.”

It is important at this stage that I highlight what the Court of Appeal decided and ordered. The Court of Appeal set aside the appointment of the 2nd appellant/applicant to the Chieftaincy stool of Eesa of Iragbiji. By granting prayer 5, the Court of Appeal also restrained the 2nd appellant/ applicant from further parading himself as such. This application by the 2nd appellant/applicant seeks an order of this court staying the execution of the judgment of the Court of Appeal.

After reading the briefs and hearing counsel submission on the 20th day of June 2013, the central issue for determination is:

Whether the appellants/applicants are entitled to an order for stay of execution of the judgment of the Court of Appeal pending the out come of their appeal to this court.

Learned counsel for the appellants/applicants professor W. Egbewole argue that this court has the discretion to grant a stay of execution. Referring to section 22 of the Chiefs Law of Oyo State applicable in Osun State, he submitted that special circumstances exist for this Court to grant the application. Reliance was placed on Oyeyemi v. Irewole L.G. (1993) 1 NWLR (Pt. 270) p. 462.

Opposing the application, learned counsel for the 1st respondent, Mr. B. Abdul-Raheem observed that before a stay of execution can be granted, there must be a valid appeal pending before the appellate court. Reliance was placed on Martins v. Nicanner Food Co. Ltd. (1988) 2 NWLR (Pt. 74) P.75. He submitted that in the notice of appeal all the grounds of appeal are of mixed law and fact or fact and leave was not obtained before filing, observing that by virtue of section 233(2)(a) of the Constitution as amended there is no valid appeal before this court, as the notice of appeal is incompetent. In further opposing the application he observed that the appel-

lants/applicants failed to show any substantial or exceptional reason why the judgment should be stayed. Reliance was placed on Ajomale v. Yaduat (No. 2) (1991) 5 NWLR (Pt. 191) p. 266. He urged this court to dismiss the application.

Learned counsel for the 2nd and 3rd respondents, Mr. W. Adejumobi did not oppose the application. First of all, it must be decided whether the judgment of the Court of Appeal is a declaratory or executory judgment.

A declaratory judgment or order is one that proclaims or declares the existence of a legal relationship, but does not contain any order which may be enforced against the defendant. Once rights declared in a declaratory judgment are infringed, fresh proceedings are needed for enforcement. Declaratory judgments cannot be enforced by execution, as there is nothing to enforce. So where a court delivers a declaratory judgment, the party appealing may be granted an injunction if he deserves it but never a stay of execution pending the determination of the appeal. See Okoya v. Santilli (1990) 2 NWLR (Pt. 131) p. 173; Shodeinde v. The Registered Trustees of Ahmadiyya Movement-In-Islam (1980) 1-2 SC p. 163.

An executory judgment or order is one that states the respective rights of the parties and goes the extra mile to order the defendant to act in a particular way or refrain from interfering with the plaintiffs' rights, e.g. to pay damages or as in this case to stop parading himself as the Eesa of Iragbiji. A stay of execution pending appeal is granted where the judgment is executory. I must observe though that an injunction or a stay of execution merely suspends the rights of the successful party until the appeal is decided.

The plaintiff/1st respondent sought five claims, prayers 1-4 were declaratory while prayer 5 was for an injunction which reads: "An order of injunction restraining the 2nd defendant by himself, his servants and or agents from parading himself as the Eesa of Iragbiji."

My lords, the trial High Court dismissed all the claims. The judgment was upset on appeal, and all the claims were granted. The grant of prayer 5 restrained the 2nd appellant/applicant from further parading himself as the Eesa of Iragbiji. Prayer 5 is a restraining order and it can be the subject matter

of an application for stay of execution. A stay of execution of the judgment of the Court of Appeal can be granted on these facts.

The notice of appeal

The notice of appeal contains eight grounds of appeal. Learned counsel for the 1st respondent argues that since all the grounds of appeal are mixed law and fact and or fact, the notice of appeal is incompetent because leave was not obtained before they were filed. In *Enterprise Bank Ltd. v. Deaconess Bose Aroso & 5 Ors.* (Unreported) Appeal No. SC 166/2003 judgment delivered on the 12th of April, 2013 I said that:

“Before making the distinction between grounds of law, mixed law and facts, and facts, first of all read carefully the ground of appeal and its particulars to understand thoroughly the substance of the complaint. Find out if the ground of appeal contests facts. If it does, it can only be a ground of facts or mixed law and facts. Once facts are not in dispute, that is to say facts are settled, a ground of appeal can never be on facts or mixed law and facts. The ground of appeal can only complain of the wrong application of the law to settled facts and that is a ground of law. It is very easy to identify a ground of appeal on facts.”

It would amount to an academic exercise to examine the grounds of appeal one after the other to see if Mr. B. Abdul-Raheem is correct in view of ground 7 in the notice of appeal which reads:

“The learned Justices of the Court of Appeal erred in law and contravened the provisions of section 22 of the Chiefs Laws of Oyo State, applicable to Osun State, when they countenanced and assumed jurisdiction to hear the appeal of the 1st respondent, contrary to the express provisions of section 22 of the said Chiefs Law and thereby came to the wrong decision.

Particulars

1. It was evident from the record that the 1st respondent did not comply with the mandatory provisions of section 22(3) and (4) of the Chiefs Law aforesaid.

2. The action of the 1st respondents, as plaintiff, was hasty and premature.

3. Even where there was an enquiry as envisaged by the said law, the decision of the prescribed authority is final.”

It is clear that ground 7 questions whether the Courts below had jurisdiction to hear and determine the suit. Jurisdiction is a question of law, and by virtue of section 233(2)(a) of the constitution, an appeal would lie to this court as of right on this ground. Furthermore this ground alone can sustain the appeal. Accordingly the appeal is competent even if leave was not obtained for the other grounds of appeal. The notice of appeal filed by the appellants/applicants is competent.

Learned counsel for the appellants/applicants contends that the issue of jurisdiction amounts to special circumstances why this application should be granted. Reliance was placed on section 22 of the Chiefs Law of Oyo State applicable in Osun State.

Jurisdiction is a threshold matter. Once raised all proceedings abate until it is resolved. Proceedings conducted without jurisdiction amount to a nullity. There is nothing as useless as conducting a trial flawlessly only to find out that the court had no jurisdiction to hear the matter. That explains why the issue of jurisdiction can be taken at any stage of the proceedings, at trial, on appeal and even in the Supreme Court for the first time. See *A-G Anambra State v. A-G Federation* (1993) 6 NWLR (Pt.302) p.692; *Biariko v. Edeh-Ogwuile* (2001) 12 NWLR (Pt. 726) p.235; *Olatunde v. Abidogun* (2001) 18 NWLR (Pt. 746) p. 712; *Ejuetami v. Olaiya* (2001) 18 NWLR (Pt. 746) p.572. Learned counsel has raised the issue of jurisdiction for the first time in this court, and he is perfectly correct to do so, since jurisdiction can be raised for the first time in this court.

Part 3 of the Chiefs Law of Oyo State, Cap. 28 applicable in Osun State is titled “Minor Chiefs”. In the pleadings, it is averred that the Eesa of Iragbiji is a minor chief. In the leading judgment of the Court of Appeal it is also stated therein on page 542 of the record of appeal that the Eesa of Iragbiji chieftaincy is a minor chieftaincy. Subsections (2), (3) and (4) of section 22 of cap. 28 states that:

“(2) Where a person is appointed, whether before or after the commencement of this Law, to fill a vacancy in the office of a minor chief by those entitled by customary law so to appoint and in accordance with customary law, the prescribed authority may approve the appointment.

(3) Where there is a dispute whether a person has been ap-

pointed in accordance with customary law to a minor chieftaincy the prescribed authority may determine the dispute.

(4) Any person aggrieved by the decision of the prescribed authority in exercise of the powers conferred on the prescribed authority by subsections (2) and (3) of this section may, within twenty-one days from the date of the decision of the prescribed authority, make representations to the Governor that the decision be set aside and the Governor may, after considering the representation confirm or set aside the decision.”

A careful reading of the Chiefs Law (supra) reveals how disputes are resolved in the appointment of a minor chief. There is no mention of the courts. Section 22 (supra) thus raises a strong, case for jurisdiction. Jurisdiction amounts to special circumstances. A prima facie case of jurisdiction is a substantial or exceptional reason to justify the grant of a stay of execution. I do not propose in the circumstances to say more than that the issue of jurisdiction is worth considering and determined once and for all.

By section 24 of the Supreme Court Act, this court may order a stay of execution either unconditionally or upon the performance of such conditions as may be imposed in accordance with the rules of the court. So once, as in this case, this court is satisfied that it has become necessary in determining the real question in controversy it can make any order to achieve that purpose. Ground 7 in the notice of appeal complains of lack of jurisdiction of both courts below to hear this case and it prima facie appears so, it becomes mandatory that this Court ensures that parties remain in status quo ante bellum until the issue of jurisdiction and/or the substantive appeal is resolved.

Accordingly an order to stay execution granted by the Court of Appeal is hereby ordered. Application succeeds. No order on costs.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead ruling of my learned brother - Rhodes-Vivour, JSC just delivered. I agree with his reasoning and conclusion that the application for stay of execution

has merit and should be granted.

One of the grounds of appeal challenging the decision of the lower court raised the issue of the jurisdiction of the lower courts to hear and determine the suit of the 1st respondent having regards to the provisions of section 22(3) of the Chiefs Laws of Oyo State as applicable to Osun State.

Going through the facts of the case it is my considered view that the issue of jurisdiction raised in this appeal constitutes a special circumstance to ground the application for stay of execution pending the determination of the appeal.

I therefore order accordingly and abide by the consequential orders made in the said lead ruling including the order as to costs. Application is ordered as prayed.

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CHUKWUMA-ENEH JSC

I have read before now in draft the lead ruling prepared and delivered by my learned brother – Rhodes-Vivour, J.S.C in this matter. I agree with his reasoning and conclusion as I am in no doubt that the applicant’s application in this matter for an order of stay of execution of the order of the lower court as per relief 5 of the claim in this matter has properly raised the issue of ouster of jurisdiction of the two lower courts to entertain this matter ab initio. The issue of jurisdiction which touches the foundation of this action without more amounts to an exceptional circumstance to warrant maintaining the status quo ante bellum pending the final determination of the appeal in the matter.

There is, therefore, a cogent reason for depriving the judgment creditor, of the fruits of the said order made in his favour in this matter by the lower court.

I abide by the orders contained on the lead ruling.

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FABIYI JSC

I have had a preview of the ruling just handed out by my learned brother - Bode Rhodes-Vivour, J.S.C. I agree that the application should be granted. The Court of Appeal in its judgment delivered on 25th June, 2012 set aside the appointment of the 2nd appel-

lant/applicant herein as the Eesa of Iragbiji. He was restrained from parading himself as such This application seeks an order of this court staying the execution of the judgment of the Court of Appeal pending the determination of the appeal before this court.

It is of moment to mention it at this point that by ground 7 of the grounds of appeal, reliance was placed on section 22 of the Chiefs Law of Oyo State applicable in Osun State to contend the issue of jurisdiction of the courts below in trying the matter. B

Jurisdiction, no doubt, is a threshold and fundamental issue. This is because a proceeding conducted without jurisdiction is to no avail. See: *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341. C

The issue of jurisdiction provides special circumstance why the application should be granted as pronounced in the ruling of my learned brother. I agree with same. D

AKA'AH'S JSC

I was privileged to read in draft the leading ruling of my learned brother - Bode Rhodes-Vivour, JSC. I am in complete agreement with him that the application has merit and should be granted. Even though the dispute is concerned with who should lawfully hold the Eesa Chieftaincy title of Iragbiji (considered to be a Minor Chief by virtue of Part 3 of the Chiefs Law of Oyo State Cap. 28 of the Laws of Oyo State applicable in Osun State) ground 7 of the notice of appeal complains about lack of jurisdiction by the lower court to entertain the suit. In view of the fact that one of the reliefs granted by the lower court in the judgment being appealed against was an order of injunction restraining the 2nd defendant (now respondent) by himself his servants and or agents from parading himself as the Eesa of Iragbiji, which is executory, a stay of execution would lie if special circumstances are shown. The special circumstance is the issue of jurisdiction of the two lower courts to hear the action. My Lord, Rhodes-Vivour, J.S.C. took pains to explain the different consequences that follow executory judgments and declaratory judgments when an application is made for stay of execution. In the case of a declaratory judgment an application for stay of execution would be inappropriate. Since learned counsel for the applicants has raised the issue of jurisdiction, it is a special circumstance to warrant granting the stay of E F G H

execution. For this and the more detailed reasons contained in the leading ruling of Rhodes-Vivour, J.S.C, I too find the application to be meritorious.

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