

SUPREME COURT OF NIGERIA

FRIDAY 1ST JULY, 2016 SC. 650/2013, SC. 650A/2013

**CORAM:- W. S. N. ONNOGHEN, O. RHODES-VIVOUR,
N. S. NGWUTA, M. U. PETER-ODILI, A. SANUSI, JJSC**

1. ATTORNEY GENERAL OF KWARA STATE

2. GOVERNOR OF KWARA STATE APPELLANTS
AND

1. ALHAJI SAKA ADEYEMO

(Magaji Olugbense Ruling

House, Offa) & 7 OTHERS RESPONDENTS

JURISDICTION - Fundamental nature of - Jurisdiction being a threshold matter must be resolved once it is raised - As a case heard without jurisdiction - Would be declared a nullity (H1)

JURISDICTION - Fresh issue of - Leave - Due to fundamental nature of jurisdiction - Once it is raised as fresh issue - Leave is not required before it is raised in Supreme Court (H2)

STATUTES - Interpretation - Where a party complains of non compliance with statutory provisions - Court must interpret and examine relevant evidence - To see if there was compliance or not (H3)

STATUTES - Interpretation - Literal rule - Provisions of statute that are clear and free from ambiguity - Should be construed as they are and given their ordinary meaning - Without any embellishment (H4)

CHIEFTAINCY MATTERS - Appointment - Challenge - Procedure - Aggrieved ruling house should seek redress from Governor - And if not yet satisfied - Action can be filed in Court to resolve the dispute (H5)

CHIEFTAINCY MATTERS - Legislation - Fresh issue of jurisdiction - Raising the issue in Chiefs Law s. 3(3) for first time in SC is correct - As such issue may or may not be pleaded - And may be raised without leave (H6)

FACTS

Before the High Court of Kwara State Ilorin, plaintiffs/1st – 3rd respondents (representatives of Olugbense Ruling House) brought this action claiming inter alia, that the Olofa Chieftaincy stool is rotational between the two Ruling Houses to wit: Olugbense and Anilelerin and it was the candidate of the Olugbense Ruling House to be the Olofa of Offa. The events leading to the filing of the action is that following the death of Olofa of Offa town in Kwara State, the Kingmakers assembled to choose a new Olofa. The aforementioned two ruling houses were directed by the Kingmakers to nominate their candidate for the vacant Chieftaincy stool. Both houses complied. The Oracle of Offa went to work and settled on Alhaji Mofutau Mohammed Gbadamosi Esuwoye from the Anilelerin Ruling house as the right person to be the new Olofa of Offa.

The Olugbense ruling house was not pleased with the turn out of event. Hence, the action was initiated. At the trial, the Court heard submissions and evidence from both sides. At the end of the trial, the learned trial Judge held inter alia, that the appointment from the Anilelerin ruling house was in accordance with native law and customs of the Offa people. Aggrieved, 1st - 3rd respondents appealed to the Court of Appeal. The Court upturned the judgment of the trial Court. It held inter-alia that the ascension to the throne of Olofa is by rotation between the two Ruling Houses and as such 1st - 3rd respondents are entitled to the reliefs sought in the trial court. Dissatisfied, appellants brought Appeal No. SC. 650A/2013 to the Supreme Court, challenging the decision of the Court of Appeal.

ISSUES FOR DETERMINATION

ISSUE 1

Whether the proceedings and decisions of the courts below are not competently defective in the light of the provisions of section 3(3) of the chiefs (Appointment and Deposition) Law Cap C9, Laws of Kwara State, 2006.

ISSUE 2

Whether the Court of Appeal was right in its conclusion that, based on Exhibits A and J, the selection and appointment of Olofa of Offa is by rotation and whether the approval of the 8th respondent as the Olofa of Offa was rightly set aside by the Court of Appeal.

ISSUE 3

Whether contrary to the case of the parties, the Court of Appeal was right to have employed and relied on “*its sense of Justice*” and principle of repugnancy test as basis for granting the reliefs of the 1st - 3rd respondents.

HELD (Unanimously allowing the appeal per **RHODES-VIVOUR JSC**)

JURISDICTION - Fundamental nature

1. Jurisdiction is the authority given to the court by the Constitution, legislation to decide matters that come before it. Jurisdiction is a threshold issue. So once raised, it must be resolved quickly. It is so fundamental in that if a court hears a case in which it has no jurisdiction, no matter how well the case was conducted and decided, it would be declared a nullity.

Jurisdiction is so fundamental and so it may be raised in the trial court or Court of Appeal or in the Supreme Court for the first time.

It determining jurisdiction it is only the plaintiff’s claim that is considered. (p. 3223 A)

JURISDICTION - Fresh issue of - Leave

2. This issue on jurisdiction is a fresh issue and the appellants’ in SC650A/2013 did not seek leave of this court to raise it. The long settled position of the law is that a fresh issue can only be raised on appeal after leave (i.e. permission) is asked for and obtained, but there is an exception to this position of the law. Due to the fundamental nature of jurisdiction once the issue is on jurisdiction leave is not required before it is raised in this court.

In view of the above appellants in SC.650A/20213 were correct to raise the issue of jurisdiction before this court for the first time without obtaining leave. (p. 3224 D)

STATUTES - Interpretation

3. Where a party in a suit complains that there was non compliance with provisions of a Statute, in this case section 3(3)

of the Chiefs (Appointment and Deposition) Law, the interpretation of the provision becomes an issue and it is the duty of the court to examine relevant evidence to see if there was compliance or non compliance. (p. 3224 H)

B STATUTES - Interpretation - Literal rule

4. It is long settled that words, provisions in a statute that are clear and free from ambiguity should be construed as they are and given their ordinary meaning without any embellishments.

C The main object of interpretation is to find out the intention of the law makers, and this is done by diligently examining the language used. Once the meaning is clear, a judge has no alternative but to give effect to it. Sections of the legislation should on no account be interpreted in isolation, rather sections of the legislation should be interpreted in a way that one section would not defeat the intent and purpose of another section and this is easily achieved by a careful examination of the whole legislation. It must be always borne in mind that the words of the statute speak the intention of the legislature. There can be no doubt after examining provisions of the Chiefs (Appointment and Deposition) law of Kwara State that the law-makers anticipated that after the selection of a chief there is very likely to be a dispute. That explains why the chiefs (Appointment and Deposition) law was made. It was made to provide for resolution of Disputes (See section 3(3) supra) by the Governor, and where a party is still not satisfied with the Governor's decision, he shall deposit with the state Accountant – General a non-refundable sum of ten thousand naira before he institutes an action in court (see section 15 supra). (pp. 3225 B/3227 A)

CHIEFTAINCY MATTERS - Appointment - Challenge - Procedure

H 5. After the Kingmakers select and appoint a candidate to be the Olofa of Offa and a candidate from the other Ruling house is not satisfied with that decision, then there is a dispute. It is the duty of the aggrieved Ruling house to bring their grievance to the attention of the Governor to be resolved. It is only if the Governor is unable to settle the dispute to the aggrieved

candidate's satisfaction that he can file an action in court for the court to decide who is the right person to be the Olofa of Offa.

My lords, after examining evidence available it is clear that representatives was made to the Governor by the Olugbense Ruling house before the appointment of the 8th respondent as the Olofa of Offa. At the time representation was made to the Governor there was no dispute. Section 3(3) supra provides for representation to be made to the Governor after appointment of Olofa of Offa by a candidate who lost. Approaching the Governor before the 8th respondent was selected and appointed Olofa of Offa amounted to lobbying by the Olugbense Ruling house, an act not provided for in the chiefs law. The 1st to 3rd respondents did not approach the Governor for settlement of the dispute after the 8th respondent was selected and appointed Olofa of Offa. In view of conclusive evidence it is clear that there was non-compliance with the provisions of section 3(3) of the Chiefs (Appointment and Deposition) Law of Kwara State before 1st – 3rd claimants/respondents filed their action in court. Since there was non-compliance with section 3 (3) supra complying with section 15 supra (as the 1st – 3rd claimants/respondent say they did) amounts to a wasted effort and is of no consequence whatsoever. To my mind it amounts to putting the cart before the horse and that is wrong. Where a statute provides a legal line of action for determination of an issue, be that issue an administrative matter, chieftaincy matter the aggrieved party must exhaust all remedies in that law before going to court.

(p. 3225 E)

CHIEFTAINCY MATTERS - Legislation - Fresh issue of jurisdiction

6. The Chief (Appointment and Deposition) Law, like any other legislation that raises the issue of jurisdiction may or may not be pleaded and it may be raised without leave. All that is required is that a process is filed wherein the issue is raised so that the adverse party is not taken by surprise. Raising the jurisdiction point in section 3 (3) of the Chief (Appointment and Deposition) Law for the first time in this court is correct.

NOTABLE POINTS OF INTEREST

RHODES-VIVOUR JSC

1. Jurisdiction – Types of

- B Jurisdiction is a question of law. There are two types of jurisdiction:
1. Jurisdiction as a matter of procedural Law
 2. Jurisdiction as a matter of substantive Law (p. 3223 E)

2. Statutory rights – Waiver of

- C A litigant may waive the former. For example a litigant may submit to a procedural jurisdiction of the court where a writ of Summons has been served outside jurisdiction without leave or where a litigant (the defendant) waives compliance by the claimant of pre-action notice.
- D No litigant can confer jurisdiction on the court where the constitution or statute says that the court does not have jurisdiction. Why is jurisdiction as a matter of procedural law allowed to be waived but not allowed in the case of substantial law? I gave two examples earlier on when jurisdiction in the former can be waived. I now explain. Section 99 of the Sheriffs and Civil Process Law provides for 30 days to serve process if the defendant is outside the jurisdiction of the court. The purpose of a pre-action notice is to give the defendant, usually an agency of Government enough time to negotiate and reach settlement with the claimant, or decide whether it makes sense to jurisdiction and go through a full bloom trial at great expense to resolve the issue in controversy.
- E In both cases 30 days for service of processes out of jurisdiction and the pre-action notice are for the benefit of the defendant. The position of the law is that where a statute gives a party a benefit he may waive it, thereby conferring jurisdiction on the court to hear the matter. Put in another way conditions contained in a statute for the benefit of a person or class of persons can be waived by the person/s to benefit from it.
- F
- G
- H On the other hand where the right conferred by the Constitution or Statute involves an element of public policy, i.e. of interest to the public such a right cannot be waived. (p. 3223 F)

REPRESENTATION

Suit No. SC. 650A/2013

K. Ajibade, with F.D. Lawal Solicitor General and Permanent Secretary Kwara State, H.A. Gegele Director of Civil Litigation Kwara State, M. A. Oniye Chief State Counsel, I. Zakari, State Counsel 1 and Miss P. Ejeh, for the Appellants. B

J.A. Baiyeshen (SAN) with J.S. Fagbebe, R. S. John, S.Ipin Lanye, R. S.Bayeshea, L. Belawu, Mrs. O. Ibitoye, Y. Dikko, K.Odetokun, A. S. Asombare, S. David, O. Akintoye, O.Oluwafunbi

E. B. Bayeshea, L. Aluko, B. Steward, I. Opeyemi, D. Adeyemi, for the 1st -3rd Respondent C

No Appearances for the 4th - 7th Respondents

R. A. Lawal-Rabana (SAN) with O.E. Adeyeye, A. Akintoye II, I. Bello Mrs., K. Oji, T. S. Alawode, G. Oyewole, P. O. Abang,

R. O. Ojo-Oba Miss, for the 8th Respondent D

Suit No. SC. 650/2013

R. A. Lawal-Rabana (SAN) with O. E. Adeyeye, A. Akintoye II, I. Bello (Mrs.), K.Oji, T. S. Alawode, G. Oyewole, P. O. Abang,

R. O. Ojo-Oba Miss for the Appellant E

J. A. Baiyeshen (SAN) with J. S. Fagbebe, R. S. John, S. Ipinlaye, R. S. Baiyeshen, L. Belawu, Mrs. O. Ibitoye, Y. Dikko, K.Odetokun,

A. S. Asombare, S. David, O. Aladotoye, O.Oluwafunbi, E. B. Bayeshea, L. Aluko, B. Steward, I. Opeyemi, D. Adeyemi for the 1st-3rd Respondent F

No Appearances for the 4th - 7th Respondents

K. A. Ajibade with F.D. Lawal, Solicitor General and Permanent Secretary Kwara State, H.A. Gegele Director of Civil Litigation Kwara State, M.A. Oniye Chief State Counsel, I. Zakari State Counsel 1 and Miss P. Ejeh for the 8th-9th Respondent G

CASES REFERRED TO

Atiku v. A.G. Federation (2008) All FWLR (pt. 441) 870

Aribisala v. Ogunyemi (2005) All FWLR (pt. 252) 451 H

Ezuamenze v. Amagbizenmen (1993) 9 NWLR (pt. 315) 1

Mobil Producing Nig. Unltd. v. LASEPA (2002) 18 NWLR (pt. 798) 1

Kayili v. Yilbuk (2015) 7 NWLR (pt. 1457) 26

Amasike v. Reg. Gen. C.A.C. (2010) 3 NWLR (pt. 1211) 337

Dong v. A.G. Adamawa State (2014) 6 NWLR (pt. 1404) 555

Madukolu v. Nkemdilim (1962) 2 NSCC 374

A.G. Lagos State v. Hon. Justice Dosunmu (1989) 3 NWLR (pt. 111) 552

Dangana v. Usman (2012) 2 SC (pt. 111) 103

B NURTW v. RTEAN (2012) 1 SC (pt. 11) 119

Obiuweubi v. CBN (2011) All FWLR (pt. 321) 208

PCHSC Ltd. v. Migfo Nig Ltd. (2012) 6 SC (pt. III) 1

Tukur v. Govt. of Gongola State (1989) 4 NWLR (pt. 117) 17

C Adeyemi v. Opeyori (1976) 9-10 SC 31

STATUTES & RULES REFERRED TO

Chiefs (Appointment & Deposition) Law Cap C9 Laws of Kwara State 2006, s. 3(3)

D Sheriffs & Civil Process Law, s. 99

High Court (Civil Procedure) Rules 2005 of Kwara State, O. 27 r. 4(i)

LEAD JUDGMENT BY RHODES-VIVOUR JSC

E Offa is a town in Kwara State. There is a High Chief in Offa. He is referred to as the Olofa of Offa. In 2010 he died. The kingmakers got together to choose a new Olofa of Offa. Now, there are two Ruling houses in Offa, The Olugbense Ruling House (male line) and the Anilelerin Ruling House (female line). The kingmakers directed both
F houses to nominate their candidate for the vacant Olofa Chieftaincy stool. Both houses complied. The Oracle of Offa went to work and settled on Alhaji Mofutau Mohammed Gbadamosi Esuwoye from the Anilelerin Ruling house as the right person to be the new Olofa of
G Offa. This did not go down well with the Olugbense Ruling House, so they filed an action in an Ilorin High Court claiming inter alia that the Olofa chieftaincy is rotational between the two Ruling Houses to be wit: Olugbense and Anilelerin and it was the candidate of the Olugbense Ruling House to be the Olofa of Offa. The action was
H brought by 1st, 2nd, and 3rd respondents, representatives of the Olugbense Ruling

After hearing evidence the learned trial judge delivered a well considered judgment on 19 June, 2012. His lordship held:

1. That the vacant stool of Olofa of Offa can only be filled by

candidates from any of the two Ruling Houses.

2. That the Olofa Chieftaincy is not rotational rather only members of the two Ruling Houses can contest for it.

3. That the kingmakers (i.e. 4th - 7th respondents) considered candidates from the two Ruling Houses as stated in exhibit J, consequently the appointment of Alhaji Mufutau Mohammed Gbadamosi Esuwoye as the new Olofa of Offa was in accordance with native Law, Custom and Laws of the people of Offa. B

4. In view of the fact that the 1st- 3rd claimants were unable to establish their claims which are declaratory in nature, the 8th respondent was valid appointed and approved as the Olofa of Offa. C

The judgment of the trial court was upset on appeal. That court held inter-alia that the ascension to the throne of Olofa is by rotation between the Olugbense and Anilelerin Ruling Houses and so the 1st - 3rd respondents who were the appellants in the Court of Appeal D are entitled to the reliefs sought in the trial court.

This appeal is against that judgment. SC.650A/2013 is the appeal by the Attorney General of Kwara State and his Governor. Their learned counsel K. Ajibade esq., filed the appellants' brief on 29 January 2016 wherein he formulated three issues for determination of this appeal. They are: E

ISSUE 1

Whether the proceedings and decisions of the courts below are not competently defective in the light of the provisions of section 3(3) of the chiefs (Appointment and Deposition) Law Cap C9, Laws of Kwara State, 2006. F

ISSUE 2

Whether the Court of Appeal was right in its conclusion that, based on Exhibit A and J, the selection and appointment of Olofa of Offa is by rotation and whether the approval of the 8th respondent as the Olofa of Offa was rightly set aside by the Court of Appeal. G

ISSUE 3

Whether contrary to the case of the parties, the Court of Appeal was right to have employed and relied on "*its sense of Justice*" H and principle of repugnancy test as basis for granting the reliefs of the 1st - 3rd respondents.

Learned counsel for the 1st- 3rd respondents, Mr. John O. Baiyeshea SAN also formulated three issues for determination of the

appeal. The issues are:

ISSUE 1

Whether the trial court and the Court of Appeal had the jurisdiction to adjudicate on the 1st – 3rd respondents’ case having regard to section 3(3) of the Chiefs (Appointment and Deposition) Law of Kwara State.

ISSUE 2

Whether the lower court properly relied on exhibits A and J for its decision in this case to the effect that it is the turn of the 1st-3rd respondents family ruling house to produce the candidate to fill the vacant stool of Olofa.

ISSUE 3

Whether or not the principle of repugnancy and justice were rightly applied by the court below in coming to its decision in this case.

Learned counsel for the appellants filed a reply brief on 11 April, 2016. Therein the appellants learned counsel responded to the Preliminary Object argued in the respondents brief. The 4th - 8th respondents did not file respondents’ brief. SC.650 /2013 is the appeal by Alhaji Mufutau Mohammed Gbadomsi Esuwoye. It was he that the Kingsmakers (i.e. 4th - 7th respondents’) selected and appointed as the new Olofa of Offa. His learned counsel, Mr. R. A Lawal-Rabana, SAN formulated four issues for determination.

ISSUE 1

Whether the learned Justices of the Court of Appeal were not in error when they relied on exhibit “A” and jettisoned exhibit DFC2 as evidence of facts relating to the Native Law and Custom regarding the selection and appointment of Olofa of Offa and came to the conclusion that the stool is rotational.

ISSUE 2

Whether the learned Justices of the Court of Appeal were not in error when they imported into exhibit “J” five extraneous materials which are neither expressly nor impliedly stated therein, contrary to section 128 of the Evidence Act, and came to the conclusion that the Olofa stool is rotational.

ISSUE 3

Whether having, regard to the approach adopted by the trial judge to arrive at his conclusion in the resolution of the issue of rota-

tion in favour of the appellant, the learned justices of the Court of Appeal were in law entitled to re-evaluate the evidence on record and disturb the findings of facts made by the trial judge.

ISSUE 4

Whether the consequential orders made by the Court of Appeal on the recognition of the 2nd respondent as the Olofa of Offa is B not contrary to the provisions of section 3(1) and 7 of the Kwara State chiefs (Appointment and Deposition) law of Kwara State.

Learned counsel for the 1st - 3rd respondents Mr. John O. Baiyeshea SAN also formulated four issues for determination. They C are:

ISSUE 1

Whether the lower court rightly relied on exhibit A as evidence of rotational chieftaincy in Offa.

ISSUE 2

Whether the lower court properly interpreted exhibit J and or D properly relied on same to hold that it contains evidence of rotational chieftaincy policy for the Olofa stool.

ISSUE 3

Whether the lower court was right to hold that there is evi- E dence that ascension to the stool of Olofa is rotational between the two Ruling Houses in Offa (Olugbense ruling house and Anilelerin ruling house) from 1969.

ISSUE 4

Whether the lower court was right in granting the reliefs sought F by the 1st – 3rd respondents having regard to section 3 (1) and (7) of Kwara State Chiefs (Appointment and Deposition) Law.

The 4th - 9th respondents did not file respondents' brief. Learned counsel for the appellant filed a reply brief to the 1st – 3rd G respondents brief.

At hearing of the appeals on 11 April, 2016, learned counsel for the appellants' in 650A/2013, Mr. A. Ajibade adopted the appellants' brief and reply brief filed on 29 January, 2016 and 11 April, 2016 respectively and urged the court to allow the appeal. H

Learned counsel for the 1st - 3rd respondents Mr. Bayeshea SAN adopted the 1st - 3rd respondent brief filed on 5 April, 2016 and urged the court to dismiss the appeal. The 4th - 8th respondents did not file briefs.

In 650/2013 learned counsel for the appellant, Mr. R. A. Rabana SAN, adopted the appellant's brief deemed duly filed on 5 April, 2016 and reply brief on 7 April, 2016 and urged this court to allow the appeal. Mr. Bayeshea SAN adopted his brief filed on 5 April, 2016 and urged the court to dismiss the appeal.

B Learned counsel for the appellants' in SC.650A/2013, Mr. K. Ajibade observed that this issue challenges the jurisdictional competence of the courts below for entertaining the case of the claimants, the 1st - 3rd respondents in this appeal, further observing that it also
C questions the basis for the grant of the reliefs awarded by the Court of appeal to the 1st - 3rd respondents. He submitted that by virtue of the provisions of section 3(3) of the Chiefs (Appointment and Deposition) Law of Kwara State, to resolve the dispute over the appointment of the 8th respondent the 1st - 3rd respondents are to appeal
D to the 2nd respondents (the Governor of Kwara State) who in turn must hold consultation with the 4th - 7th respondents (the Kingmakers.) He observed that this statutory procedure was skipped by the 1st - 3rd respondents who without reference to the Governor filed action in court against the appointment of the 8th respondent as
E the Olofa of Offa. Relying on *Alhaji Atiku v A.G. Federation & 5 ors (2008) ALL FWLR (Pt.441) p. 870 Chief Aribisala & anor v. T. Ogunyemi & 2 ors (2005) ALL FWLR (Pt.252) p.451, Ezuamenze v Amagbizenmen (1993) 9 NWLR (Pt.315) p.1.*

F He concluded that failure of the claimants to approach the Governor to resolve their dispute before going to court robbed the trial court and the Court of Appeal of jurisdiction to entertain the case. He urged this court to resolve this issue in favour of the appellants and strike out the substantive case for want of jurisdiction.

G Learned counsel for the 1st - 3rd respondents observed that this jurisdictional issue is a fresh issue which the appellants did not seek leave of this court to raise, contending that in the absence of leave it should not be considered.

H On whether there was compliance with the provisions of section 3 (3) of the Chiefs (Appointment and Deposition) Law of Kwara State, learned counsel submitted that it must be pleaded and proved in the trial court since it is a question of fact. Reliance was placed on Order 27 Rule 4 (i) of the High Court (Civil Procedure) Rules 2005 of Kwara State, *Mobil Producing Nig Unlimited v LASEPA (2002) 18*

NWLR (Pt. 798) P.1.

He submitted that since the issue of whether there was compliance with section 3(3) of the Chiefs law was not pleaded the issue of jurisdiction being raised is improper and inappropriate.

In further submissions learned counsel observed that the 1st-3rd respondents made representation to the Governor before the appointment of the 8th respondent was purportedly made, intimating the Governor that it was the turn of their Olugbense ruling house to produce the Olofa and not the Anilelerin ruling house from where the immediate past Olofa of Offa came from. Reverence was made of PW3 at page 642 Vol. 1 Record of Appeal. He submitted that after complying with section 3 (3) (supra) the 1st -3rd respondents complied with section 15 of the Chiefs (Appointment and Deposition) Law of Kwara State.

Learned counsel submitted that section 3(3) supra is unconstitutional and so a nullity. Reference was made to *Kayili v. Yilbuk* 2015 7 NWLR (Pt.1457) p.26, contending that the section (supra) confers jurisdiction on the Governor instead of on the court. He urged the court to resolve this issue in favour of the 1st – 3rd respondents.

Learned counsel for the appellant in SC650/2013 Mr. R. A. Lawal-Rabana SAN submitted that the provisions of the chiefs law gave both the Kingmakers and the Governor of Kwara State unfettered statutory discretion in the selection and appointment of Olofa of Offa and there was compliance to the letter in the appointment of the Olofa of Offa. Reference was made to *Amasike v Reg. Gen. C.A.C.* (2010) 3 NWLR (Pt.1211) p.337 p.400. *Dong v A.G. Adamawa State* (2014) 6 NWLR (pt.1404) p.555. He urged the court to hold that there was compliance with the law (supra).

In appeal No.SC. 650A/2013 learned counsel for the appellant made the consideration of section 3(3) of chiefs (Appointment and Deposition) Law of Kwara State an issue. I find the issue to be very fundamental in that if it is found that there was non-compliance with it the hearing of the appeals would abate and the judgment of the trial court and the Court of Appeal would be declared nullities. The issue reads:

Whether the proceedings and the decision of the courts below are not competently defective in the light of the provisions of section 3 (3) of the Chiefs (Appointment and Deposition) Law Cap C9, Laws

3222 A-G Kwara State v. Adeyemo (2016) 7 KLR Rhodes-Vivour JSC
of Kwara State, 2006.

Section 3, 4(1)7 and 15 of the Chiefs (Appointment and Deposition) Law states that:

3-(1) Upon the death, resignation or deposition of any chief other than a chief of a kind referred to in section 4, the Governor
B may appoint as the successor of such chief or head chief, any person selected in that behalf by those entitled by customary law and practice to select in accordance with customary law and practice.

(2) Where no selection is made before the expiration of such
C interval as is usual under customary law and practices, the Governor may himself appoint such person as he may deem fit and proper to carry out such duties incidental to the chieftaincy as it may be necessary to perform.

(3) In the case of any dispute, the Governor, after due in-
D quiry and consultation with persons concerned in the selection, have the final say as to whether the appointment of any chief has been made in accordance with customary law and practice.

(4) (1) The provisions of section 3 shall not apply to the of-
E fice of a chief which has not originated from customary law and practice but has been created by legislation or administration act of a competent authority, but the provisions of subsection (2) and (3) of this section shall apply thereto.

7. The powers of the Governor under the preceding sections of this law shall only be exercised after receiving the advice of the
F Council of Chiefs.

15-(1) Where the Governor or the appointing authority has approved the appointment of a person as a chief, any person who intends to challenge the validity of such appointment shall first de-
G posit with the State Accountant –General a non-refundable sum of ten thousand naira.

(2) Where the Governor or the appointing authority has not approved any appointment to a vacant chieftaincy stool, any ag-
H grievied person who institutes any court action in connection with a vacant chieftaincy stool and joins the State Government or any of its agencies as a party to any such court action shall first deposit with the State Accountant-General a non-refundable fee of ten thousand naira.

The issue asks the question whether the courts below, particularly the trial court had the jurisdictional competence to entertain the

case of the 1st -3rd claimants/respondents in the absence of compliance by them with section 3(3) of the Chiefs (Appointment and Deposition) Law.

Jurisdiction is the authority given to the court by the Constitution, legislation to decide matters that come before it. Jurisdiction is a threshold issue. So once raised, it must be resolved quickly. It is so fundamental in that if a court hears a case in which it has no jurisdiction, no matter how well the case was conducted and decided, it would be declared a nullity. See *Madukolu v Nkemdilim* (1962) 2 NSCC p.374 A.G. Lagos State v Hon Justice L. J. Dosunmu (1989) 3 NWLR (Pt.111) p.552, *Dangana & anor v Usman & 4 ors.* (2012) 2 SC (Pt.III) p.103 NURTW & anor v RTEAN & 5 ors. (2012) 1 SC (Pt.11) p.119. B

Jurisdiction is so fundamental and so it may be raised in the trial court or Court of Appeal or in the Supreme Court for the first time. See *Usman Dan Fodio University v Kraus Thompson Organisation Ltd* (2001) 15 NWLR (Pt.736) p.305. C

It determining jurisdiction it is only the plaintiff's claim that is considered. See *Obiuweubi v CBN* (2011) ALL FWLR Pt.321) p.208 PCHSC Ltd & 3 ors v Migfo Nig Ltd & anor (2012) 6 SC (Pt.III) p.1 *Tukur v Govt of Gongola State* (1989) 4 NWLR (Pt.117) p.17 *Adeyemi v. Opeyori* (1976) 9-10 SC p.31 E

Jurisdiction is a question of law. There are two types of jurisdiction: F

1. Jurisdiction as a matter of procedural Law
2. Jurisdiction as a matter of substantive Law

A litigant may waive the former. For example a litigant may submit to a procedural jurisdiction of the court where a writ of Summons has been served outside jurisdiction without leave or where a litigant (the defendant) waives compliance by the claimant of pre-action notice. No litigant can confer jurisdiction on the court where the constitution or statute says that the court does not have jurisdiction. Why is jurisdiction as a matter of procedural law allowed to be waived but not allowed in the case of substantial law? I gave two examples earlier on when jurisdiction in the former can be waived. I now explain. Section 99 of the Sheriffs and Civil Process Law provides for 30 days to serve process if the defendant is outside the jurisdiction of the court. The purpose of a pre-action notice is to give G

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the defendant, usually an agency of Government enough time to negotiate and reach settlement with the claimant, or decide whether it makes sense to jurisdiction and go through a full bloom trial at great expense to resolve the issue in controversy.

In both cases 30 days for service of processes out of jurisdiction and the pre-action notice are for the benefit of the defendant. The position of the law is that where a statute gives a party a benefit he may waive it, thereby conferring jurisdiction on the court to hear the matter. Put in another way conditions contained in a statute for the benefit of a person or class of persons can be waived by the person/s to benefit from it. See: Adegoke Motors Ltd v Adesanya (1989) 3 NWLR (Pt.109) p.255; Ezomo v Oyakhire (1981) 1 SC p.6; Nwabueze v Okoye (1985) 1 NWLR (Pt.2) p.195.

On the other hand where the right conferred by the Constitution or Statute involves an element of public policy, i.e. of interest to the public such a right cannot be waived. See; Ariori v. Elemo (1983) 14 NSCC p.1.

I shall now address the merit of this issue. ***This issue on jurisdiction is a fresh issue and the appellants' in SC650A/2013 did not seek leave of this court to raise it. The long settled position of the law is that a fresh issue can only be raised on appeal after leave (i.e. permission) is asked for and obtained, but there is an exception to this position of the law. Due to the fundamental nature of jurisdiction once the issue is on jurisdiction leave is not required before it is raised in this court.*** See: Opobiya & anor v Muniru (2011) 12 SC (Pt.111) p.83; Obiakor v State (2002) 6 SC (Pt.111) p.33; Gaji v Paye (2003) 5 SC p.53.

In view of the above appellants in SC.650A/20213 were correct to raise the issue of jurisdiction before this court for the first time without obtaining leave.

WHETHER THE CLAIMANTS 1ST- 3RD RESPONDENTS COMPLIED WITH THE PROVISIONS OF SECTION 3 (3) OF THE CHIEFS (APPOINTMENT AND DEPOSITION) LAW OF KWARA STATE BEFORE FILING THEIR SUIT WHICH LED TO THIS APPEAL.

Where a party in a suit complains that there was non compliance with provisions of a Statute, in this case section 3(3) of the Chiefs (Appointment and Deposition) Law, the interpretation of the provision becomes an issue and it is the

duty of the court to examine relevant evidence to see if there was compliance or non compliance.

Section 3(3) supra reads as follows:

“In the case of any dispute, the Governor after due inquiry and consultation with persons concerned in the selection shall have the final say as to whether the appointment of any chief has been made in accordance with customary law and practice.” B

It is long settled that words, provisions in a statute that are clear and free from ambiguity should be construed as they are and given their ordinary meaning without any embellishments. See: Mobil v FBIR (1977) 3 SC p.53; Toriola v Williams (1982) 7 SC p.27; In Kayili v Yilbuk (2015) 7 NWLR (Pt.1457) p.26. C

Kekere-Ekun, JSC interpreting and explaining a similar provision in the Chiefs (Appointment and Deposition) Law Cap 20 Laws of Northern Nigeria 1963 said that: D

“By making provisions 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.” E

I am in complete agreement with the above. **After the Kingmakers select and appoint a candidate to be the Olofa of Offa and a candidate from the other Ruling house is not satisfied with that decision, then there is a dispute. It is the duty of the aggrieved Ruling house to bring their grievance to the attention of the Governor to be resolved. It is only if the Governor is unable to settle the dispute to the aggrieved candidate’s satisfaction that he can file an action in court for the court to decide who is the right person to be the Olofa of Offa.** F G

Now, was there compliance with section 3(3) of the Chiefs (Appointment and Deposition) Law? Evidence available reveals that the 1st - 3rd respondents made representation to the Governor. Evidence of PW3 of page 642 of the Record of Appeal and exhibit M. H

My lords, after examining evidence available it is clear that representatives was made to the Governor by the

- Olugbense Ruling house before the appointment of the 8th respondent as the Olofa of Offa. At the time representation was made to the Governor there was no dispute. Section 3(3) supra provides for representation to be made to the Governor after appointment of Olofa of Offa by a candidate who lost.***
- B Approaching the Governor before the 8th respondent was selected and appointed Olofa of Offa amounted to lobbying by the Olugbense Ruling house, an act not provided for in the chiefs law. The 1st to 3rd respondents did not approach the Governor for settlement of the dispute after the 8th respondent was selected and appointed Olofa of Offa. In view of conclusive evidence it is clear that there was non-compliance with the provisions of section 3(3) of the Chiefs (Appointment and Deposition) Law of Kwara State before 1st – 3rd claimants/***
- D respondents filed their action in court. Since there was non-compliance with section 3 (3) supra complying with section 15 supra (as the 1st – 3rd claimants/respondent say they did) amounts to a wasted effort and is of no consequence whatsoever. To my mind it amounts to putting the cart before the horse***
- E and that is wrong. Where a statute provides a legal line of action for determination of an issue, be that issue an administrative matter, chieftaincy matter the aggrieved party must exhaust all remedies in that law before going to court. See: Eguamwense v Amaghizenwem (1993) 9 NWLR (Pt.315) p.1; Chief Isreal Aribisala & ors v Talabi Ogunyemi & 2 ors (2005) ALL FWLR (Pt.252) p.451; Owoawni v Faloye (2005) 14 NWLR (Pt.946) p.719.***
- F***

G This scenario is similar to a case where a claimant files a suit without serving on the defendant pre-action of the suit and the defendant complaints. In such a case the court has no jurisdiction until pre-action notice is properly served on the defendant. In this appeal the trial court had no jurisdiction to hear the suit until all remedies were exhausted and that includes compliance with section 3(3) of the Chiefs (Appointment and Deposition) Law of Kwara State.

- H*** If I may further explain, where statutory conditions precedents are prescribed before a relief or remedy is claimed in court, the claimant must comply with and exhaust the prescribed condition before the institution of a court action. It is only after compliance with section 3 (3) supra that the trial court would have jurisdiction to hear and de-

terminate the claims filed by the 1st - 3rd respondents.

WHETHER SECTION 3(3) OF THE CHIEF (APPOINTMENT AND DEPOSITION) LAW IS UNCONSTITUTIONAL.

The main object of interpretation is to find out the intention of the law makers, and this is done by diligently examining the language used. Once the meaning is clear, a judge has no alternative but to give effect to it. Sections of the legislation should on no account be interpreted in isolation, rather sections of the legislation should be interpreted in a way that one section would not defeat the intent and purpose of another section and this is easily achieved by a careful examination of the whole legislation. It must be always borne in mind that the words of the statute speak the intention of the legislature. There can be no doubt after examining provisions of the Chiefs (Appointment and Deposition) law of Kwara State that the law-makers anticipated that after the selection of a chief there is very likely to be a dispute. That explains why the chiefs (Appointment and Deposition) law was made. It was made to provide for resolution of Disputes (See section 3(3) supra) by the Governor, and where a party is still not satisfied with the Governor's decision, he shall deposit with the state Accountant-General a non-refundable sum of ten thousand naira before he institutes an action in court (see section 15 supra).

It must be abundantly clear that if the guideline for interpretation of legislation above is followed it is clear that section 3(3) supra is geared towards reducing chieftaincy disputes by providing for settlement of disputes by the Governor, and a still dissatisfied person can go to court (Section 15 supra). By no stretch of imagination can it be said that section 3 (3) supra outs the jurisdiction of the court. In all chieftaincy disputes, before an aggrieved person files a suit in court he must show that he had exhausted the remedies or followed the procedure under the applicable law. In this case the chiefs (Appointment and Deposition) Law of Kwara State. It is obvious that the 1st – 3rd claimants/respondents were wrong not to have complied with section 3(3) supra. Indeed this court in *Eguamwense v Amaghizenwem* (1993) 9 NWLR (Pt.315) p.1 considered the provisions of section 21 and 22 (1)–(6) of the Traditional Rulers and Chiefs Edict No (16) of 1979 Bendel State which is similar to the Chiefs (Appointment and

Deposition) Law of Kwara State. His lordship Belgore JSC (as he then was) observed that:

“Where a statute prescribes a legal line of action for determination of an issue, be that issue an administrative matter, chieftaincy matter or matter of taxation, the aggrieved party must exhaust all the remedies in that law before going to court.”

The provision of the Chiefs (Appointment and Deposition) Law of Kwara State are clear on the steps to be taken. The 1st - 3rd claimants/respondents avoided the provisions of the law (supra) laid down for settlement of disputes and rushed to court. This is clearly wrong. The provisions of section 3(3) supra must be complied with before a suit can be filed in court. The said provision is not unconstitutional. **WHETHER SECTION 3(3) OF THE CHIEFS (APPOINTMENT AND DEPOSITION) LAW SHOULD BE PLEADED?**

Section 3(3) of the Chiefs (Appointment and Deposition) Law of Kwara State confers jurisdiction on the Governor of the State to settle disputes arising from the appointment of Chiefs in the State. A court has jurisdiction to hear and determine chieftaincy appointments only after the Governor fails in his effort to resolve the dispute. The Chiefs law (supra) is an important issue on jurisdiction. It is long settled that jurisdiction of a court to hear a matter can be raised in the trial court, on appeal, or in the Supreme Court for the first time. See: Dangana & anor v Usman & 4 ors (2012) 2 SC (Pt.111) p.103; Society Bic S. A. & 2 ors v Charzin IND Ltd (2014) 2 SC (Pt.11) p.57.

The Chief (Appointment and Deposition) Law, like any other legislation that raises the issue of jurisdiction may or may not be pleaded and it may be raised without leave. All that is required is that a process is filed wherein the issue is raised so that the adverse party is not taken by surprise. Raising the jurisdiction point in section 3 (3) of the Chief (Appointment and Deposition) Law for the first time in this court is correct.

In the final analysis I am satisfied that the trial court and the Court of Appeal had no jurisdiction to entertain the 1st - 3rd claimants/respondents suit by reason of section 3(3) of the Chiefs (Appointment and Deposition) Law of Kwara State. The judgments of the trial court and the Court of Appeal are nullities, and are consequently set

aside. Suit No. KWS/OF/15/2010 and appeal Nos. CA/IL/71/2012 and SC.650/2014 are struck out for being incompetent.

Appeal succeeds. No order on costs.

ONNOGHEN JSC

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

I agree with his reasoning and conclusion that the lower courts have no jurisdiction to hear and determine the matter due to non-compliance with the provisions of section 3(3) of the Chiefs (Appointment and Deposition) Law Cap C9, Laws of Kwara State, 2006. C

My learned brother has dealt exhaustively with the issue of jurisdiction raised, thereby leaving me with nothing more to add except to adopt his reasoning and conclusion as mine. D

In conclusion, I allow appeal No. SC/650A/2014 and strike out the main suit No. KWS/OF/15/2010 and appeal Nos. CA/IL/71/2012 and SC/650/2014 for being incompetent.

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

NGWUTA JSC

I read in draft the lead judgment just delivered by my learned brother, Rhodes-Vivour, JSC. I agree with the well articulated argument that the success *vel non* of both appeals depends on the interpretation and application of Section 3 (3) of the Chiefs (Appointment and Deposition) Law Cap C9 Laws of Kwara State 2006 which reads: F

“S.3(3) In the case of any dispute, the Governor, after due inquiry and consultation with persons concerned in the selection, have the final say as to whether the appointment of any chief has been made in accordance with customary law and practice.” G

The Governor’s “final say as to whether the appointment of any chief has been made in accordance with customary law and practice” is a condition precedent to the institution of an action in Court by any person aggrieved in the selection of a chief under the Chief’s Law (*supra*). There are other pre-conditions that must be satisfied H

before an action can be brought under the Chiefs Law.

Section 15 (1) and (2) are hereunder reproduced:

“S.15 (1) Where the Governor or the appointing authority has approved the appointment of a person as a chief, any person who intends to challenge the validity of such appointment shall first
B *deposit with the State Accountant-General a nonrefundable sum of ten thousand naira.*

(2) Where the Governor or the appointing authority has not approved any appointment to a vacant chieftaincy stool, any ag-
C *grieved person who institutes any Court action in connection with a vacant chieftaincy stool and joins the State Government or any of its agencies as a party to any such Court action shall first deposit with the State Accountant-General a non-refundable fee of ten thousand naira.”*

D Above are “pre-action” requirements in the same class as pre-action notices which have been declared not unconstitutional. See: Anambra State Government & ors vs Marcel & ors (1996) 9 NWLR (Pt. 213) 115. The aim of statutory pre-conditions for commencement of suit is to provide opportunity for settlement out of Court.

E In compliance with Section 3 (3) of the law the Governor, on the advice of the State Council of Chiefs is likely to give a final word that will lay the matter to rest and avoid unnecessary and an expensive litigation in terms of time and resources.

F If a person has to cough out the sum of N100,000 as a condition to filing a suit, which he is not certain he will win, he is more amenable to peaceful resolution of the dispute than rushing to Court. The intendment is to give a person contemplating Court action opportunity to give the matter a second thought before embarking on
G avoidable litigation.

Unless the conditions precedent to the institution of an action are complied with, the party initiating the suit cannot ignite the jurisdiction of the Court to hear and determine the dispute. In such a case the matter ought to be struck out. Section 3 (3) of the law has
H nothing to do with the power of the Court and I find argument in that regards specious.

The law made provision for what an intending plaintiff will comply with in the institution of his case, much the same way the rules provide for payment of filing fees for institution of an action. Non-

compliance with the provision of Section 3 (3) of the law renders the suit incompetent and liable to be struck out.

For the above and the fuller reasons in the lead judgment I also allow appeal No. SC.650A/2013 and strike out the main suit No. KWS/OF/15/2010 and appeal Nos. CA/IL/71/2012 and SC650/2013 for being incompetent.

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

PETER-ODILI JSC

I agree with the judgment just delivered by my learned brother, Olabode Rhodes-Vivour, JSC and to underscore my support, I shall make some comments.

The full background of the facts leading to this appeal has been well captured in the lead judgment and so, no need for a repeat here.

Learned Attorney General of Kwara State, Kamaldeen Ajibade filed a Brief of the Appellants on the 29/1/2016 and in it formulated three issues for determination which are stated hereunder as follows:-

1. Whether the proceedings and decisions of the Courts below are not competently defective in the light of the provisions of Section 3 (3) of the Chiefs (Appointment and Deposition) Law Cap C9, Laws of Kwara State, 2006.

2. Whether the Court of Appeal was right in its conclusion that, based on Exhibits A and J, the selection and appointment of Olofa of Offa is by rotation and whether the approval of the 8th Respondent as the Olofa of Offa was rightly set aside by the Court of Appeal.

3. Whether contrary to the case of the parties, the Court of Appeal was right to have employed and relied on “its sense of Justice” and principle of repugnancy test as basis for granting the reliefs of the 1st - 3rd Respondents.

The Brief of Argument aforesaid and a Reply Brief filed on the 11/4/2016 were duly adopted by the learned counsel for the Appellant.

John Olusola Baiyeshea SAN for the 1st - 3rd Respondents adopted their Brief of Argument filed on the 5/4/2016 and in it ar-

gued the Preliminary Objection he had raised. Learned counsel in the alternative crafted three issues for determination in the event that the Court did not uphold the Preliminary Objection.

1. Whether the trial Court and the Court of Appeal had the jurisdiction to adjudicate on the 1st - 3rd Respondents' case having regard to Section 3 (3) of the Chiefs (Appointment and Deposition) Law of Kwara State.

(Ground 6 of the Appellants' grounds of appeal).

2. Whether the Lower Court properly relied on Exhibits A and J for its decision in this case to the effect that it is the turn of the 1st - 3rd Respondents family ruling house to produce the candidate to fill the vacant stool of Olofa. (Grounds 1, 2, 3 7 and 8 of the grounds of appeal).

3. Whether or not the principle of repugnancy and justice were rightly applied by the Court below in coming to its decision in this case. Grounds 4 and 5 of the grounds of appeal.

It needs no saying that the Preliminary Objection should be confronted first in order to clear the ground as to whether the Court can venture into the appeal. I shall set down what the objection is all about.

PRELIMINARY OBJECTION

The 1st - 3rd Respondents hereby object to Grounds 1, 2, 3, 4, 5, 6, 7 and 8 of the Grounds of appeal on the ground that they are incompetent for the following reasons, namely:

i. Grounds 1, 2, 3, 4, 5, 6, 7 and 8 of the grounds of appeal in the Notice of Appeal are grounds of fact and/or of mixed law and facts for which no leave was sought by the appellants before raising same.

ii. Ground 6 of Appellants' Grounds of Appeal is a fresh issue being raised for the first time before this Court for which no leave was sought before raising same.

iii. Issue 3 distilled by the appellants is at variance with grounds 4 and 5 and grounds 4 and 5 are deemed abandoned having not distil any issue therefrom.

Learned counsel for the 1st - 3rd Respondents/Objector submitted that the Grounds 1, 2, 3, 4, 5, 6, 7 and 8 are issues of facts and or mixed law and facts and so an appeal cannot lie herein without leave of the Court of Appeal or the Supreme Court first sought

and obtained. He cited Section 233 (2) of the 1999 Constitution of the Federation. That the Appellants having failed to comply with the mandatory prescription of seeking and obtaining the leave, a fatality to the appeal has occurred. Reliance was placed on CBN & Ors v Okojie & Ors (2002) 3 SCNJ 150 at 152-153; Abdusalam & Anor v Salawu (2002) 6 SCNJ 388 at 400. B

That Issues 1 and 2 of the Appellants' Brief of Argument having been distilled and argued from the incompetent grounds of appeal are also incompetent.

Mr. Baiyeshea SAN of counsel for the Objector said that Ground 6 of the Grounds of appeal and the issue so formulated are not proper being raised on evidence based jurisdiction as the issues were not raised nor did they join issues on it in the pleadings. He cited Mobil Producing Nig. Unlimited v LASEPA (2002) 18 NWLR (Pt. 798) 1 at 29. C

He submitted further that Issue 3 distilled by Appellants is at variance with grounds 4 and 5 of the grounds of appeal and so should be taken as not derivable from the said grounds. He referred to Ogbe v Asade (2010) All FWLR (Pt. 510) 612 at 637. D

In reply to this Preliminary Objection, the Attorney-General contended that it is trite and well settled that jurisdictional competence of an action can be raised at anytime, anyhow and at any stage even for the first time before the Supreme Court. He cited Akegbejo & Ors v Ataga & Ors (1998) 1 NWLR (Pt. 534) 459 at 469; Bronik Motors v Wema Bank Ltd (1983) 1 SCNLR. E F

That the ground of appeal which challenges the jurisdiction of the trial High Court (Ground six) is based on the failure of the 1st-3rd respondents as claimants before the trial High Court to comply with Section 3 (3) of the Chiefs (Appointment and Deposition) Law of Kwara State which is purely a point of law. He relied on NDIC v CBN (2002) 7 NWLR (Pt. 766) 272 at 292 - 294 etc. G

Also, that 1st - 3rd Respondents are in error in submitting that issue 3 of the appellants is not distilled from grounds 4 and 5 and that the Issue 3 is at variance with the said grounds. That a look at the said Issue 3 shows it stemmed out of grounds 4 and 5 of the Appeal as grounds of appeal are considered together with their particulars. He cited First Bank of Nigeria Plc v Alhaji Musa Labbo (1996) 3 NWLR (Pt. 438) 614. H

The grounds of this Preliminary Objection dovetail into the issue raised in the main appeal and so it is best to get into the meat of the matter which is the appeal and settle all the questions on merit.

MAIN APPEAL

The issues as crafted on either side are really saying the same things and for ease of reference, I shall utilize the question in Issue 1 distilled by the Appellants.

ISSUE 1

Whether the proceedings and decisions of the Courts below are not competently defectively in the light of the provisions of Section 3 (3) of the Chiefs (Appointment and Deposition) Law Cap C9, Laws of Kwara State, 2006.

Learned counsel for the appellants contended that a challenge to jurisdictional competence of Courts may be raised and or taken at any stage of a trial or an appeal and even before the Apex Court. He cited *Owners of the MV Arabella v Nig Agric Insurance Cor (2008) 34 NSCQR 1091 at 117.*

That the trial Court cannot assume jurisdiction when all the conditions precedent stipulated by the extant law on the issue presented before it by the claimants (1st - 3rd Respondents) were not met. He cited *Atiku v A.G Federation & 5 Ors (2008) All FWLR (Pt. 441) 870 at 908; Bamisile v Osansuyi & Ors (2008) All FWLR (Pt. 423) 1300 at 1338 etc.*

John Baiyeshea SAN for the Respondents contended that the purported issue of jurisdiction of the nature raised at this stage cannot be considered since no issue on the said condition precedent had been joined at the trial court. He referred to *Mobil Producing Nigeria (Unlimited) v LASEPA (2002) 18 NWLR (Pt. 798) 1 at 29; Ogunbadejo v Adebawale (2008) All FWLR (Pt. 405) 1707 at 1717 - 1718.*

I have confined my attention to Issue One which has raised the jurisdictional question though for the first time, the reason being that it is a foundational matter needing to be attended to as it is the life wire of every trial. Also, there can be no exercise of justice delivery within the frame work of jurisdiction that does not exist. This is glaring in this instance where a condition precedent had not be fulfilled or met. Stated differently a wrong exercise of jurisdiction demystifies the elegance or beauty of a judgment which comes to nought and of no use being the result of a futile act. In this case, Section 3 (3) of the

Chiefs (Appointment and Deposition) Law of Kwara State, the extant law for our purpose here and upon which the suit emanated, it is provided thus:-

“In the case of any dispute, the Governor, after due inquiring and consultation with persons concerned in the selection, shall have the final say as to whether the appointment of any Chief has been made in accordance with the customary law and practice”. B

It is seen from the above stipulation that a claimant who complains that his right had been breached does not invoke the powers of the Court until the complaint had first been raised before the Governor and it is after his decision that the claimant dissatisfied could venture into court. Thus, a condition precedent is thrown up before the adjudicatory powers of the trial Court could be sought otherwise it would be taken to be a jumping of the gun by seeking the remedy in the Court. See *Atiku Abubakar v A.G. Federation & Ors* (2008) All FWLR (Pt. 441) 870 at 908 in which the Supreme Court stated that where a statute as in this instance Section 3(3) of the Chiefs (Appointment and Deposition) Law of Kwara State has prescribed for a particular method of performing a duty regulated by it, such method and no other must be adopted. C D E

In the case of *Chief F. A. Bamisile v Francis Ojo Osasuyi & 5 Ors* (2008) All FWLR (Pt. 423) 1300 at 1338, the Court held that:-

“Where remedies are statutorily provided for determining an issue, the aggrieved party must exhaust all the remedies available to him before going to Court.” F

On the same issue, this Court per Oguntade JSC in the case of *Chief Israel Aribisola & Anor v Talabi Ogbunyemi* 2 Ors (2005) All FWLR (Pt. 252) 451 at 466 held thus:

“This Court in Ezuamwenze v Amagbizenmen (sic) (1993) 9 NWLR (Pt.315) 1 at 25 had occasion to consider the provisions of Sections 21 and 22 (1) - (6) of the Traditional Rulers and Chiefs Edict No. (16) 1979 (Bendel State) which are similar to Section 22 (2) to 7 of the Chiefs Law 1978 of Ondo State Cap.20”. The Court per Belgore JSC observed: G H

“Where a statute prescribed a legal line of action for determination of an issue, be that issue an administrative matter, chieftaincy matter or matter of taxation, the aggrieved party must exhaust all remedies in that law before going to Court”.

The reaction of the 1st- 3rd Respondents is that they are not to be blamed for the Appellant's own infringement in seeking the intervention of the Governor and even then that the provision under Section 3 (3) of the said Chiefs Law is unconstitutional since it deprives a party to have his grievance ventilated in the Court of law.

B Learned counsel for 1st - 3rd Respondents based his submission on this Court's case in *Edewor v Uwegba & 4 Ors* (1987) 1 NWLR (Pt.50) 313 at 339-340, per Nnamani, JSC held as follows:-

C *"In the circumstances of this suit, I am of the view that... the Governor was bound to hold an enquiry before exercising the powers which he purported to do under Section 22 (6) (b) of the Traditional Rulers and chiefs Edict of 1979. Not doing so was a gross irregularity. Further, the purported appointment under Section (6) (b) was irregular and contrary to law as it was a breach of sub-section (7) and Section 27 of the Edict. The Governor received the representations of the Appellant, the aggrieved party, in exhibit 'W' and without holding an enquiry at which the case of the other parties would have been ventilated, proceeded to act in appointing the Appellant. That, in my view, is also a breach of natural justice which renders his actions null and void".*

D Learned Senior Advocate, John Baiyeshea submitted further that the said provision offends the principles of fair hearing, placing the Governor as a judge in his own cause. He cited *Kayili v Yilbuk* (2015) 7 NWLR (Pt. 1457) 26 at 58.

F *"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. 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 whatsoever. As rightly submitted on behalf of the 1st Respondent*

G *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 Plaintiff/1st Respondent. It was enough that the various steps which were taken for the purpose of seeking*

redress were not addressed”.

The case *Kayili v Yilbuk* (supra) cannot avail the 1st-3rd Respondents in that the initial step of seeking the action of the Governor must first be done. In the *Kayili v Yilbuk* (supra), the Governor refused to act while in the case at hand the Governor was not sought first before entering into Court. There arose the condition precedent B which had not been met, thus depriving the Court of the jurisdiction.

Jurisdiction is the pillar under which the entire case stands. Once it is shown that the Court lacks jurisdiction, the foundation of the case is not only shaken but it is entirely broken. The case crumbles C and in effect, there is no case before the Court for adjudication.

In the main, the 1st - 3rd Respondents had not complied with the Chiefs Law of Kwara State when they failed to have recourse to the Governor of Kwara State (2nd Appellant) before filing a suit at the trial Court and that action of the 1st - 3rd Respondents stripped the D trial Court and thereafter the Court of Appeal of the competence or jurisdiction to entertain the suit. Another way of saying it is that from the provision of Section 3 (3) of the Chiefs (Appointment and Deposition) law of Kwara State, the 2nd Appellant, the Governor will only act after the happening of two events, namely - an appointment of E the Chief must have been made and there must have been a dispute after the appointment and then the Governor would be notified of the dispute over the appointment of the 8th Respondent. That failure to notify the Governor and getting his reaction made the hastening F to the trial Court by the claimants, 1st - 3rd Respondents an act in futility, rendering all proceedings thereat a nullity, a scenario different from the *Kayili v Yilbuk* (supra) where the complainants had been made to the Governor after the appointment.

For a fuller picture, the Supreme Court has properly elucidated G the expression “*condition precedent*” in the case of *J.S. Atolagbe & Ors v Alhaji Muhammadu Awuni & Ors* (1997) 9 NWLR (Pt. 522) 537 at 565 per Uwais CJN thus:-

“Condition is a provision which makes the existence of a right dependent on the happening of an event, the right is then additional H as opposed to an absolute right. A true condition is where the event on which the existence of the right depends is in the future uncertain. A ‘condition precedent’ is one that delays the vesting of a right until the happening of an event”

By the same token in this case in hand, the recourse to the Governor upon the dispute over the appointment of the Olofa of *Offa* is the condition precedent that would first take place before the vesting of the right to approach the Court. There is no opaque scenario or an ambiguous situation. The condition must first be met before the 1st-3rd Respondents' right to ventilate in a Court of law would enure. There is also no constitutional breach occurring or an infringement of the right to be heard denied the said parties and so the party acts in vain approaching the Court without having that condition precedent or hurdle or impediment dispelled as a first step.

To cut a long story short, there is no jurisdiction in the Trial High Court to first entertain the suit, the jurisdiction of the Court of Appeal stopped on account thereof and by implication no competence in this Apex Court in the matter.

The appeal is therefore struck out as lacking in competence. I abide by the consequential orders made. SC.6S0 /2013 has been overtaken by the events of SC.650A/2013, and there is no need getting into it.

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