

SUPREME COURT OF NIGERIA

FRIDAY 1ST JULY, 2016. SC. 647/2013, SC.648/2013

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

1. ALHAJI YUNUS BUKOYE

(ESSA OF OFFA)

2. CHIEF BAYO AKINOLA & 2 ORS APPELLANTS
(OJOMU OF OFFA)

AND

1. ALHAJI SAKA ADEYEMO

(MAGAJI OLUGBENSE

RULING HOUSE, OFFA) 3 ORS

5. ATTORNEY-GENERAL

OF KWARA STATE

..... RESPONDENTS

6. GOVERNOR, KWARA STATE

AND

1. ALHAJI JIMOH ABODUNRIN

IMAM BOSERE

(Substituted for ALHAJI SHEU

F. OYENIYI)

MAGAJI OLUGBENSE RULING

HOUSE, OFFA) & 2 ORS

..... CROSS APPELLANTS

AND

1. ALHAJI YUNUS BUKOYE,

ESSA OF OFFA & 4 ORS

6. ATTORNEY GENERAL

OF KWARA STATE

..... CROSS RESPONDENTS

7. GOVERNOR, KWARA STATE

APPEALS - Right of - Exercise of - Right of appeal are exercised according to law and procedure governing appeal - And litigant is not permitted to abuse process of Court - In exercise of such right (H1)

COURT PROCESSES - Abuse of - Features - Concept of abuse of process is the improper use of judicial process - By a litigant to interfere with the administration of justice (H2)

APPEALS - Dismissal - Abuse of court process - By filing multiplicity of appeals on same subject matter - The appeal constitutes abuse of judicial process - And is liable to a dismissal (H3)

CHIEFTAINCY MATTERS - Filing of - Condition for - Compliance with Chiefs Law s. 3(3) as to Governor's final say - Is imperative before filing the matter in Court - Otherwise Courts will lack jurisdiction to adjudicate on the matter (H4)

FACTS

This action commenced at the High Court of Kwara State Holden at Offa. The case is a chieftaincy tussle between the Anileleri and Olugbense Ruling houses of Offa, in Kwara State of Nigeria. The tussle is basically on who becomes the rightful person from the two ruling houses to occupy the position of Olafa of Offa on the basis of rotation after the demise of the erstwhile Olafa of Offa (one Ola Mustapha Olawore Olanipekun II). Plaintiffs/1st – 3rd respondents' claim inter alia, is that based on the principle of rotational chieftaincy from 1969, it was their turn to produce the Olafa of Offa, whereas the counter-claim of defendants/appellants and 4th respondent is that the male line of Olugbense ruling house had become extinct.

The matter proceeded to hearing and after taking evidence from both sides, the trial Court in its judgment rejected 1st to 3rd respondents' claim. The Court equally rejected the counter claim of appellants and 4th respondent. It further held that there are two ruling houses in Offa, namely the Olugbense male ruling house and the Anilelerin female ruling house but it rejected the claim that the ascension to the stool of Olafa of Offa was by rotation. Aggrieved, 1st – 3rd respondents appealed to the Court of Appeal, Ilorin Division. The Court held that the claim of 1st to 3rd respondents that the stool became rotational right from 1969 was proved and thus granted all the reliefs sought by 1st to 3rd respondents. Not being satisfied with that decision, appellants appealed to the Supreme Court.

HELD (Unanimously dismissing the appeal and cross appeal per **SANUSI JSC**)

APPEALS - Right - Exercise of

1. There is no iota of dispute that parties to any suit have unfettered right of appeal against the decision of the trial court to court below and even further to this apex court as provided by Section 246 and 233 of the Constitution of the Federal Republic of Nigeria 1979 and 1999 (as amended) (the Constitution for short) respectively. At any rate it is my considered view that even though the Constitution provides right of appeal to any party aggrieved by decision of a court, that does not however give such aggrieved party the right to abuse the process of the court when exercising such right of appeal. It is trite law, that rights of appeal are exercised according to law, rules and procedures governing such appeal. In other words it is incumbent upon the litigant to follow the law, rules and procedure governing the exercise of such right of appeal one of which is to guard against abusing the process of court. (p. 3575 B)

COURT PROCESSES - Abuse of - Features

2. The issue to address now is “what does “abuse of court or Judicial Process” mean. This court in the case of Saraki vs Kotoye (1992) 9 NWLR (Pt 264) 156 had held the concept of abuse of court or judicial process is imprecise and that it involves circumstances and situation of infinite variety and condition that a common feature of the concept is simply the improper use of the judicial process by a litigant to interfere with the administration of justice.

This court went further to lay down in the same case, the circumstances which will give rise to abuse of judicial process which include the following:-

(a) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues, or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.

(b) Instituting different actions between the same parties simultaneously in different courts even though on different grounds.

(c) Where two similar processes are used in respect of

the exercise of the same right for example, a cross-appeal and a Respondent notice.

(d) Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of facts already decided by court below.

B (e) Where there is no iota of law supporting a court process or where it is predicated on frivolity or recklessness.

This court went ahead to hold that the abuse of process lies in the multiplicity and manner of the exercise of the right rather than the exercise of the right per se. It consists of the intention, purpose or aim of the person exercising the right to harass, irritate and annoy the adverse party and interfere with the administration of justice. It is the inconvenience and inequities involved in the aims and purposes of the action.

D (p. 3575 E)

APPEALS - Dismissal - Abuse of court process

3. Applying the above listed principles which tantamount to abuse of judicial process to the instant situation of these two cases, one can safely say that the institution or filing of these appeals constitute abuse of judicial or court process. The appeals are on the same judgment and against the same parties and also on the same subject matter. The appeals in my view were no doubt instituted with the aims of annoying the adverse party thereto. This court had on previous occasions frowned at the attitude of learned counsel of filing such multiplicity of action at first instance or on appeal and counsel are admonished for filing such numerous processes especially in the most recent appeals No. SC. 12/2016 and SC.12A/2016 to which attention of senior counsel appearing for the parties were drawn. Therefore, having held that this appeal No. SC.467/2016 amounts to abuse of judicial process in line with the reasons I have given above, I do not see any need to consider the issues for determination raised by the learned counsel for the parties or to consider the appeal on the merit.

In the result, this appeal being an abuse of judicial process deserves to be dismissed and it is hereby accordingly so dismissed. (p. 3576 F)

CHIEFTAINCY MATTERS - Institution - Condition for

4. I am in entire agreement with the reason of this court in those two appeals mentioned above and also hold that compliance with the provisions of Section 3(3) of the law is imperative and a pre-condition before the parties could rush to the trial court for the resolution of their chieftaincy dispute. Failing to so comply, in my view, made the institution of the suit at the trial court in the first place premature, because a vital precondition to filing such suit at the trial court and by extension to appeal to the court below and this court amounted to putting the cart before the horse. The trial court and indeed the court below are loathe of jurisdiction to adjudicate on the matter.

Thus, in the light of my finding on the impropriety of filing this cross appeal and also the non-compliance by the cross-appellants and of the cross respondents to this cross appeal, with the provisions of Section 3(3) of the law this cross-appeal also deserves to be discountenanced and is hereby dismissed. (p. 3580 A)

REPRESENTATION

Chief R. A. Lawal-Rabana (SAN) with Messrs. Oyebanji E. Adeye, Akin Akintoye II, Esq.; Iwalola Bello (Mrs.), Kizito Oji, Esq.; Tosin S. Alawode, Esq.; Gbenda Oyewole Esq.; Peter O. Abang Esq.; Rukayat O. Ojo-Oba (Miss), for appellant in Sc. 890/2014 and 5th cross respondent

John O. Baiyeshea (SAN) with Messrs. Jacob S. Fagbemi, R. S. John, P Ipinlaiye, Richard S. Baiyeshea, Labake Belawu (Mrs.), Olutoyese Ibitoye, Yusuf Dikko, Kayode Odetokun, A. S. Asonibare, Stewart David, Oluseyi Akintoroye, Otele Oluwafunbi (Miss), Elizabeth Bolanle Baiyeshea (Miss), Lanre Mark Aluko, Betsy Stewart (Miss), Deji Adeyemi, John Samuel Opeyemi, for 1st, 2nd & 3rd Respondents in SC. 890/2014 and Cross Appellant in same SC. 890/2014

Yusuf Ali (SAN) with Messrs. K. K. Eleja (SAN), Lawrence John Esq.; S. A. Oke Esq.; Alex Akoja Esq.; N. N. Adegboye Esq.; Patricia Ikpegbu (Mrs.), K. O. Lawal Esq.; M. A. Adelodun Esq.; Halimah Sulaiman (Miss); A. O. Usman Esq; and Adaobi Ike (Miss), for 4th –

7th Respondents in SC 890/2014

Kamaldeen Ajibade, A - G, Kwara State, with Messrs. F. D. Lawal S. G; H. A. Gegele D. C. L, M. A. Oniye, C. S. C, I. Zakari, SCI Priscilla Ejah, for 8th and 9th Respondents in SC. 890/2014

B CASES REFERRED TO

Saraki v. Kotoye (1992) 9 NWLR (pt. 264) 156

Okorodudu v. Okoromadu (1977) 3 SC 21

Oyebola v. Esso West African Inc. (1966) 1 All NLR 170

Harriman v. Harriman (1989) 5 NWLR (pt. 119) 6

C Madukolu v. Nkemdilim (1962) 2 SCNLR 341

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

Okorodudu v. Okoromadu (1977) 3 SC 21

Oyebola v. Esso West Africa Inc. (1966) 1 ANLR 170

D Amadi v. NNPC (2000) 10 NWLR (pt. 674) 72

Nwoye v. Anyiahie (2005) 1 SC (pt. 11) 96

Katsina Local Authority v. Dawu (1971) 1 NWLR 100

Labiya v. Anretiola (1992) 8 NWLR (pt. 258) 139

Adeogun v. Fashogbon (2011) 8 NWLR (pt. 1250) 427

E Osidele v. Sokunbi (2012) 15 NWLR (pt. 1324) 470

Omomeji v. Kolawole (2008) 14 NWLR (pt. 1106) 180

STATUTES & RULES REFERRED TO

F Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 233

Chief (Appointment and Deposition) Law Cap 09 of Kwara State 2006, s. 3(3)(4)

Kwara State High Court (Civil Procedure) Rules 2005, O. 27 r. 4(1)

G

LEAD JUDGMENT BY SANUSI JSC

This appeal emanates from the Judgment of the Ilorin Division of the Court of Appeal (“the lower court”, for short) delivered on the 9th of July, 2013, which allowed the 1st to 3rd Respondents’ joint appeal and granted all the reliefs sought in the statement of claim of the plaintiffs/appellants as opposed to the decision of the trial High Court of Kwara State sitting in Offa which had on 21/7/13 which had earlier dismissed the plaintiffs/appellants claim filed thereat.

This case had a chequered history. It is case of chieftaincy tussle

between Anileleri and Olugbense Ruling houses of Offa, in Kwara State of Nigeria. The tussle is basically on who is the rightful person from the two ruling house to occupy the position of Olafa of Offa on the basis of rotation after the demise of the erstwhile Olafa of Offa Ola Mustapha Olawore Olanipekun II who was from the Anilelerin Ruling house who ruled for forty years and his ruling house Anilelerin which was female ruling house. Ordinarily, the candidate to fill the vacant stool going by the principal of rotation as established by Kwara State Government should have been from the Olugbense male ruling house and the 2nd respondent who was from the latter ruling house, was nominated and presented to the kingmakers of Offa who are now the appellants, who refused to confirm the 2nd Respondent as the Olafa of Offa acting in concert with the 5th and 6th respondents and instead they installed the 4th respondent who is also from the same family ruling house of Olafa of Offa.

The case of the appellants and the 4th respondent together at the trial court was that the male line of Olugbense ruling house had become extinct. The trial court after taking evidence delivered its Judgment on 19/7/2012 in which it rejected the claimant's (1st to 3rd Respondents) case, that it was their turn to produce the Olafa of Offa, that the appointment and installation of the 4th Respondent was unlawful and void. It also rejected the counter claim of the appellants' and 4th respondent. It further held that there are two ruling houses in Offa, namely the Olugbense male ruling house and the Anilelerin female ruling house but it rejected the claim that the ascension to the stool of Olafa of Offa was by rotation. On appeal to the Court of Appeal (the lower court), the penultimate court held that the claim of the 1st to 3rd Respondents that the stool became rotational right from 1969 was proved and it granted all the reliefs sought by the 1st to 3rd Respondents.

Dissatisfied with the Judgment of the lower court, the present appellants appealed to this court even though they split in that, the 4th respondent with whom they fought the case jointly at both the trial court and the lower court has now filed a separate notice of appeal containing then grounds of appeal at paras 1515-1524 of the record.

The appellants jointly filed a notice of appeal dated 23rd July 2013 containing eight grounds of appeal out of which they formulated four issues for determination by this court. The four issues are:-

1. Whether having regards to the extant provisions of Section 3(3) of the Chief (Appointment and Deposition) Law CAP 09 of Kwara State 2006, the Court of Appeal acted competently and correctly in countenancing and granting the reliefs it awarded to the 1st to 3rd Respondents (Ground 1).

B 2. Whether the Court of Appeal was not in error in suo motu raising and relying on the principle of repugnancy test and its perceived “sense of Justice”, to find in favour of the 1st to 3rd respondents, contrary to the case of the parties as formulated in the pleadings and presented by them in evidence. (Grounds 2 & 6)

C 3. Whether the Court of Appeal was not in error in the view it took of Exhibits A, D and J and its conclusion that ascension to the Olafa of Offa stool is by rotation between the Anilelerin and Olugbense Ruling Houses and that it was the turn of Olugbense Ruling House to produce the next Olafa of Offa in succession to the late Oba Mustapha Olawore Olanipekun. (Grounds 3, 4, 5, and 9)

D 4. Whether the Court of Appeal was not in error in granting the reliefs sought by the 1st to 3rd Respondents when same was not proved as required by law but also caught by the principle of estoppels.
E (Grounds 7, 8 and 10)

Upon being served with the appellants’ brief of argument, the learned counsel for the 1st to 3rd Respondents filed brief of argument on behalf of his client on 25-11-2015, which was settled by J. O. Baiyeshea SAN. Therein, five issues for determination were raised
F which read as below:-

A. Whether the trial court and the Court of Appeal had the jurisdiction to adjudicate on the 1st to 3rd Respondents’ case having regard to Section 3(3) of the Chiefs Appointment and Deposition law
G of Kwara State (Ground 1).

B. Whether or not the principle of repugnancy was raised suo motu by the court below or whether or not any of the parties canvassed the principle of repugnancy as an issue at the trial court and the court below (Grounds 2) and

H C. Whether the court below properly relied on exhibits A, D and J in coming to the conclusion that 1st-3rd respondent had enough evidence on record to establish rotational chieftaincy for the stool of Olafa of Offa from 1969 (Grounds 3, 4, 5 and 9).

D. Whether in the peculiar circumstances of this case, the

principle of estoppel applies for the benefit of the appellants (Ground 8).

E. Whether the court below was right in granting the 1st to 3rd respondents (Grounds 7 and 10).

It is pertinent to state at this stage, that the Appellants had on 8/3/2016, filed Appellant's Reply Brief in response to the brief of argument filed on behalf of the 1st to 3rd Respondents. No briefs of argument were however filed on behalf of the 4th to 6th Respondents. B

On the 11th day of April 2016 this court got set to hear appeals Nos SC.647/2013, SC. 648/2013, SC. 650/2013, SC650A/2013 and SC.890/2013 together. Learned senior counsel to the parties after identifying their respective briefs of argument they filed in each of the five appeals, proceeded to adopt them including the Preliminary Objection where such was or were filed. C

After taking the appeals, the court suo motu invited the learned D senior counsel for the parties to address it on the propriety of them filing multiplicity of such appeals all on single Judgment affecting virtually the same parties in the light of this court's recent judgment in Appeal Nos SC.12/2016 and SC.12A/2016 delivered on 15th day of February, 2016. E

Mr. Yusuf Ali SAN of learned senior counsel of the appellants in SC.647/2016 and the 1st to 3rd respondents in cross appeal No. SC.648 and also in SC650A triggered the first shot by submitting that appeals Nos. SC.647/2013, SC.650/2013 and SC.650A/2013 are the main appeals while SC.648/2013 is a cross appeal to SC.647/2013. As regards appeal No. SC.890/2014, the learned senior counsel submitted that it was delivered by another panel of the Court of Appeal. With reference to this court's recent decision in SC.12/2015 and SC.12A/2015, he stated that he participated in those appeals and F argued that the decisions in those recent decisions do not have retrospective effect. He finally contended that there is actually the need to discourage filing of multiplicity of appeals on same judgment and urged this court to exercise its discretion on the matter. G

Chief R. A. Lawal Rabana SAN who appeared for Appellants on H SC. 650A/2013; for 5th Respondent in SC.650/2013 is against the Judgments of the High Court and the Court of Appeal. He submitted that where an appellant had shown sufficient interest in his appeal, such would not amount to an abuse of court process. With regard to

appeal No. SC.890/2014, he said that appeal arose from the dismissal of counter-claim by defendant at the trial court, hence the counter-claimant appealed to the court below which hold that the counter claim was not statute barred.

Mr. K. Ajibade, the learned Attorney General of Kwara State represented the 5th and 6th Respondents in SC. 647/2013, 6th and 9th Respondents in SC.648/2013 and 8th and 9th Respondent in SC890/2014. He aligned himself with the submission of learned senior advocates Y. Ali and Chief R. A. Lawal Rabana. He submitted that appeal No SC650A/2013 was filed separately as a result of the consequential order made by the court below against the Government of Kwara State as contained on page 1503 of Vol 12 of the Record. He said based on the consequential order made on the Government of Kwara State, they decided to appeal to this court. He finally urged this court not to regard their appeal as abuse of court process.

On his part, Mr. John Olusola Baiyeshea SAN of learned senior counsel for the Cross Appellant in SC.648/2013, for 1st to 3rd Respondents in SC.650/2013 and SC.650A/2013 and for Cross Respondent SC.890/2014 agreed that multiplicity of appeals amount to abuse of court process and counsel should be discouraged from filing them. He said the only germane issue is whether there were two ruling houses in Offa and that is the only issue calling for determination which this court should be bold enough to decide and to also adopt the procedure for posterity sake.

There is no gain saying that the present two appeals covered by this Judgment and indeed the other appeals except SC.890/2014 are all against the single Judgment of the court below delivered on the 9th of July 2013 which reversed the decision of the trial court. All learned senior counsel are ad idem, that their respective appeals were lodged against the said Judgment of the court below. I think it will therefore be apt to consider whether the appeals lodged particularly the present two appeals i.e. SC. 647/2013 and SC.648/2013 amount to abuse of court process. It is not in dispute that the crux of the dispute which led to the institution of the action before the trial court in the first place, is centered on the ascension to the stool of the Olafa of Offa of Kwara State. Also not in dispute is that all the parties relied on the pleadings they filed at the trial court on which basis evidence

were led at the trial court. Similarly, it needs to be stated also, that by filing appeals and cross appeals against the same Judgment each party decided to file separately appeals or cross appeals and made himself either appellants, cross appellants, respondents or cross respondent in their own appeal against the single Judgment. Admittedly an appellant is not bound to retain all the parties at the trial in his appeal. B

There is no iota of dispute that parties to any suit have unfettered right of appeal against the decision of the trial court to court below and even further to this apex court as provided by Section 246 and 233 of the Constitution of the Federal Republic of Nigeria 1979 and 1999 (as amended) (the Constitution for short) respectively. At any rate it is my considered view that even though the Constitution provides right of appeal to any party aggrieved by decision of a court, that does not however give such aggrieved party the right to abuse the process of the court when exercising such right of appeal. It is trite law, that rights of appeal are exercised according to law, rules and procedures governing such appeal. In other words it is incumbent upon the litigant to follow the law, rules and procedure governing the exercise of such right of appeal one of which is to guard against abusing the process of court. C D E

The issue to address now is “what does “abuse of court or Judicial Process” mean. This court in the case of Saraki vs Kotoye (1992) 9 NWLR (Pt 264) 156 had held the concept of abuse of court or judicial process is imprecise and that it involves circumstances and situation of infinite variety and condition that a common feature of the concept is simply the improper use of the judicial process by a litigant to interfere with the administration of justice. In fact at page 188 of the report KARIBI-WHYTE JSC stated thus:- F G

“It is recognized that the abuse of the process may lie in both proper or improper use of the judicial process in litigation. But the employment of judicial process is only regarded generally as an abuse of the judicial process when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice” H

This court went further to lay down in the same case, the circumstances which will give rise to abuse of judicial pro-

cess which include the following:-

(a) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues, or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.

B (b) Instituting different actions between the same parties simultaneously in different courts even though on different grounds.

C (c) Where two similar processes are used in respect of the exercise of the same right for example, a cross-appeal and a Respondent notice.

(d) Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of facts already decided by court below.

D (e) Where there is no iota of law supporting a court process or where it is predicated on frivolity or recklessness.

E This court went ahead to hold that the abuse of process lies in the multiplicity and manner of the exercise of the right rather than the exercise of the right per se. It consists of the intention, purpose or aim of the person exercising the right to harass, irritate and annoy the adverse party and interfere with the administration of justice. It is the inconvenience and inequities involved in the aims and purposes of the action. See Okorodudu vs Okoromadu (1977) 3 SC 21; Oyebola vs Esso West African Inc. (1966) 1 All NLR 170; Harriman vs Harriman (1989) 5 NWLR (Pt 119) 6.

G Applying the above listed principles which tantamount to abuse of judicial process to the instant situation of these two cases, one can safely say that the institution or filing of these appeals constitute abuse of judicial or court process. The appeals are on the same judgment and against the same parties and also on the same subject matter. The appeals in my view were no doubt instituted with the aims of annoying H the adverse party thereto. This court had on previous occasions frowned at the attitude of learned counsel of filing such multiplicity of action at first instance or on appeal and counsel are admonished for filing such numerous processes especially in the most recent appeals No. SC. 12/2016 and SC.12A/

2016 to which attention of senior counsel appearing for the parties were drawn. Therefore, having held that this appeal No. SC.467/2016 amounts to abuse of judicial process in line with the reasons I have given above, I do not see any need to consider the issues for determination raised by the learned counsel for the parties or to consider the appeal on the merit. B

In the result, this appeal being an abuse of judicial process deserves to be dismissed and it is hereby accordingly so dismissed.

SC. 648/2013

This is a cross appeal against part of the decision of the Court of Appeal Ilorin Division, delivered on the 9th day of July 2013. The facts giving rise to this cross appeal are the same with those set out earlier in this judgment, facts in SCD.647/2013. It will therefore amount to repetition to repeat the facts here. C

The three cross appellants filed their Cross Appellants Brief of argument on 14/7/2014, wherein they formulated two issues for determination of the cross appeal which read thus:- D

1. Whether the lower court was right in upholding the decision of the trial court that ‘Exhibit G’ – The Kwara State Press Release of 1969’ is inadmissible in evidence on the ground that it was not certified. E

2. Whether the lower court was right in holding that newspapers (Exhibits P, Q, R and S) were inadmissible on the ground that there was no evidence of payment of fees for their certification and that newspapers were generally inadmissible in evidence. F

The cross appellant had also filed Cross Appellants Reply Brief to 1st to 4th Cross Respondents on 5-4-2016.

Learned senior counsel for the 1st to 4th cross appellants in the brief he filed on their behalf on 14/7/2014 distilled two issues for determination from the grounds of appeal and the dual issues are as follows:- G

A. Whether the lower court was right in upholding the decision of the trial court that ‘Exhibit G, the Kwara State Press Release of 1969’ is inadmissible in evidence on the ground that it was not certified. H

B. Whether the lower court was right in holding that newspapers (Exhibits), O, P, Q, R and S) were inadmissible on the ground

that there was no evidence of payment of fees for their certification and that newspapers were generally inadmissible in evidence.

The fifth Cross Respondent's brief was filed on 5th August 2014. He also raised two issues for determination as below:-

(i) Whether Exhibits G, being a public document is admissible B in evidence having not been certified (Ground I).

(ii) Whether the court below was right to have expunged Exhibits O, P, Q, R and S from the record on the ground that they are public documents which have not accordingly been certified. (Ground 2) C

Lastly, the 6th and 7th Cross respondents had filed their brief of argument on 16/2/2015. Like others, two issues were also formulated for the determination of the cross-appeal which are reproduced below:-

1. Whether the lower court was right in upholding the decision D of the trial court that 'Exhibit G, the Kwara State Press Release of 1969' is inadmissible in evidence on the ground that it was not certified.

2. Whether the lower court was right in holding that newspapers E (Exhibits), O, P, Q, R and S) were inadmissible on the ground that there was no evidence of payment of fees for their certification and that newspapers were generally inadmissible in evidence.

As I posited supra, this present cross appeal is an off-shoot of appeal No. SC.647/2016 as it emanated from the decision of the F latter appeal. In my discourse above I have adjudged appeal No. SC.647/2013 to be an abuse of judicial process for the reasons I have adumbrated supra after giving due consideration to the responses by learned senior counsel to all the parties to the question raised suo G motu by this court on the propriety of all the appeals filed, including this particular cross appeal.

My noble lords, permit me to state that this court in its judgment in the main appeals, namely - SC.650A/2013 and SC.650/2013 delivered today 1st July, 2016 made a far reaching finding that H in fact, the two lower courts were in the first place bereft of jurisdiction to adjudicate in the dispute by the parties on the stool of Olafa of Ofa in view of the non-compliance with the provisions of Section 3(3) and (4) of the Chiefs (Appointment and Deposition) Law (hereinafter referred to as "the law") by the respondents in those appeals

i.e. SC.650A/2013 and SC.650/2013. For ease of reference and purpose of clarity I shall reproduce below the relevant provisions of Section 3 and 4 of the law.

“Section 3(1)

Upon the death, resignation or deposition of any chief other than a chief of a kind referred to in Section 4, The Government 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. ^B

2. Where no selection is made before the expiration of interval as is usual under customary law and practice, 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. ^C

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. ^D

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

7. The powers of the Governor under the proceeding (sic) sections of this law shall only be exercised after receiving the advice of Council of Chiefs. ^F

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 deposit with the State Accountant General a non-refundable sum of ten thousand naira. ^G

(2) Where the Governor or the appointing authority has not approved any appointment to a vacant chieftaincy stool, any aggrieved person who institutes any court action in connection with a vacant chieftaincy, stool and join 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.” ^H

This court held in the said appeal Nos. SC.650A/2013 and SC.650/2013 that evidence abound that the parties failed to comply with the provisions of Section 3(3) of the law.

I am in entire agreement with the reasoning of this court in those two appeals mentioned above and also hold that compliance with the provisions of Section 3(3) of the law is imperative and a pre-condition before the parties could rush to the trial court for the resolution of their chieftaincy dispute. Failing to so comply, in my view, made the institution of the suit at the trial court in the first place premature, because a vital precondition to filing such suit at the trial court and by extension to appeal to the court below and this court amounted to putting the cart before the horse. The trial court and indeed the court below are loathe of jurisdiction to adjudicate on the matter. See MADUKOLU VS NKEMDILIM (1962) 2 SCNLR 341; NURTW & ANOR V RTEAN 7 5 ORS (2012) 1 SC (Pt. 11) 119.

Thus, in the light of any finding on the impropriety of filing this cross appeal and also the non-compliance by the cross-appellants and of the cross respondents to this cross appeal, with the provisions of Section 3(3) of the law this cross-appeal also deserves to be discountenanced and is hereby dismissed.

On the whole, I am satisfied that both appeals are entitled to be dismissed for being abuse of judicial process. Similarly, the judgments of both the trial court and the court below are nullified for the non-compliance with the provisions of Section 3(3) of the Chiefs (Appointment and Deposition) Law of Kwara State. Both the appeal and the Cross appeal are dismissed accordingly. I make no order on costs.

ONNOGHEN JSC

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

I agree with his reasoning and conclusion that appeal No. SC/247/2013 be dismissed for being an abuse of process while No. SC/648/2013 be struck out for want of jurisdiction.

The facts of the case have been stated in detail in the lead judgment making it unnecessary for me to repeat them herein except as may be needed for the point being made.

Appellants herein are the King makers of the Stool of Olafa of Offa, Kwara State and were sued, along with the present 4th respondent as the 5th defendant in suit No. KWS/OF/15/2010 by the present 1st - 3rd respondents who were the claimants therein. The claim against them is as follows:

“(a) A declaration that ascension to the stool of Olafa of Offa is rotational between Olugbense (Male) ruling house and Anilelerin (Female) ruling house of Offa.

(b) A declaration that Anilelerin ruling house having produced the late Oba Mustapha Olawore Olanipekun Ariwojoye II, who ruled for over 40 years, it is now the turn of Olugbense ruling house in law and/or equity to produce the Olafa of Offa on the basis of rotation.

(c) A declaration that Anilelerin ruling house is precluded from producing the candidate to fill the vacancy created by the death of Oba Mustapha OLAWORE Olanipekun Ariwajoye /I from Anilelerin ruling house.

(d) A declaration that in view of the established Chieftaincy custom of Offa from 1969, ascension to the vacancy stool of Olafa of Offa is rotational between the two ruling houses of Offa viz Olugbense ruling house and Anilelerin ruling house.

(e) A declaration that by virtue of the decision of Kwara State Government published in the Kwara State press release No. 275 of 9th July, 1969 (pursuant to the report of the Sawyer Commission of Enquiry to Olafa Chieftaincy Stool), ascension to the stool of Olafa of Offa, is rotational between the Olugbense ruling house and the Anilelerin ruling house.

(f) A declaration that the consideration of candidates (2nd claimant and 5th defendant) from the two ruling house - Olugbense and Anilelerin respectively at the same time by the kingmakers of Offa (1st – 4th defendants) and the acceptance/recommendation of the 5th defendant by the 1st- 4th defendants as Olafa of Offa to the 7th defendant thereby is illogical, wrongful unlawful, inequitable, unjust, invalid, null and void and of no effect whatsoever.

(g) A declaration that by virtue of the Chieftaincy declarations contained in the Kwara State of Nigeria Gazette, No. II Vol. 4 of 12th

March, 1970 and legal notices 3 and 4 of 1969 herein, in respect of the process of selection of a candidate for the stool of Olafa of Offa by Anilelerin ruling house and Olugbense ruling house respectively ascension to the stool of Olafa of Offa is by rotation and not by competition between the two ruling houses.

B *(h) A declaration that the recognition of the 5th defendant as Olafa of Offa by the 6th and 7th defendants is illogical, wrongful, unlawful, unconscionable, null and void and of no effect what so ever.*

C *(i) A declaration that the appointment and installation of the 5th defendant as the Olafa of Offa by the 7th defendant is wrongful, unlawful, null and void and of no effect what so ever.*

D *(j) A declaration that the nomination of the 2nd claimant, Alhaji (Prince) Abdul-Rauf Adegbeye Keji by the Olugbense ruling house as the Olafa of Offa is valid and he is the only candidate entitled to be recommended for approval as Olafa of Offa by the Kingmakers of Offa (1st - 4th defendants) to the 7th defendant.*

E *(k) A declaration that the nomination of the 2nd claimant from Olugbense ruling house as the candidate for the stool of Olafa of Offa is valid and he is entitled to be recognized by the 6th and 7th defendants.*

F *(l) A declaration that the 2nd claimant from Olugbense ruling house is validly and duly nominated candidate of the stool of Olafa of Offa and entitled to be appointed and installed by the 7th defendant.*

(m) An order nullifying the appointment and installation of the 5th defendant as the Olafa of Offa and removing him forthwith from the stool of Olafa of Offa.

G *(n) An order compelling the 1st - 4th defendants to accept the nomination of the 2nd claimant as the Olafa of Offa.*

(o) An order compelling the 7th defendant to approved the appointment of the 2nd claimant as the Olafa of Offa and a further order compelling the 7th defendant to install 2nd claimant as the Olafa of Offa.

H *(p) An order of perpetual injunction restraining the 5th defendant from parading himself as the Olafa of Offa.”*

The present appellants and 4th respondent filed a joint Statement of Defence in which they counter-claimed against the 1st - 3rd respondents herein in the following terms:-

“(1) The 1st - 5th Defendants repeat paragraphs 4 - 18 of the Statement of Defence.

(2) That the Olugbense Ruling House have been disinherited and have gone into extinction going by the curse and the decision of Oba Olugbense their progenitor to allow only the female lineage of Anilelerin to occupy the Olafa Stool. B

(3) That by reason of the fact that since the demise of Oba Olugbense it is the female lineage of Anilelerin that have been occupying the Olafa Stool, the Anilelerin House have become the main and the only Ruling House in Offa.

(4) Where of the 1st - 5th Defendants/Counter-Claimants pray as follows: C

a. A declaration that No Rotational Policy exist in Offa between the Ruling Houses in Offa on the appointment of Olafa of Offa whenever a vacancy occur to the stool. D

b. A declaration that the only Ruling House that exists in Offa for the purpose of appointing an Olafa of Offa is the Anilelerin Ruling House.

c. A declaration that the Kwara State Government Gazette No. II. Vol. 4 of 12th March, 1970 and any other Notices as it recognizes Olugbense as a Ruling House in Offa be declared null and void as it is contrary to the History, custom and tradition of Offa on Offa Chieftaincy. E

d. An order of perpetual injunction restraining the 6th and 7th Defendants from treating and or recognizing the Olugbense Ruling House that have a right to the Chieftaincy title of Olafa of Offa.” F

The trial court, after hearing the matter dismissed the claims of the claimants - 1st - 3rd respondents herein - as well as the counter claim which was held to be statute barred. In reaction to the said judgment, 1st - 3rd respondents herein filed appeal No. CA/IL/71/2012 at the lower court while the 1st – 5th defendants filed a cross appeal No. CA/IL/71A/2012 against the decision of the trial court on the counter claim. G

It is of great importance to note that the 1st - 5th defendants/ H appellants were being represented both at the trial and Court of Appeal by a single team of lawyers. However, and suddenly after the lower court delivered its judgment in CA/IL/71/2013, the 1st - 4th appellants herein filed an appeal No. SC/647/2013 in this Court in

which they removed their co-traveler, the 5th defendant/appellant in the lower courts as appellant herein but made him the 4th respondent. Not only were the parties who had all doing had a joint case/defence to the claim but had been represented by the same team of lawyers been split, they are now being represented by different teams of counsel. So while 1st- 4th defendants/respondents in the lower court in CA/IL/71/2013 filed the instant appeal, the 4th respondent herein filed appeal No. S.C/650/2013 and made 1st - 4th appellants herein respondents in his own appeal!! One is amazed at this development particularly the roles the strange respondents in these particular appeals are expected to play in defence of the judgment on appeal.

The issue is whether this appeal No. S.C/647/2013 is not in abuse of process having regard to the facts and circumstances of the case.

In the case of Saraki vs Kotoye (1992) 9 NWLR (pt. 204) 156 this Court laid down the circumstances that will give rise to abuse of court process.

They include the following:

(a) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues, or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.

(b) Instituting different actions between the same parties simultaneously in different courts, even though on different grounds.

(c) Where two similar processes are used in respect of the exercise of the same right for example, a cross appeal and a respondent notice.

(d) Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by courts below.

(e) Where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness.

The court also held in that case, inter alia, that the abuse of processes in the multiplicity and manner of the exercise of the right rather than the exercise of the right per se; it consists of the intention, purpose or aim of the person exercising the right to harass, irritate and annoy the adversary, and interfere with the administration of

justice; it is the inconvenience and inequities involved in the aims and purposes of the action. See in addition Okorodudu vs Okoromadu (1977) 3 SC 21; Oyebola vs Esso West Africa Inc. (1966) 1 ANLR 170.

It cannot be denied that there are multiplicity of appeals by the defendants in the suit and respondents in appeal No.CA/IL/71/2013 B in this Court arising from the same judgment. The judgment of the lower court, however, remains the same as well as their brief before that court.

It must be borne in mind that the 4th respondent in this appeal is the candidate who was declared the Olafa of Offa by the Kingmakers - 1st - 4th appellants herein but has not been made a co-appellant in the appeal, for reasons best known to the appellants, even though the decision of the lower court now on appeal before us set aside the judgment of the trial court which was in favour of the present appellants and the 4th respondent. D

It however goes without saying that the success of this appeal ensures mainly to the benefit of the said 4th respondent who has been forced into a position of having to defend the judgment of the lower court which is not to his benefit in anyway whatsoever, by E being made a reluctant respondent in the appeal. It is therefore not surprising that the respondent has not deemed it fit to file any processes in defence of the judgment of the lower court on appeal.

In the circumstance, would it not be proper to conclude that such a respondent has conceded the appeal? What purpose is the F current trend designed to serve? I hold the considered view that the trend is very disturbing and ought not to be encouraged at all.

In the circumstance, I agree with my learned brother, SANUSI, G JSC that this appeal is in abuse of court process and therefore liable to be dismissed. The present trend should not be encouraged at all as it will do the judiciary and the legal profession no good. Appellants and the 4th respondent ought to have continued to fight the case together by filing a joint appeal in this Court, not to split the appeals thereby forcing some of the appellants to be respondents in an ap- H peal in which they cannot perform their traditional role of defending the judgment on appeal. They have, thereby become odd bedfellows with the other respondents.

S.C/648/2013

This cross appeal is also against the judgment of the lower court in appeal No. CA/IL/71/ 2013 delivered on the 9th day of July, 2013.

This Court has, however, in appeal No. S.C/650A/2013 delivered this morning, 1st July, 2016 held that suit No. KWS/OF/15/2010 was instituted without fulfilling pre-conditions required by law, particularly the provisions of section 3(3) of the Chiefs (Appointment and Deposition) Law, CAP C9 of Kwara State, 2006 and consequently that the lower courts have no jurisdiction to entertain the action as constituted and the appeal arising therefrom.

It is clear, therefore, that the said judgment applies to this appeal which is consequently struck out for want of jurisdiction.

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

D

RHODES-VIVOUR JSC

I read in draft the leading judgment delivered by my learned brother Sanusi, JSC, on the above appeals. I entirely agree with his lordship. In view of my leading judgment in SC.650A/2013 and SC.650/2013 where I declared the judgment of the Court of Appeal from where the appeals emanate a nullity for want of jurisdiction, SC.647/2013 is dismissed for being an abuse of process, while SC.648/2013 is struck out for want of jurisdiction.

F

NGWUTA JSC

I read in draft the lead judgment just delivered by my learned brother, Sanusi, JSC, on the above mentioned appeals. I adopt the reasons given for dismissing each of the two appeals as abuse of Court process. The two appeals herein are among the multiple appeals arising from the judgment of the trial Court. The practice of filing multiple appeals against one judgment is undesirable and ought to be discouraged by award of punitive costs against Counsel involved personally.

Most importantly, the suit from which the multiple appeals, including the two herein, arose was commenced without compliance with the pre-condition imposed by the Chiefs (Appointment and Dis-

position) Law Cap 09 of Kwara State 2006. Section 3 (3) of the law provides:

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

The Governor’s final say, which he makes known after due inquiry and consultation with persons concerned in the selection 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 the suit giving rise to these appeals. That condition was not complied with and the non-compliance rendered the suit incompetent. C

Failure to comply with Section 3 (3) of the law has the same effect as failure to serve pre-action notice where the law or rule provides for it. It renders the suit incompetent. See Captain Amadi v. NNPC (2000) 10 NWLR (pt. 674) 72 at 26; Chief Nwoye v. Anyiahie & 2 ors (2005) 1 SC (Pt. 11) 96; Katsina Local Authority v. Alhaji B. Maka Dawu (1971) 1 NWLR 100 at 105.

As the suit was incompetent the trial Court had no jurisdiction E to hear and determine it. It has been established beyond argument that a Court acts in vain in hearing a matter in which it lacks jurisdiction no matter how well the trial was conducted. See Labiyi v. Anretiola (1992) 8 NWLR (Pt. 258) 139.

The proceeding in the trial Court was a nullity and *ipso facto* F the proceeding in the Court below was also a nullity as that Court had no jurisdiction to hear the appeal. The defect of want of jurisdiction also applies equally to his appeal.

For the above and the fuller reasoning in the lead judgment I G also dismiss both the main appeal and the cross-appeal for lack of merit. Parties shall bear their respective costs.

PETER-ODILI JSC

I agree with the judgment just delivered by my learned brother, Amiru Sanusi JSC and to underscore my support, I shall make some comments in emphasis of the reasoning.

This is an appeal against the decision of the Court of Appeal, H

Ilorin Division, the appeal of the 1st-3rd respondents herein and awarded all the reliefs set out on their Statement of Claim as opposed to the decision of the trial court which dismissed their claims out rightly.

The full details of the background facts have been well adumbrated in the lead judgment and I shall not repeat them.

On the 11th day of April, 2016 date of hearing, learned counsel for the appellants, Yusuf O. Ali SAN adopted their Brief of Argument filed on 27/5/2014 and deemed filed on 17/11/15. In it were crafted four issues for determination which are as follows:

1. *Whether having regards to the extant provision of Section 3(3) of the Chiefs (Appointment and Deposition) Law Cap of Kwara State 2006, the Court of Appeal acted competently and correctly in countenancing and granting the reliefs it awarded to the 1st - 3rd respondents.*

2. *Whether the Court of Appeal was not in error in suo motu raising and relying on the principle of repugnancy test and its perceived "sense of justice to find in favour of the 1st - 3rd respondents contrary to the case of the parties as formulated in the pleadings and presented by them in evidence.*

3. *Whether the Court of Appeal was not in error in the view it took of Exhibits A, D and J and its conclusion that ascension to the Olafa of Offa stool is by rotation between the Anilelerin and Olugbense Ruling Houses and that it was the turn of Olugbense Ruling House to produce the next Olafa of Offa in succession to the late Oba Mustapha Olawore Olanipekun.*

4. *Whether the Court of Appeal was not in error in granting the reliefs sought by the 1st - 3rd respondents when same was not only proved as required by law but also caught by the principle of estoppels.*

Also adopted by senior advocate is the appellant's reply Brief filed on the 8th day of March 2016.

John Olusola Baiyeshea SAN for the respondents adopted the Brief of Argument filed on the 25/11/15. In it he raised and argued a Preliminary Objection senior counsel posed in the Brief of Argument in the alternative five issues for determination in the event the Preliminary Objection was not upheld. The issues are thus:

1. *Whether the trial court and the Court of Appeal had the*

jurisdiction to adjudicate on the 1st – 3rd respondent’s case having regard to section 3(3) of the Chiefs (Appointment and Deposition) Law Cap of Kwara State (Ground 1 of the Grounds of Appeal.

2. Whether or not the principle of repugnancy was raised suo motu by the court below or whether or not any of the parties canvassed the principle of repugnancy as an issue at the trial court and the court below. (Grounds 1 of the Ground 6 of the Grounds of Appeal)

3. Whether the court below properly relied on Exhibits A/D and J in coming to the conclusion that 1st – 3rd respondents had enough evidence on record to establish rotational chieftaincy for the stool of Olafa of Offa from 1969 (Grounds 3, 6, 5 and 9)

4. Whether, in the peculiar circumstances of this case, the principle of estoppels applies for the benefit of the appellants (Ground 8 of the Grounds of Appeal).

5. Whether the court below was right in granting the relief sought by the 1st - 3rd respondent (Grounds 7 and 10).

It needs no saying that the Preliminary objection would be taken first since the competence of this court is to be firstly decided so the court would know if it has jurisdiction.

PRELIMINARY OBJECTION

Learned counsel for the respondent/objector put across the following objection, viz:

The 1st- 3rd respondents hereby object to Grounds 1 and 8 of the Grounds of Appeal on the ground that they are incompetent for the following reasons; namely:

1. Ground 8 of the Ground of Appeal in the Notice of Appeal raises the principle of estoppels which did not form part of the appellants case at the trial court and at the Court of Appeal. The appellants did not plead the principle of estoppel and did not canvass same at all at the trial court and at the Court of Appeal.

2. Appellant’s issues 1 and 4 for determination are incompetent having been raised from the incompetent grounds of appeal.

3. Ground 1 of appellant’s 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.

Mr. Baiyeshea SAN of counsel submitted that the principle of estoppel was not pleaded at the trial court or raised at the Court of

Appeal and so it cannot be raised at the Supreme Court since it is a fresh issue for which no leave was sought or obtained. He cited Adeogun v Fashogbon (2011) 8 NWLR (Pt. 1250) 427 at 455, Saraki v Kotoye (1992) 9 NWLR (pt. 264) 156 at 184; Osidele v Sokunbi (2012) 15 NWLR (Pt. 1324) 470 at 498; Order 27 Rule 4(1) of the
 B Kwara State High Court (Civil Procedure) Rules 2005.

That Ground one of the grounds of appeal and the issue formulated thereon are not proper as the issue is evidence based jurisdiction which can only be established upon facts pleaded by the party
 C relying on it which did not happen in this instance and so renders the grounds of appeal incompetent. He cited Mobil Producing Nig. Unlimited v LASEPA (2002) 18 NWLR (Pt. 798) 1 at 29.

Yusuf Ali SAN for the appellant in response submitted that estoppel was part and parcel of this case right from the trial court and
 D came up in the Court of Appeal and is not a fresh issue. That it being an issue of jurisdiction can be raised at any time and anyhow, even on appeal for the first time without leave of court. He cited Omomeji v Kolawole (2008) 14 NWLR (Pt. 1106) 180 at 196.

That assuming without conceding that there was need to plead
 E any condition precedent that would affect the court's jurisdiction it is the 1st- 3rd respondents who were claimants before the trial court and had the onus to plead such condition precedent and not the appellant who were defendants before the trial court as canvassed by
 F the appellant. Learned senior counsel said it is trite law that it is the claim of a claimant as presented in the statement of Claim that confers jurisdiction on the court and not the response of the defendant.

This appeal has to be dispatched without delay as it is an abuse of court process, being an appeal against the judgment of the Court
 G of Appeal whereby the appellants split from the 4th respondent with whom they presented a joint case at the trial court and the Court of Appeal. In doing so they filed a separate Notice of Appeal with ten grounds of appeal and the only option open is a dismissal of the appeal which I do here and now for the appeal is an abuse of court
 H of process.

I abide by the consequential orders as made in the lead judgment.

SC.648/2013

CROSS - APPEAL

For the 1st - 3rd respondents in SC.647/2013 and now Cross-Appellants, learned senior advocate, John Olusola Baiyeshea adopted the Brief of Argument filed on 4/7/2014 and Reply Briefs to 1st - 4th cross -respondents filed on 5/4/2-16, Reply to 5th Cross -Respondent filed on 2/10/2014, Reply to 6th and 7th Cross- Respondents filed on 5/4/2016.

In the Cross-Appellants Brief were crafted two issues for determination which are stated as follows:

1. Whether the lower court was right in upholding the decision of the trial court that exhibit G, Kwara State Press Release of 1969 is inadmissible in evidence on the ground that it was not certified.

2. Whether the lower court was right in holding that the newspaper (Exhibits O, P, Q, Rand S) were inadmissible on the ground that there was no evidence of payment of fees for their certification and that newspapers were generally inadmissible in evidence.

Yusuf O. Ali SAN learned counsel for the 1st - 4th Cross-respondents filed their Brief of Arguments on 14/1/2014 and deemed filed on 5/4/16. He adopted the Brief of Arguments as raised by the cross-appellants.

ISSUES 1 & 2

The two issues question the admissibility or otherwise of exhibit G, the kwara State Press Release of 1969 for not being certified is and also the admissibility of Exhibits O, P, Q, R and S without evidence of payment of fees for certification and the admissibility of the newspapers.

Learned counsel for the cross-appellants John Baiyeshea SAN contended that the main judgment of the lower court or Court of Appeal is a sound one. That admitting Exhibits O, P, Q, R, and S together with Exhibit G, will further strengthen the cross-appellants' case and will confirm further the historical evidence that the Offa Chieftaincy stool has become rotational. He urged the court to allow the cross-appeal, set aside that part of the decision of the lower court upon which this cross-appeal has been brought for the following reasons:

i. Exhibit G being an original copy of a public document requires no certification and IS therefore admissible.

ii. Exhibits O, P, Q, R and S cannot be rejected based on the

purported non-payment of the fees for certification and are therefore admissible in evidence.

iii. Exhibits G, O, P, Q, R and S constitute additional evidence in support of cross-appellants' case that ascension to the stool of Olafa of Offa is rotational by virtue of the Kwara State Government Policy/ B decision known to all parties and the whole world since 1969.

He referred to *Igbodin & Ors v Obianke & Ors* (1976) 9 - 10 SC or (1976) NSCC vol. 10 467 at 473 - 474; *Araka v Egbue* (2003) 17 NWLR (Pt. 848) 1 at 19 - 20.

C That the judgment of the lower court affirming the rejection of exhibits O, P, Q, R and S on the basis of failure to pay certification fees is rather harsh as what should have been done is the court ordering the cross-appellants to pay the necessary fees. He relied on *Tabik Investment Ltd v GTB Plc* (2011) 17 NWLR (Pt. 1276) 240 per D Rhodes-Vivour JSC.

Learned senior counsel, Yusuf Ali countered by submitting that it is settled that a public document is only admissible if it met the conditions set out in the provisions of section 106 of the Evidence Act. He cited *Iteogwu v LPDC* (2009) 19 NWLR (Pt. 614) 634; *Orlu E v Gogo - Abite* (2010) 8 NWLR (Pt. 1196) 307 at 335; *Anatogu v Iweka II* (1995) 8 NWLR (pt. 415) 547.

The appeal is also overtaken by events in view of the decision of this court in SC.650A/2013 delivered this morning, 1/7/16 to the effect that the lower courts have no jurisdiction to entertain the matter herein. F

This cross-appeal is clearly a fishing expedition and academic as I do not see what can be achieved from it where the Olafa Elect is not made a party. It becomes manifest that no useful purpose will be achieved in entertaining this cross- appeal and in the light of the fuller reasons put across in the lead judgment of my learned brother, Amiru Sanusi JSC, I too dismiss it. G

I abide by the consequential orders made.

H