

1. VICTOR ADEGOKE ADEWUMI
 2. ALHAJI SALAMI OLUYEDE
- (For themselves and on behalf of Atewogbo E: Ruling House)

- V.
1. THE ATTORNEY GENERAL OF EKITI STATE
 2. SECRETARY, ADO-EKITI L.G. COUNCIL
 3. CHIEF T.A. OGUNRINDE (DECEASED)
 4. CHIEF KOLA FATOYO
 5. RUFUS ADEYEMO ADEJUGBE
 6. PRINCE KUNLE ALADESANMI
 7. AJAYI OLORUNFEMI
- (For and on behalf of Aroloye Ruling House)

SUPREME COURT OF NIGERIA

SC.138/1996

ABUBAKAR BASHIR WALI, J.S.c. (Presided and Read the Leading Judgment)
EMANNUEL OBIOMA OGWUEGBU, J.S.C.
UTHMAN MOHAMMED, J.S.C.
SYLVESTER UMARU ONU, J.S.C.
UMARU ATU KALGO, J.S.c.

FRIDAY, 18TH JANUARY, 2002

ACTION - Locus standi - Duty on litigant to disclose locus stand in a matter.

ACTION - Representative action - Representative capacity of parties - Need to so express on writ of summons - Failure to so express
Effect - Order 5 rule 11 and Order 4 rule 7 High Court of Ondo State (Civil Procedure) Rules, 1987 considered and applied.

APPEAL - Error in judgment of trial court - Whether every error killed lead to reversal of judgment.

CHIEFTAINCY LAW - Chiefs Edict of Ondo State, 1984 (as amended) - Sections 8 and 11 thereof-Purport of
CHIEFTAINCY MATTER - Locus standi - Locus standi in a chieftaincy matter - How established - Relevant considerations.

CHIEFTAINCY MATTER - Chiefs Edict of Ondo State, 1984 (as amended) - Section 11A thereof- Purport and import of

COURT -Jurisdiction of court- where challenged- whether court need take evidence to resolve.

COURT - Hypothetical questions - Attitude of the Supreme Court thereto.

INTERPRETATION OF STATUTES - Chiefs Edict of Ondo State, 1984 (as amended) - Section IIA thereof- Purport and import of.

INTERPRETATION OF STATUTES - Chiefs Edict of Ondo State, 1984 (as amended) - Sections 8 and 11 thereof-Purport of

INTERPRETATION OF STATUTES - Clear and unambiguous words in a statute - How construed - Duty on court not to distort.

INTERPRETATION OF STATUTES - Construction of statutory provision to ascertained facts - Duty on court.

INTERPRETATION OF STATUTES - Golden rule of interpretation of statute.

INTERPRETATION OF STATUTES - Language of statute – When court may modify to meet intention of legislator.

INTERPRETATION OF STATUTES - Section of statute with several sections - How construed.

INTERPRETATION OF STATUTES - Interpretation to discover intention of legislator - When applicable.

INTERPRETATION OF STATUTES - Principle of exception and interpretation of statute - When will be applied.

JURISDICTION - Jurisdiction of court - Where challenged - Whether court need take evidence to resolve.

LOCUS STANDI- Denotation of "locus standi".

LOCUS STANDI - Duty on litigant to disclose locus standi in a matter.

LOCUS STANDI - Locus standi in a chieftaincy matter – How established - Relevant considerations.

PRACTICE AND PROCEDURE - Action - Representative action - Representative capacity of parties - Need to so express on writ of summons - Failure to so express- Effect - Order 5 rule II and Order 4 rule 7 High Court of Ondo State (Civil Procedure) Rules, 1987 considered and applied.

PRACTICE AND PROCEDURE - Amendment – Principles governing grant of - Duty on court to allow all amendments necessary for achievement of justice.

PRACTICE AND PROCEDURE - Amendment - When takes effect.

PRACTICE AND PROCEDURE - Appeal - Error in judgment of trial court - Whether every error will lead to reversal of judgment.

PRACTICE AND PROCEDURE - Hypothetical questions – Attitude of the Supreme Court thereto.

PRACTICE AND PROCEDURE - Jurisdiction of court – Where challenged - Whether court need take evidence to resolve.

PRACTICE AND PROCEDURE - Order 5 rule 11 and Order II rule 7 of the High Court of On do State (Civil Procedure) Rules, 1987 - "Shall" therein - Effect of.

STATUTE - Chiefs Edict of Ondo State, 1984 (as amended) – Section 11A thereof-Purport and import of.

STATUTE - Chiefs Edict of Ondo State, 1984 (as amended) – Sections 8 and 11 thereof-Purport of.

WORDS AND PHRASES - "Shall" in Order 5 rule 11 and Order 11 rule 7 of the High Court of On do State (Civil Procedure) Rules, 1987 - Effect of.

Issues:

1. Whether or not the Court of Appeal was right to hold that the case was being prosecuted in a personal capacity and not in a representative capacity?
2. Whether or not the second appellant had locus standi?
3. Whether or not there were materials upon which the trial court could have held that the late George Adelabu was duly appointed as required by section 11A of the Chiefs Edict?
4. Whether or not Court of Appeal was right to affirm the judgment of the trial court that amended and or altered the tense of a word in section 11 A of the Chiefs Edict despite the fact that there was no ambiguity in the said section?

Facts:

There are two ruling houses entitled to the chieftaincy title of the Ewi of Ado-Ekiti, namely, the Aroloye Ruling House and the Atewogboye Ruling House.

The chieftaincy became vacant with the demise of Oba Aladesanmi from Aroloye Ruling House who died in 1983. Oba George Adelabu from the Atewogboye Ruling House was subsequently selected and appointed to succeed Oba Aladesanmi. The present pi appellant then challenged the appointment in suit No. HAD/48/84. Later, Oba Adelabu died in 1988.

The trial court delivered its decision in the said suit in 1990, wherein it nullified the appointment of Oba Adelabu to chieftaincy. Consequently, the 5th respondent from the Aroloye Ruling House was appointed as the next Ewi of Ado-Ekiti. As a result, the 151 appellant instituted the action leading to the present appeal claiming several declaratory and injunctive reliefs against the respondents on the ground that it is the turn of the Atewogboye Ruling House to present a candidate for the chieftaincy.

Meanwhile, in 1991, the Ondo State Government amended the Chiefs Edict, 1984 by section 11A of the Chiefs (Amendment) Edict 1991 which states:

"11A. Where a ruling house whose turn it is to present a candidate to fill a vacancy in accordance with provisions of section 8 of the Edict had been so called and had presented a candidate who having undergone the process of selection prescribed under that section and section 8A and was duly appointed to fill the vacancy and performed functions of such chief before his candidacy for whatever reason was subsequently annulled, that person so appointed shall be deemed to have reigned and it shall be the turn of the next

ruling house to present a candidate to fill the vacancy, and where there is only one ruling house, that chief whose candidature has been annulled shall be deemed to have reigned and shall not be qualified to be considered again."

In the course of the proceedings before the trial court, the 151 appellant applied and was granted leave to add the name of the 2nd appellant as co-plaintiff suing in representative capacity and to amend the writ of summons accordingly. However, the writ of summons was not subsequently amended to reflect the amendment granted. But, both parties subsequently filed amended pleadings reflecting the representative capacity of the appellants.

After pleadings had been exchanged, the 151 respondent filed an application challenging the jurisdiction of the court to entertain the suit on the ground, inter alia, that the appellants lacked the locus standi to institute the action and that the suit disclosed no reasonable cause of action.

The trial court upheld the application of the respondents and dismissed the suit. The appellant's appealed unsuccessfully to the Court of Appeal.

Dissatisfied, they further appealed to the Supreme Court.

(Unanimously dismissing the appeal):

1. On When amendment takes effect

An amendment duly made takes effect from the date of the original document sought to be amended; and this applies to every successive further amendment of whichever nature and at whatever stage it is made. Therefore, when a writ of summons is amended, it dates back to the date of the original issue of such writ and consequently the action will continue as if the amendment has been inserted from the beginning. (P.506, paras. E-G)

2. On Duty on court to allow all amendments necessary for the achievement of justice

In all civil litigations, it is the duty of the court to aim at, and to do, substantial justice and allow formal amendments as are necessary for the ultimate achievement of justice and the end of litigation. While recognizing that Rules of court should be observed and followed, it should also be emphasized that justice is not a fencing game in which parties engage each other in a whirling of technicalities. [Afolabi v. Adekunle (1983). CNLR 141 referred to .] (5,507, paras. G-H).

Per WALI, J.S.C at pages 507-508, paras H-F:

"It is evident from the motion filed by appellant for joinder and prosecuting the case in a representative capacity on behalf of Atewogboye Ruling House and the supporting documents particularly the resolution of Atewogboye Ruling House reproduced in this judgment, the statement of claim filed, the statements of defence and the reply thereto and even the motion on notice filed by 1st defendant respondent, the purpose of the amendment as granted was to allow the 22nd appellant be joined to the suit and to prosecute the same for and on behalf of Atewogboye Ruling House which no doubt had a stake in the case. The respondents were appreciative of that when filed their respective statements of defence in the form and manner they did and it is my find view that they were not misled. It is sufficient for a plaintiff wishing to amend his writ of summons to give briefly in a general form, the particulars of his amendment which will give the defendant reasonably sufficient information as to the details thereof. It is my view that

the details of the amendments in this case were sufficiently provided in the statement of claim filed subsequent to the amendment and to which the respondents responded. To avert the injustice that could manifest in a situation like this, the courts are empowered to grant to a party leave to amend his writ of summons and pleadings; and here it becomes absolutely necessary, the court can make the amendment. The important thing is that such an amendment will foster the course of justice as between the parties as is necessary for the purpose of determining the real issue in dispute between them. The 2nd appellant was clothed with the authority by the Atewogboye Ruling House to join in the suit and prosecute same on its behalf."

3. On whether court need take evidence to resolve challenge to jurisdiction -
Where an interpretation of a statutory provision and a challenge to the jurisdiction of the court are involved, the court can proceed to consider the issue based on the pleadings filed without calling any further evidence unless doing so becomes inevitable. In the present case, both the pleadings and the judgment that declared the appointment of George Adelabu as Ewi of Ado Ekiti null and void, and the Chiefs Edict as subsequently amended, were both before the court. The trial court was therefore right when it proceeded to interpret the Chiefs Edict as amended based on the documents before it. It did not require to call any further evidence to do so. (P. 509, paras. F-H)
4. On Purport and import of section 11A of the Chiefs Edict of Ondo State, 1984 (as amended)
By virtue of section 11A of the Chiefs Edict of Ondo State, 1984 (as amended), where a ruling house whose turn it is to present a candidate to fill a vacancy in accordance with provisions of section 8 of the Edict had been so called and had presented a candidate who having undergone the process of selection prescribed under that section and section 8A and was duly appointed to fill the vacancy and performed the functions of such chief before his candidacy for whatever reason was subsequently annulled, that person so appointed should be deemed to have reigned and it shall be the turn of the next ruling house to present a candidate to fill the vacancy, and where there is only one ruling house, that chief whose candidature has been annulled shall be deemed to have reigned and shall not be qualified to be considered again. The section was enacted to remedy the mischief brought about by the judgment in suit No. HAD/48/84, which annulled the reign of Oba George Adelabu as the Ewi of Ado-Ekiti. Accordingly, neither of the two appellants nor their ruling house Atewogboye - has any cause of action to institute or maintain the suit heading to the instant appeal. (Pp. 509-510, paras. H-C; 512, paras. G-H; 513, paras DF)
5. On Purports of sections 8 and 11 of the Chiefs Edict of Ondo State, 1984 (as amended)
What sections 8 and 11 of the Chiefs Edict No. 11 of 1984 provide for is a procedure to follow in filling a vacant stool in the State; while section 11A, an amendment to the principal Edict, provides for the situation where the appointment of a Chief duly made under sections 8 and 11 is annulled by court.
An appointment is duly made under sections 8 and 11 of the Chiefs Edict when the ruling house whose turn it is to present candidate(s) for the vacant stool does so. The name(s) of the nominee(s) is/are then sent to the Kingmakers for their consideration. The

Kingmakers would then select and appoint the most suitable candidate for the State Executive Council's approval. (P.526, paras. A-C)

6. **On When court may modify language of statute to meet the intention of the law maker**
Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. In the instant case, however, the trial court having made findings that the provision of the section 11A was not ambiguous, absurd or meaningless, it should not have embarked on a voyage of criticising the drafting and grammatical construction of the section. (Pp. 510-511, paras. GA; 511, E-F)
7. **On Duty of court faced with construction of a statutory provision to ascertained facts**
When a Judge is faced with construction, interpretation and application of a statutory provision to the facts ascertained by him in a case, he must.
 - (a) Read the statute to ascertain whether and how its meaning relates to the case in controversy;
 - (b) If the language, that is, the words or meaning ascertained from that language resolve the controversy, the inquiry terminates there;
 - (c) But if the language or meaning does not resolve the controversy, then the Judge must adjust and apply an appropriate judicial rule to decide and resolve the case or the issue in controversy. (P.511, paras. F-H)
8. **On Interpretation of clear and unambiguous words in a statute**
Where the words of a statute are clear, the court shall give effect to their literal meaning. It is only when the literal meaning may result in ambiguity or injustice that the court may seek internal aid within the body of the statute itself or external aid from statutes in pari material in order to resolve the ambiguity or avoid doing injustice. This is because, the object of all interpretation is to discover the intention of the law maker which is deducible from the language used. Thus, the courts are enjoined to give adequate consideration to the words used in the statute. In the instant case, the literal meaning of section 11A of the Chiefs Edict is neither ambiguous nor misleading and its application to the facts as ascertained by the trial court could not have resulted in any injustice having regard to the mischief which it was intended to remedy. [Mobil Oil (Nig.) Limited v. Federal Board of Inland Revenue (1977) 3 SC 35; Maizabo v. Sokoto N.A. (1957) SCNLR 142; Ifezue v. Mbadugba (1984) 1 SCNLR 427 referred to.] (Pp. 511-512, paras. H-E; 523, paras. A-B)
9. **On Interpretation of clear and unambiguous words in a statute**
In cases of statutory construction, the court's authority is limited. Where the statutory language and legislative intent are clear and plain, the judicial inquiry terminates there. A court is therefore not permitted to distort a statute's meaning in order to make it conform with the Judge's own views of sound social policy. Moreover, under Nigerian jurisprudence, the presumption is that ill-considered or unwise legislation will be

corrected through democratic process. Thus, in the instant case, the duty of the trial court was to ascertain the law and apply it to the facts, when it is clear and unambiguous, but not to amend or reconstruct it. (P. 512, paras. E-G)

10. On Interpretation of a section of statute with several sections

In seeking to interpret a particular section of a statute or subsidiary legislation one does not take the section in isolation but one approaches the question of the interpretation on the footing that the section is part of a greater whole. [Orubu v. NEC (1988) 5 NWLR (pt.94) 3223 referred to.] (P.522, paras. G-H)

11. On Attitude of Supreme Court to hypothetical issues The Supreme Court is not given to making moot decisions or to decide hypothetical cases which have no bearing with the case the court is called upon to decide. [Dike v. Nzeka (1986) 4 NWLR (pt.34) 144; Saude v. Abdullahi (1989) 4 NWLR (Pt.116) 387; Kosile v. Folarin (1989) 3 NWLR (pt.107) 1 referred to.] (P.525, paras. C-D)

DISSENTING VIEW OF ONU, J.S.C.:

1. On Need to express representative capacity of parties in the writ of summons

By virtue of Order 5 rule 11 of the Ondo State High Court (Civil Procedure) Rules, 1987, before a writ is issued, it shall be endorsed:

(a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues; and

(b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.

Moreover, under Order 11 rule 7 plaintiff sues or any defendant counter-claims in any representative capacity, it shall so be expressed on the writ. The court may order any of the persons represented to be made parties in lieu of, or in addition to, the previously existing parties. And by the provision of rule 15 of the same Order 5, issue of a writ takes place upon its being signed by the registrar or other officer of the court duly authorised to sign the writ. It is, therefore, glaring from the above mandatory provisions of the rules of the trial court that the capacity in which a party intends to prosecute a case must be expressed on the writ first and foremost and that this must be done before the writ is issued. In this wise, the endorsement of the capacity in which a party prosecutes an action merely on the statement of claim is grossly inadequate for the purposes of the rules. (Pp. 515-516, paras. H-E)

Per ONU, J.S.C. at page 515, paras. C-G:

"...it is pertinent firstly, to stress that the action was commenced by the first appellant who, the second appellant for purposes of prosecution, later applied to join in a representative capacity. The trial court duly acceded to his request based upon the resolution of the Atewogboye Ruling House authorising same on 18th October, 1991 describing themselves as suing for themselves and on behalf of the Atewogboye Ruling House as plaintiffs. Rather than proceeding to effect an amendment to the writ or the order of the trial court granted on 18/10/91, the appellants filed another application to amend the writ to reflect the earlier order of 18th October, 1991. Unfortunately, there was no order granted on the latter day as erroneously stated by the appellants in paragraph 5.2 of their brief that the writ of

summons was amended. Rather, on that day as borne out by pages 13 and 26 of the record, the application was to amend the statement of claim and not the writ of summons. This point is put beyond doubt by a cursory reference to the order made by the trial court on the same 18/10/91 at page 29 of the record wherein that court granted an order of extension of time to file the statement of claim.

Contrary to the position postulated in paragraph 5.4 of the appellants' brief, the conduct of the parties cannot cure the fundamental defect of non compliance with the rules of that court by the appellants to amend the writ of summons to reflect the capacity in which they were suing on behalf of others."

2. On Effect of the word "shall" Order 5 rule 11 anti
Order 11 rule 7 of the High Court of On do State (Civil Procedure) Rules, 1987 .The word "shall" as copiously used in Order 5 rule 11 and Order 11 rule 7 of the High Court of Ondo State (Civil Procedure) Rules make the provisions mandatory, peremptory and failure to comply therewith is a fundamental error in the proceeding. [Olajobi v. Olanipekun (1985) 4 SC 156; Olubode v. Salami (1985) 2 NWLR (pt.7) 282; Gwonto v. State (1983) 1 SCNLR 142; Bankole v. Pelu (1991) 6 NWLR (pt. 211) 545; Ifezue v. Mbadugha (1984) 1 SCNLR 427; Oyeyipo v. Oyinloye (1987) 1 NWLR (Pt.50) 356 referred to.] (P.516, paras. E-G)
3. On whether every error of trial court will lead to reversal of judgment
It is not every error of law that is committed by a trial or appellate court that justifies the reversal of a judgment. An appellant to secure the reversal of a judgment must further establish that the error of law complained of did in fact occasioned a miscarriage of justice and/or substantially affected the result of the decision. An error in law which has occasioned no miscarriage of justice is immaterial and may not affect the final decision of a court. This is because what an appeal court has to decide is whether the decision of the trial court is right and not whether his reasons were, and a misdirection that does not occasion injustice is immaterial. In the instant case, the appellants failed woefully to show that the part of the decision of the lower courts on representative capacity did occasion a miscarriage of justice or that it substantially affected the result of the case. They have also failed to show us that the decisions of the two lower courts below were not right. One only thing they have succeeded in showing, if at all, was that the reasons were not right, but such cannot sustain a reversal of the judgment. [Ajuwon v. Akanni (1993) 9 NWLR (Pt. 316) 182; Ukejianya v. Uchendu 13 WACA 45; Onajobi v. Olanipekun (1985) 4 NWLR (Pt.2) 156; Oje v. Babalola (1991) 4 NWLR (Pt.185) 267; Onwuka v. Omogui (1992) 3 NWLR (Pt. 230) 393 referred to.] (Pp 517, paras. D-G; 518, paras. A-C)
4. On Denotation of "locus standi"
Locus standi denotes legal capacity to institute proceedings in a court of law. It is used inter-changeably with terms like standing and title to sue. [Thomas v. Olufosoye (1986) 1 NWLR (Pt.18) 669; Fawehinmi v. Akilu (1987) 4 NWLR (pt.67) 797 referred to] (P.519, para. G) . On How locus standi established in a chieftaincy matter to establish locus

standi in a chieftaincy matter, the plaintiff has the duty to show the court that he has interest in a claim relating to the filling of a vacancy of the chieftaincy. In particular, in a ruling house chieftaincy, as in the instant case, Ewi of Ado-Ekiti - the plaintiff must do more than relying on his membership to chieftaincy, to wit:

1. He belongs to a ruling house;
2. That it is the turn of that ruling house to provide a candidate or candidates to fill the vacancy;
3. That there is or ought to be a vacancy on the throne;
4. That he is or was interested as an eligible candidate in the throne and;
5. That he had taken part as a candidate for the throne.

This is because, in a ruling house chieftaincy, the right of succession to the throne is that of the whole ruling house and not that of the individual members. Therefore, a member who desires to take benefit of the right of the ruling house must aver in his statement of claim and prove by evidence his entitlement to the vacant throne. He cannot succeed by merely averring that he is qualified as the appellants have done in the instant case. However, where a plaintiff sues in a representative capacity on behalf of a ruling house which is to nominate a successor or successors to the chieftaincy either in question, he would have locus standi to maintain and prosecute the action. [Momoh v. Olotu (1970) 1 All NLR 117; Adefulu v. Oyesile (1989) 5 NWLR (Pt.122) 377 referred to.] (Pp. 519-520, paras. H-E; 520-521, paras. H-C)

Per ONU, J.S.C. at page 521, paras. D-F:

"The court below, having with respect, held that the action was not properly brought in a representative capacity the latter holding that the 2nd appellant has no locus standi in the matter, is unassailable on the authorities. I am of the view that the mere fact that the trial court granted the application for the joinder of the 2nd appellant as a co-plaintiff does not, without more, clothe him with the standing to challenge the appointment of the 5th respondent. Besides, the ordinary membership of the Atewogboye ruling house is not a license to entitle him to bring the action when he never proffered any peculiar to him other than the general right of the ruling house."

6. On Duty on litigant to disclose locus standi in a matter
A party intending to challenge or take any legal steps to protect any interest before a court must have and demonstrate his locus standi on the matter. This requirement of the law which is now constitutionally recognised in section 6(b)(6) of the Constitution of the Federal Republic of Nigeria, 1979. From the foregoing, it is clear that before any person can call in aid the judicial process of the courts of law, the matter or matters on which he wants a decision must relate to his civil rights and obligations. Where he is unable to show that he has either civil rights or obligation, he will be held to have no locus standi or standing. In the instant case, it can be seen from the pleading that the 2nd appellant, apart from an expression of a general interest with the members, indicated no personal interest in the throne at Ewi of Ado Ekiti or the struggle to fill same. [Adesanya v. President of the Federal Republic of Nigeria (1981) 2 NCLR 358; A.-G. Kaduna State v. Hassan (1985) 2 NWLR (pt.8) 483 referred to.] (P.519, paras. A-G)

7. **On Principle of exceptional construction of statute**
Where the main object and intention of a statute are clear, it should not be reduced to a nullity by a literal following of the language, which may be due to want of skill or knowledge on the part of the draftsman unless such language is intractable. Thus, if the general provision of a statute is ambiguous, it is the duty of the court to give meaning to meet ambiguous expression. In the instant case, in giving effect to the provision of section 11A of the Chiefs Edict of Ondo State, one has to note the intention of the legislature and the circumstances leading to its promulgation. The trial court therefore developed what is called exceptional construction. All that the trial court did was to make the law. *Board of Customs & Excise v. Barau* (1982) 10 SC 48 referred to.] (P.523, paras. C-G)
8. **On Golden rule of interpretation of statute**
It is a canon of interpretation that the court will lean against a construction that will produce an absurdity or an avoidable invalidity. In the instant case, in the interpretation of section 117 of the Chiefs Edict, the lower courts legitimately employed the canons of interpretation that would best aid the purpose of the law and not to defeat its aim. [*Adigun v. Governor of Oyo State* (1987) 1 NWLR (Pt. 53) 678 referred to.] (P.524, paras. A-B)
9. **On Interpretation of statute to discover intention of law maker**
If the words of a statute are ambiguous, then the intention of parliament must be sought first in the statute itself, then in other legislation, and contemporaneous circumstances, and finally in the general rules laid down and often approved, namely, by ascertaining what was the common law before the making of the Act, what was the mischief and defect for which the common law did not provide, what remedy parliament hath resolved and appointment to cure the disease of the remedy. In the instant case, since it is acceptable that the Chiefs Edict is ambiguous, the trial court had a duty to seek the intention of the law maker to decipher what it intended by the particular provision in section 11A thereof. [*Ifezue v. Mbadugha* (1984) 1 SCNLR 427 referred to.] (P.524, paras. B-E)

Per ONU, J.S.C. at pages 524-525, paras. G-C:

"I am therefore of the firm view that the courts below in their interpretation of the provisions of section 11 A of Edict No.4 of 1991, it is legitimate to apply any of the canons of interpretation that will best aid the purpose of the law and not to defeat its aim. In the light of the above I will not hesitate to employ the "Mischief" rule of interpretation of statutes to solve the riddle of the provisions of section 11 A of Edict No.4 of 1991 (hereinafter called Edict for short). Should this be accepted, the court will look at the history of the Edict, its purpose and the wrong that it seeks to set right or correct. Edict No.4 of 1991, it must be noted, was aimed at validating the reign of late Oba Adelabu whose reign was set aside by the Chief Judge of Ondo State in case No. HAD/48/84: *Victor Adegoke Adewumi v. The Attorney-General of Ondo State & 17 Ors* delivered on 30/11/90. In this wise, I agree with the respondents that the course of the appeal rests on the application and interpretation of application of section 11A of the 1991 Chiefs Edict - the law having been promulgated to cure the defect, if any in late Adelabu's appointment vide paragraph 33 of the statement of claim which avers that:

'33. The plaintiffs will further contend at the trial that it is still the turn of Atewogboye Ruling House to produce a successor to late Oba Aladesanmi notwithstanding the purported reign of late George Adelabu of the judgment in HAD/48/84.'”

Nigerian Cases Referred to in the Judgment:

A.-G., Kaduna State v. Hassan (1985) 2 NWLR (Pt.8) 483
Adefulu v. Oyesile (1989) 5 NWLR (pt.122) 377
Adesanya v. President of the Federal Republic of Nigeria (1981)
2 NCLR 358
Adigun v. Gov., Oyo State (1987) 1NWLR (Pt. 53) 678
Afolabi v. Adekunle (1983) 2 SCNLR 141
African Newspapers of Nigeria Ltd. v. Federal Republic of
Nigeria (1985) 2 NWLR (pt.6) 137
Ajuwon v. Akanni (1993) 9 NWLR (pt. 316) 182
Amodu v. Obayomi (1992) 5 NWLR (Pt.242) 503
Atoyebi v. Gov., Oyo State (1994) 5 NWLR (Pt.344) 290
Bankole v. Pelu (1991) 8 NWLR (Pt. 211) 523
Bello v.A-G., Oyo State (1986) 5 NWLR (Pt. 45) 828
Board of Customs &Excise v. Barau (1982) 10 SCA8
Busari v. Oseni (1992) 4 NWLR (Pt.237) 557
Dike v. Nzeka (1986) 4 NWLR (Pt.34) 144
Fawehinmi v.Akilu (1987) 4 NWLR (Pt.67) 797
Gwonto v. State (1983) 1 SCNLR 142
Ifezue v. Mbadugha (1984) 1 SCNLR 427
Kosile v. Folarin (1989) 3 NWLR (Pt.I07) 1
Maizabo v. Sokoto N.A. (1957) SCNLR 142
Mobil Oil [Nigeria] Limited v. Federal Board of Inland Revenue (1977) 3 SC 97
Momoh v. Olotu (1970) 1 All NLR 117
Nkado v. Obiano (1993) 4 NWLR (Pt. 287) 305
Ogbimi v.Ololo (1993) 7 NWLR (Pt.304) 128
Oje v. Babalola (1991) 4 NWLR (Pt.185) 267
Olubode v. Salami (1985) 2 NWLR (Pt. 7) 282
Onajobi v. Olanipekun (1985) 4 SC. 158
Onwujuba v. Obienu (1991) 14 NWLR (Pt.183) 16
Onwuka v. Omogui (1992) 3 NWLR (Pt. 230) 393
Orubu v. N.E.C. (1988) 5 NWLR (Pt.94) 323
Oyeyipo v. Oyinloye (1987) 1 NWLR (Pt.50) 356
Thomas v. Olufosoye (1986) 1 NWLR (Pt.18) 669
Ukaegbu v. Ugoji (1991) 6 NWLR (Pt.196) 127
Ukejianya v. Uchendu (1950)13 WACA45

Foreign Cases Referred to in the Judgment:

Sneade v. Wotherton Barytes and Lead Mining Co. Ltd. (1904) 11 K.1B 295 at 297
Tva v. Hill 43 U.S. 158 (1979)

Nigerian Statutes Referred to in the Judgment:

Chief's (Amendment) Edict No.4, 1991, S. 11A

Chief's Edict of Ondo State, 1984 Ss. 8 & 11

Constitution of the Federal Republic of Nigeria, 1979 S. 6(6)(b)

Nigerian Rules of Court Referred to in the Judgment:

High Court of Ondo State (Civil Procedure) Rules, 1987, 0.5, IT. 7, 11 & 15

Book Referred to in the Judgment:

Halsbury Laws of England, 3rd Edition, Vol. 36, page. 388

This was an appeal against the decision of the Court of Appeal which affirmed the judgment of the High Court dismissing the suit of the appellants. The Supreme Court, in a unanimous decision, dismissed the appeal.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal: Abubakar Bashir Wali, J.S.C.(Presided and Read the Leading Judgment), Emanuel Obioma Ogwuegbu, J.S.C.; Uthman Mohammed, J.S.c.; Sylvester Umaru Onu, J.S.c.; Umaru Atu Kalgo, J.S.c.

Appeal No: SC.138/1996

Date of Judgment: Friday, 18th January, 2002 Names of Counsel: E. Abiodun Esq. -for the Appellants Obafemi Adewale, Attorney General of Ekiti State (with him, L.E. Ojo, Director of Civil Litigation, Ministry of Justice, Ekiti State and Nicholas O.A. Adala, Legal Officer, Ministry of Justice, Ekiti State - for the 1st and 2nd respondents Yusuf O. Ali, SAN (with him, KK Eleja and S.A. Oke Esq.) - for the 5th Respondent

Court of Appeal:

Division of the Court of Appeal from which the appeal was brought: Court of Appeal, Benin Names of Justices that sat on the appeal: Justin Thompson Akpabio, J.c.A. (Presided); Sylvanus Adiewere Nsofor, J.c.A. (Read the Leading Judgment); Atinuke Omobonike Ige, J.C.A

Appeal No: CA/B/162/94

Names of Counsel: A.-G., Adeniran for E. Abiodun - for the Appellants A.I. Adegbenro, Deputy Director of Civil Litigation -for the 1st and 2nd Respondents Yusuf O. Ali, SAN (with him, W.I. Egbiwote and K.K Eleje) -for the 5th Respondent

High Court:

Name of the High Court: High Court, Ado Ekiti

Name of the Judge: Aguda, J.

Suit No: HAD/25/91

Date of Judgment: Friday, 2nd July, 1993

Names of Counsel: Attorney General of Ekiti State - for

L.O. Aladetoyinbo, Esq. -for the 3rd and 4th Defendants Ade Awomolo -for the 5th Defendants C.J. Chukura for the 6th and 7th defemdants.

Counsel:

E. Abiodun Esq. -for the Appellants Obafemi Adewale, Attorney General of Ekiti State (with him, L.E. Ojo, Director of Civil Litigation, Ministry of Justice, Ekiti State and Nicholas O.A. Adala, Legal Officer, Ministry of Justice, Ekiti State -for the 1st and 2nd respondents Yusuf O. Ali, SAN (with him, KK Eleja and S.A. Oke Esq.) for the 5th Respondent.

WALL, J.S.C. (Delivering the Leading Judgment): By paragraph 14 of the statement of claim, the plaintiffs seek for the following reliefs against the defendants:

"WHEREOF the plaintiffs claim against the defendants:

- i. DECLARATION that 1st - 4th defendants were aware of the various motions for injunction in HAD/48/84 and other steps taken to conclude the case when the 1st - 4th defendants flagrantly rushed the purported selection of a new Ewi of F Ado-Ekiti without due regard to the processes of law.
- ii. DECLARATION that only Omo Orites qualified under 1960 Declaration on Ewi of Ado-Ekiti can be lawfully considered for G appointment as Ewi of Ado-Ekiti.
- iii. DECLARATION that the 5th defendant is not an Omo Orite and does not qualify to become an Ewi of Ado- Ekiti under the 1960 Declaration.
- iv. DECLARATION that the 1984 Declaration on H Ewi of Ado-Ekiti under which the 5th defendant was purportedly appointed is invalid, irregular null and void.
- v. DECLARATION" that the purported appointment of the 5th defendant based on the 1984 Declaration on Ewi of Ado-Ekiti is invalid null and void.
- vi. DECLARATION that after the passing away of Oba Aladesanmi from Aroloye Ruling House, it is the turn of Atewogboye Ruling House to present the next Ewi of Ado-Ekiti.
- vii. DECLARATION that the 1st-4th defendants were parties to suit No. HAD/48/84 the plaintiff v. 1st defendant and 17 Ors.
- viii. INJUNCTION restraining the 5th defendant from parading himself as the Ewi of Ado-Ekiti and the other defendants from recognising Ewi of Ado-Ekiti." After the pleadings had been duly filed and exchanged the 1st defendant the Attorney-General of Ondo State brought an application dated 7th day of April, 1992 in the trial court seeking the following:

"ORDER of this Honourable Court dismissing the claims of the plaintiffs/respondents in its entirety by virtue of the fact that this Court lacks the competence and jurisdiction to pronounce upon, or take cognizance of, and grant reliefs claimed by the plaintiffs/respondents. Or in alternative:

1. ORDER dismissing the claim in its entirety for failure to disclose any reasonable cause of action or any cause of action at all.
2. ORDER dismissing and or striking out the plaintiffs' claim in toto for lack of locus standi of the plaintiffs to ask for or be entitled to any of the reliefs claimed.
3. ORDER dismissing the action, as it smacks of an abuse of the process of the court, vexatious and frivolous.
4. AND for such order or other orders as the Court may deem fit to make in the circumstances.

GROUNDS OF THE APPLICATION

1. The Applicant was legally, lawfully and constitutionally appointed the Ewi of Ado-Ekiti by the erstwhile Military Governor of Ondo State.
2. The plaintiffs' claim is a direct challenge and attack on the power of the Military Governor of Ondo State to enact and promulgate Edict No. 11 of 1984 i.e. Chiefs Edict of 1984.
3. The plaintiffs' action is also a direct challenge to the power of the Military Governor to enact and promulgate the Chiefs (Amendment) Edict of 1991.
4. The plaintiffs' action is a challenge to the power of the Military Governor to make a subsidiary legislation to wit Legal Notice No. 11 of 1991. Notification of Appointment of recognised Chief.
5. The combined effect of Decree Nos. 1 and 13 of 1984, take away the power and jurisdiction of the court to entertain the suit.
6. The Plaintiffs lack locus standi to institute the action and ask for the reliefs formulated.
7. The suit is an abuse of the Court's process and discloses no reasonable cause of action.

TAKE FURTHER NOTICE that the applicant shall at the hearing of this motion reply on all the processes filed so far in the cause."

The application was vehemently opposed by the plaintiffs/respondents who filed counter-affidavit to that effect. Learned counsel on both sides addressed the court for and against the application. It was adjourned to 16 -2 - 93 for ruling. This was on 8/ 12/92.

In response to the letter dated 6th April, 1993, by the learned trial Judge and in which he invited learned counsel representing the parties to submit further written submissions on the interpretation of section 11A of the Chiefs Edict No.11 of 1984 inserted therein by section 7 of the Chiefs (Amendment) Edict, 1991, the request was complied with. The ruling was further adjourned to 21/7/93. In a comprehensive ruling delivered by Aguda, J, he came to the following conclusion:

"In conclusion, I hold that by virtue of section 11A of the Chiefs Edict neither of the two plaintiffs/respondents nor their ruling house (Atewogboye ruling house) has any cause of action to institute or maintain this suit which is therefore hereby dismissed."

Aggrieved by the decision of the trial court, the plaintiffs/respondents appealed to the Court of Appeal, Benin Division and at the end of the exercise it delivered a judgment in which it concluded (per N so for JCA) as follows:

"In the final analysis, the issues as formulated by the appellants in the appellants' brief of argument, canvassed and agitated in this appeal must ex necessitate to be resolved in favour of the respondents and co ipso; against the appellants. The grounds of appeal from which those issues were distilled ought to be, therefore, dismissed. And I do hereby dismiss them accordingly. I affirm the ruling on the 2/7/93 by the learned trial Judge (O.O. Aguda.) The appeal is devoid of any merits. It is therefore dismissed by me.

Both Akpabio and Atinuke 1ge JCA agreed with the lead judgment. Dissatisfied with the judgment of the Court of Appeal, the plaintiffs have further appealed to this court. The facts of the plaintiffs' case as presented before the trial court can be stated briefly as follows: Facts of the plaintiffs case the chieftaincy of Ewi of Ado-Ekiti became vacant with the demise of the then holder, Oba Aladesanmi, on 7/1/83. By the customary law of Ado-Ekiti the chieftaincy alternates between the two recognised Ruling Houses to wit:

- (a) Aroloye Ruling House
- (b) Atewogboye Ruling House

The immediate past Ewi, Oba Aladesanmi came from Aroloye Ruling House so it was the turn of the Atewogboye Ruling House to nominate and present a candidate to fill in the vacant stool. In the selection exercise that followed the demise of Oba Aladesanmi, George Adelabu was selected by the King-makers of Atewogboye Ruling House and presented to fill the vacant stool and was duly appointed under the 1984 Chieftaincy Declaration of Ewi of Ado-Ekiti. He performed the requisite traditional rights and ceremonies and was duly approved as Ewi by the Military Governor.

The present 1st plaintiff in suit No. HAD/48/84: Victor Adegoke Adewunmi A.G. of Ondo State & 17 Ors. promptly challenged the appointment of George Adelabu on grounds that:

"1. The customary law relating to the selection of candidates to the office of Ewi of Ado-Ekiti on the death of Oba Aladesanmi in the Declaration made under section 4(2) of the Chieftaincy Law, 1957, on 1/6/60 and approved on 28/10/60.

Under the 1960 Declaration only members of ruling house of the male line who are sons of the previous holder of the title, born to him by Olori during his reign can be selected and presented as eligible candidate.

Abilagba i.e the 1st son to a ruling Ewi by one of his predecessors Olori is not eligible.

The previous Ewi according to the customary law of Ado-Ekiti could make females Ewi provided there is no male issue.

The said George Adelabu was not duly appointed, as he did not satisfy the prevailing customary law for selection, appointment and succession to the vacant stool of Ewi of Ado- Ekiti.

Any purported appointment to the Ewi of Ado-Ekiti stool under any other customary law different from 1960 Declaration would be null and void."

In the brief of argument filed by the plaintiffs, four issues were formulated for the resolution of this appeal which were equally adopted by the defendants in their brief of argument.

The four issues are as follows

"1. Whether or not the Court of Appeal was right to hold that the case was being prosecuted in a personal capacity and not in a representative capacity?

2. Whether or not the second appellant had locus standi?

3. Whether or not there were materials upon which the trial Court could have held that the late George Adelabu was duly appointed as required by section 11A of the Chiefs Edict? I

4. Whether or not Court of Appeal was right to affirm the judgment of the trial Court that amended and or altered the tense of a word in section 11 A of the Chiefs Edict despite the fact that there was no ambiguity in the said section?"

When the trial of suit No. HAD/48/84 was pending in the Ondo State High Court before the then late Chief Judge of that State, George Adelabu passed away in October, 1988. The learned Chief Judge delivered his judgment on 30/11/90 after the demise of George B Adelabu, declaring that the applicable customary law was the 1960 Declaration and that the latter's appointment under the 1984 Declaration which he declared null and void, was also declared null and void. The plaintiffs, as a result of the judgment filed the present suit in the High Court of Ondo State sitting at Akure seeking the reliefs stated in the earlier part of this judgment. Parties filed and exchanged briefs of arguments Henceforth in this judgment, the plaintiffs and the defendants will be referred to as the appellants and the respondents respectively.

In issues 1 and 2 the appellants argued and contended that the Court of Appeal was wrong to state that there was no legal basis for the appellants to state in their pleading that they were suing in a representative capacity following the trial court's order granting them leave to do so when they failed to amend the writ of summons to reflect that. The appellants submitted that the statement of claim they filed on 24/10/91 after the grant of the prayer to amend the writ was in line and in compliance with the amendment granted them by the trial court. It was the contention of the appellants under these issues that the Court of Appeal was wrong to affirm the decision F by the trial court that the 2nd appellant Alhaji Salami Oluyede had no locus standi in joining the 1st appellant to prosecute the case jointly for and on behalf of Atewogboye ruling house as there was no formal amendment of the writ of summons, when the same trial court had granted the prayers to amend and that same was reflected in the appellant's pleading as well as the respondent's statement of defence.

The respondents on their part submitted that although the general principle of law is that an amended statement of claim supersedes the writ of summons and it back-dates to the date the H writ was issued, but only when an amendment to the names of the parties suing in a representative capacity and the name of their principal are reflected on the writ will make such an amendment be effective and that failure to do so, renders the process deficient. It is also the contention of the respondents that the mere granting to the 2nd plaintiff/appellant by the trial court of leave to be joined and sue the case jointly with the 1st plaintiff/appellant in a representative capacity for and on behalf of Atewogboye Ruling House without formal amendment of the Writ of summons to reflect same, is not enough. The fact that the appellants had filed a statement of claim in which they were described suing jointly for and on behalf of Atewogboye Ruling House after the grant of the amendment, coupled with the treatment of the appellants by the respondents as such in their statement of defence filed thereafter was contended to be not enough to make the 2nd appellant a competent party in the proceedings and that it is only when the provision of Order 5 rule 11 (1) of the Ondo State High Court Rules is complied with, can the 2nd appellant acquire locus standing in the case.

On 7/10/91 the 2nd appellant as applicant and a party to be joined filed a motion on notice in the trial court on 7/10/91 in which he prayed as follows:
"MOTION ON NOTICE

"TAKE NOTICE that this Honourable Court will be moved on the 18th day of October, 1991 at the hour of 9 0' clock in the forenoon or so soon thereafter as the Counsel on behalf of the applicant can be heard for leave of this Honourable to add the applicant's name as the co-plaintiff suing jointly with the plaintiff herein in a representative capacity; Or that such other Order may be made as the Court may deem just."

The motion on notice is dated 3/10/91. It was supported by an affidavit sworn to by the applicant. He averred thus in the following paragraphs:

2. That I am from the Atewogboye ruling house, and I have the authority and consent of the Ruling House to bring this application and also to depose to this affidavit.
3. That the writ of summons in this suit was filed on 17th May, 1991.
4. That the plaintiff in this suit is yet to file his statement of claim in respect of this case.

5. That at the meeting of Atewogboye ruling house of 25th August, 1991 where both the present plaintiff and myself were present amongst others it was resolved by the entire ruling house that I should grant a co-plaintiff and jointly with the plaintiff prosecute this case in a representative capacity on behalf of the entire Atewogboye Ruling House (copy of the resolution is hereby attached and marked Exhibit "A")

6. That Atewogboye Ruling House has an interest in the subject matter of this suit which is the Ewi of Ado-Ekiti chieftaincy more so in view of the Chiefs (Amendment) Edict, 1991 and will definitely be affected by the outcome of this suit as our Ruling House still believes it is still our turn to present the candidate to the Ewi of Ado-Ekiti stool.

7. That if this application is granted the issues involved will once and for all be determined between the parties and consequently avoid multiplicity of action."

Also accompanying the motion in support thereof is the Resolution of the General Meeting authorising the 2nd appellant to be joined in the suit to wit: No. HAD125/91 "to prosecute the suit in a representation capacity for Atewogboye Ruling House". The document reads in full as follows:

"THE ATEWOGBOYE RULING HOUSE

26, OGBON ATO STREET,
c/o PRINCE E.O.
OGUNLADE,
P. O. BOX 32 OR BOX 93,
ADO-EKITI

RESOLUTION OF GENERAL MEETING APPOINTING
ALHAJI SALAMI OLUYELE TO JOIN IN SUIT
NO. HAD/25/91

At the meeting of Atewogboye Ruling House held on the 25th August, 1991 At Prince E. O. Ogunlade's House, 26 Ogbon Ado Street, Ado-Ekiti, where the issue in Suit No. HAD/25/91 Victor Adegoke Adewusi v. Attorney General Ondo State & Ors. was extensively discussed, the entire Ruling House thereby resolved that Alhaji Salami Oluyede be appointed to join as a co-plaintiff in the said suit with all rights and powers given to the two plaintiffs (i.e. Prince Victor Adegoke Adewusi and Alhaji Salami Oluyede) to prosecute the suit in a representative capacity for the Atewogboye Ruling House.

1. (Sgd.) Prince E. Ogunlade
Head of Atewogboye Ruling
House (Chairman).
2. (Sgd.) James Akeredolu
Secretary
3. (Sgd.) James Olajugbe
for Olukoro Branch
4. (Sgd.) Adeyemo Aje
for Ade Branch
5. (Sgd.) Raji Adewumi
Adewumi Branch

6. (Sgd.)Olayinka
Olanipekun
for Olanipekun Branch
7. (Sgd.) Salami Oluyede
for Oluyede Branch
8. (Sgd.) Ben Obenbe
for Obenbe Branch
9. (Sgd.) James Akeredolu
for Akeredolu Branch
10. (Sgd.) Alhaji Adeyoju
for Adeyoju Branch
11. (Sgd.) Lasisi Ogunlade
for Adelusi Branch
12. (Sgd.) Saliu Aladesuru
for Aladesuru Branch
13. (Sgd.) Alhaji Kunle Adelusi
for Adelusi Branch

The foregoing having been read and explained to all the parties by Akeredolu before affixing their marks/signatures." The application for the trial court on 18/10/91 in which Aguda J. granted the amendment ordered as follows "Order as prayed. There shall be no order as to cost." It was after this order that the appellants after obtaining extension of time to file their statement of claim did so on 24/10/91. The heading of the statement of claim reads:

"IN THE HIGH COURT OF ONDO STATE OF NIGERIA IN THE AKURE JUDICIAL
DIVISION HOLDEN AT AKURE

BETWEEN:

<p>A VICTOR ADEGOKE ADEWUMI) ALHAJI SALAMI OLUYEDE) (for themselves and on behalf of Atewogboye) Ruling House</p>	<p>SUIT NO. HAD/25/91</p> <p>PLAINTIFFS</p>
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<p>1. THE ATTORNEY-GENERAL) OF ONDO STATE</p> <p>2. THE SECRETARY, ADO-EKITI) LOCAL GOVT. COUNCIL)</p> <p>3. CHIEF T. A. OGUNRINDE)</p> <p>4. CHIEF KOLA FATOYO</p> <p>5. RUFUS ADEYEMO ADEJUGBE)</p> <p>6. PRINCE KUNLE ALADESANMI)</p> <p>6. AJAYI OLORUNFEMI (for and on behalf of Aroloye) Ruling House)</p>	<p>DEFENDANT</p>
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The 5th defendant filed a statement of defence and counter-claim which was headed as follow

"IN THE HIGH COURT OF JUSTICE
ONDO STATE OF NIGERIA
IN THE AKURE JUDICIAL
DIVISION HOLDEN AT AKURE

BETWEEN: SUIT NO. HAD/25/91
VICTOR ADEGOKE ADEWUMI ...
AND
THE ATTORNEY-GENERAL)
ONDO STATE
THE SECRETARY, EKITI CENTRAL) DEFENDANTS
LOCAL GOVERNMENT)
CHIEF KOLA FATOYO
RUFUS ADEYEMO ADEJUGBE) DEFENDANTS/COUNTER PRINCE KUNLE
ALADESANMI) CLAIMANTS
(for and on behalf of Aroloye)
Ruling House)
7. AJAYI OLORUNFEMI) DEFENDANTS"

The 3rd and 4th defendants responded to the statement of claim filed by the appellants.
They too filed a Statement of defence headed as follows:

IN THE HIGH COURT OF JUSTICE
ONDO STATE OF NIGERIA
IN THE AKURE JUDICIAL DIVISION
HOLDEN AT AKURE

BETWEEN: SUIT NO. HAD125/91
VICTOR ADEGOKE ADEWUNMI)
ALHAJI SALAMI OLUYEDE)
(for themselves and on behalf of) PLAINTIFFS
Atewogboye Ruling. House)
AND

1. THE ATTORNEY-GENERAL OF ONDO STATE
2. THE SECRETARY, ADO-EKITI LOCAL GOVERNMENT COUNCIL
3. CHIEF T. A. OGUNRINDE
4. CHIEF KOLA FATOYO
5. RUFUS ADEYEMO ADEJUGBE) DEFENDANTS"
6. PRINCE KUNLE ALADESANMI F
7. AJAYI OLORUNFEMI
(for and on behalf of Aroloye Ruling House)

The 1st and 2nd respondents who were the 1st and 2nd defendants, did not file statement of defence but the 1st defendant/respondent the Attorney-General of Ondo State brought an

application in the G trial court dated 7/4/1992 and filed on 8/4/1992 praying for the following reliefs

"ORDER of this Honourable Court dismissing the claims of the plaintiffs/respondents in its entirety by virtue of the fact that this Court lacks the competence and jurisdiction to pronounce upon, or take cognisance of, and grant reliefs claimed by the Plaintiffs/ Respondents.

Or in alternative,

1. ORDER dismissing the claim in its entirety for failure to disclose any reasonable cause of action or any cause of action at all.
2. ORDER dismissing and or striking out the plaintiffs' claim in toto for lack of locus standi of the plaintiffs to ask for or be entitled to any of the reliefs claimed.
3. ORDER dismissing the action, as it smacks of an abuse of the process of the court, vexatious and frivolous.
4. AND for such order or other orders as the Court may deem fit to make in the circumstance.

GROUNDINGS OF THE APPLICATION

1. The applicant was legally, lawfully and constitutionally appointed the Ewi of Ado-Ekiti by the erstwhile Military Governor of On do State.
2. The plaintiffs claim is a direct challenge and attack on the power of the Military Governor of Ondo State to enact and promulgate Edict No. 11 of 1984. i.e. Chiefs Edict of 1984.
3. The Plaintiffs action is also a direct challenge to the power of the Military Governor to enact and promulgate the Chiefs (Amendment) Edict of 1991.
4. The plaintiffs' action is a challenge to the power of the Military Governor to make a subsidiary legislation to wit Legal Notice No. 11 of 1991. Notification of appointments of recognised Chief.
5. The combined effect of Decree Nos. 1 and 13 of 1984, take away the power and jurisdiction of the court to entertain the suit.
6. The plaintiffs lack locus standi to institute the action and ask for the reliefs formulated.
7. The suit is an abuse of the court's process and discloses no reasonable cause of action.

TAKE FURTHER NOTICE that the applicant shall at the hearing of this motion rely on all the processes filed so far in the cause." The application was also headed as follows:

IN THE HIGH COURT OF JUSTICE OF ONDO STATE OF NIGERIA IN THE AKURE JUDICIAL DIVISION

BETWEEN: SUIT NO. HAD/25/91

VICTOR ADEGOKE ADEWUNMI)

ALHAJI SALAMI OLUYEDE)

(for themselves and on behalf of) PLAINTIFFS/ RESPONDENTS

Atewogboye)

Ruling House)

AND

1. THE ATTORNEY-GENERAL OF ONDO STATE)

2. THE SECRETARY, ADO-EKITI LOCAL GOVERNMENT COUNCIL)

3. CHIEF T. A. OGUNRINDE)

4. CHIEF K. OLA FATOYO) DEFENDANTS

5. RUFUS ADEYEMO ADEJUGBE)
 6. PRINCE KUNLE ALADESANMI
 7. AJAYI OLORUNFEMI
- (for and on behalf of Aroloye Ruling House)

The principle is that an amendment duly made takes effect from the date of the original document sought to be amended; and this applies to every successive further amendment of whichever nature and at whatever stage it is made. Therefore when a writ of summons is amended, it dates back to the date of the original issue of such writ and consequently the action will continue as if the amendment has been inserted from the beginning. See *Sneade v. Watherton* (1904) 1 K.B. 295 at 297. The trial court opined on page 112 lines 2 - 14 as follows

"The application was argued and the leave granted on October 18, 1991. However, an amended writ of summons was not filed showing that there were now two plaintiffs or that they brought this suit in a representative capacity. What followed next was that a statement of claim was filed on October, 24, 1991 in the 2nd paragraph of which Adewumi and Oluyede, as plaintiffs, aver that they are suing" in a representative capacity on behalf of Atewogboye Ruling House." The failure to file and serve a~ Amended Writ of summons, it would seem, means that Alhaji Salami Oluyede is not yet a party to this suit. The Ondo State Rules of the High Court does not specifically provide that an Amended writ of summons should be filed and served showing the name of a new plaintiff added to an existing suit by the leave of court."

and also on page 113 lines 5 - 12 further as follows

"In view of the plaintiffs' failure to comply with this requirement which, in my view, is mandatory, I hold that this suit has' not been properly brought in a representative capacity. This means that although Atewogboye Ruling House or its representatives has the locus standi to sue for, and in respect of, the reliefs claimed in this suit, this suit has not been properly instituted in its name directly or in a representative capacity. The Ruling House itself has not been named as a party to this suit."

The learned trial Judge in the excerpts of his judgment (supra) agreed that he granted the prayers for joinder and leave to prosecute the case in a representative capacity for and on behalf of Atewogboye Ruling House. He even went further to comment on the effectiveness of order 5 rule (11)(1) of the Ondo State High Court Rules in lines 11 - 14 on page 112 as follows:

"The On do State Rules of the High Court do not specifically provide that an amended writ of summons should be filed and served showing the name of a new plaintiff added to an existing suit by the leave of the court. "

In all civil litigations, it is the duty of the court to aim at, and to do, substantial justice and allow formal amendments as are necessary for the ultimate achievement .of justice and the end of litigation. While recognising that Rules of court should be observed and followed, it should also be emphasised that 'Justice is not a fencing game in which parties engage each other in a whirling of technicalities ". See *Joseph Afolabi & Ors. v. John Adekunle & Anor*, (1983) 2 SCNLR 141; (1983) 8 SC 98 at 117 - 119, per Aniagolu
I JSC.

It is evident from the motion filed by appellant for joinder and prosecuting the case in a representative capacity on behalf of Atewogboye Ruling House and the supporting documents particularly the resolution of Atewogboye Ruling House reproduced in this judgment, the statement of claim filed, the statements of defence and the Reply thereto and even the motion on notice filed by 1st defendant/respondent, the purpose of the amendment as granted was to allow the 22nd appellant be joined to the suit and to prosecute the same for and on behalf of Atewogboye Ruling House which no doubt had a stake in the case. The respondents were appreciative of that when they filed their respective statements of defence in the form and manner they did and it is my firm view that they were not misled. It is sufficient for a plaintiff wishing to amend his writ of summons to give briefly in a general form, the particulars of his amendment which will give the defendant reasonably sufficient information as to the details thereof. It is my view that the details of the amendments in this case were sufficiently provided in the statement of claim filed subsequent to the amendment and to which the respondents responded. To avert the injustice that could manifest in a situation like this, the courts are empowered to grant to a party leave to amend his writ of summons and pleadings; and where it becomes absolutely necessary, the court can make the amendment. The important thing is that such an amendment will foster the course of justice as between the parties as is necessary for the purpose of determining the real issue in dispute between them. The 2nd appellant was clothed with the authority by the Atewogboye Ruling House to join in the suit and prosecute same on its behalf. The decisions cited and relied on are not apposite.

In view of the principle and the authorities as regards amendment already referred to, I hold that the Court of Appeal was wrong in affirming the decision of the trial court that the 2nd appellant had no locus standi in the case and that the suit had not been brought in a representative capacity and that the reliefs claimed in the suit had not been properly instituted in the name of Atewogboye Ruling House directly or in a representative capacity.

I therefore resolve issues 1 and 2 in favour of the appellants. I shall next consider issues 3 and 4 together as they are inter-related. Under Issue 3 it was the submission of learned counsel for the appellants that since the appointment of George Adelabu was challenged and was a live issue in the present case having regard to paragraph 13 of the statement of claim, the respondents could not take advantage of Section IIA of the Chiefs Amendment Edict and ask for the dismissal of the action. It was the contention of the appellants that before that order could be made evidence must be called to prove or disprove the averments in paragraph 13 of the statement of claim.

B On issue 4 it was contended by the appellants that the trial court wrongly interpreted Section IIA of the Chiefs Edict and that the Court of Appeal was equally wrong in affirming that interpretation. It was submitted that the wording of Section 11A of the Edict is ambiguous and the trial court in interpreting it made some alteration to arrive at its conclusion that the section is clear and unambiguous and that the Court of Appeal was wrong to have justified the amendment effected to the existing law 5 inserting Section IIA.

In reply to the appellants' argument on Issue 3, the respondents submitted that Section 11A was validly made by the then Military Governor of the State and that its promulgation put to rest of the appellants' claim as they could not successfully challenge its promulgation.

On Issue 4 learned counsel did not say much in reply to the appellants' arguments and submissions, but stated that the purport and intent of Section IIA of the Edict was to legalise any selection and appointment that is duly made in accordance with Sections 8 and 11 of

"I hold that by virtue of section IIA of the Chiefs Edict neither of the two plaintiffs/respondents nor their Ruling House [Atewogboye Ruling House] has any cause of action to institute or maintain this suit which is therefore here dismissed."

The learned trial Judge after considering the oral and written submissions on the construction and interpretation of Section IIA (supra) came to the following conclusions:

1. There is no ambiguity, as far as I can see, in the provision now under consideration: neither of the interpretations open to me [as shown above] will produce an absurdity; and
3. The provision does not contain irrelevant or meaningless words."

The learned trial Judge having made the findings above, his remaining duty would be, in my opinion, for him to apply the law to the facts as ascertained by him earlier, but not to embark on speculative voyage to criticise and fault the drafting and grammatical construction of Section IIA (supra). When a Judge is faced with construction, interpretation and application of a statutory provision to the facts ascertained by him in a case, he must

- (a) Read the statute to ascertain whether and how it's meaning relates to the case in controversy;
- (b) If the language, Le the words or meaning ascertained from that language resolves the controversy, the inquiry terminates there;
- (c) But if the language or meaning does not resolve the controversy then the Judge must adjust and apply and appropriate judicial rule to decide and resolve the case or the issue in controversy. In the case of Mobil Oil [Nigeria] Limited v. Federal Board of Inland Revenue [1977] 3 SC 53. Particularly at page 74, Bello JSC [as he then was] re-stated the rule governing the interpretation of a statute") provision while considering Section 30A of the Companies Income Tax Act, as follows.

"The general rule for construing a statute has been stated by this court in a number of cases. The rule is: where the words of a statute are clear the court shall give effect to their literal meaning. It is only when the literal meaning may result in ambiguity or injustice that the court may seek internal aid within the body of the statute itself or external aid from statutes in pari material in order to resolve the ambiguity or avoid doing injustice: Olalere Obadare & Others v. The President Naadan West District Customary Court [1964] 1 All N .L.R. and Claude Nabhan v. George Nabhan (1967) 5 P"

The literal meaning of Section 11A of the Chiefs Edict is neither ambiguous nor misleading and its application to the facts as D ascertained by the learned trial Judge could not have resulted in any injustice having regard to the mischief which it was intended to remedy. As the Court of Appeal stated in its judgment, the duty of the learned trial Judge was to ascertain the law and apply it to the facts, E when it is clear and unambiguous, but not to amend or reconstruct it. In cases of statutory construction the court's authority is limited. Where the statutory language and legislative intent are clear and plain, the judicial inquiry terminates there. Under our jurisprudence, the presumption is that ill-considered or unwise legislation will be corrected through democratic process. A court is not permitted to distort a statute's meaning in order to make it conform with the Judge's own views of sound social policy. See TVA v. Hill, 43 U.S. 153 [1978].

Section 11 (A) of the Chiefs Edict was enacted to remedy the mischief brought about by the judgment in suit No. HAD/48/84, which annulled the reign of Oba George Adelabu as the Ewi of Ado-Ekiti. The Court of Appeal in its lead judgment rightly stated it thus as per Nsofor, JCA: that the makers of the Chiefs [Amendment] Edict No. 4 of 1991 had the foresight or foresaw the manifold sets of facts' or situations that would be called into existence in the possible event of the High Court

judgment in Suit No. HAD/48/84 going the way it did go. In my humble opinion that was the mischief the law giver intended to evade and avoid in promulgating the Chiefs [Amendment] Edict."

I have no difficulty in agreeing with the judgment of the Court of Appeal wherein Nsofor, JCA further stated that:

"By the application of the Chiefs (Amendment) Edict No.4 of 1991, Prince George Adelabu from the Atewogboye Ruling House had reigned from 1984 1988 as an Oba or Ewi of Ado-Ekiti, the judgment by the High Court notwithstanding. On the death of Oba George Adelabu from the Atewogboye Ruling House it became the turn of the Aroloye Ruling House to produce the next Oba or Ewi of Ado-Ekiti. And the 5th respondent was produced by the Aroloye Ruling House."

And upon proper consideration and interpretation of Section 11A of the Chiefs (Amendment) Edict No.4 of 1991 and the reasons stated already in this judgment, I agree with the conclusion correctly arrived at by the trial court and which was subsequently affirmed by the Court of Appeal that:

"By virtue of Section 11A of the Chiefs Edict, neither of the two plaintiffs/respondents nor their Ruling House (Atewogboye Ruling House) has any cause of action to institute or maintain this suit which is therefore dismissed. "

This issue is also resolved against the appellants. The appeal partially succeeds on the procedural issue of joinder of the 2nd appellant to the suit and to prosecute it jointly for and on behalf of Atewogboye Ruling House; other than that, it is hereby dismissed. The Ruling of the trial Judge which was subsequently affirmed unanimously by the Court of Appeal is hereby confirmed.

Each party shall bear its own costs in this appeal.

OGWUEGBU, J.S.C.: I have had the opportunity of reading the judgment of my learned brother Wali, J.S.c. and I agree with it and in the reasons given by him to which I cannot usefully add. The appeal partially succeeds on the issue of the joinder of the 2nd appellant to the suit. Short of this, the appeal is dismissed and each party is to bear its own costs in this appeal.

MOHAMMED, J.S.C.: I have had the privilege of reading the judgment just read by my learned brother, Wali, J.S.C, in draft, and I agree with him that the Court of Appeal was right to affirm the decision of the trial High Court that by virtue of section 11A of the Chiefs Edict, neither of the two plaintiffs/respondents nor their ruling House (Atewogboye Ruling House) has any cause of action to institute or maintain before the court. The appeal of the appellant on this issue is dismissed.

I also agree with my learned brother that the Court of Appeal was in error to affirm the holding of the High Court that the 2nd appellant had no locus standi to be made a party to the suit and that the suit had not been brought in a representative capacity. The main appeal has failed and it is dismissed. I also make no order as to costs.

ONU, J.S.c.: The appeal herein is in respect of a chieftaincy matter. It is against the judgment of the Court of Appeal Benin Judicial I Division dated the 26th day of April, 1996 whereby the said court dismissed the appellants' appeal against the ruling of an Ondo State High Court delivered by Oluwadare Aguda, J. in favour of the respondents and dated 2nd day of July, 1993 wherein the trial court declined jurisdiction on the ground of its incomplete to adjudicate on the matter.

The facts of the case as exhaustively set out in the leading judgment of my learned brother Wali, JSC, which I do not propose to repeat here in extenso except to delve straight into the consideration of the four issues adopted by the respondents' which I complain thus:

1. Whether or not the Court of Appeal was right to hold that the case was being prosecuted in a personal capacity?
2. Whether or not the second appellant had locus standi?
3. Whether or not there are materials upon which the trial court could have held that the late George Adelabu was duly appointed as required by section 11A of the Chiefs Edict?
4. Whether or not the Court of Appeal was right to affirm the judgment of the trial court that amended and or altered the tense of a word in section 11 A of the Chiefs Edict despite the fact that there was no ambiguity in the said section?

In treating the first issue which relates to the first two (i.e. grounds 1 and 2) of the grounds of appeal, it is pertinent firstly, to stress that the action was commenced by the first appellant who, the second appellant for purposes of prosecution, later applied to join in a representative capacity. The trial court duly acceded to his request based upon the resolution of the Atewogboye Ruling House authorising same on 18th October, 1991 describing themselves as suing for themselves and on behalf of the Atewogboye Ruling House as plaintiffs. Rather than proceeding to effect an amendment to the writ on the order of the trial court granted on 18/10/91, the appellants filed another application to amend the writ to reflect the earlier order of 18th October, 1991. Unfortunately, there was no order granted on the latter day as erroneously stated by the appellants in paragraph 5.2 of their brief that the writ of summons was amended. Rather, on that day as borne out by pages 13 and 26 of the record, the application was to amend the statement of claim and not the writ of summons. This point is put beyond doubt by a cursory reference to the order made by the trial court on the same 18/10/91 at page 29 of the record wherein that court granted an order of extension of time to file the statement of claim.

Contrary to the position postulated in paragraph 5.4 of the appellants' brief, the conduct of the parties cannot cure the fundamental defect of non compliance with the rules of that court by the appellants to amend the writ of summons to reflect the capacity in which they were suing on behalf of others. In this regard, it is pertinent to refer to what the Ondo State High Court rules provide:

Firstly, Order 5 rule 11 states:

"Before a writ is issued, it shall be endorsed

(a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which houses;

(b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is used."

Secondly, rule 15 of the same Order defines the word "issue" as used in rule 11 thus:

"Issue of a writ takes place upon its being signed by the Registrar or other officer of the court duly authorised to sign the writ."

Thirdly, and to dispose of this point, Order 11 rule 7 of the same Ondo State High Court rules provides thus:

"If the plaintiff sues or any defendant counter-claims in any representative capacity, it shall so be expressed on the writ. The court may order any of the persons represented to be made parties either in lieu of, or in addition to, the previously existing parties."

It is therefore glaring that from the above mandatory provisions of the rules of the trial court, the capacity in which a party intends to prosecute a case must be expressed on the writ first and foremost and that this must be done before the writ was issued. In this wise, the endorsement of the capacity in which a party prosecutes an action merely on the statement of claim is grossly inadequate for the purposes of the rules.

The word "shall" as copiously used in these rules make the provisions mandatory, peremptory and failure to comply therewith is a fundamental error in the proceeding. See *Onajobi v. Olanipekun* (1985) 4 Sc. 156 at 163; *Olubode v. Salami* (1985) 2 NWLR (Part 7) 282; *GWollto v. The State* (1983) 1 SCNLR 142 and *Bankole v. Pelu* (1991) 6 NWLR (Part 211) 545. See also *Chief Ifezue v. Mbadugha* (1984) 1 SCNLR 427 and *Oyeyipo v. Oyinloye* (1987) 1 NWLR (Pt.50) 356.

Thus, I agree with the submission of the appellants that it is the reliefs endorsed on the statement of claim that can supersede the claim endorsed on the writ of summons. To hold otherwise, will defeat the provisions of the rules of the trial court which ordered the parties to endorse the capacity in which they are prosecuting a matter on the writ of summons. Since the appellants have declined to appeal against some salient points especially those contained on pages 237, 238 and 240 of the record to allow them to canvass what they are now contending under this issue is to condone their arguing on a point not made out in a ground of appeal. As it is not every complaint in an appeal that will lead to a reversal of the decision appealed against and the appeal herein is a good example of such a situation, the non-consideration of all the complaints has not been shown to lead to a miscarriage of justice. In the instant case, apart from the issue of representative capacity, there are other issues on which the matter was decided against the appellants. I am however of the respectful view that this is not a proper case to overturn the concurrent findings of the courts below on the appellants' complaints on this point. See *Atoyebi v. Governor of Oyo State* (1994) 5 NWLR (Pt.344) 290. See also this Court's decision in *Ukaegbu v. Ugoji* (1991) 6 NWLR (Part 196) 127; *Onwujuba v. Obienu* (1996) 14 NWLR (Pt.183) 16 at 25 - 26 and *Nkado v. Obiano* (1993) 4 NWLR (Pt. 287) 305 at 32 l.

This Court has elucidated on this point in the recent case of *Oladejo Adewllyi Ajuwon v. Fadeke Akanni & 10 Ors.* (1993) 9 NWLR (Pt. 316) 182 at 205 per Iguh, JSC wherein his Lordship restated the point in the following words:

"In this regard, it must be emphasized that it is not every error of law that is committed by a trial or appellate court that justifies the reversal of a judgment. An appellant to secure the reversal of a judgment, must further establish that the error of law complained of did in fact occasion a miscarriage of justice and/or substantially affected the result of the decision. See *Olubode v. Salami* (1985) 2 NWLR (Pt. 7) 282. An error in law, which has occasioned no miscarriage of justice, is immaterial and may not affect the final decision of a court. This is because what an appeal court has to decide is whether the decision of the trial Judge was right and not whether his reasons were, and a misdirection that does not occasion injustice is immaterial. "

On the same point, Adio, JSC in his contribution at page 206 of there port stated as follows:

"It is only where the issue raised suo motu goes to the root of the case that it can be said that the error of law occasioned a substantial miscarriage of justice so as to warrant a reversal of the judgment. It is not every slip Oba Aladesanmi in January, 1983. The 1st plaintiff is still interested in the stool of Ewi of Ado-Ekiti."

It can be seen from the above pleading that 2nd appellant apart from an expression of a general interest with other members, indicated no personal interest in the throne or the struggle to fill same. This was the position of the matter on which counsel on all sides addressed the learned trial Judge and upon which he came to the conclusion that while the 1st appellant had locus standi to prosecute the case, the 2nd Appellant has none and this was the view endorsed by the court below in what amounted to concurrent findings on the point. It is trite law that a party intending to challenge or take any legal steps to protect any interest before a court must have and demonstrate his locus standi on the matter. This requirement of the law which is now constitutionally recognised in section 6(6)(b) of the Constitution of the Federal Republic of Nigeria 1979 provides as follows:

"(6) The judicial powers vested in accordance with the foregoing provisions of this section shall extend to all matters between persons or between government or authority, and to all actions and proceedings, relating thereto, for the determination of any question as to the civil rights and obligations of that person. (*Italics mine for emphasis*).

From the foregoing it is clear that before any person can call in aid the judicial powers of the courts of the land, the matter or matters on which he wants a decision must relate to his civil rights and obligations. Where he is unable to show that he has neither civil rights nor obligation, he will be held to have no locus standi or standing. See *Senator Abraham Adesanya v. President of the Federal Republic of Nigeria* (1981) 2 NCLR 358; *Attorney-General of J Kaduna State v. Hassan* (1985) 2 NWLR (Pt.8) 483. Locus standi denotes legal capacity to institute proceedings in a court of law. It is used inter-changeably with terms like standing and title to sue. See *Thomas v. Olufosoye* (1986) 1 NWLR (Pt.18) 669 at 685 and *Fawehinmi v. Akilu* (1987) 4 NWLR (Pt.67) 797. This means that the provisions 0; the Constitution in respect of locus standi now ensures that Nigeria no longer lacks any dearth or paucity of authorities. See *Busan v. Oseni* (1992) 4 NWLR (Pt.237) 557; *Amodu v. Obayomi* (1992) 5 NWLR (Pt,242) 503 at 511 - 512. How does a plaintiff show locus standi in chieftaincy matters as in the case in hand? The plaintiff in such a case has the duty to show the court that he has locus standi in a claim relating to the

filling of a vacancy in the chieftaincy. In particular, in a ruling house chieftaincy like that of Ewi of Ado-Ekiti, he must do more than relying on his membership to the chieftaincy, to wit:

1. He belongs to a ruling house;
2. That it is the turn of that ruling house to provide a candidate or candidates to fill the vacancy;
3. That there is or ought to be a vacancy on the throne;
4. That he is or was interested as an eligible candidate in the throne and;
5. That he had taken part as a candidate for the throne.

Be it noted that in a ruling house chieftaincy the right of ascension to the throne is that of the whole ruling house and not that of the individual members. A member who desires to take benefit of the right of the ruling house must aver in his statement of claim and prove by evidence his entitlement to the vacant throne. He cannot succeed as the appellants have done in the instant case by merely averring that he qualified. Quite apart from pointing to the Omo-orile theory of the 1st appellant, 2nd appellant also had a duty to aver that he would be qualified to contest and assume the throne, all things being equal.

In the case of *Momoh v. Olotu* (1970) 1 All NLR 117, a case almost on all fours with the one under consideration, this court held at page 127 of the report inter alia as follows:

"The plaintiff says he is a member of the Olukare family. The question may be asked, is it enough for plaintiff to state that he is a member of the family? Has he not got to state that he has an interest in the chieftaincy? Surely not every member of a chieftaincy family as such has interest in the chieftaincy title.

We are of the view that it is not enough for the plaintiff to state that he is a member of the family; he has to state further that he has interest in the chieftaincy title, and furthermore, state in his statement of claim how his interest in the chieftaincy title arose." (Italics is for emphasis).

As can be seen, the position of the 2nd appellant is admittedly even worse than that of the plaintiff in the *Olotu's* case (supra). In the latter case of *Timothy Adele Adefulu & 12 Others v. Bello Oyesile & 5 Ors.* 1989) 5 NWLR (Pt.122) 377 at 413 - 414 this court confirmed the *Olotu's* case (supra) wherein it held, inter alia, (per Ogundare, JSC) as follows:

"A ruling house will ordinarily consist of numerous persons. So, Agaigi Ruling House can eminently take advantage of the representative action procedure in the relevant rules of court as it has done here. In my judgment, the decision of *Momoh v. Olotu* (supra) supports the contention of counsel for the plaintiffs that since the plaintiffs are also suing in a representative capacity that is on behalf of the ruling house which is to nominate a successor or successors to the chieftaincy title in question, they, the plaintiffs have the locus standi to maintain and prosecute the present action. I therefore reject the contention of counsel for the defendants appellants that they, the plaintiffs, have no locus standi in this case."

The court below, having with respect, held that the action was not properly brought in a representative capacity the latter holding that the 2nd appellant has no locus standi in the matter, is unassailable on the authorities. I am of the view that the mere fact that the trial court granted the application for the joinder of the 2nd appellant as a co-plaintiff does not, without more, clothe him with the standing to challenge the appointment of the 5th respondent. Besides, the

ordinary membership of the Atewogboye ruling house is not a license to entitle him to bring the action when he never proffered any peculiar to him other than the general right of the ruling house. Furthermore, the appellants have failed to appeal on the salient findings of the court below on this point as exemplified on pages 244 and 245 of the record. On this ground alone issue 2 is bound to fail.

I will finally consider issue 3 which deals with grounds 4, 5, and 6 of the grounds of appeal which is whether the Court of Appeal was not correct to have agreed with the interpretation placed on the provisions of section IIA of the Chiefs Edict of Ondo State having regard to the facts contained in the statement of claim and supporting the affidavit filed to challenge the competence of the action by the 5th respondent. It is pertinent to note that in their statement of claim contained on pages 22 - 26 of the record, the appellants made copious references to all the facts relied upon in their concurrent decisions wherein they relied to arrive at their conclusion on this point, particularly the fact that:

- (i) There are two ruling houses for the Ewi of Ado Ekiti chieftaincy.
- (ii) That late Oba Adelabu reigned at least defacto from 1984 -1988.
- (iii) That there was a system of rotation between the two ruling houses to the Ewi of Ado Ekiti Chieftaincy.
- (iv) That late Oba Adelabu was from Atewogboye ruling house like the appellants.
- (v) That the 5th respondent was from Aroloye ruling house.
- (vi) That the 5th respondent had been selected and appointed as the successor to Oba Adelabu.

These and the other facts emanating from the statement of claim are the facts relied upon by the two courts below in interpreting the provisions of section IIA of the Chiefs Edict (ibid) of Ondo State which enacted as follows:

"IIA Where a ruling house whose turn it is to present a candidate to fill a vacancy in accordance with the provisions of section 8 of this Edict had been so called and had presented a candidate who having undergone all the processes of selection prescribed under that section and section 8A and was duly appointed to fill the vacancy, and performed functions as such chief before his candidacy for whatever reason was subsequently annulled, that person so appointed shall be deemed to have reigned and it shall be the turn of the next ruling house to present a candidate to fill the vacancy, and where there is only one ruling house, that chief whose candidature has been annulled shall be deemed to have reigned and shall not be qualified to be considered again."

The right and power of the courts to interpret statutes, agreements and other written documents are undoubted. It is a cardinal rule of construction that in seeking to interpret a particular section of a statute or subsidiary legislation one does not take the section in isolation but one approaches the question of the interpretation on the footing that the section is part of a greater whole. See *James Orubu v. N.E.C. & 13 Ors.* (1988) 5 NWLR (Pt. 94) 323. It is now accepted that where the words of a statute are clear, unambiguous and not doubtful as to its meaning and intendment see *Maizabo v. Sakata N.A.*(1957) SCNLR 142 the court will employ the literal or ordinary meanings of the words used and the intention of the law maker. See *Chief Dominic Onuorah Ifezue v. Livinus Mbadugha & Anor.* (1984) SCNLR 427 at 447 where the court stated inter alia, as follows:

"The object of all interpretation is to discover the intention of the law-makers which is deducible from the language used."

Furthermore, in performing this duty of interpretation the courts are enjoined to give adequate consideration to the words used in the statute. See *African Newspapers of Nigeria Ltd. & 22 Ors. v. The Federal Republic of Nigeria* (1985) NWLR (Pt.6) 137 at 140. If the general provision of a statute is ambiguous, it is the duty of the court to give meaning to that ambiguous expression. In giving effect to the provision of section 11 A of Chiefs Edict, one has to note the intention of the legislature and the circumstances leading to its promulgation. From my own reading of the legislation its intendment is to legalise any selection and appointment that is duly made in accordance with sections 8 and 11 of the Chiefs Edict but which appointment was subsequently annulled by court. The learned authors of *Halsbury's Laws of England* in paragraph 582 at page 289 state that:

"Where the main object and intention of a statute are clear, it should not be reduced to a nullity by a literal following of language, which may be due to want of skill or knowledge on the part of a draftsman unless such language is intractable."

The trial court in construing the provision of the Chiefs Edict at pages 122 and 123 of the record rightly adopted what the learned G author of *Maxwell on the "Interpretation of Statutes"* calls an exceptional construction. Thus, all that the trial court has done is to make the law *vide Board of Customs & Excise v. Alhaji Ibrahim Barau* (1982) 10 SCA8 at 128 - 129.

Be it noted that in the instant case, the trial court has not amended the provisions of section 11A of the Chiefs Edict; what the trial court did was to make corrections of careless or ambiguous language to really give the true meaning of the statute. This issue is also accordingly resolved in favour of the respondents.

It being a canon of interpretation that the court will lean against a construction that will produce an absurdity or an avoidable invalidity (see *Adigun v. Governor of Oyo State* (1987) 1 NWLR (Pt. 53) 678, I am of the view that in their interpretation of the provisions of section 11A of the Edict No.4 of 1991 in what in my view, constitute concurrent findings legitimately employed to canons of interpretation that will best aid the purpose of the law and not to defeat its aim.

In the light of the above, I must respectfully endorse and adopt here that as it is acceptable that Edict No.4 of 1991 looks (or appears) ambiguous, the court below had a duty to seek the intention of the law makers to decipher what it intended by the particular provision. The learned authors of *Halsbury's Laws of England* 3rd Edition Vol.36 page 388 paragraph 580 put it as follows:

"If the words of a statute are ambiguous, then the intention of parliament must be sought first in the statute itself, then in other legislation, and contemporaneous circumstances, and finally in the general rules laid down long ago and often approved, namely, by ascertaining what was the common law before the making of the Act, what was the mischief and defect for which the common law did not provide, what remedy parliament hath resolved and appointment to cure the disease of the remedy."

See *Ifezue v. Mbadugha & Anor.* (supra) wherein this court stated *inter alia* as follows:

"The object of all interpretation is to discover the intention of the law-makers which is deducible from the language used."

I am therefore of the firm view that the courts below in their interpretation of the provisions of section 11 A of Edict No.4 of 1991, it is legitimate to apply any of the canons of interpretation that will best aid the purpose of the law and not to defeat its aim. In the light of the above I will not hesitate to employ the "Mischief" rule of interpretation of statutes to solve the riddle of the provisions of section 11 A of Edict No.4 of 1991 (hereinafter called Edict for short). Should this be accepted, the court will look at the history of the Edict, its purpose and the wrong that it seeks to set right or correct. Edict No.4 of 1991, it must be noted, was aimed at validating the reign of late Oba Adelabu whose reign was set aside by the Chief Judge of Ondo State in case No. HAD/48/84: *Victor Adegoke Adewumi v. The Attorney General of On do State & 17 ors* delivered on 30/11/90. In this wise, I agree with the respondents that the course of the appeal rests on the application and interpretation of application of section 11A of the 1991 Chiefs Edict - the law having been promulgated to cure the defect, if any in late Adelabu's appointment vide paragraph 33 of the statement of claim which avers that:

"33. The plaintiffs will further contend at the trial that it is still the turn of Atewogboye Ruling House to produce a successor to late Oba Aladesanmi notwithstanding the purported reign of late George Adelabu of the judgment in HAD/48/84."

The above claim as can be seen is misconceived in that this court is not given to make moot decisions or decide hypothetical cases which have no bearing with the case the court is called upon to decide. See *Ikenye Dike & Ors. v. Obi Nzeka 11 & Ors.* (1986) 4 NWLR (Pt.34) 144; *Saude v. Abdullahi* (1989) 4 NWLR (Pt.116) 387 and *Kosile v. Folarin* (1989) 3 NWLR (Pt.107) 1 at 8. In respect of 1st and 2nd respondents the four issues formulated in this appeal which clearly overlap the four submitted by 3rd to the 7th appellants' issues my brief comments are as follows:

(i) That the appointment/selection of 5th respondent as Ewi of Ado-Ekiti is governed by section 11A of the Chiefs (Amendment) Edict 1991 amending the Chiefs Edict of 1984 (ibid hereinbefore set out in this judgment).

(ii) That based on these provisions the Atewogboye Ruling House have no locus standi to institute the action.

(iii) Thus, both the trial and the lower court came to a right conclusion when they held that the 2nd appellant had no locus standi to prosecute the action.

This is because the appellants only filed a statement of claim wherein they described themselves as suing for and on behalf of the Atewogboye Ruling House - the mere fact that other parties treated the appellants as suing for and on behalf of Atewogboye Ruling House is not a waiver of the provision of Order 5 rule 11 (1) of the Ondo State High Court rules as regards the requirements of a writ of summons. Both the trial and the lower courts therefore came to a right conclusion when they held that second appellant had no locus standi to prosecute the action. What sections 8 and 11 of Chiefs Edict No. 11 of 1984 provide for is a procedure to follow in filling a vacant stool in the State; while section 11A, an amendment to the principal Edict, provides for the situation where the appointment of a chief duly made under sections 8 and 11 is annulled by court. An appointment is duly made

under sections 8 and 11 of the Chiefs Edict when the ruling house whose turn it is to present candidate(s) for the vacant stool does so. The name(s) of the nominee(s) is/are then sent to the kingmakers for their consideration. The king makers would then select and appoint the most suitable candidate for the State Executive Council's approval. There is no dispute that there are two ruling houses for the Ewi of Ado-Ekiti chieftaincy, namely Aroloye and Atewogboye. It is also not disputed that Oba Aladesamni from Aroloye joined his ancestors in January, 1983 and it became the turn of Atewogboye to fill the vacant stool. Oba George Adelabu from Atewogboye was installed in 1984 and reigned till 1988 when he also joined his forebears. His appointment was subsequently annulled by the High Court in 1990. The appellants have not demonstrated that Oba Adelabu was not from the Atewogboye ruling house. They have not : shown that he was neither appointed by the kingmakers nor earlier selected by his ruling house. The fact that he was appointed by the kingmakers and that his appointment was approved by the State Executive Council in compliance with the Chiefs Edict 1984 as amended was not disputed.

Thus, whether the claim of the appellants was suck out or dismissed by the trial court, the issue still remains that the appellants cannot successfully challenge the installation of the 5th respondent as the Ewi of Ado-Ekiti by virtue of section 11A of the Chiefs Edict.

See Ogbimi v. Ololo (1993) 7NWLR (pt.304) 128 at 134 and Nosiru Bello & Ors. v. Attorney-General, Oyo State (1986) 5NWLR (Pt.45) 828.

For the above reasons and tae more detailed ones contained in the leading judgment of my learned brother Wali, JSC a preview of which I had, I, too, will dismiss the appeal, affirm the decision of the trial court which the court below confirmed. I endorse the order as to costs therein made.

KALGO, JSC.: I have had a preview of the judgment just delivered by my, learned brother Wali JSC in this appeal and I agree with his reasoning and conclusions. For the reasons given in the judgment, which I adopt as mine, I also find no merit in the appeal. I dismiss it and affirm the decision of the Court of Appeal. I also award N10,000.00 costs to the respondents.

Appeal dismissed