

1. GOVERNOR OF KWARA STATE
2. IFELODUN LOCAL GOVERNMENT
3. IFELODUN/ IREPODUN TRADITIONAL COUNCIL

V.

1. MR. Joseph ALABI EYITAYO

(Suing of himself and on behalf of Adiyelefon Ruling House)

2. ALHAJI SALAWU OYEDOLA

(Suing for himself and on behalf of Fakayode Ruling House)

3. MR. P.O. IRANLOYE

(Suing for himself and on behalf of Niniola Ruling House).

COURT OF APPEAL  
(KADUNA DIVISION)

UMAKU ABDULLAHI, J.C'.A. (*Presided*)

JAMES OGENYI OGEBE, J.C.A. (*Read the Leading Judgment*)

IBRAHIM TANKO MUHAMMAD, J.C.A.

TUESDAY, 26TH NOVEMBR, 1996

*APPEAL - Grounds of Appeal - How framed - Need to be concise and succinct.*

*CHIEFTANCY MATTERS - Existing declaration of Customary Law relating to Chieftaincy - Duty on Court to give effect thereto.*

*COURT - Academic question - Attitude of court thereto.*

*CUSTOMARY LAW Existing declaration of Customary Law relating to Chieftaincy -Duty on Court to give effect thereto.*

*DOCUMENTS - Documentary evidence - Party tendering document in evidence Duty on to in establish relevance of document tendered.*

*PRACTICE AND PROCEDURE – Academic question – Attitude of court thereto.*

*STATUTES – Section 34(1)High Court Laws of Northern Nigeria, 1963 – Purport of.*

Issues:

1. Whether the trial court had the jurisdiction to make the declaratory orders having regard to Exhibit D.
2. Whether the trial court was right in not giving Exhibit C any probative value.

The respondents as plaintiffs herein sued the appellants as defendants in the Ilorin High court claiming six declaratory reliefs in respect of the chieftaincy title of Elese of Irese land in Igbaja and a perpetual injunction.

The case went to trial and the respondents called 5 witnesss in their effort to establish their case. The respondents also tendered various documents including Exhibit D entitled the Elese of Irese (Confirmation of Declaration) Edict, 1987.

The appellants did not give oral testimony before the trial Court but addressed the court on points of law at the close of the case.

In its judgment, the trial Court granted the 1st and 3rd reliefs of the respondents' claim and dismissed the other reliefs. The appellants appealed against the judgment of the trial High Court whilst the respondents, also dissatisfied, cross-appealed.

In resolving the appeal, the Court of Appeal considered Section 34(1) of the High Court Law of Northern Nigeria, 1963 and section 2 of the Elese of Irese (Confirmation of Declaration) Edict, 1987 of Kwara State which provide:-

S.34(1) "The High Court shall observe, and enforce the observance of every, native law and custom which is not repugnant to natural justice, equity, and good conscience nor incompatible either directly or by implication with any law for the time being in force, and nothing in this law shall deprive any person of the benefit of any such native law or custom."

"The Declaration of the Irese Customary Law relating to the Selection of the Elese of Irese contained in the schedule hereto, which said declaration is neither repugnant to natural justice, equity and good conscience nor incompatible either in its terms or by necessary implication with any enactment, shall be regarded as the Customary Law relating to the subject matter."

**Held** (*Unanimously allowing the appeal and dismissing the cross-appeal*): -

*On jurisdiction of High Court to make declaration of customary law governing chieftaincy-*

The high court in exercise of its unlimited jurisdiction vested in it by section 236(1) of the Constitution of the Federal Republic of Nigeria, 1979, has power to make declaration that a particular ruling house is entitled to present candidate for the chieftaincy of any given community in issue. In carrying out the judicial task, the court will from the evidence adduced ascertain and find whether there is customary law on the matter and what the customary law is. [Adigun v. A.-(Oyo State (1987) 1 NWLR (Pt. 53) 678 at 702 referred to and applied] (Pp.126-127, paras. H-C)

*On Whether court can make declaration of customary law –*

It is not the duty of any Court for that matter, to make declarations of customary law for any community. The function of the court is merely to enforce such a law or to identify and enforce it. [Imonikhe v. A.-G., Bendel State (1992)6 NWLR (Pt.248) 396 referred to (P.127, para. D

*On Scope of power of court to make declaration on customary law*

Once a declaration has been made in respect of native law and custom on customary law with regard to any subject, that declaration becomes the native law and custom to the exclusion of all other laws and practices and the court's only duty is to enforce it. [ *Inwnikhe v. A.-G., Bendel State* (1992)6 NWLR (Pt.248) 396 referred to and applied] (P.128, paras. D-E) PER OGEBE, J.C.A. at page 129, paras. C-E:

"It follows therefore that the trial Judge faced with Exhibit was clearly in error in making declaration of 4 Killing Houses instead of only one provided for in Exhibit D. He should have realised that the whole purport of the claim was to challenge the correctness of Exhibit D. The forum for doing that was certainly not the court. The duty of the court was to enforce Exhibit I). If the respondents were not satisfied with Exhibit I), they should carry their struggle to the Executive arm of the Kwara State Government to amend Exhibit I). There was evidence before the trial court that before Exhibit was made there was a Public Commission of Inquiry in which the respondents were participants. The report of that inquiry is Exhibit C. If they were not happy with the result of exhibit D which led to the promulgation of Elese of Irese (Confirmation) Edict, 1987, their only option was to go back to the Kwara State Government to seek redress by amendment of that Edict. I want to emphasise that it is not the duty of the High Court or any court for that matter to declare native law and custom for any community. The function of the court is to identify native law and custom and apply it to the facts in dispute."

*On Purport section 34(1) High Court Law of Northern Nigeria, 1963-*

Section 34(1) of the High Court Law of Northern Nigeria, 1963 empowers a High Court to observe and enforce the observance of native law and custom which is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication with any law for the time being in force. (P. 128, paras. F-G)

*On Duty on party tendering document in evidence before Court-*

It is the duty of any party that tenders a document to establish before the Court its relevance and what it expects the Court to do with it. It is not the duty of the court to do its own independent research and come out with the result of its own private investigation. [ *Saraki v. Kotoye* (1992) 9 NWLR (Pt. 269) 156 referred to] (P.129, paras. F-H)

Per OGEBE, J.C.A. at page 129, paras. E-G:

"On issue 2, the learned counsel for the appellants complained that Exhibit D. i.e. the Report of the Commission of Inquiry into the Elese Chieftaincy title in Igbaja was tendered by consent of all parties and the trial court was wrong not to have given it any probative value without assigning reasons therefor. This complaint is completely baseless. The appellants simply tendered Exhibit 'C' without leading any evidence to connect it with the case. They did not refer the court to any relevant portion of Exhibit C. It was not the duty of the trial Court to do its own independent research into Exhibit C and come out with the result of its private investigation. It is the duty of any party that tenders a document to establish before the court relevance and what it expects the court to do with it. In this case the appellants failed to establish the probative value of exhibit C and even before this court, they have not made any attempt to satisfy us of the value of Exhibit C."

*On Attitude of court to academic questions -*

A court of law must not engage in an academic exercise [ *Saraki v. Kotoye* (1992) 9NWLR (Pt. 264) 156 referred to] (P. 129,para. H)

*On How grounds of appeal should be framed -*

Grounds of appeal are supposed to be succinct and right to the point, avoiding verbosity and arguments. They are supposed to be couched in such a way that an *advocate*, can, as soon as it is read, understand the purport and complaint in the ground without any strain whatsoever. A ground of appeal simply couched and condensed in as few words as possible, with **particulars as condensed without necessarily resorting to the reproduction of evidence is a ground that is well framed and a pride to its author.** [*Okoroji v. Ngwu* (1992) 9 NWLR (Pt. 263) referred to] (P. 126, paras. A-B)

*Nigerian cases referred to in the Judgment:*

*Adigun v. A.G., Oyo State* (1987) 1 NWLR (Pt. 53) 678.

*Anyaoke v. Adi* (1986) 3 NWLR (Pt.31) 731.

*linoiukhe v. Attorney-General, Bendel State* (1992) 6 NWLR (Pt. 248) p. 396.

*Okorojt v. Ngwu* (1992) 9 NWLR (Pt. 263) 113

*Saraki v. Kotoye(W)iy* NWLR (Pt. 264) 156.

**Appeal:**

These were an appeal and a cross-appeal against the judgment of the trial court granting part of the reliefs claimed by the respondents. The Court of Appeal, in a unanimous decision,

allowed the appeal and dismissed the cross-appeal.

### **History of The Case.**

#### *Court of Appeal:*

*Division of the Court of Appeal to which the Appeal was brought:* Court of Appeal, Kaduna.

*Names of Justices that sat on the appeal:* Umaru Abdullahi, J.C.A. (Presided); James Ogehyi Ogede, J.C.A.; (Read the Leading Judgement); Ibrahim Tanko Muhammead, J.C.A.

*Appeal No:* CA/K/21/93

*Date of Judgment:* Tuesday, 26<sup>th</sup> November 1996.

#### *Counsel:*

Chief Lambo Akanbi, (with him, S.A Mohammed, Acitng Director, Civil Litigation, Kwara State) – for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> appellants.

Yusuf O. Alli, Esq. for the respondents.

**UK, J.C.A.. (Delivering the Leading Judgment):** The 1<sup>st</sup> to the 3<sup>rd</sup> respondents sued the appellants before an Ilorin High Court in its amended writ of summons claiming as follows:-

1. That the Elese of Irese chieftaincy being a traditional chieftaincy under native law and custom of Irese land has the following: i.e. Ailiyelefon, Fakayode, Niniola and Abidolu as the ruling houses or families entitled to occupy the throne of Elese of Irese land.
2. That the right to occupy the Elese of Irese chieftaincy upon the death of its incumbent, according to the Native Law, Custom and Traditions of Irese land is open to all eligible grand children of the four ruling Families/ Houses i.e. Adiyelefon, Fakayode, Niniola and Abidolu in rotational order.
3. That any native rule, custom and tradition which purports to limit the right to ascend the throne of Elese of Irese land to the grand children of any of the ruling I louse or family to the exclusion of others is wrong, is regular, inconsistent with the native law, custom and traditions of Irese land, all is also repugnant to the principles of equity and good conscience.
4. That any directives of the defendants and any nominations which purports to limit the right to occupy the throne of Elese of the families of Atolagbe,,Snlc,Oyelewo,TafaYoro, Buraimo.Togunde, Sanusi,Babalola, Iosebikan, Saidu and Olaoye is wrongful, irregular and inconsistent with the custom, tradition and practice of Elese of Irese land and repugnant to the principles of equity and good conscience.
5. An order selling aside any native rule or practice which purports to limit the rights lo ascend the throne of Elese of Irese land to the families of Abidolu but that all male grand children of Elese's Adiyelefon, Fakayode, Niniola and Abidolu are by native law, custom and tradition entitled by natural rights to occupy the throne of Elese of Irese land.
6. An interim order of injunction restraining the defendants, their servants, agents, privies or any persons or authority howsoever from implementing, putting into effect, recognising, validating or continue to execute, put into effect, validate, act upon, recognise, approve or take steps to fill the vacant stool of Elese of Irese on the basis of the native law and custom which limit the rights of any prince to ascend the throne, pending the final determination of the substantive suit.
7. A perpetual injunction restraining the defendants, their servants, privies, or any person(s) howsoever, deriving authority from them and in whatever capacity, from implementing, act upon, validate or recognise the native law and custom which deny the grand children

of Adiyelefon, Niniola, and Fakayode's right to ascend the throne of Eleseland.”

The parties exchanged pleadings before the lower court and the matter went into full trial. The respondents called 5 witnesses in their effort to establish that there were 4 ruling Houses which were entitled to fill the vacant chieftaincy title of Eleseland at Igbaja. These ruling houses are:

1. Adiyelefon
2. Fakayode
3. Niniola
4. Abidolu

Various documents were tendered before the lower court including exhibit D titled Eleseland (Confirmation of Declaration) Edict, 1987.

The appellants did not give oral testimony before the trial court but addressed the court on points of law at the close of the case. The trial court in its judgment granted the 1st and 3rd reliefs only.

The concluding part of the judgment reads :-

"From the evidence before me I am satisfied that the plaintiffs have proved that by the native law and custom of Eleseland, four ruling houses namely Adiyelefon, Fakayode, Niniola and Abidolu are the ruling houses entitled to occupy the throne of Eleseland and that any native rule, custom or tradition which purports to limit the right to ascend the throne of Eleseland to the grand children of any of the ruling houses or family to the exclusion of others is wrong and inconsistent with the native law and custom of Eleseland. I therefore grant the 1<sup>st</sup> and 3<sup>rd</sup> reliefs sought by the plaintiffs while the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> reliefs, not having been proven, are refused. The plaintiffs have similarly failed to prove their entitlement to the interim and perpetual injunctive orders sought as per paragraphs 6 and 7 of their amended writ of summons dated 3<sup>rd</sup> November, 1988 and these are accordingly refused."

The appellants were dissatisfied with this decision and appealed to this court on 6 grounds of appeal. In accordance with the rules of this court they filed a brief C' of argument in which they identified 4 issues for determination as follows:-

" I. Whether having regard to the circumstances of this case the 1<sup>st</sup> and 3<sup>rd</sup> reliefs of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein are compatible with the provisions of Eleseland (Confirmation of Declaration) Edict No. I 1 of 1987 and/or whether the said two reliefs are not challenging the validity of the Edict.

2. Whether Exhibit C (the report of the Judicial Commission of Inquiry into Eleseland Chieftaincy Stool) has any probative value which the court ought not to have discountenanced.

3. Whether failure of the learned trial Judge to give effect to the Edict No- 11 of 1987 has not led to a miscarriage of justice.

4. Whether the reliefs No. I and 3 of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents disclose any cause of action against the appellants, more so when the respondents referred contradictory evidence."

The respondents were not satisfied with the judgment and cross-appealed. They filed respondents' brief embodying also their brief in respect of the cross-appeal. In the brief they identified 4 issues for determination as follows:-

" I. Whether having regard to the claims of first respondents as couched in their amended statement of claims. the trial Judge was wrong to have granted the reliefs I and 3 when none of the two reliefs granted directly or indirectly challenged the validity of the provisions

of Edict No. 11 of 1987 nor the competence of the military Governor to make same.

2. Whether the learned trial Judge having regard to the whole circumstances of the case was not right to have placed no probative value on the contents of Exhibit C, when the trial Judge would still have arrived at the same conclusion even if he had acted on the content of the said Exhibit, more so, when the appellants have not shown that the stand of the learned trial Judge of Exhibit 'C' has led to any miscarriage of Justice in the matter.
3. Whether the learned trial Judge was not right having regard to all the uncontroverted and cogent evidence given all the trial by the respondents to have granted the reliefs 1 and 3 granted by the trial Judge in the circumstances of the case, and whether the said reliefs granted disclosed any reasonable cause of action against the appellants.
4. Whether the learned trial Judge was right to have refused to grant reliefs 2,4,5, 6 and 7 of the claims of the respondents having regard of the overwhelming, uncontradicted evidence in support of the reliefs and having regard to the ancillary nature of the reliefs to reliefs 1 and 3 granted by the trial Judge."

Their last issue arose from the cross-appeal. The appellants filed a reply brief in response to the cross appeal. The respondents raised a preliminary objection to grounds 5 and 6 of the appellants' grounds of appeal. These grounds reads:-

The learned trial Judge misdirected himself in law by granting the two reliefs to the respondents when the respondents' case discloses no reasonable or any cause of action against the appellants. *Particulars of Error in Law*

By the combined provisions of sections 6(6)(b) and 236(1) of the 1979 Constitution, the High Court is empowered to

hear and determine questions in which the existence of a legal right or interest or claim, among others, is in issue,

The respondents' claim and evidence did not disclose any breach by the appellants of any of respondents' rights or interest in the subject matter.

The claims of the 1st-3rd respondents heard and determined by the learned trial Judge amounts to fruitless exercise as it is not grounded on any justiciable issue.

The learned Trial Judge misdirected himself on the facts when he granted the two reliefs despite the contradictory evidence proffered by the respondents.

1. The respondents claim that there are 4 ruling houses in Irese land and that these four ruling houses evolved in 1944.
2. There is evidence before the learned Trial Judge that after past Obas Adiyelcloir, Eakayode and Niniola, none of their descendants has ever become an Elese of Irese land.
3. The so-called Ruling Houses of Adiyeldon, Eakayode, and Niniola are names of three past Obas in different settlements before the formation of Irese land,
4. Documents and evidence before the court show that Irese land was founded by Oba Abidolu and his House has been providing the Obas for the stool of Elese since then."

The objection to ground 5 is that it is vague and there is no correlation between the ground of appeal and the particulars supplied. It was also argued that ground 6 alleged misdirection of facts without setting out the portion of the judgment where the misdirection occurred. The learned counsel relied on the cases *NTA & Ors. V. Anigbe & ors (1972) 5S.C*

*156; Okorojiv. Ngwu (1992) 9NWLR (Pt. 263) 113 and Atiyaoke v. Adi (1986) 3 NWLR (Pt.31)*

731. The appellants in their reply brief submitted that the 2 grounds of appeal complained of are good grounds of appeal and met adequately the requirements of Order 3 Rule 2(2),(3) and (4) of the Court of Appeal Rules.

I have examined die grounds of appeal, and even though they may not be elegant, they are however satisfactory and accord with the relevant rules of court. As pointed out by teamed brother Mukhtar JCA in *Okoroji v. Ngwu* (1992)9 NWLR (IPt. 263) I 13 at p. 130.

"... grounds of appeal are supposed to be succinct and right to the point, avoiding verbosity and arguments. They are supposed to be couched in such a way that an *advocate*, can, as soon as it is read, understand the purport and complaint in the ground without any strain whatsoever. A ground of appeal simply couched and condensed in as few words as possible, with particulars as condensed without necessarily resorting to the reproduction of evidence is a ground that is well trained and a pride to its author."

I agree entirely with this view wand since the appellants' complaints in these grounds of appeal are clear enough, I shall consider the issues arising from them.

On the 1<sup>st</sup> issue the learned counsel for the appellants submitted that Exhibit D, i.e. Elese of Irese (Confirmation of Declaration) Edict, 1987 was tendered with the consent of all parties. Exhibit D established only one ruling House, Abidolu Ruling House, while the reliefs the trial Judge granted in reliefs 1 and 3 established -I ruling houses for the same chieftaincy. The learned counsel said this was an indirect challenge of Exhibit D and the trial court had no power to challenge the validity of an Edict. He referred to the case of the *Governor of Ondo State v. Adewumi* (1988) 3 NWLR (1\*1.82) 280.

At, the 3rd Issue is related to the 1st, I shall summarise the argument along with the 1<sup>st</sup> Issue. The learned counsel for the appellants submitted that exhibit D which is the current native law and custom applicable to the stool of Elese of Irese created only one ruling house with eleven branches, The trial judge was bound to give effect to this law by virtue of section 24(1) of the High Court Law of Kwara State. If he had done so, he would not have granted reliefs 1 and 3 which are directly inconsistent with exhibit D. He finally submitted that the trial Judge by failing to give effect to Exhibit 'D' caused a miscarriage of justice.

In reply, the learned counsel for the respondent submitted that reliefs 1 and 3 are declaratory as to the applicable native law and custom to the Elese of Irese throne, and that the declaration sought to expand the number of ruling houses from I in 1. He submitted that the High Court had the jurisdiction to make the declaratory orders in reliefs I and 3. He relied heavily on the case of *Prince Yahaha A Ors' v. The Attorney General of Oyo State & Ors* (1987) 1 NWLR (Pt. 53) b 7H at 702. Learned counsel further argued that there is nothing in Exhibit D to preclude the High Court from making declaration as to the native law and custom on Elese of Irese. It only attempted to set up one ruling house. At best it is an imperfect declaration.

On die 3rd Issue the learned counsel for the respondents adopted his argument in respect of the 1st issue. He said that with the uncontradicted evidence before the trial court it was imperfectly in order in granting reliefs 1 and 3. I have seriously considered the argument offered on both sides in respect of issues I and 3 taken together, and in my respectful view the trial Judge had jurisdiction to entertain the matter as correctly pointed out by the learned counsel for the respondents. The case of *Prince Yuhuyu Adigun & Ors v. Attorney-General* (supra) settled that matter. At page 705 of that report, Obaseki JSC resolved the matter thus:-

"It is clear from the Chiefs Law that the court cannot assume the functions of the Chieftaincy Committees as regards the making of declarations of Customary Law

governing the selection and appointment of traditional chiefs. The appellants have not by their claim asked for that declaration. What the appellants seek is a declaration that Ogunmakinde And is under the customary law of Iwo the only ruling house. In carrying out this judicial task, the court will from the evidence adduced ascertain and find whether there is a customary law on the matter, what the customary law is and then decide whether on the evidence Ogunmakinde And is the only Ruling house in Iwo from which Oluwo of Iwo can be selected and appointed. It cannot in my view be correctly and legally argued that the High Court cannot entertain and adjudicate on such a claim in exercise of its unlimited jurisdiction vested in it by section 236 (1) of the Constitution of the Federal Republic of Nigeria 1979." (Italics ours)."

The question then is, having assumed jurisdiction over the case, was the trial Court right to ignore exhibit D, Elese of Irese (Confirmation) Edict, 1987 to mad-Hre declarations inconsistent with the provisions of Exhibit D. As pointed out by Obaseki JSC, it is not the duty of any court for that matter to make declarations of customary law for any community. The function of the court is merely to enforce such a law or to identify and enforce it. In the case of *Chief Imonikhe & Anor v. Attorney-General Bendel State & Anor* (1992)6 NWLR (Pt.248) p.396 the Supreme Court dealt with the effect of a registered declaration under Chiefs Laws at pages 410 to 411 as follows:-

"What then is the effect of the procedure for the announcement and installation which were not sanctioned by the Chieftaincy Declaration, Exhibit A? Now under the Chiefs Law of Bendel State (Cap.37. of 1970) a, it expressly provided in section 9 as follows:-"Where a declaration in respect of a recognised chieftaincy is registered under this part, the mailers (herein stated (including any recommendation under paragraph of subsection (2) of section (4) shall be deemed to be the customary law regulating the selection of a person to be the holder of that chieftaincy to the exclusion of any other customary usage or rule 9."

It follows that when such a declaration is duly made and registered under section 11 of the Law, it becomes the constitution and embodiment of the entire customs of the town with respect to chieftaincy matters, to the exclusion of any other customary rule of usage.

Learned Senior Advocate for the appellant has submitted that the manner of election and installation of the 3rd defendant by a representative of Emabo quarters as the Ukor is unconstitutional, illegal, and so null and void. Learned counsel for the respondent has on the other hand submitted that the situation whereby the representatives of the family units and of Emabo Quarters had to act was created by the refusal of the Odionwere to act in accordance with true result of the voting during the election of the Ukor. It is my view that if the Declaration had intended such an act, it should have expressly said so; but it did not so provide. Now a constitution is the organic law, a system or body of fundamental principles according to which a nation, a state body politic or organisation is constituted and governed. In this respect, we have the Constitution of the Federation of Nigeria and of the States of the Federation, as well as that of different organisations in the country and of different towns and villages of Nigeria. Any act which infringes or runs contrary to those organic principles or systems is said to be unconstitutional. So, in this case the form of announcement of the election and of installation is unconstitutional. Being contrary to the Chieftaincy Declaration of them and the Chiefs Law, they are also illegal. It follows also that they are illegal and void and of no effect. Now a declaration derives its force and authority from the Chiefs Law

itself and is absolutely binding on all who may be interested in this Chieftaincy. As it is so, it appears to me that on the production of Exhibit A, all that the Court should have done was to apply its provisions to the facts of the case as established by cv evidence.”

From this Supreme Court judgment it is clear that once a declaration has been made in respect of native law and custom or customary law with regard to any subject, that declaration becomes the native law and custom to the exclusion of all which laws and practices and the court's only duty is to enforce it.

Section W(I) of the High Court Laws of Northern Nigeria 1963 applicable in Kwara State reads:-

"The High court shall observe, and enforce the observance of, every native law and custom which is not repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by implication with any law for the time being in force, and nothing in his law shall deprive any person of the benefit any such native law or custom."

This is the section that empowers a High Court to observe and enforce the observance of native law and custom which is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication with any law for the time being in force. It is not just a declaration, it is an edict of the Kwara State Government which clearly states in section therefore as follows:

"The Declaration of the Supreme Customary Law Relating to the Selection of the Lase of Irese contained in the schedule hereto, which said declaration is neither repugnant to natural justice, equity and good conscience nor incompatible either in its terms or by necessary implication with any enactment, shall be regarded as the Customary law relating to the subject matter," paragraph 1 of the Schedule is relevant and is also quoted hereunder:-

"There shall be one Ruling House in Irese known as the Abidolu Ruling House consisting of eleven branches corresponding to the descendants of the following eleven sons of Abidolu, namely:-

- a. Atolagbe;
- b. Sule;
- c. Oyelewe
- d. Tafa Yare
- e. Buremo;
- f. Togunde;
- g. Sanusi;
- h. Babalola
- i. Lasebikan;
- j. Saidu;
- k. Olaye."

It follows therefore that the trial Judge faced with Exhibit was clearly in error in making declaration of 4 Ruling Houses instead of only one provided for in Exhibit D. He should have realised that the whole purport of the claim was to challenge the correctness of Exhibit D. The forum for doing that was certainly not the court. The duty of the court was to enforce Exhibit D. If the respondents were not satisfied with Exhibit D, they should carry their struggle to the Executive arm of the Kwara State Government to amend Exhibit D. There was

evidence before the trial court that before Exhibit D was made there was a Public Commission of Inquiry in which the respondents were participants. The report of that inquiry is Exhibit C. If they were not happy with the result of exhibit D which led to the promulgation of Elese of Irese (Confirmation) Edict, 1987, their only option was to go back to the Kwara State Government to seek redress by amendment of that Edict to, emphasise that it spot the duty of High Court or any court for that matter to declare native law and Custom and apply it to the facts in dispute.

On issue 2, the learned counsel for the appellants complained that Exhibit D. i.e. the Report of the Commission of Inquiry into the Elese Chieftaincy "title in Igbaja was tendered by consent of all parties and the trial court was, wrong not to have given it any probative value without assigning reasons therefore. This complaint is completely baseless. The appellants imply tendered Exhibit without leading any evidence to connect it with the case. They did not refer to the court to any relevant portion of Exhibit C. It was not the duty of the trial Court to do its own independent research into Exhibit C and come out with the result of its private investigation. It is the duty of any party that tenders a document to establish before the court its relevance and what it expects the court to do with it. In this case the appellants failed to establish the probative value of exhibit C and even before this court, they have not made any attempt to satisfy us of the value of Exhibit C. As pointed out earlier this complaint is misconceived.

In view of what I have said in respect of issues 1 and 3, Issue 4 which seeks to answer the question whether or not reliefs 1 and 3 disclosed any reasonable cause of action against the appellants is now academic and I shall decline to go into it. A court of law must not engage in an academic exercise. See *Saraki v. Kotoye* (1992)9 NWLR (Pt. 264) 156.

On the respondents' cross-appeal the main argument is that the learned trial s Judge having granted reliefs 1 and 3 ought to have granted all the other reliefs which are ancillary to reliefs I and 3 already granted. As I have stated in the resolution of Issues 1 and 3 the trial court was wrong in granting reliefs 1 and 3 all, and so the question of granting the remaining reliefs is now totally irrelevant,; For the sake of emphasis I want to say that the trial Judge faced with Exhibit D which was and still is the only applicable native law and custom with regard to the Elese of Irese stool had no business in granting any of the reliefs sought by the ": respondents, lie should have dismissed the respondents' claim in its entirety.

From all I have said in this judgment, I am satisfied that this appeal has merit Accordingly the appeal is allowed and the judgment of the trial court in its entirety is set aside. In its place I dismiss the respondents' claim before that court. The cross-appeal lacks merit and it is hereby dismissed. The respondents shall pay the costs of N2.000 to the appellants for this appeal.

**ABDULLAH1, J.C.A:** I read before now, the judgment just delivered by the learned brother Ogebe J.C.A. I agree with the reasons given and the conclusion I reached. I adopt them as mine. I abide by all the consequential orders made therein.

**MUHAMMAD, J.C.A.:** I read in advance the lead judgement of my learned brother Ogebe, J .C.A I agree with his reasoning and conclusions. I allow the main appeal as it is meritorious. I dismiss the cross-appeal as it lacks merit. The appellants are entitled to N2.000.00 costs in the appeal.

*Appeal allowed  
Cross appeal dismiss*