

SIMEON OLADOYE
LIASU ADEYEMO
SALAMI OJEDEYI
(For themselves and on behalf of Oladagbo and Lata Ruling Houses of Ijimoba)

v.
THE ADMINISTRATOR, OSUN STATE
ATTORNEY-GENERAL, OSUN STATE
OBA OYEYODE, OYESOSIN, (Ejigbo of Ejigbo)
TIJANI OGUNKUNLE (Representing Atoyebi Family)

SUPREME COURT OF NIGERIA

SC.39/1990

ABUBAKAR BASHIR WALI, J.S.c. (*Presided*)
MICHAEL EKUNDAYO OGUNDARE, J.S.c. (*Read the Leading Judgment*) UTHMAN MOHAMMED, J.S.c.
SYLVESTER UMARU ONU, J.S.c.
ANTHONY IKECHUKWU HIGH, J.S.c.

FRIDAY, 13TH DECEMBER, 1996

ACTION - Hypothetical and academic question - What amounts to - Relevant consideration.

APPEAL - Concurrent findings of lower courts - Attitude of Supreme Court thereto When it will interfere - When it will not interfere.

CHIEFTAINCY MATTERS -Section 22(4) of Chiefs Law of Oyo State (applicable to Osun State) - Constitutionality on Whether it can withstand the jurisdiction of the High Court.

CHIEFTAINCY MATTERS - Minor chiefs - Appointment of - Power of prescribed authority

CHIEFTAINCY MATTERS - Prescribed authority - Power of under Section 22(3) of the Chiefs Law of Oyo State (applicable to Osun State) - Scope and limit of - Whether power includes making for chieftaincy declaration.

CONSTITUTIONAL LAW - Section 22(4) of Chiefs Law of Oyo State (applicable to Osun State) - Constitutionality of-Whether can stand the jurisdiction of the High Court.

COURT - Declaratory orders - Power of court to make.- Where derived - Scope and limit of

CUSTOMARY LAW - Customary law - Proof of - How done.

CUSTOMARY LAW- Minor chiefs - Appointment of - Power of prescribed authority - Scope of

CUSTOMARY LAW - Prescribed authority - Power of under Section 22(3) of the Chiefs Law of Oyo State (applicable to Osun State) - Scope and limit of Whether power includes making of chieftaincy declaration.

CUSTOMARY LAW - Traditional evidence - Conflict therein - Resolution of Rule in Kojo II v. Bonsie (1957) 1 WLR 1123 - Whether precludes court from evaluating evidence of traditional history.

EVIDENCE - Customary law -Proof of-How done.

EVIDENCE- Proof- Onus of proof in civil cases – On Whom lies - Relevant governing principle.

EVIDENCE - Traditional evidence - Conflict therein - Resolution of - Rule-in Kojo II v. Bonsie (1957) 1 WLR 1123

Whether precludes court from evaluating evidence of traditional history.

INTERPRETATION OF STATUTES - Repeal of a statute - Effect on subsidiary legislation, instrument or order made there under.

INTERPRETATION OF STATUTES. Repeal of enabling Act or law- Subsidiary instrument or order made under the enabling Act of Law - Legal status of- Effect of the repeal on subsidiary instrument or order made under the repealed Act. or law.

JUDGMENT AND ORDER - Declaratory orders - Power of court to make - Where derived - Scope and limit of.

JURISDICTION - Section 22(4) of Chiefs Law of Oyo State (applicative to Osun State) Constitutionality of - Whether can oust the jurisdiction of the High Court.

PRACTICE AND PROCEDURE- Hypothetical and academic question - What amounts to - Relevant consideration,

STATUTES - Repeal of a statute - Effect on subsidiary legislation , instrument or order made there under.

STATUTES – Repeal of enabling Act or Law -Subsidiary instrument or order made under the enabling Act or Law - Legal status of - Effect of the repeal on subsidiary instrument or order made under the repealed Act or Law.

WORDS AND PHRASES -Hypothetical and academic question - What amounts to - Relevant consideration.

Issues:

1. Whether having regard to section 22(3) of the Chiefs Law Cap. 21 Laws of Oyo State of Nigeria, 1978, applicable in Osun State, it is not ultra vires a Prescribed Authority to determine a dispute involving conflicting claims by families aspiring to present candidates -to the Chieftaincy as opposed to determining a dispute whether a person has been appointed in, accordance with Customary Law applying to the Chieftaincy in dispute?
2. Whether the Court of Appeal was right in declining to re-evaluate the evidence of the parties on the ground that the learned trial Judge had made a finding on *the* evidence when there was proof that the evaluation made by the Learned trial Judge on conflicting traditional histories, and inferences to be drawn from the evidence led was wrong and when in any event the evidence was not one bothering on demeanor of witness?
3. Whether the Court of Appeal was right in affirming the decision of the trial court on the issue of number of Ruling Houses in Ijimoba and/or question of common ancestry to or between the appellants and the 4th respondent?
4. Whether the Court of Appeal was right in affirming the decision of the learned trial judge in view of the inconsistency occasioned by the learned trial Judge's grant of some of the reliefs sought and the refusal of others?
5. Whether the Court .of Appeal was right in affirming the decision of the High Court reached Without or in excess of jurisdiction by granting to there, respondents a relief not claimed by them.

Facts:

The appellants as plaintiffs instituted an action against the respondents as defendants in the High Court of Oyo State holden at Ogbomoso claiming certain declarations relating to the Baale of Ejimoba chieftaincy and an order of injunction:

The case of the appellants was that according to the custom of Ijimoba, there are only two ruling houses. That is Oladogba and Lala from which the Baale of Ijimoba is appointed. This customary law, they claimed, is reflected in the Chieftaincy Declaration made in 1957 in respect of the chieftaincy. Prior to 1976, the Baale of Ijimoba chieftaincy was a recognized title coming under Part II of the Chiefs Law of Oyo State. The title was in 1976 reduced in status to a minor chieftaincy with the Elejigbo of Ejigbo as the Prescribed Authority in respect thereof.

The defence, on the other hand, claimed that there are three ruling houses, that is, Oladogba, balaand Atoyebi and that to that extent, therefore, the Chieftaincy declaration of 1957 is faulty.

Following the complaint of members of the Atoyebi family of their exclusion from the 1957 declaration, the 3rd respondent, the Elejigbo, conducted an inquiry, which found that there are three ruling houses. All the three families were informed of the findings of the inquiry and that the findings and recommendations would be forwarded to the State Government. The government accepted the findings of the inquiry and ordered that steps be taken to amend the Declaration to include Atoyebi ruling house after the vacancy occasioned by the death of Baale Akinloye in June 1978 might have been filled with a candidate from the Lala ruling house. Pursuant to the directive of the State Government, Chief Ashiru Jaiyeola from Lala ruling house was appointed and installed the Baale of Ijimoba in January 1981. The Chieftaincy declaration was subsequently amended to include the Atoyebi family and the appellants being dissatisfied with the amendment, instituted the action leading to this appeal.

At the end of the trial the trial court found that there

are three ruling houses and dismissed the 1st and 4th claims of the appellants but granted the orders sought in the 2nd and 3rd claims; The appellants were dissatisfied with the judgment of the trial High Court and appealed to the Court of Appeal. The Court of Appeal affirmed the finding of the trial court that there are three ruling houses that are entitled to the Baale of Ijimoba, chieftaincy. The Court of Appeal dismissed the appeal,

Further dissatisfied, the appellants appealed to the Supreme Court contending that the 3rd respondent acted *ultra vires* his powers as the prescribed authority when he conducted an inquiry to determine the number of ruling houses eligible to present candidates in the event of a vacancy arising in the chieftaincy and that the concurrent finding of the two lower courts that there are three ruling houses in respect of Ijimoba chieftaincy was wrong.

In determining the appeal the Supreme Court construed the following statutory provisions: Section 22(3) & (4) of the Chiefs Law Cap. 21 Laws of Oyo State of Nigeria, 1978 (applicable to Osun State):

Where there is a dispute whether a person has been appointed in accordance with customary law to a minor chieftaincy, a prescribed authority may determine the dispute."

The decision of the prescribed authority to approve or not to approve an appointment to a minor chieftaincy; or (b) determining a dispute in accordance with sub-section (3) of this section shall be final and shall not be questioned in any court."

Held (*Unanimously dismissing the appeal*):

1. *On Scope of power of prescribed authority under section 22(3) of the Chiefs law of Oyo State, 1978*

The dispute envisaged by section 22(3) of the Chiefs of Oyo State (applicable to Osun State) is one which arises as to whether a traditional chieftaincy title has been conferred on a person in accordance with customary law or whether it has been conferred on the right person." Thus, the dispute envisaged in section 22(3) of the Chiefs Law Cap. 21; Laws of Oyo State is one which clearly arises where there are two contesting persons or two rival candidates who have been named, selected or nominated to a minor chieftaincy or whether a person has been appointed in accordance with customary law and related matters. However, in the instant case, since the chieftaincy had been relegated to a minor one, thereby bringing it within the control of the 3rd respondent, he was right in conducting the inquiry he made: [*Edewo v. Uwegba* (1987) 1 NWLR (Pt.50) 313; *Inipede v. Sonekan* (1995) 1 NWLR (Pt.11374) 668 referred to and followed] (Pp. 61-62; *paras. H-B*).

Per OGUNDARE, J.S.C. at pages 53-54, paras. G-C:

"It is contended by the appellants that the power of the 3rd defendant, as prescribed authority" under Section 22(3) of the Chiefs Law of Oyo State is limited only to a determination of a dispute on whether a person has been appointed in accordance with customary law. The learned trial Judge in dealing with the power of a prescribed authority under Section 22(3) of the Law has this to say.

"As regards a minor chieftaincy; the Kingmakers are to appoint a candidate to a vacancy before a prescribed authority appointed by the Executive Council approves such appointment or settles a dispute as to whether a person so appointed to fill the vacant stool has been properly appointed." I think the above passage correctly states the law. For section 22(3) states:

"Where there is a dispute whether a person has been appointed in accordance with customary law to a minor chieftaincy, a prescribed authority may determine the dispute."

The 3rd defendant however, has not claimed that he was acting under section 22(3) when he conducted an inquiry into the identity of families eligible to present candidates to fill a vacancy in the Baale of Ijimoba chieftaincy. Following the demise of Baale Akinloye in 1978 and the attempted exclusion of the Atoyebi family from presenting

a candidate, that family petitioned the 3rd defendant as the paramount ruler of the area and the prescribed authority for the chieftaincy, complaining about the exclusion of their family from the 1957 declaration. If the chieftaincy had not been delegated to the status of a minor chief the petition would have been directed to the Governor of the State. In the light of the protest made to the 3rd defendant, I think he was right to conduct an inquiry into finding out the number of families entitled to the chieftaincy. "

Per ONU, J.S.C. at pages 60, paras. C-E; 62, paras. D-H:

"The dispute envisaged in the above sub-section in the case in hand, is as encapsulated in the appellant's claim before the trial court, which in the absence of a declaration or amended declaration, has been submitted for judicial determination vis-a-vis the customary law regulating the Baale of Ijimboba chieftaincy. That claim was definitely separable from those granted and since the exclusive right alleged to have resided in the appellants' families was not established or proved in the trial court, a view which the court below affirmed, it was, in my opinion, rightly refused. It is on the above premise that I regard the way the appellant has invited us to do, as hypothetical and academic since it cannot help in the determination of the main issue which, as I pointed out hereinbefore, turns on the number of the Ruling Houses that were entitled to the Baale of Ijimboba chieftaincy. "

"In the case in hand, the dispute which arose after the death of Akinloye, the then immediate past Baale of Ijimboba, was not strictly who of the two contestants, Ashiru Jaiyeola from Lala family and Samuel Olaoye Alabi from Atoyebi family, was to be approved for the chieftaincy but whether the Atoyebi Ruling House should be given recognition as a third Ruling House. This was the dispute before the 3rd respondent and this Committee which eventually led the 4th respondent's petition to the 1st and 3rd respondents to be probed. The findings of the 3rd respondent and his committee after being submitted to the 1st respondent and receiving approval culminated in the 3rd respondent being directed to fill the vacancy in the Baaleship of Ijimboba Chieftaincy along the lines of the 1957 declaration, and to take further steps to include the family of the 4th respondent, the former act which the learned trial Judge held, rightly in my view, to be null and void but the latter act which the 3rd respondent as the prescribed authority, duly performed. When therefore the trial court held that:

"The decision i.e. the decision of the 3rd respondent is the binding customary law for the selection of a candidate to fill a vacancy in the Baale of Ijimboba Chieftaincy." and the court below confirmed the same, both courts, in my firm view, were right to have upheld the 3rd respondent's power/competence as the prescribed authority, to determine the issue of the number of ruling houses in the minor chieftaincy of Baale of Ijimboba under section 22(3) of the Chiefs Law (ibid); more so as the 1st respondent had earlier in time approved the 3rd respondent chieftaincy Committee's findings and recommendations on the issue"

2. *On What amounts to hypothetical and academic question*

A point is said to be hypothetical and academic if it cannot help in the determination of the main issue. In the instant case, the call by the appellants on the Supreme Court to construe section 22 of the Chiefs Law of Oyo State of Nigeria 1978 (applicable in Osun State) can be hypothetical and academic since it cannot help in the determination of the main issue which turns on the number of the ruling houses that were entitled to the Baale of Ijimboba chieftaincy. [*Dike v. Nzeka II* (1986) 4 NWLR (Pt. 34) 144; *Saude v. Abdullahi* (1989) 4 NWLR (Pt. 116) 387 at 550; *Kosue v. Folarin* (1989) 3 NWLR (Pt. 107) 1 at 8; *Oyeneye v. Odugbesan* (1972) 4 SC 244; *Bakare v. A.C.E.* (1986) 3 NWLR (Pt. 26) 47; *Overseas Construction Co. (Nigeria) Ltd. v. Creek Enterprises (Nig.) Ltd* (1985) 3 NWLR (Pt. 13) 409 referred to]. (P. 60, paras. E-F).

3. *On Attitude of Supreme Court to concurrent finding of lower courts*

The law is that where there are concurrent findings of facts by the lower courts, then unless those findings are found to be perverse or are not supported by the evidence or are reached as a result of a wrong approach to the evidence or a wrong application of some principle of substantive law or procedure the appellate court, even if disposed to come to a different conclusion upon the printed evidence, cannot do so. In the instant case, issues numbers 2 to 5 as formulated by the appellants relate to the finding of the learned trial Judge as affirmed by the Court of Appeal, that there are three ruling houses eligible to nominate, in rotation, candidates to fill any vacancy in the Baale of Ijimboba chieftaincy. In effect, the appellants by so doing, are inviting the Supreme Court to review concurrent findings of facts in a case which they have not shown either to be perverse, speculative, unsound or otherwise at variance with the evidence led or against

- the rules of procedure. The Supreme Court will decline to interfere with such concurrent decisions *Ehang v. Adu* (1981) 11-12 SC 25 at 42; *Okagbue v. Romaine* (1982) 5 SC 133 at 170; *Elike v. Nwankwoala* (1984) 12 SC 301; *Wankey v. State* (1993) 5 NWLR (Pt. 295) 542 at 552; *Sanyaolu v. State* (1976) 5 SC 37; *Nwadike V. !bekwe* (1987) 4 NWLR (Pt. 67) 718 *Igwego v. Ezeugo* (1992) 6 NWLR (Pt. 249) 561; *Woluhem v. Gudi* (1981) 5 SC. 291 at 326 referred to and applied].(P. 56, paras. A-C P. 60 paras. F-G).
4. The principle of resolving conflicts in traditional evidence-by reference to events in recent years as evolved by the courts over the years does not immune such evidence from the general duty of the court of trial assigning probative value to all or any kind of evidence adduced and making findings based on the totality of the cases made out by the parties before it. In the instant case, events in recent years were relied upon by the trial court in finding the 4th respondent's case more probable of the two versions of traditional evidence adduced before it which the court below justifiably affirmed. [*Alade v. Awo* (1975) 4 SC 215 at 228; *Chukwueke v. Nwankwo* (1985) 2 NWLR (Pt. 6) 195 at 201; *Ogbuokwelu v. Umeanafunkwa* (1994) 4 NWLR (Pt. 341) 676 referred to] (Pp. 60,61, paras. G-14)
 5. *On Whom onus of proof lies*
The onus is on a part who alleges to prove his assertion. Thus, the onus was on the appellants who alleged that there were only two ruling houses to the Baale of Ijimoba chieftaincy to prove their exclusive right thereto. The appellants having failed to discharge that onus, the trial court was right in making a clear finding of fact that there was indeed a third Ruling House which was 4th respondent's Atoyebi family. This was *not* a way of granting a relief not claimed. [*Kodilinye v. Odu* (1935) 2 WACA 336 referred to] (P. 61, paras. A-B).
 6. *On Power of High Court to make declaratory orders*
 The power of High Court of a State to make declaratory order is derived under sections 6(6)(b) and 236(1) of the 1979 Constitution (as amended). It is an exercise of judicial power between persons for the determination of questions as to the civil rights and obligations of such persons. Clearly therefore, the declarations sought by the appellants in the instant case as reliefs, 1 and 4 in the trial court which it declined to grant are declarations sought under Sections 6(6) (b) and 236(1) of the 1979 Constitution (amended). In carrying out this judicial task, the court whom evidence adduced ascertain and find whether there is customary law on the matter, what the customary law is and then decide whether on the evidence, the Oladogba and Lala are the only ruling houses in Ijimoba from which Baale of Ijimoba can be selected and appointed. Thus, it cannot 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 1979 Constitution (as amended). Consequently, the trial court has jurisdiction and competence to make the finding of fact which it made and applied to the claim before it and the Court of Appeal was equally right to, affirm that the decision was appropriately arrived at *intra vires*. [*Adigun v. A.G., Oyo State* (1987) 1.NWLR (Pt. 53) 678 at 681; *Edewor v. Uwegba* (1987) 2 S.C. 49a HO5 referred to and followed] (P. 61 ,paras. C-G).
 7. *On Constitutionality of the provision of section 22(4) Chiefs Law of Oyo State (applicable to Osun State)*
 By virtue of the provision of section 6(6)(b) of the 1979 Constitution (as amended) and sections 2 and 20 of the Interpretation Law Cap 52 laws of Oyo State (applicable to Osun State), the provision of section 22(4) of the Chiefs Law of Oyo State 1978 which provides that the decision of the prescribed authority to approve an appointment or determine a dispute shall not be questioned in any court would not absolve the prescribed authority from suit where there is a failure on his part to apply the applicable customary law. Hence, the trial court was therefore right when he declared the provision of section 22(4) of the Chiefs Law null and void since it conflicts with the provision of the Constitution.(Pp. 62 -63 , paras. H -B)

DISSENTING VIEW OF WALL, J.S.C.

"On Effect of repeal or revocation of .enabling law on delegated legislation or instrument made thereunder"

Per WALL, J.S.C. at pages 56-58, paras. D-D:

"I have been privileged to read before now, the lead judgment of my learned brother Ogundare, J.S.C., and I agree with his reasoning and, conclusion save where he opined thus:

"The statement of law contained in the 1957 declaration, subject to the answer given to the main question, remains the customary law governing the appointment of the Baale of Ijimoba title.

The main issue as stated in the lead judgment is: "how many ruling houses are entitled to the Baale of Ijimoba Chieftaincy?".

The learned trial Judge has in my view stated the purpose for which the repealed declaration, in so far as it affects the Baale of Ijimoba Chieftaincy (when it became a derecognised chieftaincy) can be put to use which he stated:

"The Baale Ijimoba chieftaincy have been derecognised by the Recognised Chieftain (Revocation and Miscellaneous Provisions) Order W.S.L.N. No.6 of 1976 as confirmed by OY.S.L.N.18 of 1978, there can be no more existing declaration envisaged under the Chiefs Law of the State but statements of customary law which may guilty the prescribed authority in the settlement of dispute in respect of the Baale Ijimoba Chieftaincy."

"There being no declaration to amend, the directive of the State Government to the 3rd defendant to amend a declaration in respect of the Baale Ijimoba Chieftaincy is uncalled for, unnecessary, and therefore null and void as you cannot put something on nothing and expect it to stay-See *Macfoyv. U A.c. Ltd.* (1962) A.C. 152 at 160 per Denning L.J. (as he then was). I therefore do not find the case of *Uwegba v. A.G. Bendel State* 1986) 1 NWLR (Pt. 16) 303 helpful as in that case a declaration which should normally be treated as a legally binding customary law was being interpreted. That is the effect that our Section 4(1) above of the Chiefs Law i.e. of Oyo State envisages. One may sound a warning here that the provisions under Part II of the Chiefs Law being relied upon by Mr. Adedeji are not applicable to Baale Ijimoba (a part III) chieftaincy but in view of what have said above it follows that I have to grant the orders in the second and third heads of claim of the "plaintiffs as there was no declaration to amend since, 1978, a directive for the amendment of one cannot be given and no amendment can be *a fortiori* made."

The repealed "declaration is no longer the only customary law for the appointment of the Baale of Ijimoba, but it may only serve as a guide to the ascertainment of the proper customary law which has now become an issue of fact to be proved whenever there is dispute as to what the proper, customary law is given a new Baale of Ijimoba is to be appointed, until such customary law gains notoriety through superior court decisions when it will be judicially noticed. Sees 14.(1) and (2) of the Evidence Act (Cap 112), Laws of the Federation of Nigeria 1990. See *Larinde v. fiko* (1940) 6 WACA 108, and *Amissah v. Krabah* (1931) W ACA 30.

In the recent case of *Lipede v. Sonekan* (1995) 1 NWLR (Pt. 374) 668 a similar issue as regards the effect of declaration of customary law on the appointment of a derecognised chieftaincy arose. In that case this court clearly stated that where the enabling law is repealed or revoked any delegated legislation, instrument or order made pursuant thereof becomes of no legal binding effect, except for the right has accrued prior to the repeal or revocation. See *Odojin Il Ayoola-U984* 11 SC 72 and *Mogaji v. Cadbury (Nig.) Ltd* (1985).2 NWLR (Pt. 7) 393; where Onu J.S.C. delivering the lead judgment in *Lipede v. Sonekan (supra)* opined thus on this issue:-

"The gist of the appellant's argument on this issue, which asks whether Exhibit '18' (the registered declaration) has been revoked by W.S.L.N.No.6 of 1976 so as to rendered inapplicable to Ashipa Egba Chieftaincy, is that Exhibit' 18' remains in full force in its applicability to the minor chieftaincy of Ashipa Egba (governed by 0Part 3 of the Chiefs Law) notwithstanding the fact about it was expressly and statutorily made to apply to recognised Chieftaincy (governed by Part 2 of the Chiefs Law) (ibid). I fully endorse the respondents' argument on this point that to so hold would amount to a clear refusal to recognised the change' introduced by the amendment effected by W.S.L.N" No.6 ot1976 (ibid). The amendment introduced in my view, was to wipe away the use of registered declarations in respect of the Ashipa Egba Chieftaincy among other minor Chieftaincies, which hitherto enjoyed privileges as recognised chieftaincies. This, I hold, accords with the intendment of the law make to endorse all that I have said under Issue (b) above. In addition, I am of the view that a declaration such as Exhibit 18 derived its root, existence and validity from section 4 in Part 2 of the Chiefs Law (ibid). It is a piece of delegated legislation made pursuant to the powers-conferred by that section. Once, as shown in this case, the application of section 4 itself had been revoked by W.S.L.N. No.6 of 1976, Exhibit 18 has no legal root upon which it can continue to stand."

Uwais, J.S.C. (as he then was) stated the position of the law as follows in his concurring judgment: "Now section 4 of the Chiefs Law, Cap. 20 by virtue of. which Exhibit 18 was made, has not been repealed but the Chieftaincy of Ashipa Egba ceases, by the operation of the 1976 revocation Order (W.S.L.N.) No.6 of 1976, to be a recognised chieftaincy. Consequently, Part 2 of- the Chiefs Law cases to apply to the chieftaincy. It follows, by analogy to section 4 subsection (2) (c) of the Interpretation Act, Cap. 192, that Exhibit 18 (which is a statutory instrument) ceases to have effect. Furthermore, by the repeal of the Recognised Chieftaincies Order,.1959 (W.R.L.N. No. 22 of1959) by the 1976 Order (W.R.L.N. No.6 of1976), so far as it applies to the Chieftaincy of Ashipa Egba, Exhibit 18, though not expressly or specifically revoked is deemed to be "spent" and "obsolete".

Exh. A having been rendered obsolete or revoked by the Recognized Chieftaincies (Revocation and Miscellaneous Provisions) Order W.S.L.N. No.6 of 1976 and subsequently confirmed by OY. S.L.N. 18 of 1978 could no longer apply as an existing law, nor could it be amended since it had ceased to exist when the purported amendment was carried out."

Nigerian Cases Referred to in the Judgment:

Adigun v. A.G, Oyo State (1987) 1 NWLR (PL53) 678
Agedegudu v. Ajenifuja.(1963) 1 SCNL205'
Alade v. Lawrence Awo (1975) 4 SC 215 at 228
Bakare v. A.CJ3. (1986) 3 NWLR (Pt.26J) 47
Chukwueke v. Nwankwo (1985) 2 NWLR (Pt. 6)195
Dike. v. Nzekn (1986) 4NWLR (Pt. 34) 144
Edew r v. Uwegba (1987) 1 NWLR (Pt.50) 313
Elike v. Nwankwoala (1984) 12 SC 301
Enallg v. Adu(1981) 11-12 SC 25
Igwego v. Ezeugq (1992) 6 NWLR (Pt. 249) 561
Kodilinye v. Mbanefo Odu (1935) 2 W ACA 336
Kosile v. Folarin (1989) 3 NWLR (Pt. 107) 1
Larinde v. Afiko (1940) 6 W ACA: 108
Lipede v. Soneknn (1995) 1 NWLR (Pt. 3,74) 668
Mogaji v. eadbury (Nig.) Ltd (1985) 2'NWLR (Pt. 7) 393
Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718
Odofin v. Ayoola (1984) 11 SC 72
Ogbuokwelu v. Umeanafunkwa (1994) 4NWLR (Pt. 341) 676
Okngbue v. Romaine 0982) 5 SC 133 at 170
Overseas. Construction Co. (Nigeria) Ltd: v. Creek Enterprises (Nig.) Ltd' (1985) 3 NWLR (Pt. 13) 407
Oyeneeye v. Odugbesan (1972) 4 SC 244
Sanyaolu v. The State (1976) 5 SC 37
Saude v. Abdullahi (1989) 4 NWLR (Pt. 116) 387
Shitta Bey v. Federal Public Service Commission (1981) 1 SC 40
Wankev v. The State (1993) 5 NWLR (Pt. 295) 542
Woluchem v. Gudi (1981) 5 SC. 291

Foreign Cases Referred to in the Judgment

Kojo II v. Bonsie (1957) 1 WLR. 1223 *Amissah v. Krabah* (1931) 2 WACA 30.

Appeal:

This was an appeal against the judgment of the Court of Appeal, which affirmed the decision of the trial court, which substantially dismissed the appellants case. The Supreme Court, in a unanimous decision, affirmed the decision of the Court of Appeal and dismissed the appeal.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal: Abubakar Bashir Wali, J.S.C. (*Presided*); Michael Ekundayo Ogundare, J.S.C. (*Read the Leading Judgment*); Uthman Mohammed, J.S.C.; Sylvester Umaru Onu, J.S.C.; Anthony Ikechukwu Iguh J.S.C.

Appeal No: Sc. 39/1990

Date of Judgment: Friday, 13th December, 1996

Names of Counsel: Yusuf. O. Alli (with him, W. Egbewole and Kehinde .K. Eleja) *for the Appellants*
S.O. Ogunniyi, DL as Osun State - *for the 1st and 2nd respondents*

M.A Laogun (with him, A Laogilll) -*for the 3rd and 4th respondents*

Court of Appeal:

Division of the Court of Appeal from which the appeal was brought: Court of Appeal, Ibadan

Name of Justices that sat on the appeal: Idris Legbo Kutigi, J.C.A (*Presided*); Ibrahim Kolapo Sulu-Gambari, J.C.A; Emanuel Obioma Ogwuegbu, J.C.A (*Read Leading Judgment*)

Appeal No: CA/I/237/87

Date of Judgment: Thursday, 20th July, 1989

Names of Counsel: EA. Adedeji - *for the Appellant*

AA Aderemi - *for the 1st and 2nd Respondents*

M.A Laogun - *for the 3rd and 4th Respondents*

High Court:

Name of the High Court: High Court, Ogbomosho

Name of the Judge: T.AA Ayorinde, J

Suit No: HOG/25/86

Date of Judgment: Friday, 18th July, 1987

Names of Counsel: F.A. Adedeji - *for the Plaintiffs*

P.E Olayiwola, Senior State Counsel, Ministry of Justice, Oyo State - *for the 1st and 2nd Defendants*

M.O. Olaogun - *for the 3rd and 4th Defendants*

Counsel:

Yusuf .O. Alli (with him, W. Egbewole and, Kehinde K. Eleja)". *For the Appellants*

S.O. Oguniyi, DL as, Osun State - *for the 1st and 2nd respondents*

M.A Laogun (with him, A Laogun) - *for the 3rd and 4th respondents.*

A OGUNDARE, J.S.C. (Delivering the Leading Judgment): By a writ of summons issued on 8th September, 1986, the plaintiffs for themselves and on behalf of the Oladogba and Lala ruling houses of Ijimoba sued the defendants claiming:

1. Declaration that Oladogba and Lala Ruling Houses are the only ruling houses entitled to the Baale of Ijimoba chieftaincy title.
2. Declaration that the directive of the Governor of Oyo State contained in letter reference No..CB.d41/32J50 of 28th May 1980, purporting to authorise an amendment of the Baale of Ijimoba Chieftaincy "declaration of 1957 by the inclusion, fatoyebi as a third ruling .house is, ultra vires, unconstitutional, avoid and of no effect, whatsoever.
3. Declaration that the purported amendment of [the] Baale of Ijimoba Chieftaincy declaration of 1957 by the Ejigbo Local Government Chieftaincy Committee equal to the said Governor's directive is invalid, against the rules of natural justice, void and of no effect whatsoever.
4. Declaration that the Bale of Ijimoba Chieftaincy Declaration of 1957 is the only valid customary law regulating, appointment to the Baale of Ijimoba chieftaincy.
5. Injunction restraining the defendants either by themselves or their agents, servants and privies from acting in pursuance of the purported amendment to the Bale of Ijimoba Chieftaincy declaration made by the Ejigbo Local Government. Chieftaincy Committee."

Pleadings were filed and exchanged. The case for the plaintiffs is that, according to the custom of Ijimoba, there are only two ruling houses, that is, Oladogba and *Lala firm which the Baale of a is appointed is customary law, they claim, is reflected in the chieftaincy declaration made in 1957 in respect of the chieftaincy. Prior to 1976, the Baale of Ijimoba chieftaincy was a recognised title coming under Part II of the Chiefs Law of Oyo State. The title was in 1976 reduced in status to a minor chieftaincy with the Elejigbo of Elejigbo", as the prescribed F authority in respect thereof.*

The defense, on the other hand, claims that there are three ruling houses, *eldest*, Oladogba, Lala and Atoyebi and that to that extent, therefore, the chieftaincy declaration of 1957 is fault.

Following the complaint of members of Atoyebi family of their exclusion from the 1957 declaration, the defendant,

the Elejigbo, conducted an inquiry which found that there are three ruling houses. All the three families were informed of the findings of the enquiry and that the findings and recommendations would be forwarded to the State government. The government accepted the findings of the inquiry. and ordered that steps be taken to amend the Declaration to include Atoyebi ruling house after the vacancy occasioned by the death of Baale Akinloye in June 1978 might have been filled by a candidate from the Lala ruling house. Pursuant to the directive of the State Government, Chief Bashiru Jaiyeola from Lala ruling house was appointed and installed the Baale of Ijimoba in January, 1986. The Chieftaincy declaration was subsequently amended to include the Atoyebi family and the plaintiffs being dissatisfied with the amendment, instituted the action leading to this appeal. At the trial of the action evidence was led on both sides as to the number of ruling houses eligible to the Baale of Ijimoba Chieftaincy.

At the end of the trial and after addresses by leaning counsel for the parties, the learned trial Judge , in a reserved judgment, found that there were three ruling houses and in consequence dismissed the 1st and 4th claims of the plaintiffs but granted the orders sought in the 2nd and 3rd claims. On the 5th claim he found as follows

"I have on the facts before me held that there are three ruling houses in Baale Ijimoba chieftaincy like the 3rd defendant incidentally concluded in Exhibits L to L6. The report on his findings following the dispute that arose in 1978 after Baale Akinloye's death. The said findings were the decision of the 3rd defendant as prescribed authority by virtue of Section 22(3) of the Chiefs Law. Having given the opposing parties the opportunities to be heard it does-,not appear to me that the decision can be faulted. The decision, incidentally, like in this judgment, but not the amended declaration to which the Ejigbo Local Government Chieftaincy Committee was called in to make with the 3rd defendant out of an abundance of caution perhaps, is the binding customary law for the selection of a candidate to fill a vacancy in the Baale Ijimoba chieftaincy. As no declaration under the Chiefs Law can exist, I grant the injunction asked for in the fifth head of claim without prejudice to the orders I have made in this case and also the force and effect of the decision of the prescribed authority as stated in his report, Exhibits L to L6."

The plaintiffs were unhappy with the judgment of the trial High Court and appealed to the Court of Appeal. Ogbuegbu J.C.A. (as he then was) in the lead judgment of that Court (with which Kutigi, J.C.A. (as he then was) and Sulu Gambari J.C.A. agreed) affirmed the finding of the learned trial Judge that there are three ruling houses namely Oladogba, Lala and Atoyebi, that are entitled to the Baale of Ijimoba Chieftaincy. The Court of Appeal dismissed the appeal of the plaintiffs, It is against that judgment that the plaintiffs,. with leave of the court below, have further appealed to this court upon seven grounds of appeal as contained in their amended notice of appeal filed on 14/11/94.

Pursuant to the rules of this court, written briefs of argument were filed and exchanged. In the plaintiffs' amended appellants' brief, the following questions are set down as calling for deteliniation:

- "1. Whether having regard to section 22(3) of the Chiefs Law Cap. 21 Laws of Oyo State of Nigeria, 1978, applicable in Osun State, it is not ultra vires a Prescribed Authority to determine a dispute involving conflicting claims by families aspiring to present-candidates to the Chieftaincy as opposed to determining a dispute whether a person has been appointed in accordance with Customary Law applying to the Chieftaincy in dispute?
2. Whether the Court of Appeal was-right in declining to re-evaluate the evidence of the parties on the ground that the learned trial Judge had made a finding on the evidence when there was proof that the evaluation made by the learned trial Judge on conflicting traditional histories, and inferences to be drawn from the evidence led was wrong and when in any event the evidence was not one bothering on demeanor of witness?
3. Whether the Court of Appeal was right in affirming the decision of the trial court on the issue of number of Ruling Houses in Ijimoba and or question of common ancestry to or between the plaintiffs and the 4th respondent?
4. Whether the Court of Appeal was right in affirming the decision of the learned trial judge in view of the inconsistency, occasioned by the learned trial Judge's grant of some of the reliefs sought and the refusal of others? And Whether the Court of Appeal was right in affirming the decision of the High Court reached without or in excess of jurisdiction by granting to the respondent a relief not claimed by them."

The 1st-2nd respondents in their own brief of argument reframed the questions for determination as follows:

- “1. Whether the Prescribed Authority in this case acted *ultra vires* in view of s. 22(3) of the Chiefs Law of Oyo State, applicable in Osun state?
2. Whether the Court of Appeal erred in this case by declining to reevaluate the evidence of the parties before the trial court?
3. Whether the Court of Appeal was right in affirming the decision of the trial court on the issues of (a) common ancestry of the appellants and the 4th respondent and (b) the number of ruling houses traditionally entitled to the Baale of Ijimoba Chieftaincy having regard to the evidence led in this case?
4. Whether the Court of Appeal was right in affirming the decision of the High Court even though the court granted some of the reliefs sought and refused others?'
5. Whether the High Court.(as affirmed by the Court of Appeal) granted the 4th respondent's relief not claimed by them and therefore acted in excess flow-without jurisdictional respect of those gratuitous reliefs, if any?" The 3rd and 4th respondents in their own brief adopted the five questions as formulated in the plaintiffs' brief.

Question (1):

The main submission of the plaintiffs is that the 3rd defendant acted *ultravires* his powers as prescribed authority when he conducted an inquiry to determine the number of ruling houses eligible to present candidates in the event of a vacancy arising in the Bale of Ijimoba chieftaincy. It is contended by the appellants that the power of the 3rd defendant, as prescribed authority, under Section 22(3) of the Chiefs Law of Oyo State is limited only to a determination of a dispute on whether a person has been appointed in accordance with customary law. The learned trial Judge in dealing with the power of a prescribed, authority under Section 22(3) of the Law has this to say:

"As regards a minor chieftaincy, the Kingmakers are to appoint a candidate to a vacancy before a prescribed authority appointed by the Executive Council approves such appointment or settles a dispute as to whether a person so, appointed -to fill the vacant stool has been properly appointed."

I think the above passage correctly states *the law for section 22(3) states:*

"Where there is a dispute whether a person has been appointed in accordance with customary law to a minor chieftaincy, a prescribed authority may determine the dispute."

The 3rd defendant however, has not claimed that he was acting under section 22(3) when he conducted' an inquiry into the identity of families eligible to present candidates to fill a vacancy in- the Baale of Ijimoba chieftaincy. Following the demise of Baale Akinloye in 1978 and the attempted exclusion of the Atoyebi family from presenting a candidate, that family petitioned the 3rd defendant as the paramount ruler of the area and the prescribed authority for the chieftaincy, complaining about the exclusion of their family from the 1957 declaration. If the chieftaincy had not been relegated to the status of a minor chief the petition would have been directed to the Governor of the State. In the light of the protest made to the 3rd defendant, I think he was right to conduct an inquiry into finding out the number of families entitled to the chieftaincy. I will, therefore, not say that he acted *ultravires* by conducting that inquiry. In any event, it is not the case of the plaintiff that because the 3rd defendant conducted the inquiry, the finding was null and void. The reasons for seeking their claims (2) and (3) are found in paragraphs 25-32 of their statement of claim, which read:

"25. Plaintiff avers that in January, 1986, the heads of their respective ruling houses received copies of a letter reference No. CB .141/32/7/122 dated 20th January, 1986. Emanating from the Office of the 1st defendant under cover of a letter reference No. 181/30A dated 24th January, 1986'from the Secretary of the Ejigbo Local Government.

Plaintiffs say that the Secretary of Ejigbo Local Government endorsed copies of documents purporting to be an amended declaration in respect of the Baale of Ijimoba chieftaincy to their respective heads of ruling houses under cover of his letter referred to herein. The 4th defendant's family (Atoyebi) was included therein as a third ruling house.

Plaintiffs aver that they had no knowledge of any representations made by the Atoyebi family to the Ejigbo Local Government Chieftaincy Committee warranting the amendment of the Baale or Ijimoba Chieftaincy declaration of 1957 by the inclusion of Atoyebi as a ruling house.

Plaintiffs say that the documents purporting to be amended declaration in respect of the Baale of Ijimoba chieftaincy were made by the Ejigbo Local Government Chieftaincy Committee of which the 3rd defendants the chairman. The plaintiffs' were not given any opportunity by the Ejigbo Local Government Chieftaincy Committee to correct or contradict any representation made by members of the Atoyebi family which led to the purported amendment by the Committee, contrary to the rules of natural justice.

The plaintiffs say that their ruling houses did not receive any correspondence on any investigation into the Baale of Ijimoba chieftaincy declaration nor did members of their ruling houses submit any comments to or attend any committee to investigate the proposed amendment to the declaration.

Plaintiffs aver that the Ejigbo Local Government Chieftaincy Committee carried out the amendment exercise in reliance upon a directive from the Office of the 1st defendant contained in a letter reference No. CB. 41/32/50 dated 28th May, 1980, purporting to authorize an amendment of the Baale of Ijimoba Chieftaincy Declaration of 1957 by the inclusion of Atoyebi family as a third ruling house.

Plaintiffs say that the *purported* amendment is contrary to the age long traditional native law custom and usages of the Ijimoba community. The evidence adduced at the trial did not support the above averments. The appellants not only knew of the inquiry conducted by the 3rd defendant but made representations as well. The learned trial Judge would have dismissed claims (2) and (3) but for the reason given by him that a chieftaincy declaration was not necessary as the Baale of Ijimoba chieftaincy had been relegated to the status of a minor chief under Part III of the Law. There was therefore, no need, according to him, to amend the 1957 declaration pertaining to the title. He said:

"..... a declaration is not to be amended for its own sake as said in *Adigun v. A.G. of Oyo State* (1987) NWLR 1 (Pt. 53) 678 at 806 but the Baale Ijimoba chieftaincy having been derecognised by the Recognized Chieftaincies (Revocation and Miscellaneous Provisions) Order W.S.L.N. No.6 of 1976 as confirmed by O.Y.S.L.N. 18 of 1978, there can be no more existing declaration envisaged under the Chiefs Law of the State but statements of customary law which may guide the prescribed authority in the settlement of dispute in respect of the Baale Ijimoba Chieftaincy. The prescribed authority can however be in court however for not following the applicable customary law that should help him in settling such dispute....."

The learned Judge added:

"There being no declaration to amend, the directive of the State government to the 3rd defendant to amend a declaration in respect of the Baale Ijimoba Chieftaincy signaled for, unnecessary, and therefore null and void as you cannot put something on nothing and expect to stay.- See *Macfoy v. U.A.C. Ltd.* (1962) A.C. 152 at 160 per Denning, (as he then was)" He concluded:

"..... in view of what I have said above it follows that I have to grant the orders in the second and third heads of claim of the plaintiffs as there was no declaration to amend since, 1978, a directive for the amendment of one cannot be given and no amendment can be *a fortiori mad.*".....J'

There is no appeal against this conclusion. The grant of claims (2) and (3), for the reason given, does not, in my respectful view affect the main question between the parties which is how many ruling houses are entitled to the Baale of Ijimoba - chieftaincy? The statement of law contained in the 1957 declaration, subject to the answer given to this main question, remains the customary law governing the appointment to the Baale of Ijimoba title.

I therefore, answer Question (D) in the affirmative.

Questions (2)-(5):

These questions relate to the finding of the learned trial Judge, and affirmed by the court below, that there are three-ruling families eligible to nominate, in rotation, candidates to fill any vacancy in the Baale of Ijimoba chieftaincy. The attitude of this court to concurrent findings of fact of the courts below has been stated in numerous cases. It is trite that this court will not interfere with such findings where they are supported by sufficient evidence and cannot be said to be perverse. I have examined the evidence on record in this case and have considered the arguments proffered by the plaintiffs. I can find no good reason for disturbing the finding that there are three ruling houses namely Oladogba, Lala and Atoyebi that finding is supported by abundant evidence adduced at the trial and it is in no way perverse. Consequently I too affirm the finding. I resolve Questions (2) - (5) against the plaintiffs.

In the net result, I find no merit whatsoever in this appeal which is hereby dismissed. I affirm the judgment of

the court below and award costs of this appeal assessed at N1,000.00 in favour of each set of respondents.

WALI, J.S.C.: I have been privileged to read before now, the lead judgment of my learned brother Ogundare, J.S.C., and I agree with his reasoning and conclusion save where he opined thus:

"The statement of law contained in the 1957 declaration, subject to the answer given to the main question, remains the customary law' governing the appointment to the Baale of Ijimoba title." The main issue as stated in the lead judgment is: "how many ruling houses are entitled to the Baale Ijimoba Chieftaincy?" The learned trial Judge has in my view stated the purpose for which the repealed declaration, in so far as it affects the Baale of Ijimoba Chieftaincy (when F it became a derecognised chieftaincy) can be put to use which he stated:

"The Baale Ijimoba chieftaincy have been derecognised by the Recognised Chieftaincies (Revocation and Miscellaneous Provisions} Order W.S.L.N. No. 6 of 1976 as confirmed by OY.S.L.N. 18 of 1978, there can be no more existing declaration envisaged under the Chiefs Law of the State but statements of customary law G which may guide the prescribed authority in the settlement of dispute in respect of the Baale Ijimoba Chieftaincy."

"There being no declaration to amend, the directive of the State Government to the 3rd defendant to amend a declaration in respect of the Baale Ijimoba Chieftaincy is uncalled for; unnecessary, and therefore null and void as you cannot put something on nothing and expect it to stay- See *Maifoy v. VAC. Ltd.* (1962) A.C. 152 at 160 per Denning L.J., (as lie then was). I therefore do not find the case of *Uwegba v. A.G. Bendel State* (1986) 1 NWLR (Pt. 16) 303 helpful as in that case a declaration which should normally be treated as a legally binding customary law was being interpreted.

That is the effect that our Section 4(1) above of the Chiefs Law i.e. of Oyo State envisages. One may sound a warning here that the provisions under Part II of the Chiefs Law being relied upon Mr. Adedeji are not applicable to Baale Ijimoba (a part III) chieftaincy but in view of what I have said above it follows that I have to grant the orders in the second and third heads of claim of the plaintiffs as there was no declaration to amend since, 1978, a directive for the amendment of one cannot be given and no amendment can be *a fortiori* made."

The repealed declaration is no longer the only customary law for the appointment of the Baale Ijimoba, but it may only serve as a guide to the ascertainment of-the proper customary law which has now become an issue of fact to be proved when ever there is disputed is to what the proper customary law is when a new Baale of Ijimoba is to be appointed, until such customary law gains notoriety through superior court decisions when it will be judicially noticed. See s. 14 (1) and (2) of the Evidence Act (Cap 112), Laws of the Federation of Nigeria 1990. See *Larinde v. Afiko* (1940) 6 W ACA 108, and *Amissah v. Krabah* (1931) W ACA 30.

In the recent case of *Lipede v. Sonekan* (1995) 1 NWLR (Pt. 374) 668 a similar issue as regards the effect of declaration of customary law on the appointment of a derecognised chieftaincy arose. In that case this court clearly stated that where an enabling law is repealed or revoked any delegated legislation, instrument or order made pursuant thereof becomes of no legal binding effect, except for the right that has accrued prior to the repeal or revocation. See *Odofin v. Ayoola* (1984) 11 SC 72 and *Mogaji v. Cadbury (Nig.) Ltd* (1985) 2 NWLR (Pt. 7) 393, where Onu J.S.C. delivering the lead judgment in *Lipede v. Sonekan (supra)* opined thus on this issue:

"The gist of the appellant's argument on this issue, which asks whether Exhibit 'J 8' (the registered declaration) has been-revoked by W.S.L.N. No.6 of 1976'so as to render it inapplicable to Ashipa Egba Chieftaincy, is that Exhibit' 18' -remains in full force in its applicability to the minor chieftaincy of Ashipa Egba (governed by Part 3 of the Chiefs Law) notwithstanding the fact that it was expressly and statutorily made to apply to recognised Chieftaincy (governed by Part 2 of the Chiefs Law) (ibid). I fully endorse the respondents argument on this point that to so hold would amount to clear refusal to recognise the change introduced by the amendment effected by W.S.L.N No.6 of 1976 (ibid). The amendment introduced in my view, was to wipe away the use of registered declarations in respect of the Ashipa Egba Chieftaincy among other minor Chieftaincies which hitherto enjoyed privileges as recognized chieftaincies: This, I hold, accords with the intendment of the law maker. I endorse all that I have said under Issue (b) above. In addition, I am of the view that a declaration such as Exhibit 18 derived its root, existence and validity from section 4in Part 2 of the Chiefs Law (ibid). It is a piece of delegated legislation made pursuant to the powers conferred by that section. Once, as shown in this case, the application of section 4 it self had been

revoked by W.S.L.N. NO.6 of 1976, Exhibit 18 has no legal root upon which it can continue to stand." Uwais, J.S.c. (as he then was) stated the position of the law as follows in his concurring judgment:

"Now section 4 of the Chiefs Law, Cap. 20 by virtue of which Exhibit 18 was made, has not been repealed but the Chieftaincy of Ashipa Egba ceases, by the operation of the 1976 revocation Order (W.S.L.N.) No 6 of 1976, to be a recognised chieftaincy. Consequently, Part 2 of the Chiefs Law ceases to apply to the chieftaincy. It follows, by analogy to section 4 subsection (2) (c) of the Interpretation Act, Cap. 192, that Exhibit 18 (which is a statutory instrument) ceases to have effect. Furthermore, by the repeal of the Recognised Chieftaincies Order, 1959 (W.R.L.N. No. 22 of 1959) by the 1976 Order (W.R.L.N. No.6 of 1976), so far as it applies to the Chieftaincy, of Ashipa Egba, Exhibit 48, though not expressly or specifically revoked is deemed to be "spent" and "obsolete". ,

Exh. A having been rendered obsolete or revoked by the Recognised Chieftaincies (Revocation and Miscellaneous Provisions) Order W.S.L.N. No.6 of 1976 and subsequently confirmed by O.Y. S.L.N. 18 of 1978 could no longer apply as an existing law, nor could it be amended since it has ceased to exist when the purported amendment was carried out. I shall also dismiss the appeal for the reasons ably stated in the lead judgment and abide by the consequential orders contained therein, including the one as to costs.

MOHAMMED, J.S.C.: I have had the advantage of reading the judgment of my learned brother, Ogundare, J.S.c., in draft and I agree with him that the appellants have failed to convince this court to disturb the concurrent findings of facts from the two lower courts in this appeal. My learned brother has considered all the issues canvassed in his judgment and I adopt his opinion as my own.

This appeal is therefore dismissed. I abide by all the consequential' orders made in the lead judgment, including the award of costs.

ONU, J.S.C.: I had the advantage to read before now in draft the judgment of my learned brother Ogundare, J .S.c. just delivered. I am in entire agreement with him G that this appeal is devoid of any merit and must perforce fail.

I only wish to add the following words of mine in expatiation. The real matter in difference between the parties to the appeal herein is not strictly the issue relating to the interpretation of section 22(3) of the Chiefs Law, Cap 21 of 1978, Laws of Oyo (now Osun State but as to the number or-Ruling Houses that the Baale of Ijimoba Chieftaincy should have - two (Oladogba and Lala) as postulated by the appellants, who were plaintiffs in the trial court and who lost all the way in the two courts below before coming up on appeal to this court of three (to wit: Olaaogba Atoyebi .and Lala) as contended by the respondents, who as defendants in the trial court won through to the Court of Appeal (hereinafter referred. to as the court below)

The appellants have submitted five issues as arising for our determination as follows:

- (1) Whether having regard to section 22(3) the Chiefs Law Cap. 21 Laws of Oyo State of Nigeria 1978""applicable to Osun State, it is not *ultravires* a prescribed. Authority to determine a dispute involving conflicting claims by families aspiring to present candidates to the Chieftaincy as opposed to determining a dispute whether a person has been- appointed in accordance with Customary Law applying to the Chieftaincy in dispute?
- (2) Whether the Court of Appeal was right in declining to-re-evaluate the evidence of the parties on the ground that the learned trial Judge had made findings on the evidence when there was proof that the evaluation made by the learned trial judge on conflicting traditional histories, and inference to be drawn from the evidence led was wrong and when in any event the evidence was not one bothering (sic) on demeanor of witness?"
- (3) Whether the Court of Appeal was right in affirming the decision of the trial court on the issue of number of Ruling Houses in Ijimoba and or question of common ancestry to or between the plaintiff and the 4th respondent?
- (4) Whether the court of Appeal was right in affirming the decision of the learned trial Judge in view of the inconsistency occasioned by the learned trial Judge's grant of some of the reliefs sought and, refusal of other and
- (5) Whether the Court of Appeal was right in affirming the decision of the High Court reached without or in excess of jurisdiction by granting to the respondents a relief not claimed by them."

The facts of this case have been so ably set out in the lead judgment of my learned brother that I do not deem it necessary to appeal them here. Suffice it to say, that it was sequel to the 3rd respondent complying with the directive of the 1st respondent by appointing Ashiru Jaiyeola of the Lala Ruling House to the vacant stool of Baale of Ijimoba by firstly applying, not quite correctly though, the provisions of the 1975 declaration of Baale of Ijimoba Chieftaincy (a minor chieftaincy) for the exercise and secondly, by taking steps to include 4th respondent's family as a third Ruling House (Atoyebi), which has led the Awo other Ruling Houses of Oladogba and Lala (appellants herein) to file the suit giving rise to the instant appeal and in which they claimed the following reliefs:

- "1. Declaration that Oladogba and Lara Ruling Houses are the only ruling houses entitled to the Baale of Ijimoba Chieftaincy title. Declaration that the directive of the Governor of Oyo State (now Osun State) contained in letter reference No. CB. 141/32/50 of 28th May, 1980, purporting to authorize an amendment of the Baale of Ijimoba Chieftaincy Declaration of 1957 the inclusion of Atoyebi as a third ruling house *is ultravires*, unconstitutional, null and void and of no effect whatsoever.
2. Declaration that the purported amendment of the Baale of Ijimoba Chieftaincy declaration of 1957 by the Ejigbo local Government Chieftaincy Committee, sequel to the said Governor's directive is invalid, against the rules of natural justice, null and void and of no effect whatsoever.
3. Declaration that the Baale of Ijimoba Chieftaincy declaration of 1957 is the only customary law regulating appointment to the Baale of Ijimoba Chieftaincy. Injunction restraining the defendants either by themselves or their agents, servants and privies from acting in pursuance of the purported amendment to the Baale of Ijimoba Chieftaincy declaration made by the Ejigbo Local Government Chieftaincy Committee."

On the first issue, which complains against the construction, placed on Section 22(3) of the Chiefs Law Cap. 21 Laws of Oyo State of Nigeria 1978 applicable in Osun State but referable to Part 3 of that Law in relation to Minor Chieftaincy, it is pertinent firstly to set out the purport of sub-section 3 of section 22. It states:

"When there is a dispute whether a person has been appointed in accordance with customary law to a minor chieftaincy the prescribed authority may determine the dispute." The dispute envisaged in the above sub-section in the case in hand, is as encapsulated in the appellant's claim before the trial court, which in the absence of a declaration or amended declaration, has been submitted for judicial determination vis-a-vis the customary law regulating the Baale Ijimoba chieftaincy. That claim was definitely severable from those granted and since the exclusive right alleged to have resided in the appellants' families was not established or proved in the trial court, a view which the court below affirmed, it was in my opinion, rightly refused. It is on the above premise that I regard that call to construe.

Section 22 the way the appellant has invited us to do, as hypothetical and academic since it cannot help in the determination of the main issue which, as I pointed out herein before, turns on the number of the Ruling Houses that were entitled to the Baale of Ijimoba chieftaincy. See *Ikenye Dike & ors. v. Obi Nzeka II & 30rs* (1986) 4 NWLR (Pt. 34) 144; *Saude v. Abdullahi* (1989) 4 NWLR (Pt. 116) 387I at 550; *Kosile v. Folarin* (1989) 3 NWLR (Pt. 107) 8; *Oyeneye v. Odugbesan* (1972) 4 SC 244; *Bakare v. A.C.B.* (1986) 3NWLR (Pt.26)A.7 and *Overseas Construction Co. (Nigeria) Ltd. v. Creek Enterprises (Nig.) Ltd & anor.* (1985) 3 NWLR (Pt. 13) 407. In effect, the appellants by so doing are inviting this Court to review concurrent findings of facts in a case which they have not shown either to be perverse, speculative, unsound or otherwise at variance with the evidence led or against the rules of procedure. This Court will, as urged by the 1st and 2nd respondents, decline to interfere with such concurrent decisions. See *Enang & ors v. Adu & ors.* (1981) 11-12SC 25 at 42; *Okagbue v. Romaine* (1982) 5 SC 133 at 170; *Ejikey Nwankwoala* (1984) 12 SC 301; *Wanke v. The State* (1993) 5 NWLR (Pt. 20) 542 at 552 and *Sanyaolu v. The State* (1976) 5 SC 37, to mention but a few principles of resolving conflicts in traditional evidence by reference to events in recent years as decided in *Kojo II v. Bonsie & anor* (1957) 1 WLR. 1223 at J226 followed by such decision of this court as *Agedegudu v. Ajenifuja* (1963)

All NLR 109; *P.M. Alade v. Lawrence Awo* (1975) 4 SC 215 at 228 and more recently in *Chukwueke v. Nwankwo* (1985) 2 NWLR (Pt. 6) 195 at 201 and *Ogbuokwelu v. Umeanafunkwa* (1994) 4 NWLR (Pt. 341) 676, does not immunise such evidence from the general duty of the court of trial assigning probative value to all or any kind of evidence adduced, and make findings based on the totality.

"The declaration sought under Section 6(b) (6) and Section 26(1) of the Constitution, 1979. It is all exercise of judicial power between Persons for the determination of questions as 'to the civil rights and obligations of such persons. It is also a civil proceeding in which the existence of a legal, right falls for determination – See *Attorney-General of Bendel State v. A.G. of the Federation & ors.* (1982) 3 NCLR. Clearly therefore, the declarations sought by the appellants in the instant case as reliefs 1 and 4 in the trial court which it declined to grant are declarations sought under Sections 6(6) (b) and 236(1) of the 1979 Constitution (ibid). Consequently the learned C.F trial Judge has jurisdiction and competence to make the findings of fact which he made and applied to the claim before him and the court below was equally right to affirm that decision appropriately arrived at *intra vires*. See also *Edewor. v. Uwegba* 61987) 1 NWLR(PU50) 313;(1987) 2S.C.49at 105 in which Nnamani, J.S.c. dealing with a similar provision in Section 22(3) of the Chiefs Law of the defunct Bendel-State (which also derived from the Chiefs Law of the then (eastern Region of Nigeria)said:

"The dispute envisaged by such section 3 of section 22 is one which arises as to *"whether a traditional/Chieftaincy title has been conferred on a person in accordance with customary law or whether it has been conferred on the right person."* That is not the dispute in this suit. No traditional chieftaincy title had been conferred on any person if one regards conferment as what the kingmakers it would have-done in this suit. The dispute was rather A as to which sub-clan was entitled to 'have its candidate conferred with the title.'" (Italics is for emphasis.)

Thus; the dispute envisaged in section 22(3) of the Chiefs Law; Cap 21 Laws of Oyo'(now Osun) State (ibid) is one which clearly, in my opinion, arises where there' were two contesting persons or two rival candidates who have been named, selected or nominated to a minor chieftaincy or whether a person has been B appointed in accordance 'with customary law and related matters. (See *Lipede v. Sonekan* (1995)3 NWLR (Pt. 374) 668). This much the appellant its even conceded In-paragraph 5.10 in their brief wherein they stated that *While it is' conceded. that in determining a dispute between two contesting persons the prescribed authority may avail himself of_ the applicable customary law by virtue of that section* it is highly inconceivable, in the light of that section for a prescribed authority, who is the final approving authority, to equally exercise the power of conducting inquiries into claims by various families aspiring to be included-among the ruling houses, 'fuld in the process resolve conflicting traditional history, determine the proper families so entitled to present candidate (s)a1fd finally decide which among the I)" competing candidates is most suitable." (Italics mine for emphasis).

In the case in hand, the dispute which arose after the death of Akinloye, the 'then immediate past Baale of Ijimboba; was not strict who of the two contestants, Ashiru Jaiyeola from Lala family and Samuel Olaoye Alabironi Atoyebi family, was to be approved for the chieftaincy out whether the Atoyebi Ruling House should be E given recognition as a third Ruling House. This was the dispute before the 3rd respondent and his Committee, which eventually led the 4th respondent's petition to the 1, stand 3rd respondents to be probed. The findings of the 3rd respondent and his-committee after being submitted 1st respondent and receiving approval culminated in the 3rd respondent being directed to fill the vacancy in the Baaleship of Ijimboba Chieftaincy along the times of the 1957 declaration, and to take further steps to include the family of the 4th respondent; the former act which the learned trial Judge held, rightly in my view, to be null and void but "the latter act which the 3rd respondent as the prescribed authority duly performed. When therefore the trial court held that:-

"The decision i.e. die decision of the 3rd respondent is life binding customary law for the' selection of a candidate to 'fill a vacancy in the Baale of Ijimboba Chieftaincy." and the court below confined the same, both colus, in my firm view_ were right to have upheld the 3rd respondent power/competence as the prescribed authority., to determine the issue of the number of ruling houses in the minor chieftaincy of Baale of Ijimboba under section 22(3) of the Chiefs Law (ibid), moreso as the 1st respondent had earlier in time approved the 3rd respondent chieftaincy Committee *in* findings and recommendations on the issue, See also Section 22(4) of the Chiefs Law (ibid) which provides that "

"The decision of the prescribed authority

(a) to approve an appointment on a minor chieftaincy; or determining a dispute in accordance "with sub-section (3) of this section shall be final and shall not be questioned in any court."

The above provision the learned trial Judge, rightly in my view, declined null and void in that it would not absolve the prescribed authority from suit where there is a failure on his part to apply the applicable customary law pursuant to section, 6(b)(6) of the 1979 Constitution as amended and modified. See also the purports of sections 2 and 20 of

the interpretation Law, Cap 52 laws of Oyo State (now Osun) State.

Besides, there was no appeal by the appellants-against, the trial court's conclusion relating to the directive for amendment of the 1957 declaration which had become spent (See *Lipede v. Sonekan (supra)* and, which it rightly; in my opinion, declared null and void, being no longer applicable to the derecognized (minor) status of the Baale Ijimoba chieftaincy; and any action taken in respect of it (the 1957 Declaration) by the 3rd respondent, would in any case, have been in vain. See *Shitta-Bey v. Federal Public Service Commission* (1981) 1 SC40 (1981) 12 NSCC. 19.

My answer to Issue No.1 is accordingly in the negative. My consideration of Issue No.1 above clearly overlaps whatever points are raised in Issues 2 to 5 and this renders their treatment *otiose* since they would no longer, in my view, arise.

For the reasons I have stated above and the fuller ones contained in the judgment of my learned brother Ogundare, J.S.C. I too dismiss this appeal and make the same consequential orders inclusive of those as to costs therein contained.

J.S.c.: I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Ogundare, J.S.c. and I agree entirely with him that this appeal is devoid of merit and ought to be dismissed. The main issue that calls for determination in this appeal turns on whether or not there are two to three ruling houses in the Baale Ijimoba chieftaincy. The plaintiffs/appellants case is that there are two ruling houses, to wit, the Oladogba and Lala ruling houses whereas the defendants/respondents contend that there are the Oladogba, Laia and Atoyebi ruling houses in the Baale Ijimoba chieftaincy. In this regard the learned trial Judge after a careful consideration of the issue found as follows

"However in view of the features in the defendants evidence as stated above, it would appear the defendants' story is more probable than the plaintiffs' story which had no answer to most challenging facts in the defendants' story. I accept the defendants' story and find established that the three families of Oladoba, Lala and Atoyebi descended from the common ancestor Alugbin as father and Laadi as mother of the three male children, namely, Oladogba, Lala and Atoyebi. It follows the three families are related and as such there are three ruling houses in Baale Ijimoba chieftaincy."

The above findings of the trial court were affirmed by the court below and fully justify the reliefs granted by both courts below in favour of the respondents.

The law is that where there are concurrent findings of fact, then unless those findings are found to be perverse; or are not supported by the evidence; or are reached as a result of a wrong approach to the evidence, or a wrong application of some principle of substantive law or procedure, this court, even if disposed to come to a different conclusion upon the printed evidence, cannot do so. *Enang v. Adu* (1981) 11-12 SC. 25 at 42, *Nwadike v. Ibekwe* (1987)4 NWLR (Pt. 67) 718, *Igwego v. Ezeugo* (1992)6 NWLR (pt. 249) 561, *Woluchem v. Gudi* (1981) J.Sc. 291 at 326 etc. In the present case, the said findings are fully supported by evidence and have not been found to be perverse. They were also not reached as a result of a wrong approach to the evidence or a wrong application of any principle of substantive law or procedure. This court cannot therefore interfere with them.

It is for the above and the more detailed reasons contained in the leading judgment of my learned brother, Ogundare, J.S.C. that I, too, dismiss this appeal. I abide by the order for Costs therein made.

Appeal dismissed