ENGR. J. A. OLOGUNJA
V.
OBA RUFUS ADEYEMO ADEJUGBE & ORS
COURT OF APPEAL
(ILORIN DIVISION)

CA/IL/80/99

MURITALA AREMU OKUNOLA, J.C. A. (Presided and Read the Leading Judgment)
PATRICK IBE AMAIZU, J.C.A.
WALTER SAMUELNKANU ONNOGHEN, J.C.A.
WEDNESDAY, 5TH JULY, 2000

CHIEFTAINCY MATTERS - Selection of candidates for chieftaincy stool - Per-son not nominated by ruling House - Whether can be selected by king makers - Where so selected - Effect.
CHIEFTAINCY MATTERS - Chiefs (Amendment/ Edict of Ekiti State, 1991 - Section 13(4) thereof- Power of Prescribed Authority thereunder - Nature of -When exercisable.
STATUTE - Chiefs (Amendment) Edict of Ekiti State, 1991 - Section 13(4) thereof - Power of Prescribed Authority thereunder - Nature of- When exercisable.

Issue:
Whether there was a dispute as to the appointment of the Edemo to warrant the 1st respondent as the Prescribed Authority to invoke his power under section 13(4) of the Chiefs Law of Ekiti State, 1991 to resolve same.

Facts:
The appellant and the 2nd respondent are members of the Aduloju Ruling House of Ado-Ekiti whose turn it was to fill the Edemo Chieftaincy stool, a minor chieftaincy stool.
The Aduloju Ruling House after series of meetings nominated the appellant whose name was forwarded to the Head of the family who consented to the appellant's candidature and forwarded his name to the 1st respondent for his approval and installation.

A faction of the Aduloju Ruling House however nominated the 2nd respondent and forwarded his name to the 1st respondent for his consent and installation.
Faced with the two nominations from the Aduloju Ruling House, the 1st respondent the Ewi of Ado-Ekiti, who is the Prescribed Authority for appointment to the stool requested the family Head to resolve the misunderstanding within the family and come up with a single nomination. Consequent upon this request, the family Head and some members of the Aduloju Ruling House held a reconciliation parley where four other contestants for the chieftaincy stool withdrew for the appellant who was nominated and presented to the overall Head of the family who in both parties agreed is the person to convey the decision of the family to the 1st respondent. The overall Head of the family supported the nomination of the appellant and duly forwarded his name to the 1st respondent through a letter dated 30th November, 1992.

However, the appellant's nomination was not approved by the 1st respondent, who instead, set up a committee to look into the dispute that arose on the candidature of the appellant and the 2nd respondent who the appellant claimed was not entitled to be made the Edemo because according to him, the 2nd respondent was a descendant of a slave and not an Aduloju descendant.

The 1st respondent after conducting an inquiry which he said established the bona fides of the 2nd respondent's membership of the Aduloju family and his eligibility to contest for the chiefaincy decided to install the 2nd respondent and commenced the installation rites.

The appellant became aware of the 1st respondent's decision and commenced an action by way of judicial review seeking the reliefs of certiorari, prohibition, declaration and injunction. His application was supported by an affidavit to which the letter written to the 1st respondent by the overall Head of the Aduloju Family was attached as Exhibit B.

After hearing arguments of counsel, the trial court dismissed the appellant's suit in its entirety. The appellant was dissatisfied with the decision of the trial court and appealed to the Court of Appeal.

Held (Unanimously allowing the appeal):

1. On When power of Prescribed Authority under section 13(4), Chieftaincy (Amendment) Edict of Ekiti State 1991 exercisable -Section 13(4) of the Chiefs Law 1991 of Ekiti State, as amended, gives the Ewi of Ado-Ekiti as the Prescribed Authority, the discretion and power to determine any dispute arising from the appointment of any person into a minor chieftaincy stool such as in the present case. In the instant case, the letter dated 30th November, 1992 and marked Exhibit B which forwarded the name of the appellant as the family's nominee for the chieftaincy stool showed that there was no dispute any longer within the family. In the circumstance, there was no dispute for the 1st respondent to resolve. Consequently, the 1st respondent did not properly exercise his power under section 13(4) of the Chiefs Law of Ekiti State 1991 as amended. [Ekpendu v. Erika (1959) SCNLR 186; Odeneye v. Efwmga (1990) 7 NWLR (Pt.164) 618 referred to.] (Pp.504-505, paras. B-C; G-D)

Per OKUNOLA, J.C.A. at page 505 paras. C-D:

> "The 1st respondent ought to have approved the candidate duly nominated by the family with the concurrence of the Elerebi and not otherwise and I so hold. The 1st respondent by doing otherwise created a non-existing dispute which he purported to settle. In the circumstance, I hold that the 1st respondent exceeded his jurisdiction by approving the appointment of the 2nd respondent under the circumstances and."

Per AMAIZU, J.C.A. at pages 505-506, paras. H-B:

> "The judgment of the lower court was in the main, predicated on the fact that there was a "dispute" in the appointment of the successor to the stool of Edemo Chieftaincy. It seems that it is because of the "dispute" that the Ewi of Ado-Ekiti, the 1st respondent, appointed a committee, pursuant to his powers under section 13(4) of the Chiefs (Amendment) Edict, 1991, to look into the "dispute".

From the affidavit evidence before the lower court, there was no dispute. The first respondent should therefore have acted on the letter, Exhibit B, from the Elerebi to him, informing him of the appointment of the appellant by the Ruling House."

Per ONNOGHEN, J.C.A. at page 506 paras. C-E:

> "From the totality of the affidavit evidence before the lower court it is clear that there was no dispute as to the "appointment" of the appellant to bring into play the provisions of section 13(4) of the Chiefs Edict. At the time the trouble arose the parties were still in the nomination exercise which nomination must be by the Ruling House presided by the Elerebi."

2. On whether person not nominated by Ruling House can be selected as a chief by kingmakers -

Any purported selection by the kingmakers or its approval by the Governor of a person not nominated by the Ruling House is an exercise in futility. In the instant case, the 1st respondent exceeded his jurisdiction by approving appointment of the 2nd respondent under the circumstances. [Odeneye v. Efunuga (1990) 7 NWLR (Pt.164) 618 referred to.] (P. 505, paras. C-D)

Nigerian Cases Referred to in the Judgment:

Adeboye v. Ajala (1998) 1 NWLR (Pt.535) 631
Edozien v. Edozien (1998) 13 NWLR (Pt.580) 133
Ekpendu v. Erika (1959) SCNLR 186
Iso v. Eno (1999) 2 NWLR (Pt.590) 204
Lipede v. Shonekan (1995) 1 NWLR (Pt.374) 668
Muojekwu v. Ejikeme (2000) 5 NWLR (Pt.657) 402
Odeneye v. Efunuga (1990) 7 NWLR (Pt.164) 618
Okenwa v. Military Governor of Imo State (1990) 5 NWLR (Pt.152) 594
Okonji v. Njokanma (1991) 7 NWLR (Pt.202) 131
Oladokun v. Military Governor, Oyo State (1996) 8 NWLR (Pt.467) 387
Onwuneme v. ACB Plc. (1997) 12 NWLR (Pt.531) 150
Saraki v. Kotoye (1992) 9 NWLR (Pt.264) 156

Nigerian Statutes Referred to in the Judgment:

Chiefs (Amendment) Edict of Ekiti Stale 1901, S.I 3(4)
Chiefs Law of Ondo State 1991, S.I3 (4)

Nigerian Rules of Court Referred to in the Judgment:

Court of Appeal Rules 1981 (as amended) O.3, r.15, O.6, r.5.

Appeal:

This was an appeal against the ruling of the High Court, Ado-Ekiti in which it dismissed the appellant's suit. The Court of Appeal, in a unanimous decision, allowed the appeal.

History of the Case:

Court of Appeal:

Division of the Court of Appeal to which the appeal was brought: Court of Appeal, Ilorin

Names of justices that sat on the appeal: Muritala Aremu Okunola, J.C.A. (Presided and Read the Leading Judgment): Patrick Ibe Amaizu, J.C.A.; Walter Samuel Nkanu Onnoghen, J.C.A. Appeal No.: CA/IL/80/99 Date of Judgment: Wednesday, 5th July, 2000 Names of Counsel: A. Olujmmi, SAN (with him Peju Oguntoye Esq. - for the Appellant
Yusuf AH, SAN (with him, K. K. Eleja and S.A. Okej -for the Respondents
High Court:
Name of the High Court: High Court Ekiti State, Ado-Ekiti Name of the Judge: Adekeye, J. Date of Ruling: Wednesday, 22nd November, 1995 Suit No.: HAD/2M/94

Counsel:

A. Olujinmi, SAN (with him Peju Oguntoye Esq.) -for the Appellant
Yusuf Ali, SAN (with him, K. K. Eleja and S.A. Okej -for the Respondents

OKUNOLA, J.C.A. (Delivering the Leading Judgment): This is an appeal against the decision of the Ekiti State High Court holden at Ado-Ekiti in suit No. HAD/2M/94 delivered by

Adekeye J. on 22/1 1/95 in which the applicant/appellant's claim/suit was dismissed in its entirety.

The facts of this case briefly put were as follows:

The appellant herein as applicant took out an application for judicial review before the High Court of Ekiti State sitting at Ado-Ekiti. The case in the lower court arose out of the dispute over the filling of the Edemo Chieftaincy in Ado-Ekiti, a minor ruling house stool with the 1st respondent the Ewi of Ado-Ekiti as the prescribed authority.

From the affidavit evidence of both parties it appears the material facts of the case are not in dispute. It is not in dispute that there were two ruling houses, Fajemilua and Aduloju, entitled to present candidates for the chieftaincy and that it was the turn of Aduloju ruling house to fill the vacancy in the chieftaincy. The Aduloju ruling house after series of meetings nominated the appellant whose name was forwarded to the Elerebi (the joint head of the two ruling houses). The Elerebi consented to the appellant's candidature and forwarded his name to the 1st respondent for his approval and installation.

A faction within the Aduloju family also nominated the 2nd respondent and forwarded his name to the 1st respondent for his consent and installation. However, for some reasons the appellant's appointment was not approved by the 1st respondent who instead set up a committee to look into the dispute that arose on the candidature of the appellant and the 2nd respondent who the appellant claimed was not entitled to be made the Edemo because according to him he was a descendant of a slave and not an Aduloju descendant.

The 1st respondent after conducting an enquiry which he said established the bonafide of the 2nd respondent's membership of the Aduloju family and his eligibility to contest for the chieftaincy, decided to install the 2nd respondent. He communicated his decision to the 2nd respondent and subsequently commenced the installation rites.

The appellant became aware of the 1st respondent's decision and commenced this action by way of judicial review seeking the reliefs of certiorari, prohibition, declaration and injunction, contained at pages 3 and 4 of the records. Various allegations of bias, non-adherence to native law and custom pertaining to the Edemo stool were alleged against the way and manner 1st respondent appointed the 2nd respondent as the Edemo.

After hearing the arguments of counsel, the High Court dismissed the appellant's suit in its entirety in its ruling contained at pages 119-143 of the records.

Dissatisfied with the ruling of the High Court, the appellant herein lodged an appeal to this court on eight grounds. From the eight grounds of appeal, the appellant has formulated the following six issues for determination in this appeal

viz:-

i. Whether the trial court was right in holding that the appellant abandoned legs 2,3,5 and 6 of the reliefs claimed by him.

ii. Whether the lower court was right in holding that all local remedies provided in the Chiefs Edict must be exhausted before an aggrieved person can go to court.

iii. Whether on the material before the trial court the court was right in holding that with the de-recognition of the Edemo chieftaincy, kingmakers are no longer relevant for filling a vacancy in the chieftaincy.

iv. Whether the trial Judge was right in failing to make a finding on the important issue of whether the 2nd respondent was nominated by the ruling house for the vacancy in the Edemo chieftaincy,

v. Whether the trial Judge was right in holding that the appellant was not denied fair hearing.

vi. Whether the learned trial Judge was on the materials before him right in not quashing the decision of the 1st respondent appointing the 2nd respondent as Edemo of Ado-Ekiti.

Learned counsel to the respondent formulated 3 issues which but for framing and language used boil down to the issues raised by the appellant in the appellant's brief. These issues are as follows:

1. Whether the learned trial Judge was not right having regard to all the circumstance of this case to have held that reliefs 2, 3, 5 and 6 were no more available to the appellant and whether the trial court held in any part of the ruling that the failure of the appellant to exhaust all administrative remedies provided in the Chiefs Edict was fatal to his case.
2. Whether the learned trial Judge was not right in holding that the de-recognition of the Edemo Chieftaincy stool made the Chieftaincy declaration to be inapplicable to the stool and whether she did not make adequate finding on the nomination of the 2nd respondent which should have made her to come to the same decision in the matter.
3. Whether the trial Judge was not right to have held that the appellant was not denied a fair hearing in the way the 1st respondent dealt with the dispute on the Edemo stool.

For purposes of this judgment 1 shall use the issues formulated by the appellant for the reason given supra. Be that as it may, both parties have filed their respective briefs. Both counsel to the parties adopted these briefs filed herein on behalf of their respective clients and went further to address us viva voce to highlight some points.

Learned counsel to the appellant Mr. A Olujinmi SAN adopted and relied on the appellant's brief filed herein on 12/2/98 and a reply brief filed on 9/9/98 but deemed filed on 27/10/99 by order of this honourable court made on that day. According to learned SAN on issues 3,4,& 6 argued together, the matter is a minor chieftaincy at Ado-Ekiti. He referred to pages 5 &7, 35 &38 of the records and contended that the issue relating to this chieftaincy was deposed to in paras. 1-32 at page 38 of the records. According to the learned SAN, the respondent did not in their counter-affidavit at pages 62-63 of the records deny the process of nomination and appointment particularly para 32 where this custom was averred. He referred to para 8 at page 63 where both parties agreed that the king makers must be involved in this appointment. Learned counsel contended further that even though both sides agreed on this custom the learned trial Judge set aside this custom and went ahead to propound his own version of the custom. He referred to page 128 last 4 lines to page 129 lines 1-10 of the records where he said kingmakers are unnecessary for this kind of ceremony and went to propound his own theory which he relied upon. He submitted that the courts had held that it is not proper for the court to formulate a case for the parties. This tradition according to learned SAN had been violated by the Judge. Counsel further submitted that the court failed to resolve the issue of the role of prescribed authority (i.e. 1st respondent) placed before him as contained under S.13(4) of the Chiefs Law of Ondo State applicable to Ekiti State as amended. 1st respondent under that law is concerned with dispute relating to appointment by kingmakers but here he concerned himself with nomination at the family level vide p. 128 line 1-2 of the records. The learned Judge never resolved throughout the issue raised by the appellant as to whether the 2nd respondent was

nominated by the ruling house for this chieftaincy, all he said was that the 2nd respondent did not appoint himself and that the 4th respondent did not appoint or select the 2nd respondent. If that was true it would not relieve the trial Judge of the duty to find out whether the ruling house nominated the 2nd respondent for the chieftaincy. If he had adverted her mind to these issues, the decision would have been different, the learned SAN submitted.
In concluding learned SAN urged the court to examine these issues and allow the appeal.

By way of reply, learned counsel to the respondent Yusuf Ali SAN leading Messers K.K Eleja and S.A. Oke adopted and relied on the respondent's brief filed on 9/3/98. He urged the court to strike out the appellant's reply brief. On this learned counsel to the appellant Mr. Olujinmi SAN referred to Order 3 rule 15 (1) of Court of Appeal rules to object to the approach adopted by the learned counsel to the respondent on the reply brief as being contrary to the requirements of the rules which provide that such an objection should be formal. The fact that the court asked the learned SAN to keep his gun powder dry when he earlier on wanted to raise same, does not amount to a waiver and if it is, the 3 days notice cannot be waived. He urged the court to disallow any argument on the objection which the learned SAN may wish to prefer.

Learned counsel to the respondent further submitted that provisions of Order 3 rule 15(1) are inapplicable to the circumstances of this case. He contended that on 27/10/99 he raised objection to the application to file the reply brief. He contended that, as contained in Order 3 (supra) he was not raising objection to the hearing of the appeal but to the improper use of the document in the appeal to wit; the reply brief. He referred to Order 6 rule 5 of the rules that the court can take the issue of an irregularly filed process suo motu. He cited the cases of Okenwa v. Military Governor of lmo State (1990) 5 NWLR (Pt.152) 594 p.602; Iso v. Eno (1999) 2 NWLR (Pt.590) 204. He submitted that if Order 3 rule 15(1) is applicable he would urge the court to construe the word Notice as "being aware," and urged the court to construe that the notice he gave on 27/10/99 was adequate for purposes of this objection. He submitted that the admission of Mr. Olujinmi that he raised that objection then shows that he is taken by surprise.

On the appeal, learned SAN referred to the 3 issues formulated in their respondents' brief. He submitted that even if the trial Judge had determined that the appellant should first of all exhaust the remedies he has under S.22 of the Chiefs Law of Ondo State applicable in Ekiti State, the Judge would be right by virtue of clearness of the decisions of the Court of Appeal and the Supreme Court in Onwuneme v. ACB Plc. (1997) 12 NWLR (Pt.531) 150 p. 159,; Lipede v. Shonekan (1995) 1 NWLR (Pt.374) 668 and Adeboye v. Ajala (1998) 1 NWLR (Pt.535) 631 Pp.639-640 all cited in support of Issue No. 1.

On their issue No. 2 learned SAN submitted that the native law and custom relied upon by the appellant is inconsistent with his own case - did not follow the native law and custom which he relied upon in his affidavit at page 9 & 10 of the record in the declaration which he said made it compulsory for the names of the nominees to be sent to the king-makers. However, according to the learned SAN, at p. 6 para 14 of the supporting affidavit, the appellant contradicted this position as there was no passing through the kingmakers to the prescribed authority hence with this inconsistency with the procedure he set out by himself he had failed to make a case that will entitle him to the relief he sought.

Having regards to the consensus of the parties that there is a de-recognition of the Chieftaincy by the revocation of the declaration guiding the chieftaincy title, it is therefore of no moment whether the respondents agree expressly or tacitly with their assertion that there were kingmakers for the chieftaincy since the declaration they relied upon for that contention had been revoked.

On issue No. 3 learned SAN contended that S.13 (4) of Ondo State Chiefs Law came into being by virtue of the dispute between the parties to the chieftaincy which is common ground to the parties - dispute as to who was entitled. He referred to p.6 paras 11-16 of the records to show there was a dispute. He submitted that once there is a dispute what the 1st respondent is enjoined to do is to do what is first and fair in the circumstances and not strictly a recourse to native law and custom which is being disputed. He cited Edozien v. Edozien (1998) 13 NWLR (Pt.580) 133 Pp. 152 & 155; Muojekwu v. Ejikeme (2000) 5 NWLR (pt.657) 402 Pp.432. 435-436.

On the submissions of learned counsel to the appellant he referred to pages 111.115, 117 & 128 of the records where the learned trial Judge answered all the questions in his judgment.

He therefore urged the court to dismiss the appeal.

By way of reply, learned counsel to the appellant contended on learned counsel submission on Order 6 rule 5 of the rules that the court could take the reply brief suo motu, that Order 6 rule 5 does not say any such thing. On Okunwa & Iso .supra referred to, learned SAN contended that it is irrelevant to the issue of whether or not a notice of objection should be filed. On whether Order 3(15) relates to hearing of appeal simplicities, learned SAN submitted that in interpreting a statute to obtain justice, it will be necessary to adopt a liberal interpretation so that whether the objection is against a process being issued in the appeal or the whole appeal itself the prescribed notice in Order 3 rule 15 must be followed. This argument of learned SAN for the respondent was canvassed by Chief Rotimi Williams SAN in Saraki v. Kotoye (1992) 9 NWLR (Pt.264) 156, The Supreme Court in that case held that whether you are objecting to the ground of appeal or the whole appeal you must file that notice. On the argument that his earlier oral intention to raise the objection on 27/10/99 will amount to a waiver he submitted that oral notice will not amount to a notice where there is a prescribed form. He quoted Kotoye (Supra).

On his para 4.07 of the respondent's brief on exhausting local remedies the learned SAN submitted that his oral argument ran counter to this as his case of Onwuneme v. ACB Plc. (supra) does not support the oral contradictory contention. Adebiyi supra relevant to that oral contention makes a clear exemption at p.639 para 6. This case supports an exemption where the action is declaratory to avoid exhaustion of local remedies if it is for judicial review of action of prescribed authorities. This action commenced by way of application for judicial review. On the submission that prescribed authority should abandon native law and custom when there is dispute on same, learned SAN submitted that this cannot be the position as he must comply with the law setting him up. I have considered the submissions of both learned counsel to the parties on all the issues raised and canvassed by them in their respective briefs of arguments and their addresses before us viva voce. In my view their arguments boil down to one principal issue viz:

> "Whether there was a dispute as to the appointment of the Edemo to warrant the 1st respondent as the prescribed authority to invoke his powers under S.13 (4) of the Chiefs Law to resolve".

On this principal issue learned counsel to the appellant on pages 4-7 of the appellant's brief referred to the finding of the trial Judge at page 128 lines 1 to 2 that there was "evidence that the 1st respondent played this role when there was a statement as regards nomination of a candidate". On this finding of the learned trial Judge, the learned SAN for the appellant submitted that as 1st respondent exercised his power under s.13(4) of the Chiefs law in respect of dispute over appointment, the trial Judge ought to have found that the 1st respondent acted without or in excess of jurisdiction.

Learned counsel cited in support ekependu v. Erika (1959) 4 SC 79, (1959) SCNLR 186.

Counsel further submitted that the act of nomination of 2nd respondent carried out by a section

of the family without the family head is void ab inito but. in breach his adjudicator his function function and the appellant right to fair hearing; the learned trial Judge failed to make a finding on the issue of whether the 2nd respondent was nominated by his ruling house which should invalidate her decision. Learned counsel cited in support of the case of Okonji v. Njokanma (1991) 7 NWLR (Pt.202) 131 p. 150.

Since nomination has not preceded appointment, the appointment of 2nd respondent by 1st respondent is void, counsel submitted.

By way of reply, learned counsel to the respondents by way of summary at page 6 of the respondents' brief, learned SAN for the respondents submitted on this issue that the whole tenor of the Chiefs Law will be defeated if this court succumbs to the piecemeal interpretation of the provisions of section 13(4) of the Chiefs Law as canvassed at pages 4-5 of the appellant's brief highlighted supra. Learned SAN asserted thus:

"It is undoubted that where a family only nominates a person there can be no dispute. A dispute envisages at least two persons. In this case the appellant agreed that both he and the 2nd respondent were nominated by factions in the Aduloju family, paragraphs 12, 13 and 14 of the supporting affidavit at page 6 of the record."

"The questions to ask are the following my Lords:

(i) If there was no dispute why was the Committee of Nine set by the family?

(ii) Why did the appellant depose in paragraph 10 of affidavit that the family meeting was unwieldy?

(iii) Why were many meetings held at the Palace of the 1st respondent with the representatives of the Aduloju family?

(iv) Why the various objections by the appellant's faction to the candidature of the 2nd respondent"?

In the light of the foregoing, learned SAN to the respondents submitted that once there was a dispute the 1st respondent acted responsibly in invoking the provisions of s.13 (14) of the Chiefs Law to find a solution to the lingering and festering chieftaincy dispute. This is moreso when the appellant deposed that the Edemo is one of the 12 kingmakers of Ado Ekiti. By way of summary at page 16 of the respondents' brief, counsel submitted that the trial court made adequate finding on the selection of the 2nd respondent by his family and that all the steps taken by the 1st respondent were fair, just and in accord with Chiefs Law as amended. The learned SAN for the respondents contended that there was nothing done by the 1st respondent that was unfair and unjust to the appellant as the 1st respondent accorded the appellant and the 2nd respondent equity and fair hearing. I have considered the submissions of both learned counsel to the parties on this principal issue vis-a-vis the parties' affidavit evidence and the prevailing law. Their arguments boil down to the following sub-issues.

(i) Whether there was a dispute and if so what kind of dispute - dispute over nomination or appointment of candidate (s) for the Edemo Chieftaincy?

(ii) Depending on the answer to sub-issue 1 whether the 1st respondent as prescribed authority rightly exercised his power under s. 13(4) of the Chiefs Law as amended.

On sub-issue 1, 1 has considered the arguments of both learned counsel to the parties highlighted supra vis-a-vis the records particularly the affidavit evidence and the prevailing law. The finding of the learned trial Judge - at page 127 lines 20-21 is that there was a dispute on the choice of candidate within the Aduloju ruling house. This finding of the learned trial Judge supports the appellant's case that the dispute was only over nomination at the level of the ruling

house and not over appointment. (See submissions of appellant's counsel on the principal issue supra). This nature of the dispute was also conceded to by the learned counsel to I the respondents in paragraphs 2.03-2.05 of the respondents brief where the respondents admitted clearly that it was in the dispute over nomination that the 1st respondent intervened. See also the submission of learned counsel to the respondents on this principal issue highlighted supra. The affidavit evidence of the parties also bear eloquent testimony to this nature of the dispute over nomination of candidate(s) at the family level (vide para. 8. Respondents counter-affidavit page 63 of the records, Para 31 & 32 of the affidavit in support to mention but a few).
Having established that the dispute in this case was one as to the nomination of candidate for the Edemo chieftaincy, it is necessary to examine the powers of the 1st respondent under S.13(4) of the Chiefs Law relating to dispute in Edemo Chieftaincy.

Section 13(4) of the Chiefs Law of Ekiti State as amended gave the 1st respondent a discretion and powers to determine any dispute arising from the appointment of any person into a minor chieftaincy like that of Edemo.

From the above provision of the Chiefs Law, the 1st respondent as the prescribed authority for the Edemo Chieftaincy would seem to be quite aware that the condition precedent to the exercise of his powers under S.13(4) of the Chiefs Law (supra) had not arisen. When faced with two nominations from the ruling house, from the affidavit evidence of both parties, the 1st respondent requested the Elerebi, the family head to resolve the misunderstanding within the family and come up with a single nomination vide paragraph 15 of the affidavit in support at page 36 of the records and Exhibits B & C at pages 42-46 of the records. It is not disputed that the family head of Aduloju ruling house and some members of the family nominated the appellant and presented him to the joint family head of the two ruling houses Elerebi who also supported the nomination of the appellant and forwarded his name to the 1st respondent through a letter written by Elerebi Exhibit B dated 30/11/92. This letter Exhibit B was written to the 1st respondent who had earlier directed the Elerebi to go and reconcile the members of the Adoluju family, a faction of which forwarded another name. It needs to be recalled that 4 candidates who had earlier been involved in the nomination contest withdrew at the reconciliation parley tor the appellant. The poser here is after the reconciliation by the Elerebi within the family, can there is said that a dispute exists any longer after the forwarding of the letter Exhibit B to the 1st respondent? To answer this question it is necessary to examine the normal route for forwarding nomination to the 1st respondent. Both parties agree that the normal route to the Prescribed Authority is the Elerebi after the family had nominated with his support. The situation in my view is akin to the position of the law-relating to disposition or alienation of family property where an act of sale carried out by the family head without the concurrence of the principal members is not void but only violable while an act of sale carried out by the principal members of the family without the concurrence of the family head is void ab iiulo See Ekpetidu v. Erika (Supra) cited by learned counsel to the appellant. By parity of reasoning the same principle applies mutatis mutandis to nomination carried out by a section of the family without the family head. See Oladokun v. Military Governor, of Oyo State (1996) 8 NWLR (Pt.467) 387.

The clear position in the instant case is that the letter written by Elerebi Exhibit B dated 30/11/92 forwarding the name of the appellant showed there was no dispute any longer. The normal route to the prescribed authority through the Elerebi had been exhausted and followed - The Elerebi and members of the family. This makes s.13 (4) of the Chiefs Law inapplicable as there is no longer any dispute for the 1st respondent to resolve. This sub-issue is resolved in favour of the appellant.

As to whether the 1st respondent as Prescribed Authority rightly exercised his powers under s. 13(4) of the Chiefs Law as amended, both learned counsel to the parties addressed us on this 2nd sub-issue.

Learned counsel to the appellant submitted that s.13(4) of the Chiefs Law becomes inapplicable as there is no longer any dispute as to appointment while learned counsel to the respondent said there is. From our holding in respect of sub issue No. 1, in the circumstance, the appellant was the candidate duly nominated by the Aduloju family as borne out by the affidavit evidence and supported by submissions of both learned counsel to the parties. The question is who, nominated the 2nd respondent a section of the Aduloju family without the family head, the Elerebi. There is doubt whether there was any meeting of another faction at all in view of the letter written by the Elerebi. Assuming there was who presided over such a meeting? Definitely not the Elerebi hence the apparent illegality as highlighted supra. The 1st respondent ought to have approved the candidate duly nominated by the family with the concurrence of the Elerebi and not otherwise and i so hold. The 1st respondent by doing otherwise created a non-existing dispute which he purported to settle. In the circumstance, I hold that the 1st respondent exceeded his jurisdiction by approving the appointment of the 2nd respondent under the circumstances and 1 so hold. See Ekpendu v. Erika supra. See also Odeneye v. Efunuga (1990) 7 NWLR (Pt. 1 64) 6 1 8 at page 63 1 where it was held that -

> "..... Any purported selection by the kingmaker or its approval by the Governor of a person not nominated by the Ruling House is an exercise in futility."

The interesting thing in this case is that the learned trial Judge failed to resolve this principal issue of whether or not the 2nd respondent was duly nominated by the ruling house. Rather than resolving this issue learned trial Judge merely retorted at page 128 of the records thus:-

> "The 1st respondent did not appoint or select the 2nd respondent by himself."

Be that as it may, I hold that the decision of the 1st respondent to approve the 2nd respondent as the Edemo of Ado- Ekiti is a nullity having been made in excess of his jurisdiction as contained in s. 13(4) of the Chiefs Law. The learned trial Judge was in error when she failed to quash the said decision. This sub-issue No. 2 is accordingly resolved in favour of the appellant.

Since the principal Issue is resolved in favour of the appellant, this appeal succeeds and it is allowed. The judgment of the Ekiti State High Court, holden at Ado-Ekiti in Suit NO.: HAD/2M/94 delivered by Adekeye J. on 22/1 1/95 is hereby-set aside. In its place, judgment is entered in favour of the appellant/applicant whereby all the reliefs sought by the appellant/applicant in the said lower court are hereby granted.

In view of the need for reconciliation after a chieftaincy dispute, I make no order as to costs.

AMAIZU, J.C.A.: I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Okunola, JCA. I agree with him that the appeal shot ' be allowed.

The judgment of the lower court was in the main, predicated on the fact that there was a "dispute" in the appointment of the successor to the stool of Edemo Chieftaincy. It seems that it is because of the "dispute" that the Ewi of Ado-Ekiti, the 1st respondent, appointed a committee, pursuant to his powers under section 13(4) of the Chiefs (Amendment) Edict, 1991, to look into the "dispute".

From the affidavit evidence before the lower court, there was no dispute. The first respondent should therefore have acted on the letter, Exhibit B, from the Elerebi to him, informing him of the appointment of the appellant by the ruling house.

For the above and other reasons marshalled out in the lead judgment, I also allow the appeal. I abide by the consequential orders made in the said lead judgment, including the order as to costs.

ONNOGHEN, J.C.A.: I have had the privilege of reading in draft the lead judgment just delivered by my learned brother, Okunola JCA.

I agree with his reasoning and conclusion that this appeal is meritorious and should be allowed.

From the totality of the affidavit evidence before the lower court it is clears that there was no dispute as to the "appointment" of the appellant to bring into play the provisions of section 13(4) of the Chiefs Edict. At the time the trouble arose the parties were still in the nomination exercise which nomination must be by the ruling house presided by the Elerebi.

I therefore allow the appeal and abide by the consequential orders made in the lead judgment of my learned brother, Okunola, JCA including the order as to costs.

Appeal allowed.