

1. **ALHAJI YUNNUS BUKOYE, ESSA OF OFFA**
2. **CHIEF BAYO AKINOLA, OJUMU OF OFFA**
3. **ALHAJI OSENI OLANIYI, BALOGUN OF OFFA**
4. **ALHAJI ZIKIRULLAH KOLA OLLABOYE, SHAWO OF OFFA**

V.

1. **ALHAJI SAKA ADEYEMO, MAGAJI AND HEAD OF OLUGBENSE RULING HOUSE, OFFA**
2. **ALHAJI (PRINCE) ABDULRAUF ADEGBOYEGA KEJI**
3. **PRINCE SAKA KEJI (for themselves and on behalf of Olugbense Ruling House of Offa)**
4. **ALHAJI MUFUTAU MUHAMMODU GBADAMOSI ESUWOYE**
5. **ATTORNEY-GENERAL OF KWARA STATE**
6. **GOVERNOR, KWARA STATE**

AND

1. **ALHAJI JIMOH ABODUNRIN IMAM BOSERE (Substituted for Alhaji Sheu F. Oyeniyi), (Magaji Olugbense Ruling House, Offa)**
2. **ALHAJI (PRINCE) ABDULRAUF ADEGBOYEGA KEJI**
3. **PRINCE SAKA KEJI (for themselves and on behalf of the Olugbense Ruling House)**

1. **ALHAJI YUNUS BUKOYE, ESSA OF OFFA**
2. **ALHAJI KADIR KOLAWOLE BELLO, OJOMU OF OFFA**
3. **ALHAJI OSENI OLANIYI, BALOGUN OF OFFA**
4. **ALHAJI ZIKIRULLAH KOLA OLABOYE. SHAWO OF OFFA**
5. **ALHAJI MUFUTAU MOHAMMODU GBADAMOSU ESUWOYE**
6. **ATTORNEY GENERAL, KWARA STATE**
7. **GOVERNOR, KWARA STATE**

SUPREME COURT OF NIGERIA

SC.647/2013

SC.648/2013

WALTER SAMUEL NKANU ONNOGHEN, J.S.C. (*Presided*)

OLABODE RHODES-VIVOUR, J.S.C.

NWALI SYLVESTER NGWUTA. J.S.C.

MARY UKAEGO PETER-ODILI. J.S.C.

AMIRU SANUSI. J.S.C. (*Read the Leading Judgement*).

FRIDAY, 1st JULY 2016

ACTION - Abuse of court process - What amounts to - Common features of - Circumstances that may give rise to.

ACTION - Chieftaincy dispute - Action for resolution of chieftaincy dispute - Condition precedent to institution of - Where not fulfilled - Effect.

APPEAL - Multiple appeals - Multiple appeals against one judgment - Undesirability of - Need to discourage same.

APPEAL - Parties to an appeal - Whether appellant bound to retain all the parties in the trial in his appeal.

APPEAL - Right of appeal - Exercise of - Need for party not to abuse court process in exercise of.

APPEAL - Right of appeal - Exercise of - Need to be within ambit of law.

APPEAL - Right of appeal - How exercised - Need for litigant to follow the law in exercising.

APPEAL - Right of appeal - Unfettered right thereto - Sections 233 and 246. Constitution of the Federal Republic of Nigeria 1979 and 1999 (as amended) - Extent and limits of.

CHIEFTAINCY MATTERS - Appointment of chief - Dispute therein - Power of Governor of the State in respect of - Nature and implication of - Section 3(3), Chiefs (Appointment and Deposition) Law, Cap C9 Laws of Kwara State, 2006.

CHIEFTAINCY MATTERS - Chieftaincy dispute - Action for resolution of chieftaincy dispute - Condition precedent to institution of - Where not fulfilled - Effect.

CONSTITUTIONAL LAW - Right of appeal - Exercise of- Need for party not to abuse court process in exercise of.

CONSTITUTIONAL LAW - Right of appeal - Exercise of- Need to be within ambit of law.

CONSTITUTIONAL LAW - Right of appeal - Unfettered right thereto - Sections 233 and 246 of the Constitution of the Federal Republic of Nigeria 1979 and 1999 (as amended) -Extent and limits of.

COURT - Abuse of court process - Need for party not to abuse process of court whilst exercising right of appeal.

COURT - Abuse of court process - What amounts to - Common features of - Circumstances that may give rise to.

COURT - Jurisdiction of court – where court acts without jurisdiction - Effect.

JURISDICTION - Jurisdiction of court - Where court acts without jurisdiction - Effect.

PRACTICE AND PROCEDURE - Abuse of court process - Need for party not to abuse process of court whilst exercising right of appeal.

PRACTICE AND PROCEDURE - Abuse of court process - What amounts to - Common features of - Circumstances that may give rise to.

PRACTICE AND PROCEDURE - Appeal - Multiple appeals - Multiple appeals against one judgment - Undesirability of -Need to discourage same.

PRACTICE AND PROCEDURE - Appeal - Parties to an appeal - Whether appellant bound

to retain all the parties in the trial in his appeal.

PRACTICE AND PROCEDURE - Appeal - Right of appeal -Exercise of - Need for party not to abuse court process in exercise of.

PRACTICE AND PROCEDURE - *Appeal - Right of appeal - Exercise of - Need to be within ambit of law.*

PRACTICE AND PROCEDURE - *Appeal - Right of appeal - How exercised - Need for litigant to follow the law in exercising.*

PRACTICE AND PROCEDURE - *Appeal - Right of appeal - Parties unfettered right thereto - Sections 233 and 246. Constitution of the Federal Republic of Nigeria 1979 and 1999 (as amended) - Extent and limits of.*

PRACTICE AND PROCEDURE - *Jurisdiction of court - Where court acts without jurisdiction - Effect.*

Issues:

1. Whether the instant appeal No. SC7 647/ 2013 amounted to an abuse of court process.
2. Whether the High Court and the Court of Appeal had jurisdiction to adjudicate on this suit.

Facts:

By suit No. KWS/OF/15/2010 the 1st – 3rd respondents as claimants instituted an action against the appellants and the 4th respondent at the High Court of Kwara State sitting at Offa.

The case was basically on who was the rightful person to occupy the position of Olofa of Offa from the existing two ruling houses after the demise of the erstwhile Olofa of Offa. Oba Mustapha Olawore Olanipekun II.

The appellants and the 4th respondent filed a joint statement of defence and counter - claim against the claim of the 1st -3rd respondents. The trial court after hearing the matter delivered its judgment on 19th July 2012. It dismissed the claims of the 1st-3rd respondents as well as the counter claim of the appellants and the 4th respondent which was held to be statute-barred.

Aggrieved by the said judgment, the 1st – 3rd respondents appealed to the Court of Appeal, Ilorin Judicial Division in Appeal No. CA/IL/71/2012. On their part, the appellants and the

4th respondent filed a cross-appeal No. CA/IL/71A/2012 against the dismissal of their counter-claim by the trial court.

The Court of Appeal in its judgment delivered on 9th July 2013 allowed the appeal of the 1st-3rd respondents and granted all the reliefs sought by them.

Dissatisfied, the 1st – 4th appellants appealed to the Supreme Court in Appeal No. SC/647/2013. In the appeal, the appellants removed the 4th respondent, their co-traveler till then, as appellant and made him the 4th respondent in the Supreme Court.

The 4th respondent was the candidate who was declared the Olofa of Offa by the kingmakers, the 1st – 4th appellants but he was not made a co-appellant in the appeal. for reasons best known to the appellants.

On his part, the 4th respondent filed Appeal No. SC/650/2013 and made the appellants in Appeal No. SC/647/2013 respondents therein.

This culminated in filing multiple appeals from the same judgment.

Also the suit from which the multiple appeals, including Appeal No. SC/647/2013. arose was commenced without compliance with the pre-condition imposed by Section 3(3) of the Chiefs (Appointment and Disposition) Law, Cap. C9 Laws of kwara State 2006. It was argued that it deprived the trial High Court and the Court of Appeal the necessary jurisdiction to adjudicate on same.

A cross-appeal against part of the judgment of the Court of Appeal with Appeal No. SC/ 648/2013 was also filed as an off-shoot of Appeal No. SC/ 647/2013.

Section 3(3) of the Chiefs (Appointment and Deposition) Law, Cap. C9 Laws of Kwara State 2006 states as follows:

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

Held (Unanimously dismissing the appeal and striking-out the cross-appeal):

1. *On Nature of right of appeal -*

By virtue of the provisions of Sections 233 and 246 of the Constitution of the Federal Republic of Nigeria 1979 and 1999 (as amended), parties to any suit have an unfettered right of appeal against the decision of the High Court to the Court of Appeal and even to the Supreme Court. (P. 191, paras. E-F)

2. *On Need for litigant to follow the law whilst exercising right of appeal -*

Rights of appeal are exercisable according to law, rules and procedures governing such appeals. In other words it is incumbent upon a litigant to follow the law, rules and procedure governing the exercise of such right of appeal one of which is to guard against abusing the process of court. (P. 19J, paras. G-H)

3. *On Whether party can abuse court process whilst exercising right of appeal –*

Even though the Constitution provides a right of appeal to any party aggrieved by a decision of a court, that does not give such an aggrieved party the right to abuse the process of the court when exercising such right of appeal. (P. 191. paras. F-G)

4. *On Whether appellant bound to retain all parties at trial in his appeal -*

An appellant is not bound to retain ail the parties at the trial in his appeal. (P. 191. para. E)

5. *On Undesirability of filing multiple appeals against one judgment and need to discourage same -*

The practice of filing multiple appeals against one judgment is undesirable and ought to be discouraged by award of punitive costs against counsel involved personally. In the instant case, the suit from which the multiple appeals, including the two herein, arose was commenced without compliance with the pre-condition imposed by section 3(3) of the Chiefs

(Appointment and Deposition) Law, Cap. C9 Laws of Kwara State 2006. (P. 203. paras. E-F)

Per ONNOGHEN, J.S.C. at 201-202, paras. H-F:

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

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

It how ever goes without saying that the success of this appeal enures mainly to the benefits of the said 4th respondent who has been forced into a position of having to defend the judgment of the lower court which is not to his benefit in anyway whatsoever, by being made a reluctant respondent in the appeal. It is therefore not surprising that the 4th respondent has not deemed it fit to file any processes in defence of the judgment of the lower court on appeal. In the circumstance would it not be proper to conclude that such a respondent has conceded the appeal? What purpose is the current trend designed to serve? I hold the considered view that the trend is very disturbing and ought not to be encouraged at all.

In the circumstance, I agree with my learned brother, Sanusi, JSC that this appeal is in abuse of court process and therefore liable to be dismissed. The present trend should not be encouraged at all as it will do the judiciary and the legal profession no good. Appellants and the 4th respondent ought to have continued to fight the case together by filing a joint appeal in this court, not to split the appeals thereby forcing some of the appellants to be respondents in an appeal in which they cannot perform

their traditional role of defending the judgment on appeal. They have, thereby become odd bedfellows with the other respondents."

6. *On What amounts to abuse of court process -*

The abuse of court process lies in the multiplicity and manner of the exercise of the right, and not in the exercise of the right per se. It consists of the intention, purpose or aim of the person exercising the right to harass, irritate and annoy the adverse party and interfere with the administration of justice. It is the inconvenience and inequities involved in the aims and purposes of the action. In the instant case, the institution or filing of these appeals constituted abuse of judicial or court process. The appeals were on the same judgment and against the same parties and also on the same subject matter. They were, no doubt, instituted with the aims of annoying the adverse party thereto. [Okorodudu v. Okoromadu (1977) 3 SC 21; Oyebola v. Esso West Africa Inc (1966) 1 All NLR 170; Harnman v. Harnman (1989) 5 NWLR (Pt. 119) 6 referred to.] (Pp. 192, paras. G-H; 201. paras. F-G)

7. *On Common features of cause of court process -*

Abuse of court or judicial process is imprecise. It involves circumstances and situations of infinite variety and condition. However, a common feature of the concept is simply the improper use of the judicial process by a litigant to interfere with the administration of justice. [Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156 referred to.] (Pp. 191-192: paras. H-A]

8. *On Circumstances that may give rise to abuse of court process -*

The circumstances which would give rise to an abuse of judicial process include the following:

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

- (b) instituting different actions between the same parties simultaneously in different courts even though on different grounds;
- (c) where two similar processes are used in respect of the exercise of the same right for example, a cross-appeal and a respondent notice;
- (d) where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of facts already decided by the lower court;
- (e) where there is no law supporting a court process or where it is predicated on frivolity or recklessness.

[Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156 referred to.]
(Pt. 192. paras C-G; 201, paras. B-F)

9. *On Condition precedent to institution of action chieftaincy disputes –*

By virtue of the provision of section 3(3) of the Chiefs (Appointment and Deposition) Law, Cap C9 Laws of Kwara State 2006, in the case of any dispute, the Governor, after due inquiry and consultation with persons concerned in the selection, has the final say as to whether the appointment of any chief has been made in accordance with customary law and practice. The Governor's final say is a condition precedent and non-compliance with it would render any suit incompetent. [Amadi v. NNPC (2000) 10 NWLR (Pt. 674) 76; Nwoye v. Anyichie (2005) 2 NWLR (Pt. 910) 623; Katsina Local Authority v. Dawu (1971) 1 NMLR 100 referred to.] (Pp. 195. paras. G-H: 203. paras. F-H)

10. *On Condition precedent to instituting an action for resolution of chieftaincy disputes –*

Compliance with the provision of section 3(3) of the Chiefs (Appointment and Deposition) Law, Cap C9 Laws of Kwara State 2006, is imperative and a pre condition before the parties could rush to the trial court for the resolution of their chieftaincy dispute. In the instant case, failing to so comply made the institution of the suit at the trial court in the first place premature, because a vital precondition to filing such suit at the trial court and by extension the appeal

to the Court of Appeal and the Supreme Court amounted to putting the cart before the horse. Therefore, the trial court and indeed the Court of Appeal were loathe of jurisdiction to adjudicate on the matter. [*Madukolu v. Nkemdili* (1962) 2 SCNLR 341; *NURTW v. R.T.E.A.A.N.* (2012) 10 NWLR (Pt. 1307) 120referred to.]

Per NGWUTA, J.S. C. at page 203-204, paras. G-B:

“The Governor's final say, which he makes known after due inquiry and consultation with persons concerned in the selection as to whether the appointment of any chief has been made in accordance with customary law and practice, is a condition precedent to the institution of the suit giving rise to these appeals. That condition was not complied with and the non-compliance rendered the suit incompetent. Failure to comply with section 3 (3) of the law has the same effect as failure to serve pre-action notice where the law or rule provides for it. It renders the suit incompetent. See *Amadi v. NNPC* (2000) 10 NWLR (Pt. 674) 76; *Nwoye v. Anyichie* (2005) 2 NWLR (Pt. 910) 623; *Katsina Local Authority v. Alhaji B. Maka Dawu* (1971) 1 NMLR 100 at 105”.

11. *On Effect when court acts without jurisdiction -*

A court acts in vain in hearing a matter in which it lacks jurisdiction no matter how well the trial was conducted. In the instant case, the proceeding in the trial court was a nullity and ipso facto the proceeding in the Court of Appeal was also a nullity as it had no jurisdiction to hear the appeal. [*Labiya v. Anretiola* (1992) 8 NWLR (Pt. 258) 139 referred to.] (P. 204. paras. B-C)

Nigerian Cases Referred To In The Judgment:

Adeogun v. Fashoghon (2011) 8 NWLR (Pt. 1250)427

Amadi v. NNPC (2000) 10 NWLR (Pt. 674) 72

Anatogu v. Iweka II (1995) 8 NWLR (Pt. 415) 547
Araka v. Egbue (2003) 17 NWLR (Pt. 848) 1
Harriman v. Harriman (1989) 5 NWLR (Pt. 119) 6
Igbodin v. Ohianke (1976) 9-10 SC 179
Iteogwu v. LPDC (2009) 17 NWLR (Pt. 1171) 614
Katsina Local Authority v. Dawu (1971) 1 NWLR 100
Labiya v. Anretiola (1992) 8 NWLR (Pt. 258) 139
Madukolu v. Nkemdilim (1962) 2 SCNLR 341
Mobil Producing (Nig.) UnLtd. v. LASEPA (2002) 18 NWLR (Pt. 798) 1
Nonye v. Anyichie (2005) 2 NWLR (Pt. 910) 623
NURTW v. R.T.E.A.N. (2012) 10 NWLR (Pt. 1307) 120
Okorodudu v. Okoromadu (1977) 3 SC 21
Omomeji v. Kolawole (2008) 14 NWLR (Pt. 1106) 180
Orlu v. Gogo-Abite (2010) 8 NWLR (Pt. 1196) 307
Osidele v. Sokunbi (2012) 15 NWLR (Pt. 1324) 470
Oyebola v. Esso West Africa Inc (1966) 1 All NLR 170
Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156
Tabik Invest. Ltd. v. GTB Ph (2011) 17 NWLR (Pt. 1276) 240

Nigerian Statutes Referred to in the Judgment:

Chiefs (Appointment & Deposition) Law Cap C9 of Kwara State, 2006. Ss. 3(1)(2)(3)(4), 4(1), 7, 15(1)(2)

Constitution of the Federal Republic of Nigeria, 1979, Ss. 233.246

Evidence Act, S. 106

Nigerian Rules of Court Referred to in the Judgment:

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

Appeal and Cross-appeal:

This was an appeal and a cross-appeal against the judgment of the Court of Appeal which allowed the appeal of the 1st- 3rd respondents from the judgment of the High Court which had dismissed their case against the appellants and the 4th respondent. The Supreme Court, in a unanimous decision, dismissed the appeal and struck-out the cross-appeal.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal: Walter Samuel Nkanu Onnoghen. J.S.C. (Presided): Olabode Rhodes-Vivour, J.S.C: Nwali Sylveste- Nsnvma. J.S.C: Man

Ukaeso Peter-Odili, J.S.C: Amiru Sanusi, J.S.C. {Read the Leading Judgment) Appeal No.: SC.647/2013 & SC.648/2013

Date of Judgment: Friday, 1st July 2016

Court of Appeal:

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

Names of Justices that sat on the appeal: Hussein Mukhtar.

J.C.A. (Presided and Read the Leading Judgment):

Obande Festus Ogbumya, J.C.A.; Tijjani Abubakar. J.C.A.

Appeal No.: CA/IL/71/2012

Date of Judgment: Tuesday. 9th July 2013

Names of Counsel: J.O. Baiyeshea, SAN (with him. R. Oladipo, Kayode Odetokun, Y. A. Dikko and Vincent Adodo) - for the Appellants

R.A. Lawal-Rabana. SAN (with him. Akin Akintoye; Iwalola Bello [Mrs.]; Kizito Oji; A. G. Ademolu Bank and Tolu Adekola) - for the 1st to 5th Respondents Kamaldeen Ajibade, Attorney-General of Kwara State {with him. M. A. Orire, Principal State Counsel. Ministry of Justice, Kwara State; M.A. Samah. Principal State Counsel, Ministry of Justice, Kwara State: G. R. Moyosore, Senior State Counsel, Ministry of Justice. Kwara State and O.S. Balogun) - for the 6th and 7th Respondents

High Court:

Name of the High Court: High Court of Kwara State. Off a

Name of the Judge: Akanbi, J.

Suit No.: KWS/OF/15/2010

Date of Judgment: Thursday. 19th July 2012

Counsel:

SC.647/2013

Yusuf Ali. SAN (with him. K. K. Eleja. SAN; Lawrence John. Esq.; Alex Akoja, Esq.: S. A. Oke; N.N. Adegboye. Esq.; Patricia Ikpegbu [Mrs.]: K. O. Lawal. Esq.: M. A. Adelodun, Esq.; Haliman Sulaiman [Miss]: Safinat Lamidi [Miss] A.O. Usman, Esq.: - far the Appellants

John Olusola Baiyeshea. SAN (with him, Jacob S. Fagbemi: R. S. John; Samuel Ipinlaiye; Richard S. Baiyeshea; Labake Belawu [Mrs.]; Olutoyese Ibitoye; Yusuf Dikko: Kayode Odetokun; A.S. Asenibare; Stewali David; Oluseyi Akintoroye; Otele Oluwafunbi [Miss]: Elizabeth, Bolanle Baiyeshea [Miss]; Lanre Mark Aluko; Betsy Stewart [Mrs.]: Deji Adeyemi and John Samuel Opeyemi – for 1st to 3rd respondents.

R. A. Lawal-Rabana. SAN (with him. Oyebanji Emmanuel Adeyeye. Esq; Akin Akintoye II. Esq.; Iwalola Bello [Mrs.]; Kizito Oji, Esq.: Tosin S. Alawode, Esq.; Adewale Odeleye. Esq.; Gbenga Oyewole. Esq.: Peter O. Abang. Esq.; Rukayat O. Ojo-Oba [Miss] – for 4th Respondents

Kamaldeen Ajibade, A.-G., Kwara State (with him. F. D., Lawal [Mrs.]; Solicitor General. H. A. Gegele D.C.L. MA. Oniye

C.S.C., I. Zakari S.C.I and Priscilla Ejeh [Miss]) – for 5th & 6th Respondents SC.648/2013

John Olusola Baiyeshea, SAN - (with him. Jacob. S. Fagbemi, R.S. John, Samuel Ipinlaiye, Richard S. Baiyeshea. Labake Belawu [Mrs]; Olutoyese Ibitoye, Yusuf Dikko. Kayode Odetokun, A.S. Asenibare, Stewart David, Oluseyi Akintoroye, Otele Oluwafunbi [MissJ; Elizabeth Bolanle Baiyeshea [Miss]; Lanre Mark Aluko, Betsy Stewart [Mrs.J; John Samuel Opeyemi, and Deji Adeyemi - for the Appellants Yusuf Ah, SAN (with him.K. K. Eleja. SAN; Lawrence John, Esq.: Alex Akoja, Esq.; S. A. Oke, N. N. Adegboye, Esq.: Patricia Ikpegbu [Mrs.J; K.O. Lawal. Esq.; M.A. Adelodun. Esq.; Haliman Sulaiman [MissJ; Safinat Lamidi [MissJ: A.O. Usman, Esq.; Adaobi Ike [Miss] and C.N. Akuneto, Esq. - for 1st to 4th Respondents

R. A. Lawal-Rabana, SAN (with him, Oyebanji Emmanuel Adeyeye, Esq.; Akin Akintoye II, Esq.; Iwalola Bello [Mrs.J Kizito Oji, Esq.; Tosin S. Alawode, Esq.; Adewale Odeleye. Esq.; Gbenga Oyewole, Esq.; Peter O. Abang. Esq.; Rukayat O. Ojo-Oba [Miss] - for 5th Cross Respondents Kamaldeen Ajibade, A.-G., Kvwara State (with him. F.D. Lawal [Mrs.]: Solicitor General, H. A. Gegele. D.C.L: M.A. Oniye C.S.C.: I. Zakari S.C.I, and Priscilla Ejeh [Miss]- for 6th & 7th Respondents

SANUSI. JJS.C. (Delivering the Leading Judgment): This appeal emanates from the judgment of the ilorin Division of the Court of Appeal ("the lower court", for short) delivered on the 9th of July 2013- which allowed the 1st to 3rd respondents joint appeal and granted all the reliefs sought in the statement of claim of the plaintiffs/appellants as opposed to the decision of the trial High Court of Kwara State sitting in Offa which had on 21/7/2013 which had earlier dismissed the plaintiff appellants claim filed thereat.

This case had a chequered history. It is a case of chieftaincy tussle between ANILELERI and OLUGBENSE Ruling houses of Offa, in Kwara State of Nigeria. The tussle is basically on who is the rightful person from the two ruling house to occupy the position of Olofa of Offa on the basis of rotation utter the demise of the erstwhile Olofa of Offa Ola Mustapha Olawore

Olanipekun II who was from the ANILELERIN ruling house who ruled for forty years and his ruling house Anilelerin which was female ruling house. Ordinarily, the candidate to till the vacant stool going by the principle of rotation as established by Kwara State Government should have been from the OLUGBENSE male ruling house and the 2nd respondent who was from the latter ruling house, was nominated and presented to the kingmakers of Offa who are now the appellants, who refused to confirm the 2nd respondent as the Olofa of Offa acting in concert with the 5th and 6th respondents and instead they installed the 4th respondent who is also from the same family ruling house of Olofa of Offa.

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

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

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

Whether having regards to the extant provisions of section 3(3) of the Chiefs (Appointment and Depositions Law. Cap. C9 of Kwara State 2006. the Court of Appeal acted competently and correctly in

countenancing and granting the reliefs it awarded to the 1st to 3rd respondent (Ground1)

Whether the Court of Appeal was not in error in sua mom raising and relying on the principle of repugnancy lest and its perceived "sense of Justice", to find in favour of the U to 3rd respondents, contrary to the case of the parties as formulated in the pleadings and presented by them in evidence. (Grounds 2 & 6)

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

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

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

Whether the trial court and the Court of Appeal had the jurisdiction to adjudicate on the 1st to 3rd respondents' case having regard to section 3(3) of the Chiefs Appointment and Deposition Law of Kwara State (Ground 1)

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

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

Whether in the peculiar circumstances of this case, the principle of estoppel applies for the benefit of the appellants (Ground 8)

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

It is pertinent to state at this stage that the appellants had on 8/3/2016. filed appellant's reply brief in response to the brief of argument filed on behalf of the 1st to 3rd respondents. No briefs of argument were however filed on behalf of the 4th to 6th respondents.

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

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

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

Chief R. A. Lawal Rabana SAN who appeared for appellants on SC.650A/2013; for 5th respondent in SC.650/2013 and for appellants in SC.890/2014. submitted that appeal in SC.650/2013 is against the judgments of the High Court and the Court of Appeal. He submitted that where an appellant had shown sufficient interest in his appeal, such would not amount to an abuse of court process. With regard to appeal No. SC.890/2014, he said that appeal arose from the dismissal of counter-claim by defendant at the trial court, hence the counter-claimant appealed to the court below which held that the counter claim was not statute barred.

Mr. K. Ajibade, the learned Attorney General of Kwara State represented the 5th and 6th respondents in SC.647/2013. 6th and 9th respondents in SC.648/2013. for 9th respondent in SC.650/2013 and appellants SC.650A/2013 and for 8th and 9th respondents in SC.890/2014. He aliened himself with the submissions of learned senior advocates Y.Ali and Chief R. A. Lawal Rabana. He submitted that appeal No. SC.650A/2013 was filed separately as a result of the consequential order made by the court below against the Governor of Kwara State as contained on page 1503 of Vol. 2 of the record. He said based on the consequential order made on the Governor of Kwara State, they decided to appeal to this court. He finally urged this court not to regard their appeal as abuse of court process.

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

There is no gain saying that the present two appeals covered by this judgment and indeed the other appeals except SC.890/2014 are all against the single judgment of the court below delivered on the 9th of July 2013 which reversed the decision of the trial court. All learned senior counsel *ad idem*, that their respective appeals were lodged against the said judgment of the court below. I think it will therefore be apt to consider whether the appeals lodged particularly the present two appeals i.e. SC.647/2013 and SC.648/2013 amount to abuse of court process. It is not in dispute that the crux of the dispute which led to the institution of the action before the trial court in the first place, is centered on the ascension to the stool of the Olofa of Off a of Kwara State. Also not in dispute is that all the parties relied on the pleadings they tiled at the trial court on which basis evidence were led at the trial court. Similarly, it needs to be stated also, that by filing appeals and cross appeals against the same Judgment each party decided to file separately appeals or cross appeals and made himself either appellants, cross appellants, respondents or cross respondent in their own appeal against the single judgment. Admittedly an appellant is not bound to retain all the parties at the trial in his appeal.

There is no iota of dispute that parties to am- suit have unfettered right of appeal against the decision of the trial court to the court below and

even further to this apex court as provided by sections 246 and 233 of the Constitution of the Federal Republic of Nigeria 1979 and 1999 (as amended) (the Constitution for short) respectively. At any rate it is my considered view that even though the Constitution provides right of appeal to any party aggrieved by decision of a court, that does not however give mien aggrieved party the right to abuse the process of the court when exercising such right of appeal. It is trite law. that rights of appeal are exercised according to law, rules and procedures governing such appeal. In other words it is incumbent upon the litigant to follow the law rules and procedure governing the exercise of such right of appeal one of which is *to guard against abusing the process of court.*

The issue to address now is "what does "abuse of court or judicial process" mean.

This court in die case of *saraki v. kotoye* (1992) 9 NWLR (Pt.264)156 had held the concept of abuse of court or judicial process is imprecise and that it involves circumstances and situation or" infinite variety and condition that a common feature of the concept *is simply the improper use of The judicial process by a litigant to interfere with the administration of justice.* In fact at page 188 of the report Karibi-Whyte JSC stated thus:-

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

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

- (a) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues, or a multiplicity of action on the same matter between the same panics even where there exists a right to begin the action.
- (b) Instituting different actions between the same parties simultaneously in different courts even though on different grounds.

- (c) Where two similar processes are used in respect of the exercise of the same right for example, a cross-appeal and a respondent notice.
- (d) Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of facts already decided by court below.
- (e) Where there is no iota of law supporting a court process or where it is predicated on frivolity or recklessness.

This court went ahead to hold that the abuse of process lies in the multiplicity and manner of the exercise of the right rather than the exercise of the right *per se*. It consists of the intention, purpose or aim of the person exercising the right to harass, irritate and annoy the adverse party and interfere with the administration of justice. It is the inconvenience and inequities involved in the aims and purposes of the action. See *Qkorodudu v. Okoromadu* (1997) 3SC 21; *oyebola v. Esso west Africa Inc* (1996) 1 All NLR 170; *Harriman v. Harriman* (1989) 5 NWLR (Pt. 119) 6.

Applying *the* above listed principles which tantamount to abuse of judicial process to the instant situation of these two cases, one can safely say that the institution or filing of these appeals constitute abuse of judicial or court process. The appeals are on the same judgment and against the same parties and also on the same subject matter. The appeals in my view, were no doubt instituted with the aims of annoying the adverse party thereto. This court had on previous occasions frowned at the attitude of learned counsel of filing such multiplicity of action at first instance or on appeal and counsel are admonished for filing such numerous processes especially in the most recent appeals No. SC.12/2016 and SC.12A/2016 to which attention of senior counsel appearing for the parties were drawn, Therefore, having held that this appeal No.SC.647/2016 amounts to abuse of judicial process in fine with the reasons I have given above. I do not see any need to consider the issues for determination raised by the learned counsel for the parties or to consider the appeal on the merit.

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

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

The three cross appellants filed their cross appellants brief of argument on 14/7 2014. wherein they formulated two issues for determination of the cross appeal which read thus:-

1. Whether the lower court was right in upholding the decision of the trial court that 'exhibit G' - Tire Kwara State Press Release of 1969' is inadmissible in evidence on the ground that it was not certified.
2. Whether the lower court was right in holding that newspapers (exhibits P, Q,R and S) were inadmissible on the ground that there was no evidence of payment of fees for their certification and that newspapers were generally inadmissible in evidence.

The cross-appeal had also filed cross appellants reply brief to 1st to 4th cross respondent on 5-4-2016.

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

- A. Whether the lower court was right in upholding the decision of the trial court that exhibit G, the Kwara State Press Release is inadmissible in evidence on the ground that it was not certified.
- B. Whether the court below was right in holding that the newspapers (exhibits O,P,Q, R & S) were inadmissible on the ground that there was no evidence of payment of fees for their certification and that newspapers were generally inadmissible in evidence.

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

- I. Whether exhibit G. being a public document is admissible in evidence having not been certified.(Ground 1)
- II. Whether the court below was right to have expunged exhibits O, P, Q, R and S from the record on the ground that they are public documents which have not accordingly been certified. (Ground 2)

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

1. Whether the court below was right in upholding the decision of the trial court that exhibit G. the Kwara State Press Release of 1969 is inadmissible in evidence on the ground that it was not certified.
2. Whether the court below was right in holding that the newspapers (exhibits O, P, Q, R & S) were inadmissible on the ground that there was no evidence payment of fees for their certification and that newspapers were generally inadmissible in evidence.

As I posited *Supra*, of this present cross appeal is an off-shoot of appeal No. SC.64 7/2016 as it emanated from the decision in the latter appeal in relation to part of the decision of the latter appeal. In my discourse above I have adjudged appeal No. SC.647/2013 to be an abuse of judicial process for the reasons I have adumbrated *supra* after giving due consideration to the responses by learned senior counsel to all the parties to the question raised *sua mom* by this court on the propriety of all the appeals filed, including this particular cross appeal.

My noble lords, permit me to state that this court in its judgment in the main appeals, namely – SC.650A/2013 and SC.650/2013 delivered today by July. 2016 made a far reaching finding that in fact, the two lower courts were in the first place bereft of jurisdiction to adjudicate in the dispute by the parties on the stool of Olofa of Off a in view of the non-compliance with the provisions of section 3(3) and (4) of the Chief (Appointment and Deposition) Law (hereinafter referred to as "the law") by the respondents in those two appeals i.e. SC.659A/2013 and SC.650/2013. For ease of reference and purpose of clarity I shall reproduce below the relevant provisions of sections 3 and 4 of the law.

“section 3(1)

Upon the death, resignation or deproduction of any-chief other than a chief of a kind referred to in section 4, the Governor may appoint as the successor of such chief or head chief, any person selected in that behalf by those entitled by customary law and practice to select in accordance with customary law and practice.

2. Where no selection is made before the expiration of interval as is usual under customary law and practice, the Governor may himself appoint such person, as he may deem fit and proper to carry out such duties incidental to the chieftaincy as it may be necessary to perform.

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

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

The powers of the governor under the proceeding sections of this law shall only be exercised after receiving the advice of the council of chiefs.

15(1) where the governor or the appointing authority has approved the appointment of a person as a chief, any person who intends to challenge the validity of such appointment shall first deposit with the state accountant general a non-refundable sum of ten thousand naira.

(2) where the governor or the appointing authority has not approved any appointment to a vacant chieftaincy stool, any aggrieved person who institutes any court action in connection with a vacant chieftaincy, stool and join the state government, or any of its agencies as a party to any such court action shall first deposit with the state accountant-general a non-refundable fee of ten thousand naira.

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

I am in entire agreement with the reason of this court in those two appeals mentioned above and also hold that compliance with the provisions of section 3(3) of the law is imperative and a pre condition before the parties could rush to the trial court for the resolution of their chieftaincy dispute. Failing to so comply, in my view, made the institution of the suit at the trial court in the first place premature, because a vital precondition to filing such suit at the trial court and by extension the appeal to the court below and this court amounted to putting the cart before the horse. The trial court and indeed the court below are loathe of jurisdiction to adjudicate on-the matter. See *Madukola v. Nkemdilim* (1962) 2 SCNLR 341; *NURTW& Anor v. R.T.E.A.A.N. & 5 Ors* (2012)1 SC (Pt. 11) 119, (2012) 10 NWLR (Pt. 1307) 120.

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

On the whole, I am satisfied that both appeals are entitled to be dismissed for being abuse of judicial process. Similarly, the judgments of both the trial court and the court below are nullified for the non-compliance with the provisions of section 3(3) of the chiefs (appointment and deposition) law of kwara state. Both the appeal and the cross appeal are dismissed accordingly, I make no order on costs.

ONNOGHEN, J.S.C.: I have had the benefit of rename in draft the lead judgment of my learned brother, Sanusi JSC just delivered.

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

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

Appellants herein are the king makers of the stool of olofa of offa, kwara state and were sued, along with the present 4th respondent as the 5th defendant in suit no. KWS/Of/15/2010 by the present 1st – 3rd respondents who were the claimants therein. The claim against them is as follows.

"(a) A declaration that ascension to the stool of olofa of offa is rotational between Olugbense (male) Ruling house and Anilelerin (female) ruling house of offa.

(b) A declaration that anilelerin ruling house having Produced the late Oba Mustapha Olawore Olanipekun Ariwojoye II, Who ruled for over 40 years, it is now the turn of Olugbense ruling house in Law and/or equity to Produce the olofa of offa on the basis of rotation.

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

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

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

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

(g) A declaration that by virtue of the Chieftaincy declarations contained in the Kwara State of Nigeria Gazette. No. II Vol. 4 of 12th March, 1970 and legal notices 3 and 4 of 1969 herein, in respect of the process of selection of a candidate for the stool of Olofa of Offa by Anilelerin ruling house and Olugbense ruling house respectively ascension to the stool of Olofa of Offa is by rotation and not by competition between the two ruling houses.

(h) A declaration that the recognition of the 5th defendant as Olofa of Offa by the 6th and 7th defendants is illogical, wrongful, unlawful, unconscionable, null and void and of no effect whatsoever.

(i) A declaration that the appointment and installation of the 5th defendant as the Olofa of Offa by the 7th defendant is wrongful, unlawful, null and void and of no effect whatsoever.

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

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

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

(m) An order nullifying the appointment and installation of the 5th defendant *as* the Olofa of Offa and removing him forth with from the stool of Olofa of Offa.

(n) An order compelling the 1st and 4th defendants to accept the nomination of the 2nd claimant as the Olofa of Offa.

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

(p) An order of perpetual injunction restraining the 5th defendant from parading himself as the Olofa of Offa."

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

“(1) The 1st – 5th defendants repeat paragraphs 4 - 18 of the statement of defence.

(2) That the Olugbense ruling house have been disinherited and have gone into extinction going by the curse and the decision of Oba Olugbense their progenitor to allow only the female lineage of Anilelerin to occupy the Olofa stool.

(3) That by reason of the fact that since the demise of Oba Olugbense is the female lineage of Anilelerin that have been occupying the Olofa stool, the Anilelerin house have become the main and the only ruling house in Offa.

(4) Where of the 1st – 5th defendants/claimants pray as follows:

- a) A declaration that no rotational policy exist in Offa between the ruling houses in Offa on the appointment of Olofa of Offa whenever a vacancy occur to the stool.
- b) A declaration that the only ruling house that exists in Offa for the purpose on appointing an Olofa of Offa is the Anilelerin Ruling House.
- c) A declaration that the Kwara State Government Gazette No. II. Vol. 4 of 12th March, 1970 and any other notices as it recognizes Olugbense as a ruling house in Offa be declared null and void as it is contrary to the history, custom and tradition of Offa on Offa Chieftaincy.
- d) An order of perpetual injunction restraining the 6th and 7th defendants from treating and or recognizing the Olugbense ruling house that have a right to the Chieftaincy title of Olofa of Offa.

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

It is of great importance to note that the 1st – 5th defendants/appellants were being represented both at the trial and Court of Appeal by a single team of lawyers. However, and suddenly after the lower court delivered its judgment in CA/IL/71/2013, the 1st – 4th appellant herein filed an appeal No. SC/647/2013 in this court in which they removed their co-traveler, the 5th defendant/appellant in the lower courts as appellant herein but made him the 4th respondent. Not only were the parties who had all along had a joint case/defence to the claim but had been represented by the same team of lawyers been split, they are now being represented by different teams of counsel. So while 1st – 4th defendants/respondents in the lower court in CA/IL/71/2013 filed the instant appeal, the 4th respondent herein filed appeal No. SC/650/2013 and made 1st – 4th appellants herein respondents in his own appeal!! One is amaze at this development particularly the roles the strange respondents in these particular appeals are expected to play in defence of the judgment on appeal.

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

In the case of *Saraki v. Kotoye* (1992) 4 NWLR (Pt. 244) 154 this court laid down the circumstances that will give rise to abuse of court process.

They include the following:

- (a) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues, or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.
- (b) Instituting different actions between the same parties simultaneously in different courts, even though on different grounds.
- (c) Where two similar processes are Used in respect of the exercise of the same right for example, a cross appeal and a respondent notice.
- (d) Where an application for adjournment is sought by a party to an action to brine an application to court for leave to raise issues of fact already decided by courts below.
- (e) Where there is no iota of la a supporting a court process or where it is premised on frivolity or recklessness.

The court also held m that case, inter alia, that the abuse of process lies in the multiplicity and manner of the exercise of the right rather than the exercise of the right per se: it consists of the intention,

purpose or aim of the person exercising the right to harass, irritate and annoy the adversary and interfere with the administration of justice. it is the inconvenience and inequities involved in the aims and purposes of the action. See in addition. *Okorodudu v. Okommadu* (1977) 3 SC 21; *Oyebola v. Esso west Africa Inc.* (1966) 1 All NLR 170.

It cannot be denied that there are multiplicity of appeals by the defendants in the suit and respondents in appeal No. CA/IL/71/20 13 in this court arising from the same judgment. The judgment of the lower court, however, remains the same as well as their brief before that court.

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

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

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

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

S.C/648/2013

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

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

It is clear, therefore, that the said judgment applies to this which is consequently struck out for want of jurisdiction. I abide by the consequential orders made in the lead judgment including the order as to costs.

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

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

Most importantly, the suit from which the multiple appeals, including the two herein, arose was commenced without compliance with the pre-condition imposed by the Chiefs (Appointment and Disposition) Law, Cap. C9 of Kwara State 2006. Section 3(3) of the law provides:

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

The Governor's final say, which he makes known after due inquiry and consultation with persons concerned in the selection as to whether the appointment of any chief has been made in accordance with customary law and practice, is a condition precedent to the institution of the suit giving rise to these appeals. That condition was not complied with and the non-compliance rendered the suit incompetent.

Failure to comply with section 3 (3) of the law has the same effect as failure to serve pre-action notice where the law or rule provides for it. it renders the suit incompetent. See *Captain Amadi v. NNPC* (2000) 10 NWLR (Pt. 674; 72 at 26; *Chief Vwoye v. Anyiahie & 2 Ors* (2005) 1 SC (Pt. 11) 96, reported as *Nonye v. Anyichie* (2005) 2 KWLR (Pt. 910) 623; *Katsina Local Authority v. Alhaji B. Maka Dawu* (1971) 1 NMLR 100 at 105.

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

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

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

PETER-ODILI. J.S.C.: I agree with the judgment just delivered by my learned brother. Amuru Sanusi JSC and to underscore my support, I shall make some comments in emphasis of the reasoning.

This is an appeal against the decision of the Court of Appeal, Ilorin Division, the appeal of the 1st - 3rd respondents herein and awarded all the reliefs set out in their statement of claim as opposed to the decision of the trial court which dismissed their claims outrightly.

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

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

1. Whether having regards to the extant provision or section 3(3) of the Chief (Appointment and disposition) law, Cap. C9 of kwara state 2006, the court of appeal acted competently and correctly in countenancing and granting the reliefs it awarded to the 1st – 3rd respondents.
2. Whether the Court of Appeal was not in error in *suo motu* raising and relying on principle of repugnancy test and its perceived “sense of justice to find in favour of the 1st and 3rd respondents contrary to the case of the parties as formulated in the pleadings and presented by them in evidence.
3. Whether the Court of Appeal was not in error in the view it took of exhibits A, D and J and its conclusion that ascension to the Olofa of Offa stool is by rotation between the Anilelerin and *Olugbense* Ruling House and that it was the turn of Olugbense Ruling House to produce the next Olofa of Offa in succession to the late Oba Mustapha Olawore Olanipekun.
4. Whether the Court of Appeal was not in error in granting the reliefs sought by the 1st – 3rd respondents when same was not only proved as required by law but also caught by the principle of estoppels.

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

John Olusola Balyeshea SAN for the respondents adopted the brief of argument filed on the 25/11/15. In it he raised and argued a preliminary objection senior counsel posed in the brief of argument in the alternative five issues for determination in the event the preliminary objection was not upheld. The issues are thus:

1. Whether the trial court and the Court of Appeal had the jurisdiction to adjudicate on the 1st -3rd respondents’ case having regard to section 3(3) of the Chiefs (Appointment and Deposition) Law. Cap of Kwara State (Ground 1 of the grounds of appeal.)
2. Whether or not the principle of repugnancy was raised *SUO MOM* by the court below or whether or not am of the parties

canvassed the principle of repugnancy as an issue at the trial court and the court below. (Ground 1 of the ground 6 of the grounds of appeal).

3. Whether the court below properly relied on exhibit A, D and J in coming to the conclusion that 1st – 3rd respondents had enough evidence or record to establish rotational chieftaincy for the stool of Olofa of Offa from 1969 (grounds 3,6, 5, and 9)
4. Whether, in the peculiar circumstances of this case, the principle of estoppels applies for the benefits of the appellants (Ground 8 of the grounds of appeal.)
5. Whether the court below was right in granting the relief sought by the 1st - 3rd respondents (Grounds 7 and 10).

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

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

The 1st – 3rd respondents hereby object to grounds 1 and 8 of the grounds of appeal on the ground that they are incompetent for the following reasons, namely:

1. Ground 8 of the ground of appeal in the notice of appeal raised the principle of estoppels which did not form part of the appellant's case at the trial court and at the Court of Appeal. The appellants did not plead the principle of estoppel and did not canvass same at all at the trial court and at the Court of Appeal.
2. Appellant's issues 1 and 4 for determination are incompetent having been raised from the incompetent grounds of appeal.
3. Grounds 1 of the appellant's grounds of appeal is a fresh issue being raised for the first time before this court for which no leave was sought before raising same.

Mr. Balyeshea SAN of counsel submitted that the principle of estoppels was not pleaded at the trial court or raised at the Court of Appeal and so it cannot be raised at the Supreme Court since it is a fresh issue for which no leave was sought or obtained. He cited *Adeogun v. Fashogbon* (2011) 8 NWLR (Pt. 1250) 427 at 455; *Saraki v. Katoye* (1992) 9 NWLR (Pt. 264) 156 at 184; *Osidele v. Sokunbi* (2012)15 NWLR (Pt. 1324) 470

at 498; Order 27 rule 4(1) of the Kwara State High Court (Civil Procedure) Rules 2005.

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

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

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

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

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

SC.648/2013

Cross-Appeal

For the 1st - 3rd respondents in SC.647/2013 and now cross-appellants, learned senior advocate. John Olusola Balyeshea adopted the brief of argument filed on 4/7/2014 and reply briefs to 1st – 4th cross-respondents filed on 5/4/2016. Reply to 5th cross-respondent filed on 2/10/2014. Reply to 6th and 7th cross-respondents filed on 5/4/2016.

In the cross-appellants' brief were crafted two issues *for* determination which are stated as follows:

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

Whether the lower court was right in holding that the newspaper 'exhibits O, P, Q, R and S) were inadmissible on the ground that there was no evidence of payment of fees for their certification and that newspapers were generally inadmissible in evidence. Yusuf O. Ali SAN learned counsel for the 1st – 4th cross-respondents filed their brief of arguments on 14/1/2014 and deemed filed on 5/4/16. He adopted the brief of argument as raised by the cross-appellants.

Issues 1 & 2

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

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

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

- ii. Exhibits O, P, Q, R and S cannot be rejected based on the purported non-payment of the fees for certification and are therefore admissible in evidence.
- iii. Exhibits O, P, Q, R, and S constitute additional evidence in support of cross-appellants' case that ascension to the stool of Olofa of Offa is rotational by virtue of the Kwara State Government policy/decision known to all parties and the whole world since 1969.

He referred to *igbodin & Ors v. Obianke & Ors* (1976) 9-10 SC 179 or (1976) NSCC vol. 10, 467 at 473 - 474; *Araka v. Egbue* (2003) 17 NWLR (Pt. 848) 1 at 19-20.

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

Learned senior counsel. Yusuf Ali countered by submitting that it is settled that a public document is only admissible if it met the conditions set out in the provisions of section 106 of the Evidence Act. He cited *Iteogwu v. LPDC* (2009) 17 NWLR (Pt. 1171) 614; *Orlu v. Gogo-Abite* (2010; 8 NWLR (Pt. II96; 307 at 335; *Anatogu v. Iweka II* (1995) 8 NWLR (Pt. 415); 547.

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

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

I abide by the consequential orders made.

Appeal dismissed.

Cross-appeal struck out.