1. PRINCE KILANI ADEKEYE
2. CHIEF Y. S. SABEREDOWO
3. CHIEF JOHN AYODELE
4. CHIEF TIAMIYU ADEKANYE

V.

I. PRINCE SUMMONU ADESINA
2. CHIEF MICHAEL OYEWALE
3. THE GOVERNOR OF OSUN STATE
4. ATTORNEY-GENERAL OF OSUN STATE
5. ODO-OTIN LOCAL GOVERNMENT, OKUKU

AND

1. PRINCE KILANI ADEKEYE
2. CHIEF Y. S. SABEREDOWO
3. CHIEF JOHN AYODELE
4. CHIEF TIAMIYU ADEKANYE
5. THE GOVERNOR OF OS UN STATE
6. ATTORNEY-GENERAL OF"OSUN STATE

V.

1. PRINCE SUMMONU ADESINA (for himself and on behalf of Olarinoye lineage, Oyan)
2. CHIEF MICHAEL OYEWALE

3. ODO-OTIN LOCAL GOVERNMENT, OKUKU

AND

PRINCE KILANI ADEKEYE

CHIEF Y. S. SABEREDOWO

CHIEF JOHN AYODELE

CHIEF TIAMIYU ADEKANYE

THE GOVERNOR OF OSUN STATE

ATTORNEY-GENERAL OF OSUN STATE

ODO-OTIN LOCAL GOVERNMENT, OKUKU

V.

1. PRINCE SUMMONU ADESINA

(For himself and on behalf of Olarinoye lineage, Oyan)

CHIEF MICHAEL OYEWALE

2. SUPREME COURT OF NIGERIA

SC. 216/2004

ALOMA MARIAM MUKHTAR. J.S.c. (Presided)

WALTER SAMUEL NKANU ONNOGHEN, . J.S.C. (Read the Leading Judgment}

MUHAMMAD SAIFULLAHI MUNTAKA-COOMASSIE, .J.S.C.

SULEIMAN GALADlMA, .J.S.C.

BODE RHODES- VIVOUR, .J.S.C.

FRIDAY. 3RD DECEMRER. 2010

ACTION - Civil cases - Haw won - Whether Judges can assist a plaintiff to win his case.

AP PEAL - Brief of argument - Reply brief - Failure to file - Effect.

AP PEAL - Concurrent findings of facts by lower courts - Attitude of Supreme Court thereto – When will interfere therewith.

APPEAL – Concurrent findings of facts by lower courts - Where not appealed against - Effect.

APPEAL - Findings of fact - Findings of fact by trial court - Where based on in pleaded facts - Duty on appellate court to set aside.

APPEAL - Grounds of appeal - Particulars of- Objection 10 specific particulars - Where there are other particulars to support grounds of appeal - Effect,

APPEAL - Right of appeal - Who can exercise same - Party who has not been adversely affected by decision of court - Whether can appeal against same.

COURT - Civil cases - How won - Whether Judges can assist a plaintiff to win his case.

COURT - Concurrent findings of facts by lower courts - Attitude of Supreme Court thereto - When will interfere therewith.

COURT - Findings of fact - Findings off act by trial court - Where based on unpleaded facts - Duty 011 appellate court to set aside.

CUSTOMARY LAW - Chieftaincy declaration - Registered Chieftaincy declaration – Duty to amend - On whom lies.

CUSTOMARY LAW - Chieftaincy declaration - Registered Chieftaincy declaration - Status and legal effect of - Attitude of court thereto.

CUSTOMARY LAW - Chieftaincy declaration - Setting aside of -Principles guiding – Need for relevant facts to be pleaded and satisfactory evidence led thereto.

CUSTOMARY LAW - Custom - Proof of - Need to plead and prove same.

EQUITY - Waiver - Party having full knowledge of his rights but decides to waive same - Whether call be heard to complain afterwards.

EVIDENCE· Proof- Custom - Proof of - Need to plead and prove same.

EVIDENCE - Proof - Pleadings - Evidence led on unpleaded facts - How Treated.

EVIDENCE - Proof - Setting aside of chieftaincy declaration - Principles guiding – Need for relevant facts to be pleaded and satisfactory evidence led thereon.

PRACTICE AND PROCEDURE - Appeal - Brief of argument -Reply brief - Failure to file - Effect.

PRACTICE AND PROCEDURE - Appeal - Concurrent findings of facts by lower courts - Attitude of Supreme Court thereto -When will interfere therewith.

PRACTICE AND PROCEDURE - Appeal - Concurrent findings of facts by lower courts - Where not appealed against - Effect.

PRACTICE AND PROCEDURE - Appeal - Grounds of appeal -Particulars of - Objection to specific particulars - Where there are other particulars to support grounds of appeal - Effect.

PRACTICE AND PROCEDURE - Appeal - Right of appeal - Who can exercise same - Party who has not been adversely affected by decision of court - Whether can appeal against same.

PRACTICE AND PROCEDURE - Civil cases - How won - Whether Judges can assist a plaintiff to win his case.

PRACTICE AND PROCEDURE - Pleadings - Bindingness of on parties and court - Evidence led on unpleaded facts - How treated - Findings by trial court on facts not pleaded - Duty on appellate court to set aside.

PRACTICE AND PROCEDURE - Pleadings - Proof - Custom -Proof of - Need to plead and prove same.

Issues:

Whether the Court of Appeal was right to have upheld the decision of the trial court to the effect that the selection of an Oloyan from the Elerno Ruling House was based on the principle of rotation between the two lineages of the family and that it-w.as the turn of the Olarinoye lineage to produce the next Oloyan when there was no pleading nor evidence to support these crucial findings and when the Island 2nd respondent did not make out any case deserving of the crucial findings.

Whether the Court of Appeal was right to have upturned the decision of the trial court that the right of the 151 respondent was caught-up by abandonment and/or waiver moreover when the Court of Appeal misconstrued the basis of the defence of abandonment and waiver as raised and agitated by the appellants.

Whether the Court of Appeal was right to have agreed with the trial court that the Oloyan Chieftaincy Declaration, exhibit G2, was scanty and in exhaustive and that it was right to resort to other evidence, oral or documentary, to fill in the perceived lacuna.

Facts:

The Oloyan of Oyan Chieftaincy in Osun State is a Ruling House Chieftaincy with a registered Chieftaincy declaration.

On 23rd A ugust 1996, Oba Omotoso Oyegbi le, an occupant of that Chieftaincy died. In the registered declaration of the Chieftaincy, exhibit G2, the Oloyan Chieftaincy had four ruling Houses. They were:

(a) Elemo
(b) Laojo
(c) Olomooba, and
(d) Daodu or Dawodu

Following the demise of-the last Oba, it became the turn-of the Elemo Ruling House to present the candidate to fill the vacancy. To actualize this and as required by law, the secretary of Odo-Otin Local Government, the 51h respondent wrote to the Kingmakers to calion the next ruling House, that is, Elerno, to present candidate(s) for appointment as Oloyan ofOyan.

In exhibit G2.· the Chieftaincy Declaration of Oloyan of Oyan, there were six kingmakers recognized by law to act but at the material time only four of them were alive to function. The said 5th respondent duly

informed the Elerno Ruling House to present candidates to fill the vacancy. as a result of which members of the Elemo Ruling House held a meeting on the 22nd day of November. 1996 to select candidates for the stool. The secretary of the 51h respondent in the person of Mr. S. O. Fadara attended the said meeting in accordance with statutory requirements in the capacity of an observer. At the meeting. both the 1st appellant and 151 respondent were duly nominated as candidates for the stool in question. PW3 acted as Secretary of Elemo Ruling House at the meeting in question and took down the minutes while one Pa Oke was the Chairman. The minutes of the meeting of 22nd November, i996 recording the nominations was sent to the Kingmakers as a result of which the Kingmakers met on the 261h day of November, 1996 to elect/select a candidate out of the two for appointment as the Oloyan of Oyan.

At that meeting, three of the four existing and functional

Kingmakers supported the candidature of the 151 appellant, while one supported the 151 respondent as a result of which the secretary to the 51h respondent forwarded the name of the 1'1 appellant to the 3'd respondent, the appointing authority, for appointment as the Oloyan of Oyan. The 1'1 appellant was consequently appointed and installed the Oloyan of Oyan sometime in 1997. The only kingmaker who supported the candidature of the 151 respondent was the 2nd respondent, who also gave evidence as PW5 at the trial.

It was the case of the 1'1 and 2nd respondents that there were two distinct lineages in Elerno Ruling Housing, namely: Olarinoye and Aresinkeye and that Elerno Ruling House had in the past produced three Oloyans out of which only one came from Olarinoye while the other two came from Aresinkeye lineage; that the meeting of 22nd November, 1996 evidenced in exhibit C, was stalemated; that during the meeting of the kingmakers on the 261h day of November, 1996, the 2nd respondent protested inspite of which protest three out of the four Kingmakers supported the 1st appellant while only the 2nd respondent supported the 1'1 respondent resulting in the 51h respondent sending the name of the 1'1 appellant to the 3rd respondent· for appointment inspite of the circumstances.

However, it was the case of the appellants that the Elerno Ruling House had five lineages. namely:

I. Olarinoye
II. Ige
III. Onuola
IV. Mejowuye/Aresinkeye. and
V. Oluyeye

and that whenever it was the turn of Elemo Ruling House to present a candidate for the throne. it was an open contest among the eligible members of the ruling house without regard to lineage; that the IS1 appellant and the 1st respondent were regularly nominated in a meeting of the ruling house held on 22nd November, 1996 out of which the Kingmakers selected the 1'1 appellant for the throne in their meeting of 261h November, 1996; that the 1'1 respondent haven taken part through his Olarinoye lineage in the nomination exercise of22nd November, 1996 was estopped from impugning the exercise; that the 2nd

respondent haven chaired the kingmakers' meeting of 261h November, 1996 was estopped from attacking the appointment of the J 51 appellant resulting from that meeting; that the nomination, selection and appointment of the J'I appellant was regular and in accordance with the native law and custom of Oyan relevant to the appointment of Oloyan of Oyan.

The trial court held that there were two lineages of Elerno Ruling House which occupied the throne by rotation and that it was the turn of Olarinoye lineage to produce the next Oloyan of Oyan ; that the Chieftaincy declaration, exhibit BG2", which governed the Oloyan Chieftaincy, was inexhausti ve and that there was a lacuna in it which the court was competent to fill; that the 1st respondent was estopped from impugning the nomination exercise of 22nd November, 1996; that it was not unusual for the names of more than one candidate to be submitted to the Kingmakers for them to choose one for the vacant throne/stool; that the 1st and 2nd respondents proved their reliefs in paragraph 66(a) and (c) of the amended statement of claim and accordingly awarded same to them. The trial court also held that reliefs I, 3 and 4 of paragraph 50 of the appellants' counter-claim were successful and ordered accordingly.

On appeal and cross-appeal to the Court of Appeal, the Court of Appeal held that the appeal of the 1'1 and 2nd respondents succeeded while the cross-appeal of the 1'1 and 2nd appellants failed.

The appellants were aggrieved by the decision and they appealed to the Supreme Court.

The 71h appellant who was not adversely affected by the reliefs claimed by the 1'1 and 2nd respondents at the trial court also appealed.

Held (Unanimously allowing the 1st and 2nd appeals and striking out the 3rd appeal by the 7th appellant):

1. On Need to plead and prove custom -

A custom ought to be pleaded and proved by evidence so as to enable the court act on it. In the instant case, the fact of rotation between the two lineage of Elemo Ruling House was not pleaded by the 1" and 2nd respondents. Thus, the findings on rotation by the trial court and the affirmation of same b)1 the Court of Appeal were perverse. (P. 486, paras. C-D)

2. On Status and legal effect of registered chieftaincy declaration -

Where a declaration in respect of a recognized chieftaincy is validly made and registered, the matter or custom or native law and custom therein stated shall be deemed to be the customary law regulating the selection of a person to be the holder of the recognized chieftaincy to the exclusion of any other customary usage or rule or tradition. The registered declaration is therefore a declaration of the tradition, customary law and usages pertaining to the selection and appointment to the particular Chieftaincy stool/throne it relates. Where, therefore, there is a registered chieftaincy declaration such as exhibit "G2" in this case, the duty of the court generally is to apply the provisions of the Chieftaincy declaration established by pleadings and evidence as the court has no power to assume the functions of the Chieftaincy Committee as regards the making or amendment of customary law governing the selection and appointment of traditional Chiefs. Oladele v. Aromolaran 11 (1996) 6 NWLR (Pt. 453) 180, lkine v. Edjerode (2001) 18 NWLR (Pt. 745) 446; Adigun v. A.-G., Oyo State (1987) 1 NWLR (Pt. 53) 678 referred to.) (P. 483, paras. C-G)

3. On whom lies duty to amend a registered chieftaincy declaration -

Where there is the need to amend a Registered Chieftaincy Declaration .so as to bring it in line with the 'current trend in the customary law of the people, it 'is the duty of the executive arm of government to do so. In the instant case, there was the anguish of one of the lineages which had to produce only one Oloyan of Oyan out of the four so far produced by Elemo Ruling House. That was clearly unfair and something ought to be done about it by the appropriate authority. Olarinoye lineage ought not to be allowed to continue to suffer under the tyranny of the majority over a common property or proprietary interest with Aresinkeye lineage. (P. 487, paras. A-C)

4. On Principles guiding the setting aside of a chieftaincy declaration -

A court can set aside a chieftaincy declaration under certain circumstances such as where a registered declaration is proved to be contrary to the customs and traditions of the people. For the court to intervene, relevant facts must be pleaded and evidence adduced thereon to the satisfaction of the court because the law is that customary law being a matter of fact must be proved b)' calling evidence unless frequent proof of same has made it to attain the legal status of notoriety so as to be judicially noticed. [Majimisebi v. Ehuwa (2007) 2 NWLR (Pt. 1018) 385; Olowu v. Olowu (1985) 3 NWLR (Pt. 13) 67.2 referred .to.] (Pp. 483-484, paras. G-D)

5. On Whether a party who waived his rights can be heard to complain afterwards-

A party having full knowledge of the rights or interest or benefit conferred upon or accruing to him under the law but intentionally decides to give up or waive it, cannot be heard to complain afterwards that he had not been permitted to exercise his rights or that he has suffered any legal grievance. In the instant case, the learned counsel for the 71h appellant did not file a reply brief to the brief of the 1'1 and 2nd respondents. This failure made it impossible for the 7th appellant to confront the points canvassed in the preliminary objection. Moreover at the hearing at' the appeal, the 71h appellant did not make any oral presentation on the matter. It was not shown that the T" appellant was -under any legal disability when he neglected to exercise its right to its benefit. It should be the best Judge of-its own benefit or interest. Thus, the 7th appellant was deemed to have conceded the points so canvassed by the 1st and 2nd respondents in their preliminary objection. (Pp. 488-489, paras. H-C)

6. Duty on plaintiff and how discharged -

A plaintiff swims or sinks with his pleadings. Judges cannot assist a plaintiff to win his case, because cases are not decided on emotions, sentiment or some misguided consideration. Cases are won on pleaded facts supported by compelling evidence. (P. 494, para. G)

7. On Bindingness of pleadings on parties and court and treatment of evidence led on unpleaded facts -

Parties and the court are bound by the pleadings filed in a matter. For facts needed to establish a right to a relief to be' relevant, it has to be pleaded by the party seeking to rely on saine to establish his claim or right to relief. It is after the relevant fact is pleaded that evidence would be admissible to establish the existence of that fact. That is why it is also settled law that evidence on facts not pleaded goes to no issue as parties normally join issues on the facts pleaded and only need evidence, either oral or documentary, to establish the-fact so pleaded. Where, however, a court relies on evidence led on facts not pleaded, an

appellate court has the duty to set aside any finding/holding resulting from that reliance. It follows therefore that even if there was evidence on record on the issue of rotation between the two lineages in the instant case, such evidence would be contrary to the pleadings and consequently of no legal effect. [Ugochukwu v. Unipetrol (Nig.) Ltd. (2002) 7 NWLR (Pt. 765) 1; Mohammed v, Klargester (Nig.) Ltd. (2002) 14 NWLR (Pt. 787) 335 referred to.] (Pp. 473; paras. D-G,' 493, paras. G-H)

On Attitude of the Supreme Court to concurrent findings of fact by lower courts and when it will interfere therewith -Findings of fact by two lower courts are normally not disturbed by the Supreme Court. But the Supreme Court would readily interfere, highlight the error and state the correct position of the facts if special circumstances are shown why the court should do so. Examples of such circumstances include if procedural errors were committed by the two courts below which led to a miscarriage of justice; if rules of procedure or some principles of law were not followed or ignored, and/or if the findings are perverse. In the instant case, the findings of the trial High Court and the Court of Appeal that Elemo Ruling House produced its own candidate for the Oloyan Chieftaincy based on rotation between its two lineages was perverse in view of paragraph 26 of the 1st respondent's/plaintiff's pleadings. [En.ang v. Adu (1981) 11·12 SC 25; Adebayo V. Ighodalo (1996) 5 NWLR (Pt. 450) 507; Nwagwu v. Okonkwo (1987) 3 NWLR (Pt..60) 314; Oladele v. Anibi (1998) 9 NWLR (Pt. 567) 559 referred to.] (P. 494, paras. C-F)

9 . 011 Treatment of concurrent findings by lower court, not appealed against -

Where an appellant fails to attack the concurrent findings by the lower courts, .that means that the appellant has accepted or is deemed to have accepted those findings as correct and therefore binding on him and every other 'relevant ·person. (P. 477, paras. B-C)

10. On Whether party who has not been adversely affected by decision of court can appeal against same -

A party to a proceeding cannot appeal against a decision arrived at in that proceeding except the same wrongfully deprives him of an entitlement or something which he has a legal right to demand, In the instant case, none of the reliefs claimed by the I" and 2nd respondents at the trial court adversely affected the interest of the 4th defendant! T" appellant so as to qualify the T" appellant to be considered a person aggrieved by an order of court so as to ground the locus standi of the 7"1 appellant to appeal against the said judgment. The T" appellant did not suffer any legal grievance arising from the said judgment. [Sun insurance Ltd. v. Ojemuyiwa (1965) 1 All NLR 1; Mobil Producing (Nig.) Unltd. v. Monokpo (2004) 18 NWLR (Pt. 852) 346 reported to.] (P. 469, paras. D-G)

11. On Effect where there are other particulars to support grounds of appeal apart from specific particulars objected to -

Where, apart from the specific particulars of grounds of appeal objected to, there are other particulars to support the grounds of appeal, the success of the objection is rendered ineffectual as it cannot adversely affect the validity of the grounds of appeal if the alleged offending particulars are struck out. (P. 472, paras. E-F)

12. On Effect of failure to file reply brief to respondent's preliminary objection -

Failure or neglect of an appellant to file a reply brief or make oral presentation in response to the points canvassed in a respondent's preliminary objection means that the appellant concedes the points so canvassed because he has no answer to them. (P. 469, paras. C-D)

Nigerian Cases-Referred to-in the Judgment:

Abalogu 1'. S.P.D.C Ltd. (2003) 13 NWLR (Pt. 837) 308

Adebayo v. lghodalo (1996) 5 NWLR (Pt. 450) 507

Adetoun Oladeji (Nig.] Ltd. v. N.B. Plc. (2007) 5 NWLR (Pt. 1027) 415

Adigu . v. A.-G., Oyo State (1987) 1 NWLR (Pt. 53) 678 Aina v. U.B.A. Plc. (1997) 4 NWLR (Pt. 498) 181 Chinwendu v. Mbamali (1980) 3 - 4 SC 31

Dweye v. Iyomahan (1983) 2 SCNLR 135

Edewor v. Uwegba (1987) 1 NWLR (Pt. 50) 313 Egbaran v. Akpotor (1997) 7 NWLR (Pt. 514) 559 Enang v. Adu (1981) 11 - 12 SC 25

Fasade v. Babalola (2003) 1 I NWLR (Pt.830) 26 lbodo v. Enarofia (1980) 5 - 7 SC 42

Ikeanyi v. A.C.B. Ltd. (1997) 2 NWLR (Pt. 489) 509 lkine v. Edjerode (2001) 18 NWLR (Pt. 745) 446 Lipede v. Sonekan (1995) I NWLR (Pt. 374) 668 Mafimisebi v. Ehuwa (2007) 2 NWLR (Pt. 1018) 385

Mobil Producing (Nig.) Unltd, v. Monokpo (2003) 18 NWLR (Pt. 852) 346

Mohammed v. Klargester (Nig.) Ltd. (2002) 14 NWLR (Pt. 787) 335

N.B.C.J. v. Integrated Gas (Nig.) Ltd. (2005) 4 NWLR (Pt. 916) 617

Nwagwu v. Okonkwo (1987) 3 NWLR (Pt. 60) 314 Ogbu v. Ani (1994) 7 NWLR (Pt. 355) 128

Ogundare v. Ogunlowo (1997) 6 NWLR(Pt. 509) 360 Ojo v. Azama (200 1) 4 NWLR (Pt. 702) 57 Ojo-Osagie v. Adonri (1994) 6 NWLR (Pt. 349) 131 Oladele v. Anibi (1998) 9 NWLR (Pt. 567) 559

Oladele v. Aromolaron Jl (1996) 6 NWLR (Pt. 453) 180 Olanrewaju v. Gov., Oyo State (1992) 9 NWLR (Pt. 265) 335 Ologunleko v. Ikuemelo (1993) 2 NWLR (Pt. 273) J6

Olowu v. Olowu (1985) 3 NWLR (Pt. 13) 372

Olufosoye v. Fakorede (1993) I NWLR (Pt. 272) 747 Societe Generale Bank (Nig.) Ltd. v. Afekore (1999) 11 NWLR (Pt. 628) 521

Sun Insurance Ltd. v. Ojemuviwa (1965) I All N LR 1 Ugochukwu . Unipetrol (Mg.) PIc (2002) 7 NWLR (Pt. 765) 1 Ukatta v. Ndinaeze (1997) 4 NWLR (Pt. 499) 251

Book Referred to in the Judgment:

Halsburys Laws of England, yd Edition, Vol.)4, para. 1175

Appeals:

These were three appeals against the judgment of the Court of Appeal wherein the court allowed the appeal of the present 151 and 2nd respondents against the judgment of the High Court of Os un State entered in favour of the appellants, The Supreme Court, in a unanimous decision, allowed the 151 and 2nd appeals filed by the l " and 2nd appellants and struck out the 3,d appeal filed by the 7th appellant.

History of the Case

Supreme Court:

Names of Justices that sat on the appeal: Aloma Mariam Mukhtar, J.S.C (Presided), Walter Samuel Nkanu Onnoghen, J.S.C (Read the Leading Judgment); Muhammad Saifullahi Muntaka-Coomassie, J.S.C ; Suleiman Galadima, J.S.C; Bode Rhodes- Vivour, J.S,C Appeal No.. SCl216/2003

Date of Judgment: Friday,]3rd December, 20 J 0

Names of Counsel: Yusuf Ali, Esq. SAN - (with him, Messrs S,A. Oke; Alex Akoja; 1.0, Adefarati: PI. Nwoha (Miss); KA, Lawai) -for the 1ST - 4th Appellants

Wole Adejumobi, Esq. (Principal State Counsel, Osun State) - for the 5th, & 6th Appellants

BolaAidi, Esq - (with him, Osagie lrnhabie and Benjamin Zakari) - for the 7th Appellant

Olalekan Ojo, Esq. - (with him, J. D, Rufai, Esq.) - for the 1st and 2nd Respondents

Court of Appeal:

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

Names of Justices that 'sat 011 the Appeal: Sunday Akinola Akintan, J,C,A. '(Presided); Francis Fedode Tabai, J.CA. (Read the Leading Judgment); Olufunlola Oyelola Adekeye. J.CA.

Appeal No: CA/I/75/79

Date of Judgment: Wednesday, 8th January, 2003

Names of Counsel: Chief A. Adejurno. SAN (with him, Mr. DJ, Rufai) - for the 1st, 5th, 11th and 7th respondents

Mr. A. A. Aderibigbe, A.D.CL., Osun State - for the 2nd and 3rd Respondents. 4th respondent unrepresented

High Court

Name of the High Court, High Court of Osun State, lkirun

Name of the Judge. Yusuf, J. Suit No: HIK/15/97

Date of Judgment. Tuesday, 30'h June, 1998

Names of Counsel. Sola Ajai holding brief for M,O, Agboola - for the Plaintiff

lyiola Obdokun (with him, Omokwa Ayoola, Oyenike Aderemi) - for the 1st , 5th - 7th Defendants

Yinka Aderibigbe, Staff Consultant, Ministry of Justice, Osun State - for the 3rd Defendant

Counsel:

Yusuf Ali, Esq., SAN - (with him, Messrs S,A. Oke; Alex Akoja; I.O. Adefarati ; PI. Nwoha (Miss); K.A. Lawai) – for the 1st – 4th Appellants

Wale Adejumobi , Esq. (Principal State Counsel, Osun State) - for the 5'" & 6,11 Appellants

Bola Aidi, Esq. - (with him, Osagie Imhabie and Benjamin Zakari) - for the 7th Appellant

Olalekan Ojo, Esq. - (with hi111, .I. D. Rufai, Esq.) - for the 1st and 2nd Respondents

ONNOGHEN, J.S.C.(Delivering the Leading Judgment): This is an appeal against the judgment of the Court of Appeal in appeal NO,CA/l/75/99 delivered on the 8th day of January, 2003 in which the court allowed the appeal of the present 1st and 2nd respondents against the judgment of the High Court of Osun State holden at Ikirun in suit NO,HIKIl5/97 delivered on the 30,h day of June, 1998 in favour of the defendants/present appellants,

In addition to allowing the appeal of the 1st and 2nd respondents, the lower court also dismissed the cross appeal of the present appellants against the said judgment of tile trial court

The respondents in this court instituted the suit as plaintiffs against the appellants claiming the following reliefs:

(i) A declaration that there are two and only two lineages of Elerno Ruling House, Oyan, namely:- Elerno Olarinoye and Elerno Aresinkeye lineages,
(ii) A declaration that the report of a discreet investigation alleged conducted by the secretary to the fourth defendant which purportedly increased the number of lineages of Elerno Ruling House to five (by splitting Aresinkeye lineage into four) as unfair inequitable void and unconstitutional being arrived at without giving the Olarinoye lineages a hearing at all or any notice whatsoever of such investigation.
(iii) A declaration that it is the turn of Olarinoye lineage Elemo Ruling House Oyan to produce a candidate for the Oloyan of Oyan Chieftaincy.
(iv) A declaration that the attendance of the 5th and 6th defendants (Kingmakers) at the family meeting of Elemo Ruling House held on 22nd day of November, 1996 was an open demonstration of bias and the S" and 6th defendants are as such disqualified from participating in any meeting of Kingmakers summoned for the consideration of any candidate nominated on the aforesaid date.

(v) A declaration that the selection of the IS! defendant by the 5'h defendant at a meeting commandeered and conducted by the secretary to the yd defendant on 26th November, 1996 was oppressive, irregular, null-and void.
(vi) An injunction restraining the 2nd defendant from relying on the aforesaid report of discreet investigation and or the nomination conducted on 20th November, 1996 in making an appointment to the Oloyan of Oyan Chieftaincy.
(vii) An injunction restraining the 2nd defendant from appointing the IS! defendant who is from (one of the lineages secretly created from Aresinkeye) lineage as the next Oloyan of Oyan.

The Facts of the case include the following:

The Oloyan of Oyan Chieftaincy is a Ruling House Chieftaincy with a registered Chieftaincy declaration. On the 23,d day of August, 1996, Oba Omotoso Oyegbile, an occupant of that chieftaincy passed on thereby creating a vacancy.

It is agreed that there are four ruling houses in the registered declaration of the chieftaincy, exhibit G2, entitled to present candidates for the throne in rotation. These are:

(a) Elemo

(b) Laojo

(c) Olornooba. and

(d) Daodu or Dawodu

Also not disputed is the fact that following the demise of the said Oba, it was the turn of the Elemo Ruling House to present the candidate to fill the vacancy. To actualize this and as required by law, the secretary of Odo-Otin Local Government, the 5th respondent herein, wrote to the Kingmakers to call on

the next ruling house, that is, Elemo, to present candidate(s) for appointment as Oloyan of Oyan.

In exhibit G2, Chieftaincy declaration of Oloyan of Oyan, there are six Kingmakers recognized by law to act but at the material time only four of them were alive to function. The said 5th respondent duly informed the Elemo Ruling House to present candidates to fill the vacancy, as a result of which members of Elerno Ruling House held a meeting on the 22nd day of November, 1996 to select candidates

for the stool. The secretary of the 5th respondent in the person of Mr. S. O. Fadara attended the said meeting in accordance with statutory requirements in the capacity of an observer. At the meeting both the 151 appellant and 1 S! respondent were duly nominated as candidates for the stool in question. PW3 acted as secretary of Elerno Ruling House at the meeting in question and took down the minutes while one Pa Oke was the Chairman. The minutes of the meeting of 22nd November, 1996 recording the nominations was sent to the Kingmakers as a result of which the Kingmakers met on the 26th day of November, 1996 to elect/select a candidate out of the two for appointment as the Oloyan of Oyan.

At that meeting, three of the four existing and functional Kingmakers supported the candidature of the 151 appellant, while Gone supported the 151 respondent as a result of which the secretary to the 5th respondent forwarded the name of the l " appellant to the yd respondent. the appointing authority. for

appointment as the Oloyan of Oyan. The 151 appellant was consequently appointed and installed the Oloyan of Oyan sometime in 1997. The only kingmaker who supported the candidature of the 151 respondent is the 2nd respondent, who also gave evidence as PW5 at the trial.

It is the case of the 151 and 2nd respondents that there are two distinct lineages in Elerno Ruling Housing, namely: Olarinoye and Aresinkeye and that Elemo Ruling House had in the past produced three Oloyans out of which only one came from Olarinoye while the other two came from Aresinkeye lineage; that the meeting of 22nd November, 1996 evidenced in exhibit C, was stalemated; that during the meeting of the kingmakers on the 26'h day of November, 1996, the 2nd respondent protested inspite of which protest three out of the four Kingmakers supported the I SI appellant while only the 2nd respondent supported the 151 respondent resulting in the 5'h respondent sending the name of the 151 appellant to the 3rd respondent for appointment inspite of the ci rcumstances.

However, it is the case of the appellants that the Elemo Ruling House has five lineages namely:

(i) Olarinoye

(ii) Ige

(iii) Onuola

(iv) Mejowuye/Aresinkeye and

(v) Oluyeye

and that whenever it was the turn of Elerno Ruling House to present a candidate for the throne, it was an open contest among the eligible members of the ruling house without regard to whichever lineage; that the I" appellant and I" respondent were regularly nominated in a regular meeting of the ruling house held on 22nd November, 1996 out of which the Kingmakers selected the I" appellant for the throne in their meeting of 26'h November, 1996; that the I" respondent haven taken pan through his Olarinoye lineage in the nomination exercise of 22nd November, 1996 was estopped from impugning the exercise; that the 2nd respondent haven chaired the kingmakers' meeting of :46'h November, 1996 was estopped from attacking the appointment of the 151 appellant resulting from -that meeting, that the nomination, selection and appointment of the 1" appellant was regular and in accordance with the native law and custom of Oyan relevant to the appointment of Oloyan of Oyan.

The trial court held that there are two lineages of Elerno Ruling House which occupy the throne by rotation and that it was the turn of Olarinoye lineage to produce the next Oloyan of Oyan; that the Chieftaincy declaration, exhibit "G2", which governs the Oloyan Chieftaincy, was inexhaustive and that there was a lacuna in it which the court is competent to fill; that the IS! respondent was estopped from impugning the nomination exercise of 22nd November, 1996: that it was not unusual for the names of more than one candidate to be submitted to the Kingmakers for them to choose one for the vacant throne/stool: that the Island 2nd respondents proved their reliefs in paragraph 66(a) and (c) of the amended statement of claim and accordingly awarded same to them. The trial court also held that reliefs 1,3 and 4 of paragraph 50 of the appellants counter claim were successful and ordered accordingly.

The reliefs in the counter-claim are as follows:

"(I) A declaration that the 1" defendant as the candidate who enjoys the support of the majority of the entire members of the Elemo Ruling House as demonstrated at the meeting of the said family on 22nd November, 1996 where he was selected as candidate and approved by majority of the Kingmakers for the Oloyan of Oyan chieftaincy at their meeting of 26'h November, 1996 is the person entitled to be installed as the Oloyan of Oyan.

(2) A declaration that the 151 plaintiff and the 2nd plaintiff are estopped from challenging the selection and approval of the 151 defendant having voluntariIy participated in the Elemo Ruling House and Kingmakers' meeting respectively whereat the I" defendant was selected by a majority of the members of the Elemo Ruling House and his candidature approved by a majority of the Kingmakers.

(3) An order directing the 2nd defendant to approve without any further delay the candidature of the pi defendant for installation as the Oloyan or Oyan.

(4) An order Of injunction restraining the 2nd plaintiff from doing or refusing to do anything that may affect the prompt installation of the 151 defendant as the Oloyan of Oyan."

On appeal and cross appeal to the lower Court, the court held that the appeal of the 151 and 2nd respondents succeeded while the cross appeal of the 151 and 2nd appellants failed.

It is against that decision that the instant appeal was filed. the issues for the determination of which have been identified by learned senior counsel for the appellants, Yusuf 0, Ali Esq. SAN, in the appellants' brief of argument filed on 23rd December, 2004 as follows:

"1. Whether the 'court below was right to have upheld the decision of the trial court to the effect that the selection of an Oloyan from the Elerno Ruling House was based on the principle of rotation between the two lineages of the family and that it was the turn of the Olarinoye lineage to produce the next Oloyan when there was no pleadings nor evidence to support these crucial findings and when the I S! and 2nd respondents did not make out any case deserving of the crucial findings. Whether the court below was right to have upturned the decision of the trial court that the right of the 1st respondent was caught up by abandonment and/or waiver moreover when the court below misconstrued the basis of the defence of abandonment and waiver as raised and agitated by the appellants.

Whether the COUlt below was right to have agreed with the trial court that the Oloyan Chieftaincy declaration. exhibit G2 was scanty and inexhaustive and that it was right to resort to other evidence oral or documentary to fill in the perceived lacuna."

The above issues have been adopted by learned counsel for the 1st and 2nd respondents. Ademola Adegbola. Esq. in the brief of argument filed on J7lh March, 2005.

It is important to note that apart from the instant appeal there is an appeal by the 5'h and 6Th appellants as evidenced in the brief of argument prepared by O. A. Adeniji, Esq. and deemed filed on 28'h May, 2007 and another appeal by the T" appellant.

It is strange that rather than performing the traditional role of respondents to the appeal of the appellants, the respondents, except the 1 S! and 2nd respondents, filed no respondent brief but appealed separately against the decision of the lower court even when, upon going through their grounds of appeal and the

issues canvassed in their briefs of argument there is really nothing to choose between their so called appeals and that of the appellants, particularly as they adopted the same issues formulated by learned senior counsel for the appellants. which issues had earlier been reproduced in this judgment.

There is however a preliminary objection by IS! and 2nd respondents against the appeal of the 7th appellant as argued in the Island 2nd respondents brief filed on 121h March, 2009 in which learned counsel has argued that the judgment of the lower court not haven decided anything against the 7th appellant. Odo-Otin Local Government, the said appellant cannot be a party aggrieved by the said decision of the lower court and cannot therefore appeal against same, relying on Societe Generals Bank (Nig.) Ltd. v. Afekore (1999) 11 NWLR (Pt. 628) 521 at 537; Mobil Producing (Nig.) Unlimited. v. Monokpo (2004) 2 MJSC I at 17, (2003) 18 NWLR (Pt. 852) 346; that the 71h appellant, though the 4'h defendant at the trial COUlt, did not appeal against the decision of the trial COUlt to the lower COUlt and that none of the five reliefs granted by the lower Court can be said to have affected the 7th appellant.

It is instructive to note that learned counsel for the 7Th appellant refused and/or neglected to file a reply brief to the brief of the IS! and 2nd respondents which would have made it possible for him to confront the issues/points canvassed in the preliminary objection, neither did he make any oral presentation on the matter at the hearing of the appeal. I hold the considered view that the failure or neglect of the T" appellant to file a reply brief or make oral presentation in response to the points/canvassed in the objection means that the 7th appellant concedes the points so canvassed because he has no answer to them I had earlier reproduced the reliefs claimed by the Island 2nd respondents at the trial court and it is clear that none of the adversely, affected the interest of the 4th defendant appellant so as to qualify the 7th appellant to be considered a person aggrieved by an order of court so as to .ground the locus standi of the 7th appellant Finally looking at the grounds of appeal of the T" appellant, it s clear that T" appellant merely reproduced the grounds of appeal of the IS! - 4'h appellants as its own and proceeded further to adopt the issues formulated by learned senior counsel for the said appellants arising from the said grounds of appeal. In the 7th appellants brief filed on 18th November. 2008.

It is therefore very clear that the preliminary objection raised .against the appeal of the 7th appellant is well founded and is consequently upheld by me with the result that the appeal of the 7'1l appellant is liable to be struck out. I hereby order accordingly.

On the appeal of the 5th and 6th appellants who were the 2nd and 3rd defendants at the trial Court, there is no preliminary objection against same but there is no difference between the grounds of appeal in that appeal and the issues arising there from and those of the appeal of the 1st – 4th appellants. In fact, as stated earlier in this judgment, the 5th and 6th appellants adopted the very issues formulated by learned senior counsel for the 1st 4th appellants in that appeal.

The above being the case, it is my considered view that a disposal of the issues in the appeal of the 1st – 4th appellants automatically disposes of the issues calling for determination in the appeal of the 1st and 6th appellants.

Therefore to save the time of the Court, I propose to deal with the appeal of the 1st - 4th appellants, the issues involved therein haven been reproduced earlier in this judgment. haven disposed of the preliminary irritations arising from the two so-called appeals.

In arguing issue 1, learned senior counsel for the appellants referred the Court to paragraphs 26, 42 and 43 of the amended statement of claim and the evidence of the 151 respondent at page 34 of the record relevant to the paragraphs of the pleadings earlier referred to and submitted that the lower Courts findings on rotation of the chieftaincy between the two lineages of Elemo Ruling House

is based on speculation as the same is neither supported by the pleadings nor evidence on record; that the parties and the Court are bound by the pleadings of the parties and that evidence not in line with facts pleaded ground to no issue, relying on Olufosoye v. Fakorede (1993) I NWLR (Pt. 272) 747 at 759 - 760; Ologunleko v. lkuemeln (1993) 2 NWLR (Pt. 273) 16 at 24-25; Ojo-Osagie v. Adol7ri(1994)6NWLR (Pt349) 131 at IS4;AdetounOladeji(Nig.) Ltd. F.·N.B. PLC. (2007) 5 NWLR. (Pt 1027) 415 at44l. 444.

It is further submitted that not only did the 1st and 2nd respondents fail to plead rotation between the lineages of Elemo Ruling House, the pleading of the I" and 2nd respondents. particularly paragraph 26 of the amended statement of claim clearly pleads facts in negation of rotation since it states that after Olarinoye of the I SI respondent lineage reigned as Oloyan of Oyan. Aresinkeye of the 1st appellants' lineage produced two Oloyans in succession and that when Onnuola, the second Oloyan from Aresinkeye lineage was to ascend the throne. Adeboya from the Olarinoye lineage contested against him; that the above would not have been the case if the tradition/custom of rotation was in vogue between the two lineages, and that the findings by the lower Courts on the issue was clearly perverse and su bject to be set aside and urged the court to so hold, relying on Aina v. USA Plc. (1997) 4 NWLR (Pt. 498) 181 at 189; Ukatta v. Ndinaeze (1997) 4 NWLR (Pt. 499) 251 at 276.

On his part, learned counsel for the I" and 2nd respondents raised a preliminary objection against grounds 1,3 particular (v); ground 4 particular (ii) and ground 5 particular (iii) of the amended grounds of appeal from which issue I, supra, was distilled.

The reasons for the objection, according to learned counsel for the 151 and 2nd respondents, are that the said grounds of appeal raise fresh issues which were not raised before the lower court and consequently cannot be raised in this Court without leave of either the lower court or of this court and that since no such leave was sought and granted, the grounds are incompetent and ought to be struck out, relying on Dweye v. 1)'0111017011 (1983) 8 S.C 76 at 83- 84, (1983) 2 SCNLR 135; Ikeanyi v. A.C.E. LTd. (1997) 2 NWLR (Pt. 509 at 523).

In the reply brief filed on 11th March,2008, learned senior counsel for the appellants submitted that the objection is misconceived; that the passage quoted in ground I comes from the judgment of the lower Court and that an unbiased reading of grounds I and 2 clearly shows that the particulars are intrinsic to the grounds; that they were findings made b)/ the lower COUl1: to justify its decision that there were two branches in the Elemo Ruling House; that particulars (i) and (ii) subjoined to the ground go to highlight the lack of credible evidence to support the findings by the lower court, learned senior counsel further submitted; that the complaint in ground 3 is that there was no factual basis for the hold in by the lower courts that exhibit G2 was scanty and in-exhaustive as vindicated by particular (v) thereof. ere; that even if the particulars of the grounds raise fresh issues which the appellants do not concede, the worst the court can do is to strike them out and if that happens the grounds would still be valid as there are other particulars to support them; that the arguments canvassed on issue I can equally be on side red as arising from the omnibus ground and urged the court to overrule the objection.

I have gone through the grounds of appeal contained in the amended notice of appeal filed on the 171h day of January, 2005 and it is very clear that the grounds of objection against the particular grounds of appeal and their particulars are clearly misconceived.

The reason for learned counsel for the 1st and 2nd respondents submitting that the alleged offending grounds or their particulars raise fresh issues not raised in the lower court is simply that the current complaints raised by the appellants never arose from the grounds of appeal before the lower court, that is why learned counsel submitted that "reading through the grounds of appeal and brief of argument of the appellants in the lower court there is no C where particulars (i) and (ii) of the ground 1; particulars of (v) of ground 3; (ii) of ground 4 and (iii) of ground 5 could have be (sic) seen as being raise (sic) for the determination of the lower court."

What the contention of learned counsel misses is the fact that the appellants is against specific concurrent D findings by the lower courts and the learned senior counsel for the appellants quoted the specific findings/holdings in the judgment of the lower court which he considers to be the source of his complaints.

The grounds of appeal alongside their particulars including 1he particulars complained of arose clearly from the decision of the E lower court-and-consequently not fresh issues for which the leave of this court is required.

'In conclusion, I find no merit whatsoever in the preliminary. Objection which is consequently overruled.

In reacting to appellants' issue I, learned counsel for the l ": G and 2nd respondents submitted that paragraphs 26, 42 and 43 of the amended statement of claim relied upon by the appellants in submitting that the issue of rotation was never pleaded does not support the contention, that ill addition to the three paragraphs of

the amended statement of claim. paragraphs 17, 18,20,21,22,30. H 31, 32, 33, 34. 35. 42. 47 and 56 of the said amended statement of claim also contain facts of the rotation of the chieftaincy, that apart from the above pleadings there was evidence by I?WI and exhibit C2 particularly paragraph 5 of exhibit C2 to support the pleadings of the 1st and 2nd respondents on the matter; and that the findings by the lower courts on the issue is therefore not perverse as contended, relying on the case of Chinwendu v. Mbamali (1980) 3 - 4 S.C 31; Ibodo v. Enarofia (1980) 5 - 7 SC 42; Ojo v. Azama (2001) FWLR (Pt. 38) 1329 at 1347, (2001) 4 NWLR (Pt. 702) 57. Learned counsel urged the Court not to interfere with the concurrent findings of fact by the lower court as the same is supported by the pleadings and evidence and consequently not perverse.

It should be noted from the onset that issue J has nothing to do with the finding by the lower courts that there are two lineages in eIemo Ruling House as pleaded and testified to by the J" and 2nd respondents as against the five lineages contended by the appellants. The issue and the argument of senior counsel for the appellants earlier summarized in this judgment limits itself to the question as to whether the issue of rotation of the chieftaincy between the two lineages as found by the lower courts was pleaded and evidence adduced in support thereof to justify the findings by the trial court and its confirmation by the lower court. The question is whether the issue or fact of rotation between the two lineages was pleaded by

the 151 and 2nd respondents.

It is settled law that parties and the court are bound by the pleadings filed in a matter. For facts needed to establish a right to a relief to be relevant, it has to be plead by the party seeking to rely on same to establish his claim or right to relief. It is after the relevant fact is pleaded that evidence would be admissible to establish the existence of that fact, that is why it is also settle law that evidence on facts not pleaded to the issue as parties normally join issues on the on the fact that only need effidence either oral or documentary establish, the existence of that fact, that why it is also evidence on 'facts' not pleaded, an appellate court has the duty to set aside any finding/holding resulting from that reliance.

To support their contention that the fact of rotation of the chieftaincy was not pleaded by the 1st and 2nd respondents, learned senior counsel for the appellants cited and relied on paragraphs 26. 42 and 43 of the amended statement of claim while the respondents relied on the same paragraphs ill addition to paragraphs 17, 18. 20 . 22, 30 - 35, 42. 47 and 56 of the said amended statement of claim to contend the contrary. Which of the contentions is correct? To answer the question one needs to take a look at the relevant paragraphs. First of all. let LIS look at paragraphs 26, 42 and 43.Paragraph 26 pleads as follows:

"26. When it was again the turn of Elemo Ruling House to present an Oloyan. one of the sons of Ige Adubi Mejowuoye (Aresinkeye) who was called Onnuola was chosen and installed as Oloyan. One Adeboya from Olarinoye lineage contested with him. Thus the 3fd Oloyan to be produced from Elemo Ruling House also came from Aresinkeye lineage.

42. The plaintiff avers that since Faroumbi Elemo's family consisted of two stripes from his two wives as stated in seven (7) above, it is customary for the children of each wife to constitute a lineage each. Since Olarinoye produced the first Oloyan from Elemo Ruling House, and the second lineage (Aresinkeye) had produced two Oloyans, it is fair just and in line with custom for Elemo Olarinoye to produce the next Oloyan so that the chances utilized by both lineages will be two each and therefore equal.

43. The 1st plaintiff states that the first defendant's family knows that Oba Ige Adubi and Oba Onnuola hailed from Elemo Isale 's (i.e Elemo Aresinkeye) lineage."

"17. Faroumbi Elemo never became an Oloyan as he had many seniors but he had two sons namely Olarinoye and Adeniyi Oyegbanle alias Eegunjobi Elemo.

18. Olarinoye was born by Segilola, Faroumbi's senior wife while Oyegbenle Adeniyi was born by Olorisade, Faroumbi 's junior wife.

20. While Olarinoye was reigning .as Oloyan, the compound became too congested. This necessitated the movement of a segment of Elemo to another. location called Idi Orisa Aga. The segment that moved was composed of the children of Faroumbi Elemo through Olorisade. They were led by Oyegbenle Adeniyi alias Eegunjobi Elemo .

2 1. The children of Elemo through his first wife Segilola. continued to live at the old homestead which was now specifically identified with Olarinoye the then -reigning Oloyan The new homestead was

referred to as Elemo lsales compound, while the old homestead is locationally called Elemo Oke or Elemo Olarinoye.

It is a common thing In Oyan for the parts of a compound divided by location to be differentiated by "Oke " or "Isale"

22. Since then the Elemo dynasty has remained one integral entity with two distinct lineages. Each has within it smaller family units caned "Kaa" presided over by principal family members. These several "Kaas" do not in themselves constitute lineages.

30. Each of the two lineages of Elemo Ruling House have been choosing their heads independently and having lineage meetings. The minute's book of meetings of Elemo Olarinoye lineage is hereby pleaded and shall be relied upon at the trial. The 1st defendant is hereby given notice to produce the minute's book of Elemo Aresinkeye lineage.

31. At a meeting of the two lineages summoned by the 2nd plaintiff and other kingmakers on 16'h September, 1996, the two lineages were distinctly represented by one representative each. At the meeting one Alhaji Oyewole Olabakinde who represented Aresinkeye lineage tried to twist history by alleging that there (are) five (5) lineages of Elemo which according to him were OJarinoye, Ige Adubi, Onnuola, Olueye and Majowuoye. He thus split Aresinkeye into four (4) - producing two of them by splitting the name of Oba Ige Adubi Majowuoye into two. The minutes of the meeting shall.be relied upon .. ,

32. At another meeting of the kingmakers with the two lineages held on 23'd September, 1996, that two lineages were also represented by a representative each. One Shittu Awoniyi who represented Aresinkeye tried to even add another lineage - Ojoko - to the list given by Alhaji Oyewole in the meeting of 16T" September, 1996.

33. At yet another similar meeting of 7th October,,1996 the two lineages were also represented by a representative each namely Mr. D. O. Efunwole and Shittu Awoniyi for Olarinoye and Aresinkeye respectively, although Shittu Oyewole took over from Shittu Awoniyi when the latter could no longer answer the questions put to him by the kingmakers.

34. A notice/invitation for a meeting of the ruling house A with the Kingmakers was sent to Elemo Aresinkeye and Elemo Olarinoye compounds. Also in preparation for another joint meeting of l7'h October, 1996, the representative of the two Lineages sent an application to the Divisional Police Officer for security men. At B the meeting of the ruling house held on 6th November, 1996 the two lineages sat on two distinct sides and the attendance was so recorded. The minutes of meeting is hereby pleaded.

35. All the recent events documents and proceedings related C in paragraphs 28 - 32 show that there are only two .lineages (and not five (sic) of Elemo Ruling Housing, namely Elemo Olarinoye of Elemo Oke's compound and Elemo Aresinkeye of Elemo Isale compound Oyan. The 1st defendant and family are stopped from D denying this fact.

36. Further to paragraph 46, if the device by Aresinkeye is allowed to stand, even when it is turn of Elemo Ruling House again, in future, Aresinkeye will still push forward one of its newly fabricated lineages and the E rights of Olarinoye will be in risk or remoteness under the chief's law.

56. When nominations were to be made, the Olarinoye lineage made it clear that it was its turn to produce the next Oloyan, since the Aresinkeye lineage had F produced two (2) out of the three (3) so far produced by Elemo Ruling House. The 151 plaintiff was then nominated. The Aresinkeye lineage opposed this and nominated the 1st defendant as its own candidate. The meeting ended in a stalemate as the ruling house could not nominate a single candidate."

I have reproduced the paragraphs of the pleadings relied upon by learned counsel in support of their respective contentions so as to see, at a glance, whether the fact of rotation of the chieftaincy throne/stool between the two lineages in question was pleaded so as to ground the case of the J sr and 21\d respondents. I had earlier H found as a fact that issue I under consideration has nothing to do with the issue as to whether there are two or five lineages in Elemo Ruling House, as can be seen from the issue as formulated and the T -argument of learned senior counsel thereon.

It is therefore very clear that all the paragraphs of the amended statement of claim reproduced supra dealing with the number of lineage in Elel110 Ruling House are not relevant in the determination of issue I and are consequently discountenanced by me. 1 have had to reproduce them despite their irrelevancy so as to demonstrate clearly that they do not relate to the fact of rotation of the throne/ stool between the two lineages.

Secondly, the fact that appellants have not attacked the concurrent findings by the lower courts that there are two lineages in Elemo Ruling House instead of five means that appellants accept or are deemed to have accepted that findings as 'correct and therefore binding on them and every other relevant person.

The question now is whether the issue of rotation of the throne/ stool between the two lineages was pleaded having regards to the pleadings in paragraphs 26,42,43 and 56 supra. I have examined closely the above paragraphs and it is very clear that the fact of rotation of the throne/stool between the two-lineages of Olarinoye and Aresinkeye both of Elemo Ruling House is not pleaded. What the paragraphs show is a desire for equal opportunity to occupy the throne alternately not that by the customs and tradition to Elemo Ruling House the throne of Oloyan of Oyan is occupied by rotation between the two I ineages. It follows therefore that issue of rotation was not part of the of the case presented by the l" and 2nd respondent in their pleadings. In fact the fact that two Oloyans of Oyan frorn Elemo Ruling House came from one of 'the lineages (Aresinkeye) in succession clearly negates the principle of- rotation between the two lineage because if rotation had been in vogue, the throne would have been occupied alternately between the two lineages. Secondly, in paragraph 26 supra it is pleaded that when Onnuola from Aresinkeye lineage was chosen and installed as Oloyan one Adeboya from Olarinoye lineage contestee the stool with him whichfact -clearly negate's the principle of rotation and supports the 'Case of the appellants that whenever it was theturn of Elemo Ruling House to produce an Olayan of Oyan. candidates from the two Iineagescontesred freely for the stool

On issue 2, learned senior counsel for the appellants referred the court to paragraphs 46 and 47 of the amended statement of defence and counter-claim where estoppel by conduct is pleaded and the evidence from the witnesses thereon and stated that it is indisputable that there was an Elemo family

meeting on 22nd November, 1996 where the representatives of Olarinoye and Aresinkeye lineages were present though the 1ST appellant and 1ST respondent did not attend; that it was at that meeting that the 1st appellant and 1 SI respondent were duly nominated as candidates for Oloyan stool; that no one protested the nominations; that at the meeting of the kingmakers on 26,11 November, 1996, three out of the four kingmakers voted in favour of the 1ST appellant while only one, the 2nd respondent, voted in fa vour of the 1ST respondent, that the trial court agreed with the appellants on the matter and allowed their counter-claim No I as well as reliefs 3 and 4; that the lower court was in error in setting aside the finding on the issue by the trial court.

In support of the above submission, learned senior counsel cited and relied on Abalogu v. S.P.D.C Ltd. (2003) 13 NWLR (Pt. 837) 308 at 335 Nig. Bank for Commerce and Industry v.Integrated. Gas (Nig.) Ltd. (2005) All FWLR CPt. 250) I, (2005) 4 NWLR (Pt. 916) 617; Ogbu v. Ani (1994) 7 NWLR (Pt. 355) 128 at 140; Egbaran v.Akpotor (1997) 7 NWLR (Pt. 514) 559 at 571 in urging the court to resolve the issue in favour of the appellants.

On his part, learned counsel for the 151 and 2nd respondents submitted that the meeting of 22nd November, 1996 ended in .a stalemate as no candidate of the Ruling House was nominated as· G there was no agreement on a single candidate as required; that that being the case, the meeting of the kingmakers on 26, 11 November, 1996 in which the 1ST appellant had three voles out off our was clearly

of no moment; that paragraph (v) of exhibit "G2" - the registered declaration provides for only one candidate to be nominated by the Ruling House and that since none of the two was the nominated candidate at the meeting, the question of waiver does not arise; that court was rigluing corning to the conclusion did and urged the Court to resolve the issue against the appellants.

The foundation of the issue under-consideration is to be found in the pleadings of the parties, particularly that of the appellants who raised the defence of estoppel/wai vel' in their paragraphs 46 and 47 of amended statement of defence and counter claim, where they pleaded thus:

"46. The defendants shall contend at the trial that the 151 plaintiff having taken part in the nomination exercise at which he lost to the 15' defendant who had the overwhelming majority is estopped from asserting the separateness of the Olarinoye lineage from the Elemo Ruling House.

The defendants shall also contend that the 2nd plaintiff who joined the 5th, 6th and 7th defendants in fixing the meeting of the kingmakers for the sole purpose of considering the nomination of candidates by Elemo Ruling House and after joining the 5th , 6th and 7th defendants in signing the letter of invitation sent to the secretary of the 3rd defendant and by his presence at the meeting is estopped from contesting the decision of the majority of the kingmakers."

The reaction of the plaintiffs to the above paragraphs of the amended statement of defence and counter-claim is contained in paragraphs I J and 15 of their reply to the statement of defence and defence to counter-claim. The paragraphs plead as follows:-

"11. The 2nd plaintiff states that he was not even at the meeting of 22nd November, 1996, neither was the 151 defendant present. The issue of estoppels did not arise at all i'i1 the circumstance. The

151 plaintiff denies that the 151 defendant had any majority as it is not the turn of his lineage (that has produced two out of three Oloyan from Elemo Ruling House) to field another candidate.

15. Further to paragraph II above, the 2nd plaintiff avers that the issue of estoppels or majority did not arise as the 5'". 6'h and 7'h defendants have stepped out of turn in their traditional duties in acting contrary to native law and custom by attending the family meeting on 22nd November, 1997. Also, the 5'h - 7'h defendants together with Mr. Fadara acted on the minutes of an inconclusive meeting and without a nomination letter from the ruling house clearly indicating "a candidate" chosen by the ruling house as required by the public notice. But they later saw his point and sent a purported nomination letter to his house after they have (sic) already done the purported selection using what they called their "knowledge" in paragraph 38 of the defence."

Evidence was adduced by both parties in support of their contending positions in their pleadings and the trial court, after evaluating the said evidence, held as follows at page J24'of the record:-

"But the plaintiff, for reasons stated earlier on in the judgment submitted to nomination by joint meeting of C the family. They cannot resile from this. It is binding, therefore the 151,51\ 61h and 71h defendants counter-claim No. I succeeds and same is granted by me. Reliefs 3 and 4 flowing from I also succeed (sic)."

The reaction of the lower court to the above finding/holding by the trial COUJ1 is at page 254 of the record; where the court said, inter alia:

" ... There is therefore no evidence in exhibit "C" to warrant the learned trial judge's finding of the Olari noye family's abandonment or waiver of their claim to the vacant stool. ..

I hold that the trial court's findings about the Olarinoye family's abandonment or waiver of their -right to produce a candidate for title-vacant stool of Oloyan of Oyan is perverse same not having been supported by the evidence in Exhibit accordingly set aside. In its place J substitute a finding that at the meeting of the Elemo tRuli.pg House on the 22"d November,]996 the Olarinoye family maintained and insisted on their right to produce the candidate for the vacant stool. .. " It is the contention of learned senior counsel for the appellants that the above findings/holdings arose from a misconception of the case put forward by the appellants relating to the issue of estoppel/ waiver, that the estoppel pleaded in paragraphs 46 and 47 of the amended statement of defence and counter-claim was against the 151 respondent and not his lineage, neither did the learned trial Judge treat the matter on the basis of lineage but on the individual right of the 151. respondent, that-the Iearned-trial judge did 110t rely solely on e.xhi bit "C" in coming to the conclusion he did as held by the lower court but on the totality of the evidence before the court; and that the issue of inconclusive nature of the meeting evidenced in exhibit "C" was uncalled for particularly as PW3, who was the secretary of the meeting never testified to the fact that the meeting was inconclusive or a stalemate. I agree with the above submissions of learned senior counsel for the appellants as the same is dear from the record and the pleadings earlier reproduced. The case of the appellants is simply based on estoppel by conduct against the 1st and 2nd respondents as individuals. It has nothing to do with their lineage at all.

It is not in dispute that two candidates were nominated for the stool of Oloyan of Oyan in the meeting of Elemo Ruling House held on 22nd November, 1996 which candidates were the 151 appellant and 1st

respondent; that the names of the two candidates were forwarded to the kingmakers who, in their meeting of261h November, 1996 voted three against one with favour of the candidacy of the 151 appellant as against the 1ST respondent. Both candidates were voted for in the meeting of the kingmakers. The case of the appellants is that the] 51 respondent as well as the 2nd respondent haven participated directly or indirectly at the nomination exercise cannot resile from same since if it had favoured them, they would not have complained. The 151 respondent never protested his nomination alongside the 1 SI appellant for the contest for the stool in question. From the reoord, the nomination of two candidates' is also not novel as the 1st and 2nd respondents .pleaded in paragraph 26 of the amended statement of claim that:-

"When it was again-the-turn of Elemo Ruling Mouse to present an Oloyan, one of the sons of Ige Adubi Mejowuoye (Aresinkeye) who was called Onnuola was chosen and installed as Oloyan. One Adeboya from Olarinoye .lineage contested with him. Thus 'the 3rd Oloyan to be produced from Elemo Ruling House also came from Aresinkeye lineage'.

The above pleading is supported by the testimony of PW1, 1st appellant at page 37 of the record, as follows:-

"Aresinkeye was made Oba twice. I was not born then but history told us-that Adeboya contested against Onnuola and lost. I don't want my own side to lose again ... "

So, it is clear that the present instance is not the first time that a candidate is nominated from each 'of the two lineages to contest for Nigerian Weekly Law Report;, 27 December 2010 (OnnoghclI, J.S.c.J the stool of Oloyan of Oyan. it is clear also that it is from the two candidates that the ki ngsmakers were to choose one for appoi ntment by the governor or appointing authority.

Secondly, there is nothing on record to suggest that the estoppel or waiver pleaded and testified to by the witnesses was against the Lineage of the I S! respondent as held by the lower court neither did the trial court so find. There is, therefore, no basis for the lower court to interfere with that finding which is based on the pleadings and evidence. To have misconceived the case of the appellants on estoppel/waiver as one against the IS! respondent's lineage is erroneous as the truth is ·that it was pleaded and found by the trial court against the 1st and 2nd respondents as individuals.

In the circumstance, I resolve issue 2 in favour of the appellants.

On issue 3, learned senior counsel submitted that the lower court was in error when it affirmed the findings of the trial court to the effect that exhibit "G2" the chieftaincy declaration, was scanty and in-exhaust have and thereby resorted to other evidence to fill in the perceived lacuna. It is the further submission of the learned senior counsel that the 1ST and 2nd respondents did not prove any lacuna in the chieftaincy declaration; that all the PWs agree that there is only one Elemo Ruling House; that there is no evidence that when Olarinoye ascended the throne he did so on an agreement on rotation neither is it the case that when IgeAdubi of the IS! appellant lineage came on the throne it was by an agreement on rotation between the two lineages; that in fact the fact that two Obas or Oloyans reigned in succession from Aresinkeye lineage is a negation of the case of rotation; that exhibit "02" is the customary law guiding the succession to the Oloyan of Oyan chieftaincy and cannot be lightly side tracked ·on the ground of lacuna or inconclusiveness. Learned senior counsel cited and relied on. the case of Oladele v.

Aromolaran (1996) 6 NWLR (Pt. 453).-180 at 203,207-208. Ogundare P. Ogunlowo i J 997) 6 NWLR (Pt. 509) 360 at 372 - 373:

Olanrewaju v. Governor of State (1992) 9 NWLR CPt. 265) 335 at 362 -363, Mafimisebi v. Ehuwa (2007) 2 NWLR (Pt. 1018) 385 at 428 - 429; Fasade v. Babalola (2003) II NWLR (Pt. 830) 26 at 45. Finally .learned .senior counsel urged the court to resolve the issue in favour of the appellants and allow the appeal.

On his part learned counsel for the 1st – 2nd respondents submitted that both parties presented conflicting cases before the court as evidenced in their pleadings: that the parties were therefore duty bound to call evidence in support of their averments since exhibit "G2": the registered declaration of Oloyan of Oyan chieftaincy does not contain sufficient material evidence in proof

of the facts pleaded making it in-exhaustive of the customs and traditions of the people; that it is on the basis of the above that recourse had to be made to evidence of tradition to enable the parties prove their case, relying on Edewor v. Uwegba (1987) I NWLR (Pt. 50) 313 at 345; Lipede v. Sonekan (1995) I NWLR (Pt. 374) 668 at 689 and urged the court to resolve the issue against the appellants and dismiss the appeal.

Exhibit "G2";,a>5 has been stated, is the registered declaration of Oloyan of'0yah chieftaincy and it is-settled law. that where-a declaration in respect of a recognized chieftaincy is validly made and registered, the matter of custom or native ,jaw.;iHJ9. custom therein stated shall be deemed to be the customary law regulating the selection of a person to be the holder of the recognized chieftaincy to the exclusion of any other customary usage or rule or tradition.

The registered declaration is therefore a declaration of the tradition customary law and usages pertaining to the selection and appdintment to the particular chieftaincy stool/throne, it relates - see Oladele v. Aromolaron fJ (1996) 6 NWLR (Pt. 453) 180. Where, therefore, there use a regjsteted chieftaincy declaration, such as exhibit "G2", the duty of the court generally is to apply the 'provisions of the chieftaincy declaration. to the facts of the case as established by pleadings and evidence as,the court has no power to assume the power of the chieftaincy committee as regards the making of amendment of customary law governing' the selection and appointment of-traditional' chiefs -.see Ikine v. Edjerode (2001) J 8 NWLR (Pt. 745) 446 at 478 - 479; Adigun v. A.-G., Oyo State G (1987) I NWLR (Pt. 53} 678.

It should, however. be noted that the court can set aside a chieftaincy declaration under certain circumstances such as where a registered declaration is proved to be contrary to the customs and traditions of the people. In the case of Mafimisebi v. Ehuwa (2007) 2 NWLR (Pt. 1018) 385 at 431, paragraphs E-H. J had these to say:

> "I hold the view that the claims as couched - being declaratory in nature are within the jurisdiction or competence of the court to grant if there are facts to support same. The court is not being called upon to make a chieftaincy declarationffor the people, neither A is it to amend the existing declaration. I hold the considered view that just as the court has the vires to declare or set aside a registered declaration found to be unconstitutional or contrary to the provision of any Act or Law including the Chieftaincy Law under which it was made, the Court equally has the

competence to declare same null and void when from the evidence, it is clear that the said declaration does not truly represent the customary law it professes to restate",

Though the above remains the taw, for the Court to intervene, relevant facts must be pleaded and evidence adduced thereon to the satisfaction of the court because the law is that customary law being

a matter of fact must be proved by calling evidence unless frequent proof of same has made it to attain the legal status of notoriety so as to be judicially noticed - see Olowu v. Olowu (1985) 3 NWLR (Pt. J 3) 372.

What does the registered declaration, exhibit "G2" say? It declares as follows:

"Declaration made by the Odo-Otin Local Government chieftaincy committee under section E 4 (2) of the Chief Law Cap. 19 of the customary law regulating the selection to the Oloyan of Oyan chieftancy appendix "D"

1. There shall be four ruling houses and the identity of the ruling houses are:-

i. Elemo Ruling House
ii. LaojoRuling House
iii. Olorno-ObaRuling House
iv. Dawodu Ruling House-

2. The order of rotation in which the respective ruling' G house are entitled to provide candidates to fill successive vacancies in the chieftaincies shall be:-

i. Elemo

ii. Laojo

iii. Olorno-Oba

IV. Dawodu

3. The persons who may be proposed as candidates by a ruling house entitled to fill a vacancy in the chieftaincy shall be: Male members of the entitled ruling house of good character and sound mind without any previous conviction in any court.
4. There are six kingmakers as under:-

i. FSA

ii. Ojornu

iii. Osholo

iv. Inurin

v. Arogun

vi. Ola

5. The method of nomination by each ruling house is as follows:

1. The ruling house whose turn it is to provide a candidate will nominate at a family meeting to be summoned by the family head a candidate for the chieftaincy to be presented by the family head to the kingmakers.

If the Kingmakers are satisfied that the candidate is suitable from all points of view they recommend him for approval by the Governor, If they are not satisfied, they request the entitled ruling house to present another candidate.

MADE BY THE ODO-OTIN CHIETAINCY COMMITTEE THIS 25TH DAY OF MAY, 1982.

(SGD)(P.O Arnusan)

Secretary,

SGD (Oba SAO OyeleyeOluronkell Olukuku of Okuku

Chairman :

Odon-Otin Chieftaincy Committee

Odo-otin Chieftaincy

Committee

Approved by the Governor this 41h day of February. 1983:

(SGD)(Bola Ige) Governor, Oyo State.

Registered this 15th day, of February. 1983.

(SGD)(M.O.Ojo)

For secretary to the Government

There is no doubt that the principle of rotation is recognized in exhibit "G2" as being the mode of filling the vacancy of Oloyan of Oyan whenever it exists among the recognized four Ruling Houses. Exhibit "G2" also states the order in which the rotation is to operate.

It is true that exhibit "G2" does not concern itself with what happens within the constituting units of a ruling house or how they chose their candidate whenever it is their turn to produce the Oloyan of Oyan. In fact it is not their business to regulate that procedure.

In the peculiar case of Elemo Ruling House, there are two lineages constituting the ruling house and the registered declaration talks of C the ruling houses as a unit presenting a candidate for the appointment.

If the candidate is to emerge by way of rotation between the two lineage that would be the custom of Elemo Ruling House which ought to be pleaded and proved by evidence so as to enable the court act on same. In the instant case, it has already been demonstrated that the fact of rotation between the two lineages of Elemo Ruling House was no where pleaded by the Island 2nd respondents and that the findings on rotation by the trial court and the affirmation of same by the lower court is perverse.

In fact the pleadings and evidence thereon demonstrates that whenever it was the turn of Elemo Ruling House to present a candidate for the stool, there was a contest between nominated candidates. There is the evidence that Aresinkeye lineage produced two Oloyans in Succession which would not ,have been the case if the principle of rotation is in operation. Secondly, it is also an undisputed fact that when Onnuola from Aresinkeye lineage was to ascend the throne, Adeboya from Olarinoye lineage contested the stool with him. These facts are very stubborn and they speak volumes. They support the case of the appellants that whenever it is the turn of Elemo Ruling House to produce an Oloyan of Oyan, it was done by open contest by nominated candidates from both lineages. This cannot be said to be inconsistent with exhibit "G2" neither would it create a lacuna in the Customary law stated therein. Exhibit "G2" is complete as it is and without any lacuna to be filled by extrinsic evidence, granted that the fact of the lacuna and the Customary law needed to fill same had been pleaded.

I should not be understood as saying that the situation as it exists does not result in injustice to one of the components of the ruling house.

What I am saying, and which is a restatement of the applicable law, is that where there is the need to amend a registered Chieftaincy declaration so as to bring it in line with the current trend in the customary law of the people, it is the duty of the executive arm of government to do so, In the instant case, there is the anguish of one of the Lineages which has to produced only one Oloyan of Oyan out of the four so far produced by Elemo Ruling House, that is clearly unfair and something ought to be done about it by the appropriate authority. Olarinoye lineage ought not to be allowed to continue to suffer under the tyranny of the majority over a common property or proprietary interest with Aresinkeye lineage.

In conclusion, I however resolve issue 3 in favour of the appellants.

With regards to the appeal by the 5'h and 6'h appellants, I had earlier stated in this judgment that they adopted the same issues formulated by learned senior counsel for the appellants arising from the same grounds appeal. It follows, therefore, that the resolution of the said issues in favour of the I" – 4th appellants results in the resolution of the same issues in favour of the 5th and 6th appellants.

In conclusion, I hold the view that the appeals succeed and are allowed, the judgment of the lower court in Appeal No CA/ 175/99 delivered on 8'h day of January, 2003 is hereby set aside and in its place I hereby restore and affirm the judgment of the trial court in suit No. HIK/l5/97 delivered on the 30,h day of June, 1998 subject to or in line with the issues resolved in this judgment.

Due to the nature of this case and in order to promote reconciliation and the spirit of brotherliness between -the lineages, I do not want to award costs. I accordingly make no order as to costs.

Appeals allowed.

MUKHTAR, J.S.c.: I have had the opportunity of reading in advance the lead judgment delivered by my learned brother Onncgben, JSc. I am incomplete agreement with him that the notice of preliminary objection raised by the appeal of the 7th appellant has merit, and should be upheld. I also upheld it. Consequently I strike out the 7'h appellant's appeal. However, the second notice of preliminary objection raised by the 151 and 2nd respondents, has no merit, and so it is overruled, as the grounds of appeal attacked are valid and competent. I also agree that the appeals of the 1st - 4'h appellants, and 5'h and 6'h

appellants are meritorious and deserve to succeed. I allow the appeal, set aside the judgment of the lower court and restore and affirm the judgment of the trial court. My learned brother has painstakingly treated all the issues raised inhis judgment, .and I do not wish to highlight or add anything to lit. I abide by the order as to costs.

MVNTAKA-COOMASSIE, J.S.c.: Having read and assimilated the draft judgment of my learned Lord Walter Onnoghen JSC, just read, I agree with his reasoning and conclusion in allowing this appeal. 1 too agree that the appeal before us deserved to be allowed same is therefore allowed by me. I endorse the reasons why costs should not be awarded. The decisions of the lower court is hereby restored and affirmed.

GALADIMA, J.S.C.: 1 have seen and read before now the draft of the judgment of learned brother Onnoghen, JSC, which has just been delivered. 1 would like to add a very short comment of my own on the preliminary objection raised by the 1st and 2nd respondents against the appeal of the 7th appellant. In the 1st and 2nd respondents brief their learned counsel has argued that the judgment of the lower Court not having decided anything against the 7th appellant, (Odo-Otin local Government) it cannot be a party aggrieved by the decision of the lower Court and cannot therefore appeal against same. Reliance was as placed on the of case Societe Generale G Bank (Nig.) Ltd. v. Afekore (1999) II NWLR (Pt. 628) 521 at 537; Mobil Producing (Nig.) Unlimited i; Monokpo (2004) 2 M.J.S.C I at 17, (2003) 18 NWLR (Pt. 852) 346. The 7th appellant as the 4'h defendent at the trial court did not appeal against the decision of the trial court to the appeal Court. None of the five reliefs granted by the lower court can be said to have affected the appellant. I have also noted that the learned counsel for the 7th appellant did not file a reply brief to the brief of the 1st and 2nd respondents. This failure has made it impossible for the 7th appellant to confront the points canvassed in the preliminary objection. Moreover, at the hearing of the appeal the 7th appellant did not make any oral presentation on the matter. It is not shown that the 7th appellant was under any legal disability when he neglects to exercise its right to its benefit. It should be the best Judge of .its own benefit or interest. Having full knowledge of the rights, or interest or benefit conferred upon or accruing to it under the law, but intentionally decides to give up or waive it, 7th appellant cannot be Heard to complain after words that it has not been permitted to exercise its rights-or that it has suffered any legal grievance. 1st appellant is deemed to have conceded the points so canvassed by the 1st and 2nd respondents in their objection. My careful consideration of the relief claimed by the 1st - 2nd respondents at the, trial - court show-clearly that none of these adversely affected the interest of the 7th appellant so as to qualify it to be considered as a party aggrieved by anorder of court so as 1:0 warrant the T" appellant to. appeal against the said judgment. 7th appellant, therefore, has not suffered any legal grievance, arising from the said judgment and also hold some Mobil Producing (Nig.) Unlimited. v. Monokpo (supra) also Halsburys Laws of England (3rd Edn. vol. 14 para. 1175).

In my further enquiry into the grounds of appeal of the 7th appellant, it is clear that it merely reproduced the grounds of appeal of the 1st 4th appellants as its own and proceeded further to adopt the issues formulated by-the counsel of the said 1st - 4th appellants.

Consequently, the preliminary objection raised against the 7th appellant is firmly established. The result of this enquiry is that the appeal of the 7th appellant-is liable to be struck out and it is hereby struck out.

It would appear; though there is no preliminary objection against the appeal of the 5th and 6th appellants who were the 2nd and 3rd defendants, respectively, at the trial court, there is no difference between the

grounds of appeal in that appeal and the issues arising there from and those of in the 1st – 4th appellants' appeal. The 5'h and 6 appellants decided to adopt the issues formulated by the learned senior counsel for the 1st - 4'h appellants in that appeal. If so, it seems to me therefore that a disposal of the issues in the appeal of the 1st - 4th appellants automatically disposes of the issues calling for resolution in the appeal of the 5'h and 6'h appellant. It now remains for me to relate those issues to the facts of this case so stated in detail in the lead judgment.

My learned brother in this lead judgment has related these issues A very well to the facts of this case as set out in great detail at the beginning of the judgment. The main issue canvassed by the 1st – 4th appellants is whether the issue of rotation of the stool between the two lineages was pleaded having regards to the pleadings in paragraphs 26, 42, -43 and 56. To support their contention that the B fact of rotation of the Chieftaincy was not pleaded by the 1st and 2nd respondents, learned senior counsel for the appellants referred to and relied on these paragraphs of the amended statement of claims while the respondents relied on the same paragraph in addition to paragraphs 17, 18, 20 - 22, 30 - 35, 42, 47 and 56 of the said C amended statement of claim to contend the contrary. For better appreciation of the contentions, I have set out paragraphs, 26, 42 and 43 herewith:

"26. When it was again the turn of Elemo ruling house to present an Oloyan, one of the son of Ige Adubi Mejowuoye (Aresinkeye) who was called Onnuolo was chosen and installed as Oloyan. One Adeboya from Olarinoye lineage contested with him. Thus the 3rd Oloyan to be produced from Elemo 's ruling house also came from Aresinkeye lineage.

The plaintiff avers that since Farournbi Elemo's family consisted of two stripes from his two wives as stated in 17 above, it is customary for the children of each wife to constitute a lineage each. Since Olarinoye produced the first Oloyan from Elemo ruling house, F and the second lineage (Aresinkeye) had produced two Oloyans, it is fair just and in line with custom for Elemo Olarinoye to produce the next Oloyan so that the chances utilized by both lineages will now be two each and therefore equal.

The 1st plaintiff states that the first defendant's family knows that Oba Ige Adubi and Oba Onnuola hailed from Elemo Isale's (ie.Elemo Aresinkeye) lineage"

From my close examination of the above paragraphs it is very clear that the fact of rotation of the stool between the two lineages of Olarinoye and Aresinkeye both of Elemo Ruling House is not pleaded. I am in agreement with the appellants that what is indicated in these paragraphs is a desire for equal opportunity to occupy.the throne alternately not that by the customs and traditions of Elemo Ruling House. the throne of Oyan is occupied by rotation between the two lineages.

In effect, the issue of rotation was not part of the case presented by the 1ST and z- respondents in their pleadings. A valid point has been established here. That is the fact that two Oloyans of Oyan from Elemo Ruling House came from one of the lineages (Aresinkeye lineage) in succession. This, in effect. negates the principle of rotation of throne/stool between the two-lineages. As correctly observed by my brother in his lead judgment, if the notion of rotation had been in vogue," the throne would have been occupied alternately between the two lineages. The appellants' contention is further strengthened by their claim on paragraph 26 of the amended statement of claim reproduced above, where it is pleaded that when Onnuola from Aresinkeye lineage was chosen and installed as Oloyan one Adeboya from Olarinoye lineage. contested the stool with him. As I have observed. This fact clearly negates the principle of

rotation and supports the case of the appellants that whenever it was the turn of Elemo Ruling House to produce an Olayan of Oyan. candidate from the two lineages contested freely for the stool. These were no evidence on facts favourable to the respondents' case. There was no evidence on record on the issue of rotation between the two lineages. In the light of the foregoing I resolve issue in favour of the appellant.

The foundation of the second issue in this appeal under consideration is to be found in the pleadings of the parties, particularly that of the appellants. They raised the defence of estoppels or waiver in their paragraphs 46, and 47 of the amended statement of defence and counter claim. The plaintiffs reacted to those paragraphs in paragraphs II and 15 of their reply to the statement of defence and defence to counter claim. Needless reproducing these paragraphs. However, my careful study of the paragraphs has led me to the conclusion that the estoppels pleaded in paragraphs 46 and 47 of the amended statement of defence and counter-claim was against the I" respondent and not his lineage, neither did the learned trial Judge treat the matter on the basis of lineage but on the individual right of 1ST respondent. I agree with learned senior counsel for the appellants that the learned trial Judge did not rely solely on exhibit "C" in coming to the conclusion he did as held by the lower court but on the entire evidence before the court. The issues of inclusive nature of the meeting evidenced in exhibit "C" was really uncalled for PW3, who was the secretary of the meeting was not shown to have testified to the fact that the meeting was inconclusive or a stalemate. The case of the appellants is based on estoppels by conduct clearly against the 1ST and 2nd respondents as individuals. The lower court could not have held otherwise. The case put forward by the appellants has nothing to do with the lineage of the 1ST and 2nd respondents at all.

In any case the 1st appellant and I S! respondent were forwarded as candidates to the kingmakers who in their meeting of 26/1l196 voted 3 (three) against I (one) in favour of the 1st appellant as against 1st respondent. The appellants are contending that the IS! and 2nd respondents who have participated directly or indirectly at the nomination exercise cannot now resile from their participation, for if they had been favoured by the voting exercise they would not have complained. The 1st respondent, in the first place. never protested his nomination alongside the 1 SI appellant for the contest for the said stool of Oloyan of Oyan. Besides, from the record the nomination of the two candidates is not novel as the 1st and 2nd respondents pleaded in paragraph 26 of the amended statement of claim, That pleading is supported by the testimony of PWI, (IS! appellant) at page 37 of the record as follows:

"Aresinkeye was made Oba twice. I was not born then but history told us that Adeboya contested against Onnuola and lost. I don't want my own side to Jose again ... "

From this, it is clear that the present instance is not the first time that a candidate is nominated frOI11 each of the two lineages to the contest for the stool.

In the light of the foregoing there is no basis for the lower court to interfere with the finding of the trial Court which is based on the pleadings and evidence before it. This second issue is therefore resolved in favour of the appellants.

With the resolution of the 1st and 2nd issues in favour of the appellants, I do not intent to consider issue 3. It has been exhaustively dealt in the lead judgment and resolved in favour of the appellants.

In the light of the foregoing reasons and for the reasons so ably set down in the lead judgment, to which 1 earlier made reference, I would also allow the appeal and set aside the judgment of the lower court but

restore and affirm the judgment of the trial court but restore and affirm the judgrnent of the tri al court. I too would not award costs, in the circumstance of these appeals.

RHODES-VIVOUR, J.S.c.: I have had the advantage of reading in draft the leading judgment prepared by Onnoghen, JSc. I am in complete agreement with it. and so hesitated before finally deciding to add a few observations of my own.

On the 23rd day of August 1996. The Oloyan of Oyan died. A new Oloyan had to be crowned. The Oloyan Chieftancy has four Ruling Houses. They are:

1. Elemo
2. Laojo
3. Olornooba
4. Daodu or Dawodu

The Oloyan must be chosen from one of them. The kingmakers decided that it was the turn of Elemo Ruling House to produce an 010y1111. There was no protest from the other three Ruling Houses.

They agreed that it was the turn of Elemo Ruling House to produce the next Oloyan of Oyan. Now. there are two lineages in the Elemo Ruling House. They are:

1. Olarinoye
2. Aresinkeye

The 1st appellant is from the Aresinkeye lineage. He was eventually appointed and installed as the Oloyan of Oyan in 1997.

This appointment did not go down well with the 1 $I respondent, who is from the Olarinoye lineage. He went to court. His case was that the Elemo Ruling House had in the past produced three Oloyans with one coming from Olarinoye and two in succession from Aresinkeye. .

The learned trial Judge agreed with the 1 SI respondent and found that it was indeed the turn of Olarinoye lineage to produce the Oloyan and not the Aresinkeye lineage. This judgment was affirmed by the court of Appeal. That it is the turn of the Olarinoye lineage of the Elemo Ruling House to produce the next Oloyan of Oyan is a concurrent finding off act by the High Court and the Court of Appeal. If pleadings are to be of any use, parties must be held bound by them. In a plethora of cases it has been stated that parties

are bound by their pleadings. See Ugochukwu. v. Unipetrol (Nig.) Plc (2002) 3 SC p. 80, (2002) 7 NWLR (Pt. 765) 1; Mohammed v. Klargester (Nig.) Ltd. (2002) 7 SC (Pt. 11) p. I, (2002) 14 NWLR (Pt. 787) 335.

Paragraph 26 of the 151 respondents/plaintiffs pleadings read thus: