OBA AMOS BABATUNDE AND ANOR

V

MR. SIMON OLATUNJI AND ANOR

SUPREME COURT OF NIGERIA

ADOLPHUS G. KARIBI-WHYTE, J.S.C. (Presided)
EMMANUEL O. OGWUEGBU, J.S.C.
ALOYSIUS I. KATSINA-ALU, J.S.C. (Read the Leading Judgment)
OKAY ACHIKE, J.S.C.
UMARU A. KALGO, J.S.C.

SC./148/1995
FRIDAY 4TH FEBRUARY, 2000

CHIEFTAINCY MATTER - Jurisdiction of court over chieftaincy matter under 1963 constitution of Nigeria - Ouster of by Section 161(3) thereof

COURT- Judgment of competent court - Effect when not set aside

COURT- Judgment of court - Presumption of correctness until set aside

COURT-Judgment of court of competent jurisdiction - When not valid - Procedure for invalidating same.

COURT- Judgment or order of court not discharged or set aside - How treated

COURT- Juris diction over chieftaincy matter under 1963 Constitution of Nigeria - Ouster of by Section 161(3) thereof

COURT- Void and voidable judgments Duty to obey until set aside

JUDGMENT AND ORDERS-Judgment of competent court - Effect when not set aside

JUDGMENT AND ORDERS - Judgment of court Presumption of correctness until set aside

JUDGMENT AND ORDERS-Judgment of court of competent jurisdiction- when not valid- Procedure for invalidating same

JUDGEMENT AND ORDERS - Order or judgement of court not discharged or set aside – How treated

JUDGMENT AND ORDERS - Void and voidable judgments Duty on party to obey until set aside

Issue:

Whether a person against whom a judgment is given or an order made can disobey and ignore it on the ground that it is null and void.

Facts:

In 1989, after the demise of Odofin Gabriel Adewoye from Ile Oba Ibuoye to Ruling House, the respondents selected and presented one Chief Ajitoni Ibuoye to the 1st appellant to be appointed and installed as the Odofin of Arandun. The 1st appellant refused and rather accepted and approved the nomination of the 2nd appellant who was subsequently installed as Odofin of Arandun on 8th June, 1989. In consequence of this, the respondents brought an action in the Kwara State High Court at Omu-Aran.

At the trial court, the respondents as plaintiffs called witnesses and tendered Exhibit 1. The appellants as defendants called 5 witnesses and tendered 8 Exhibits.
Exhibit 1 tendered by the respondents as plaintiffs in the trial court comprises the writ of summons, the pleadings, the proceedings and the judgment in Suit No.Z/11/67 in the High Court of Kwara State, Ilorin Judicial Division.

The parties in the present proceedings are privies to the parties in Exhibit 1 (Suit No. Z/11/67 between *Olukotun Adeniyi & Ors. vs. Amos Babatunde Alaran & Ors*.) In the present proceedings, the defendants who are appellants herein set up in their pleading a case different from the case canvassed by their predecessors in Exhibit 1. The trial judge, after an evaluation and consideration of the evidence, oral and documentary, entered judgment for the respondents as plaintiffs and held that the appellants as defendants cannot approbate and reprobate and that the issue decided in Exhibit 1 is valid and binding on the appellants especially, that Odasare or Ile Oba Ilufemiloye is not an odofin chieftaincy family.
Their appeal to the Court of Appeal was dismissed. The Court of Appeal in affirming the decision of the High Court also agreed that the contents of Exhibit 1 bind the appellants and that they could not resile from it.

The appellants further appealed to the Supreme Court and contended for the first time that the decision in Suit No. Z/11/67 Exhibit 1 by the Kwara State High Court was a nullity and that all subsequent proceedings were void as that court had no jurisdiction to hear and determine the case in view of the provisions of
Section 161(3) of the constitution of the Federation of Nigeria, 1963 which reads:

> "161(3) Notwithstanding anything in any other proviso of this Constitution (including in particular sections 32 and 53 of this Constitution) but without prejudice to the provision to subsection 4 of section 27 of this Constitution, no chieftaincy question shall be entertained by any court of law in Nigeria, and a certificate which is executed by an authority authorized in that behalf by a law coming into force in a territory on or after the date of the commencement of this Constitution (including a law passed before that date) and which states:
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> (a) that a particular person is or was, by reference to that territory a part of it, a chief of a specified grade at a specified time or during a specified period or
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> (b) that the provisions of a law in force in that territory relating to the removal or execution of chiefs or former chiefs from areas within the territory have been complied with in the case of particular person, shall be conclusive evidence as to the matter set in that statement."

The Supreme Court in a unanimous judgment dismissed the appeal and affirm the decision of the Court of Appeal.

Held (*Unanimously dismissing the appeal):*

1. *On lack of Jurisdiction in the High Court to entertain chieftaincy matter toby virtue of Section 161(3) of the 1963 Constitution of Nigeria-*
The High Court of Kwara State which sat over suit No. Z/11/67 tr oul had no jurisdiction to entertain and decide upon the issues in that suit as no chieftaincy matter could be entertained by any court of law in Nigeria at that time by virtue of Section 161(3) of the 1963 Constitution. [*P 886, paras E - F*]

2. *On the bindingness of void judgment of court of unlimited jurisdiction until set aside*
The judgment contained in exhibit 1 Suit No. Z/11/67 was given without jurisdiction and therefore a nullity. But it is a decision of a court of unlimited jurisdiction which remains binding until set aside. [P 886, paras. F- G)
Per OGWUEGBU, J.S.C. [P. 887, paras E - F]

> **"In the present proceedings, the Kwara State High Court which heard and determined Suit No. Z/11/67 is a court odo pbe aldoof unlimited jurisdiction and it would be most dangerous to allow a party or his counsel to determine whether its order was null or valid, regular or irregular. They should come to the court and not arrogate to themselves the power of determining the question. Until set aside, the proceedings and the judgment contained in Exhibit 1 subsist and bind the parties and their privies."**

Per KALGO, J.S.C. [P. 889, paras C - D]

> **"There is no doubt that at the time Exhibit 1 was made, it was not a valid decision as no court in Nigeria could validly entertain any chieftaincy matter under section 161(3) of the 1963 constitution. But since that decision had not been set aside by any court of law in Nigeria, and the Ilorin High Court being a court of unlimited jurisdiction, 11 judgment in exhibit 1, is still valid and subsisting and should not be discountenanced, ignored or disobeyed. See** *Issac vs. Robertson* **(1984) All E.R. 140 at 143**; *Rosek vs. A.C.B. Limited* **(1993) 8 NWLR (Pt. 312) 382;** *Aladegbemi vs. Fasanmade* **(1988)3 NWLR (Pt. 81) 129**; *Akinfolarin vs. Akinola* **(1994) 3 NWLR (Pt. 335) 659 at 676 - 677."**

3. *On proper approach to invalidate judgment or order of court-*
The option open to a person against whom an order was made at or judgment given is to apply to the court to discharge the order or appeal against the judgment that it might be set aside as the case may be, for as long as the order or judgment existed, it must not be disobeyed. *[P. 883, para G]*

4. On the bindingness of void judgment of court of competent o jurisdiction until set aside –

A judgment of a court of competent jurisdiction remains valid and binding, even where the person affected by it believes that it is void, until it is set aside by a court of competent jurisdiction. [*Chuk vs. Cremer* **47 E.R 884**; *Hadkinson vs. Hadkinson* **(1952) 2 All E.R 567 referred to.]** *(P 883, para G]*

Per KATSINA-ALU, J.S.C. [P. 883, para H- P. 884, paras A - C] *Chuk v. Cremer* **(1846) 1** *Coop temp. Cott*. **342; 47 E.R. 884 Lord Cottenham, L.c. said: "A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it...it would be most dangerous to hold that the suitors, or 86 their solicitors, could themselves judge whether an order was null or valid - whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed, it must not be disobeyed." This view was re-echoed by Romer LJ in** *Hadkinson v. Hadkinson* **(1952) 2 ALL E.R. 567 where he said:**

"It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believe it to be irregular or even void." In a nutshel1, the judgment of a court of competent jurisdiction subsists unless and until it is set aside even where person affected by it believes it to be void or irregular. The procedure for setting it aside is simple. The party affected must appeal against the judgment."

5. *On presumption of validity of court judgment until set aside-*

It is settled practice that there is a presumption of correctness in favour of a court's judgment. Unless and until that presumption is rebutted and the judgment is set aside, it subsists and must be - obeyed. It cannot for any reason under our law be ignored. [*Oba Aladegbemi vs. Oba Fasanmade* **(1988) 3 NWLR (Pt. 81) 129 referred to.]** *[P. 884, para E)*

Per KATSINA-ALU, J.S.C. [P. 884, para H]

"The appellants have argued that it was not necessary to bie o d have the decision in Suit No. Z/11/67 set aside on appeal. In the light of the law on this point which I have highlighted above, this argument is fallacious, it is badly flawed. The decision is valid and subsisting. And it is presumed correct. Until that presumption is rebutted on appeal and the decision is set aside, the person affected by it must obey it."

6. *On duty on a party to obey void and voidable orders of court until set aside-*

A party who knows of an order or judgment, whether null or valid, regular or irregular given against him, by a court of competent jurisdiction cannot be permitted to disobey it. His unqualified obligation is to obey it unless and until

that order or judgment, has been discharged or set aside. [*Chuks vs. Cremer* **47 E.R. 884;** *Hadkinson vs. Hadkinson* **(1952) 2 All E.R. 567**; *Rossek vs. A.B.C. Ltd* **(1993) 8 NWLR (Pt. 312) 382;** *J. C. Ltd. and Ors vs. Ezenwa* **(1996) 4 NWLR (Pt. 443) 391 referred to.]** *[P 884, para D]*

7. *On duty on a party to obey a judgment of competent court whether op at null or valid until set aside.*

Per ACHIKE, J.S.C. [P. 888, para C - F]

"I would only wish to add one word or so. Matters appertaining to judicial orders or judgments, for that matter, are not generally treated with arrogance or levity. Speaking for myself, it is rather officious and treading on a perilous path for one to arrogate to oneself the right to choose and pick between court orders in terms of whether they are valid or null and void. In fact, since there is a strong presumption in favour of the validity of a court's order, it behoves everyone to keep faith with the order of the court. It makes no difference that *ex facie* it appears that the court that made the order is without jurisdiction because at the end of the day an order of the court subsist and must be obeyed until set aside by a court of competent jurisdiction. To, therefore, disobey an order of the court on the facied belief that the said order is null for any reason whatsoever - even if it subsequently turns out that the order in fact is proved to be null - is a risky and unadvisable decision because until the said order is finally determined to be null and void by the court, the order subsists with the sting attaching to it unmitigated.

Therefore, sheer common sense as well as prudence demands that every order of the court should be accorded due respect and no attempt made to flout the order on the flimsy reason that it is null and void."

Nigerian Cases Referred to in the Judgment:

Akinfolarin vs. Akinola (1994) 3 NWLR (Pt. 335) 659.
J.C. Ltd. and Ors vs. Ezenwa (1996) 4 NWLR (Pt. 443) 391 o
Oba Aladegbemi vs. Oba Fasanmade (1988) 3 NWLR (Pt. 81) 129.
Odofin vs. Agu (1992) 3 NWLR (Pt. 229) 350.
Rossek vs. A.B.C. Ltd (1993) 8 NWLR (Pt. 312) 382

Foreign Cases Referred to in the Judgment:

Chuk vs. Cremer 47 E.R. 884
Hadkinson vs. Hadkinson (1952) 2 All E.R. 567
Isaacs vs. Roberston (1984) 3 All E.R. 140.
Macfoy vs. U.A.C. Ltd. (1961) 3 All E.R 1169

Nigerian Statute Referred to:

Constitution of Nigeria, 1963, Section 16l(3) oo leten

Counsel:

Babatunde Oshilaja, Esq. for the Appellants

Yusuf Olaolu Ali Esq. S.A.N (with him L. O. Egbuwole) for the Respondents.

KATSINA-ALU, J.S.C. (Delivering the Leading Judgment): The main question that arises for determination in this appeal is: Whether a person against whom a judgment is given or an order made can disobey and ignore it on the ground that it is null and void. This is informed by the fact that, in the appellants' view, the decision in the earlier case in Suit No. Z/11/67 by the High Court of Kwara State was given without jurisdiction contrary to the provisions of Section 161(3) of the 1963 Constitution. The proceedings in that suit were admitted in evidence as Exhibit 1 in the present case. It was argued that the said proceedings were null and void and should have been treated as non-existent.

Section 161(3) of the 1963 Constitution reads:

"161(3) Notwithstanding anything in any other provision of this Constitution b including in particular sections 32 and 53 of this Constitution) but without prejudice to the provision to subsection 4 of section 27 of this Constitution, no chieftaincy question shall be entertained by any be court of law in Nigeria, and a certificate which is executed by an authority authorized in that behalf by a law coming into force in a territory on or after the date of the commencement of this Constitution (including a law passed before that date) and which states:

(a) that a particular person is or was, by reference to that territory or a part of it, a chief of a specified grade at a specified time or during a specified period or

(b) that the provisions of a law in force in that territory relating to removal or execution of chiefs or former chiefs from areas within the territory have been complied with in the case of particular person, shall be conclusive evidence as to the matters set out in that statement."

Exhibit 1 tendered at the trial as I have already indicated, is a certified true copy of the Writ of Summons, Statement of Claim, Statement of Defence, the trial proceedings and the judgment of the High Court of Justice, Ilorin in Suit No. Z/11/1967 between *Olukotun Adeniyi and Anor vs. Amos Babatunde Alaran and Anor*. On the face of it, the subject matter in that case was a chieftaincy dispute. In that case, when in 1967 Adewoye Aromokeye from Ile Oba Ibuoye became the Odofin, the predecessors-in-title of the 2nd appellant herein took the 1st appellant Oba Amos Babatunde and the late Odofin Adewoye to court. That suit was dismissed.

There was no appeal therefrom.

The facts of the present case are simple. In 1989, after the demise of Odofin Gabriel Adewoye from Ile Oba Ibuoye Ruling House, the respondents selected and presented one Chief Ajitoni Ibuoye to the 1st appellant to be appointed and installed as the Odofin of Arandun. The 1st appellant refused and rather accepted and approved the nomination of the 2nd appellant who was subsequently installed as Odofin of Arandun on 8th June, 1989. In consequence of this, the respondents brought an action in the Kwara State High Court at Omu-Aran.

At the trial court, the respondents as plaintiffs sought the following reliefs in paragraph 16 of their Statement of Claim:-

"Declarations:

1. That under the native law and custom of Arandun the families of the 2nd Defendant are not entitled to ascend the stool of Odofin of Arandun.

2. That the appointment, installation and recognition of the 2nd Defendant as Odofin of Arandun is irregular, null and void.
3. That Chief Ajitoni Ibuoye being the rightful nominee of the Ile-Oba Ibuoye Ruling Family is the rightful person to become the Odofin of Arandun immediately after Gabriel Adewoye (deceased).
4. Orders:
   (i) Setting aside the purported nomination, appointment and installation of Ayinla Aransiola, 2nd defendant, as Odofin of Arandan.
   (ii) Perpetual injunction restraining the defendants, their servants privies or any person whosoever deriving authority, permission or order from any of them, from recognizing or continuing to recognise, deal with, address regard the 2nd defendant as the Odofin of Arandun.
   (iii) Perpetual injunction restraining the 2nd defendant from continuing henceforth from calling, introducing parading addressing or presenting himself either to defendants or any person(s) however and at any occasion or place as Odofin or Arandun..
   (iv) Directing the defendants to appoint and instal Chief Ajitoni Ibuoye as Odofin of Arandun within 30 days from the date of judgment."

The plaintiffs called 3 witnesses and tendered Exhibit 1. The defendant called 5 witnesses and tendered 8 Exhibits. The learned trial judge, after an evaluation and consideration of the evidence, oral and documentary, entered judgment for the plaintiffs.

The defendants appeal to the Court of Appeal was, dismissed. They have fiurther appealed to this court.

As I have already indicated the question to be resolved is whether a person against, or in respect of, whom an order is made or a judgment is given by a court f competent jurisdiction can disobey and ignore it on the ground that it was null and void. In the context of this case, it was submitted for the appellants that a judgment or order given or made without jurisdiction is a nullity; that lack of jurisdiction in the court deprives the judgment or order of any valid existence and or effect whether by estoppel or otherwise. For this submission learned counsel relied on the case of *J.C. Ltd. vs. Ezenwa* (1996) 4 NWLR (Pt. 443) 395 at 414 - 415. It follows from that submission that the action in Suit No. Z/11/67 (Exhibit 1) did not lie when it was instituted because by virtue of section 161(3) of the Constitution of the Federation 1963 the pleadings, the entire proceedings and judgment in that suit (No. Z/11/67) are non existent and should not have been received in evidence. This is so because the provisions of Section 161(3) aforesaid, oust the jurisdiction of any court of law in Nigeria in matters relating to chieftaincy question. Since Suit No. Z/11/67 (Exhibit 1) involved the determination of a chieftaincy question no court of law in this country had the jurisdiction to hear and determine such question. That being so, it was contended, there could be no judgment (Exhibit 1) in a case that by constitutional law could not be heard. Learned counsel for the appellants relied on the case of *Governor of Oyo State vs. Afolayan* (1995) 8 NWLR (Pt. 413) 292 at 321 and 329.

For his part, learned counsel for the respondents submitted that unless and until Exhibit 1 is set aside by a competent court, it remains valid and binding and cannot therefore be ignored. He relied on the case of *Odofin vs. Agu* (1992) 3 NWLR (Pt. 229) 350 at 371 372.

In order to appreciate the submissions of counsel on the issue under consideration, it is necessary to reproduce the salient paragraphs of The Statement of Claim and the State of Defence.

The respondents as plaintiffs in paragraphs 9 - 13 of their amended Statement of Claim pleaded thus:

"9 The Plaintiffs state that after the demise of Odofin Arandun, Odofin Awofaran from Ile Oba Ibuoye family, one Ajiboye Oyebanji from the family of the 2nd defendant in 1967 was wrongly nominated by Ilufemiloye family to ascend the throne, the 1st defendant who was the Alaran of Arandun on the throne at the time failed, refused and rejected the nomination, rather he in good conscience accepted the nomination and appointment of Odofin Gabriel Adewoye. He accordingly installed him and continued to recongnise and accorded Odofin Adewoye respect until he died.

10. The Plaintiffs aver that the said Ajiboye Oyebanji and one Olukotun Adeniyi being dissatisfied with the appointment of Gabriel Adewoye filed a suit to challenge the appointment vide Suit No. Z/11/67, Olukotun Adeniyi, Ajiboye Oyebanji -vs. - Amos Babatunde Alaran and Gabriel Adewoye Odofin.

11. The Plaintiffs aver that the suit was dismissed; the plaintiffs plead and will tender at the hearing, the certified true copy of *Writ of Summons, the Statement of Claim,* the *Statement of Defence, the proceedings at trial and judgment of the Court.*

12. The Plaintiffs aver that Alaran, Amos Babatunde being the custodian of the people's custom and tradition in the Statement of Defence filed in the suit stated the position of Odofin Chieftaincy correctly. The Plaintiffs will give evidence of families entitled to become Odofin Arandun, the history and names of previous holders of the office and their relationship with the Plaintiffs.

13. The Plaintiffs aver that on the demise of Odofin Gabriel Adewoye the family or the Ruling House properly and validly entitled indeed nominated Chief Ajitomi Ibuoye to ascend the vacant stool but the 1st defendant in violation of the custom and tradition of Arandun; in contradiction of his avowed position in Suit No. Z/11/1967 stated above, nominated and installed the 2nd defendant as the Odofin off Arandun."

On the other hand, the appellants as defendants joined issue on the paragraphs of the amended Statement of Claim reproduced in paragraphs 12 and 18 of their Statement of Defence. They pleaded thus:

"12. Further to paragraphs 9, 10, 11 and 12 of the Statement of Claim, the defendants aver as follows:

(i) That the 1st defendant never gave evidence to support any pleading in Suit No. Z/11/67 mentioned in paragraph 10 of the Statement of Claim:

(ii) That none of the defendants in the said case also gave evidence and that no body asserted in evidence in the said case that the 2nd defendant's family is not entitled to ascend the stool of Odofin.

18. The defendants shall contend at the trial of this case that suit No. Z/11/67 vest no right or interest on the plaintiff's family to the exclusion of the 2nd defendant's family or any of the four ruling houses to ascend to or monopolise the stool of Odofin of Arandun and neither was any evidence led nor any pronouncement made to justify the stand they now take in this case."

The learned trial judge in the course of his judgment observed at page 170 to 171 thus:

The next point for consideration on the issue of the native law and custom of Arandun regarding the Odofin chieftaincy title is the effect of exhibit 1 which is the record of proceedings and judgment in the case between 2nd defendants' relatives

on one hand and the 1st defendant with the late Odofin Gabriel Adewoye on the other hand. In exhibit 1 page 2 the plaintiffs therein claimed that there are 4 Odofin chieftaincy families at Arandun and that it was the turn of Oba llufemiloye family which has unanimously made its choice or and the 2nd plaintiff therein and presented same to the 1st defendant (now the 2nd defendant herein) for approval. The 2 defendants therein averred at page 4 that there are only 2 Odofin chieftaincy families Arandun rotating the title and they are:-

(1) The house of Odun and

(2) The house of Odofin Alaran

They went further that lle Oba Ilufemiloye is not an Odofin house.

In its judgment which was not appealed against, the court at page 14 dismissed the plaintiff's action. That specifically is a decision on the issue of the right of lle Oba Ilufemiloye to ascend the Odofin stool. *It is a valid subsisting and extant judgment by a competent court* which has decided against the right of the unanimous choice 6 of Ile Oba Ilufemiloye to ascend the Odofin Stool. The 2nd defendant said that he was then aware of the litigation by his relatives."

The learned trial judge continued at page 172 as follows:

"Can the 1st and 2nd Defendants resile from the position taken in exhibit 1? I think not, in exhibit 1, the 1st plaintiff who was the Olukotun and in that capacity, chief of lle Oba Ilufemiloye and the 2nd plaintiff who was the unanimous choice of the family for Odofin bolilulo stool were in the circumstance fighting the battle of the entire family. This is clearly borne out by their pleadings. The battle line was drawn between Ile Oba llufemiloye and the Alaran of Arandun from Ile Odun and the then Odofin from lle Oba Ibuoye. The issue centered on the right or otherwise of Odosare to fill the Odofin stool. The decision is unequivocal that it had no such right."

The court below affirmed the decision of the court of trial. It agreed that contents of exhibit I bind the appellants and that they could not reside from it.

I think the option open to a person against whom an order was made or judgment given is plain. He should apply to the court to discharge the order or appeal against the judgment that it might be set aside as the case may be. This is good sense, for as long as the order or judgment existed, it must not be disobeyed. A judgment of a court of competent jurisdiction remains valid and binding, even where the person affected by it believes that it is void, until it is set aside by a court of competent jurisdiction. In *Chuk v. Cremer (1846) 1 Coop temp. Cott. 342; 47* E.R. 884 Lord Cottenham, L.C. said:

"A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it… it would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid - whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed, it must not be disobeyed."

This view was re-echoed by Romer LJ in *Hadkinson v. Hadkinson (1952) 2 ALL E. R. 567* where he said:

> "It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believe it to be irregular or even void."

In a nutshell, the judgment of a court of competent jurisdiction subsists unless and until it is set aside even where the person affected by it believes it to be or irregular. The procedure for setting it aside is simple. The party affected must appeal against the judgment.

The position clearly therefore is this. That a person, who knows of a judgment, whether null or valid given against him, by a court of competent jurisdiction cannot be permitted to disobey it. His unqualified obligation is to obey it unless and until that judgment has been set aside. *Rossek v. A.C.B. Ltd* (1993) 8 N. W.L.R. (Pt. 312) 382; *Hadkinson vs. Hadkinson* (1952) 2 ALL E.R. R 567. It is settled practice that there is a presumption of correctness in favour of a court's judgment. Unless and until that presumption is rebutted and the judgment is set aside, it subsists and must be obeyed. It cannot for any reason under our law be ignored. In *Oba Aladegbemi vs. Oba Fasanmade* (1988) 3 NWLR (Pt. 81) 129 Eso JSC held thus:

> "… for a court of competent jurisdiction, not necessarily of unlimited jurisdiction (and I will come to this anon) has jurisdiction to decide a matter rightly or wrongly. If that court never had jurisdiction in the matter, then its decision is, without jurisdiction, void, but then should a court of law not even decide the point? That is, the court without jurisdiction decided without jurisdiction? Should the decision just be ignored? Surely it would not make for peace and finality which a decision of a court seeks to attain. It would at least be against public policy for persons, without the backing of the court, to pronounce a court decision a nullity, act in breach of the decision whereas, others may set out to obey it. In my respectful view, it is not only desirable but necessary to have such decisions set aside first by another court before any act is built upon it despite the colourful diction of the law Lord in *U.A.C. vs. Macfoy* (supra)."

The appellants have argued that it was not necessary to have the decision in Suit No. Z/11/67 set aside on appeal. In the light of the law on this point, which I have highlighted above, this argument is fallacious; it is badly flawed. The decision is valid and subsisting. And it is presumed correct. Until that presumption is rebutted on appeal and the decision is set aside, the person affected by it must obey it.

In the light of the foregoing, this appeal must fail. Accordingly, I dismiss it and affirm the decision of the court below. The respondents are entitled to costs which I assess at N10,000.00.

KARIBI-WHYTE, JSC.: I have read the judgment of my learned brother A. I. Katsina-Alu in this appeal. I agree entirely with him that the appeal be dismissed, and the judgment of the Court below affirmed. I also hereby dismiss the appeal of the Appellants herein and affirm the judgment of the Court of Appeal. I assess the costs in favour of the Respondents at N10,000.

OGWUEGBU, JSC.: I have read the judgment just delivered by my learned brother Katsina-Alu, J.S.C. and I agree with it. The bone of contention in this appeal turns on Exhibit 1 tendered by the

plaintiffs at the trial court. It comprises the writ of summons, the pleadings, the proceedings and the judgment in Suit Z/11/67 in the High Court of Kwara State, Ilorin Judicial Division.

The parties in the present proceedings are privies to the parties in Exhibit 1 *(Olukotun Adeniyi & Ors. vs. Amos Babatunde Alaran & Ors.).* In the present proceedings, the defendants who are appellants herein set up in their pleading a case different from the case canvassed by their predecessors in Exhibits 1. The learned trial judge held that they cannot approbate and reprobate and that the issue decided in Exhibit 1 is valid and binding on them especially, that Odasare or Ile Oba Ilufemiloye is not an Odofin chieftaincy family. Their appeal to the court below was dismissed. In dismissing the appeal, the court below held as follows:

> "The subject matter in Exh. 1 which was the right or entitlement of on the Ile Oba Ilufemiloye to the Odofin stool is the same as the present case. The judgment in Exh. 1 was made by a court of competent jurisdiction and there was no appeal therein…
>
> Consequently, the contents of Exh. 1 bind the appellants and now they cannot resile from it."

In their further appeal to this Supreme Court, the defendants for the first time took the point that the purported decision in Exhibit 1 by the Kwara State High Court was a nullity and that all subsequent proceedings were void as that court had no jurisdiction to hear and determine the case in view of the provisions of section 161(3) of the Constitution of the Federation of Nigeria, 1963 which reads:

> "161(3)Notwithstanding anything in any other provision of this Constitution (including in particular sections 32 and 53 of this Constitution) but without prejudice to provision to subsection (4) of section 27 of this constitution, no chieftaincy question shall be entertained by any court of Law in Nigeria, and a certificate which is executed by an authority authorized in that behalf by a law coming into force in a territory on or after the date of the commencement of this Constitution (including a law passed before that date) and which states:
>
> (a) that a particular person is or was, by reference to that territory or a part of it, a chief of a specified grade at a specified time or during specified period or;
>
> (b) that the provisions of a law in force in that territory relating to the removal or execution of chiefs or former chiefs from areas within shall be conclusive evidence as to the matters set out in that statement."

Relying on the above constitutional provision, it was submitted in the appellants' brief as follows:

> "Respectfully invite the Supreme Court to examine Exhibit 1 aforesaid upon which the judgment and order of the Court of Appeal is based and humbly submit that the provisions of section 161(3) of o the Constitution of the Federation, 1963 (supra) not having been repealed or rendered in-operative in 1967 when Suit No. Z/11/67 was commenced, the action in Suit No Z/11/67 does not lie when it was instituted and in contemplation of the constitutional law quoted above, the suit No. Z/11/67, pleadings filed therein, the entire proceedings and the purported judgment thereof are non-existent and should never have been received in evidence and if wrongly admitted should have been discountenanced. Submit that the provisions of section 161(3) aforesaid, oust the jurisdiction of any Court of Law in Nigeria in matters relating to Chieftaincy question or nomination, selection, appointment and installation of a chief…,

The cases of *Governor of Oyo State & Ors. vs. Afolayan* (1995) 8 NWLR (Pt. 413) 292, *J.C. Ltd & Ors. vs. Ezenwa* (1996)4 NWLR (Pt. 443)391 and *Madukolu vs. Nkemdilim* (1962) 4 N.N.L.R. 587were cited and relied upon by the appellants.

Clearly, the High Court of Kwara State which sat over Suit No. Z/11/67 had no jurisdiction to entertain and decide upon the issues in that suit as no chieftaincy matter could be entertained by any court of law in Nigeria at that time by virtue of section 161(3) of the 1963 Constitution the defendants against whom the judgment was given have shown by reference to section 161(3) of the 1963 Constitution the invalidity of the proceedings contained in Exhibit 1.

I agree that the judgment contained in exhibit 1 was given without jurisdiction and therefore a nullity. But it is a decision of a court of unlimited jurisdiction which remains binding until set aside. "The defendants made no attempt to get the court declare it nullity. It was either they did not seek legal advice or they were advised that it was not necessary to do so relying on the dictum of Lord Denning, M. R. in *Macfoy vs. U.A.C. Ltd*. (1961) 3 All E. R. 1169 at 1172 where he said:

> "If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so …"

The Judicial Committee of the Privy Council had opportunity to correct the above dictum which is capable of misleading an unwary practitioner in the case of *Isaacs vs. Roberston* (1984) 3 All E.R. 140 at 143 where Lord Diplock observed as follows:

> "Their Lordship would, however, take this opportunity to point out that in relation to orders of a court of unlimited jurisdiction it is misleading to seek to draw distinctions between orders that are "void" in the sense that they can be ignored with impunity by those persons to whom they are addressed, and orders that are voidable" and may be enforced unless and until they are set aside. Dicta that refer to the possibility of their being such a distinction between orders to which the descriptions "void" and "voidable" respectively have been applied can be found in the opinions given by the Judicial Committee of the Privy Council in *Marsh vs. Marsh* (1945)A.C. 271 at 284 and *Macfoy vs. United African Co. Ltd*. (1961) 3 All E.R. 1169;(1962) A.C. 152; but in neither of those appeals nor in any other case to which counsel has been able to refer their Lordship has any order of a court of unlimited jurisdiction been held to fall in a category of court orders that can simply be ignored because they are *void ipso facto* without there being any need for proceedings to have them set aside.. The contrasting legal concepts of voidness and voidability form party of the English law of contract. They are inapplicable to orders made by a court of unlimited jurisdiction in the course contentious litigation."

A similar view was expressed as far back as 1846 in the case of *Chuks vs. Cremer* 47 E.R. 884 at 885 where it was held that a party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it. He should apply to the court to have it discharged and as long as it exists, it must not be disobeyed. *See also Rossek and Ors. vs. A.C.B. Ltd*. *and Ors.* (1993) 8 NWLR (Pt. 312) 282 at 434 -435 and J. C. Ltd, and *Ors. vs. Ezemwa Supra* at 414 -415.

In the present proceedings, the Kwara State High Court which heard and determined suit No. Z/11/67 is a court of unlimited jurisdiction and it would be most dangerous to allow a party or his counsel to determine whether its order was null or valid, regular or irregular. They should

comes to the court and not to arrogate to themselves the power of determining the question. Until set aside, the proceedings and the judgment contained in Exhibit 1 subsist and bind the parties and their privies.

For the above reasons and fuller reasons contained in the judgment of my learned brother Katsina-Alu, JSC., I too dismiss the appeal and affirm the decision of the court below. There will be cost of N10,000.00 in favour of the plaintiffs.

ACHIKE, J.S.C.: I have had a preview of the leading judgment delivered by my learned brother, Katsina-Alu, J.S.C., I entirely agree with him.

The material facts in this appeal have been lucidly set out in the leading judgment; I respectfully wish to adopt them as mine. In an earlier case, Suit No. Z/11/67, i.e. *Olukotun Adeniyi and Anor vs. Amos Babatunde Alaran and Anor.*, otherwise referred to, and its certified copy was admitted in evidence in the present case, as Exhibit 1, the appellants herein believed that the proceedings in Exhibit 1 were null and void. In that case, Exhibit 1, when Adewoye Aromokeye from lle Oba Ibuoye Ruling House was the Odofin in 1967, the 2nd appellant's predecessors- in-title took action against 1st appellant, Oba Amos Babatunde and the Late Odofin Adewoye. The said suit was dismissed and was not appealed against. After the death of Odofin Adewoye, the respondents selected one Chief Ajitoni Ibuoye to the 1st appellant to be appointed as the Odofin of Arandun. The 1st appellant refused and preferred and approved the nomination of the 2nd appellant who was installed as Odofin of Arandun on 8th June, 1989. As a result, the respondents instituted an action in the High Court at Omu-Aran, Kwara State and claimed three declarations and four orders. Judgment was entered in favour of the plaintiffs and the appeal to the lower court was dismissed. They now further appealed to this court.

In the appeal, it was *inter alia* submitted on behalf of the appellants that the respondents were not entitled to rely on Exhibit 1 as the proceedings in respect thereof were incompetent and null. The issue that fell for determination herein is whether a person against whom an order is made or a judgment is given by a court of competent jurisdiction can disobey or ignore it on the ground that it was null and void.

I would only wish to add one word or so. Matters appertaining to judicial orders or judgments, for that matter, are not generally treated with arrogance or levity. Speaking for myself, it is rather officious and treading on a perilous path for one to arrogate to oneself the right to choose and pick between court orders in terms of whether they are valid or null and void. In fact, since there is a strong presumption in favour of the validity of a court's order, it behaves everyone to keep faith with the order of the court. it makes no difference that *ex facie* it appears that court that made the order is without jurisdiction because at the end of the day an order of the court subsist and must be obeyed until set aside by a court of competent jurisdiction. To, therefore, disobey an order of the court on the facied belief that the said order is null for any reason whatsoever - even if it subsequently turns out that the order in fact is proved to be null is a risky and unadvisable decision because until the said order is finally determined to be null and void by the court, the order subsists with the sting attaching to it unmitigated.

Therefore, sheer common sense as well as prudence demands that every order of the court should be accorded due respect and no attempt made to flout the order on the flimsy reason that it is null and void. See *Odofin vs. Agu* (1992) 3 NWLR (Pt. 229) 350, at 371 372 and *Chuk vs. Cremer* (1846) 47 E.R 884.

Accordingly, the submission made on behalf of the appellants that it was unnecessary to set aside the decision in Exhibit 1 was insupportable in the light of what we have stated above that the order of a court of competent jurisdiction subsists until set aside.

Consequently, the appeal fails and is dismissed with N10,000.00 costs infavour of the respondent.

KALGO, J.S. C.: I have had the privilege of reading in advance the judgment just delivered by my learned brother Katsina-Alu, JSC., and I entirely agree with his reasoning and conclusion reached therein which I hereby adopt as mine.

The substance of this appeal must be resolved on whether the judgment in suit No. Z/11/67 *Olukotun Adeniyi and Anor vs. Amos Babatunde Alaran and Anor* decided by the High Court of Ilorin and which was admitted at the trial of this case as Exhibit 1, was valid and subsisting judgment. The contention of learned counsel for the appellant was that since the case was decide under the 1963 Federal Constitution and that the Ilorin High Court or indeed any court in Nigeria at that time, had no jurisdiction to try chieftaincy matters by virtue of the provisions of section 161(3) of the said constitution, the decision of the Ilorin High Court in that case was null and void and of no effect. In response to that, that learned counsel for the respondent submitted that although the Ilorin High Court did not have jurisdiction at the time the case was decided and judgment given, there was no appeal against that judgment and so it is still valid and subsisting since it was not set aside by any court.

There is no doubt that at the time Exhibit 1 was made, it was not a valid decision as no court in Nigeria could validly entertain any chieftaincy matter under section 161(3) of the 1963 constitution. But since that decision had not been set aside by any court of law in Nigeria, and the Ilorin High Court being a court or unlimited jurisdiction, its judgment in exhibit 1, is still valid and subsisting and should not be discountenanced, ignored or disobeyed. See *Issacs vs. Robertson* (1984) All E.R. 140 at 143; *Rosek vs. A.C. B. Limited* (1993) 8 NWLR (Pt. 312 382; *Aladegbemi vs. Fasanmade* (1988) 3 NWLR (Pt. 81) 129; *Akinfolarin vs. Akinola* (1994) 3 NWLR (Pt. 335) 659 at 676 - 677.

In the circumstances, I agree with my learned brother Katsina-Alu, JSC that there is no merit in the appeal. I accordingly dismiss it with N10,000.00 cost in favour of the respondents.