1. **CLEMENT SUNDAY OBANOBI**
(For himself and other members of Ayanwa Ruling House/family of Olukakumo of Ikakumo Chieftaincy)
2. **SIMON AJAYI OLUNLOYO**
(For himself and other members of Arepin Ruling House/family of Olukakumo of Ikakumo Chieftaincy)
3. **JULIUS LOAITAN OBANIYI**
(For himself and other members of Arepin Ruling House/family of Olukakumo of Ikakumo Chieftaincy)

V.

1. EMMANUEL GBADEBO OLUSI

2. TITUS OLUWATAYO BAALE

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

SC/333/2014

MOHAMMED LAWAL GARBA

MOORE ASEIMO A. ADUMEIN

STEPHEN JONAH ADAH

JAMILU YAMMAMA TUKUR

MOHAMMED BABA IDRIS

Friday, 4th July 2025

Action: Cause of action - nature and meaning
Action: Cause of action - introduction thereof - whether amendment cannot introduce a new cause of action
Chieftaincy: Chieftaincy declaration - registration thereof - purpose - the principle in Mafimisebi & Anor vs. Ehuwa & Ors. (2007) LPELR -1812(SC)
Chieftaincy: Chieftaincy declaration - where a chieftaincy declaration is registered - implication thereof
Chieftaincy: Chieftaincy declaration - failure to register - implication
Constitutional law: Separation of power - whether the legislature, executive and judiciary are established as distinct, co-equal arms of government
Constitutional law: Doctrine of separation of powers - whether power of an arm of government may be modified by the constitution
Court: Competence to question a decree or edict - whether no court of law has competence to entertain any question as to the validity of any Edict or Decree - the principle in Obada vs. Military Governor of Kwara State (1990)6 NWLR (pt. 157)p.482 @ 496
Court: Enactment of Edict or Decree - whether cannot be questioned by a court
Court: Trial court - whether has the duty of evaluating evidence and ascribing probative value thereto
Constitutional law: Doctrine of separation of powers - whether the pendency of judicial proceedings cannot stop the enactment of edicts or decrees
Pleadings: Statement of claim - nature and purport thereof
Pleadings: Abandonment - when pleadings are deemed abandoned
Pleadings: Amendment thereof - relevant principles
Pleadings: Amendment thereof - where promotes the interest of justice - whether can be sustained

Practice and Procedure: Appeal - fresh issue on appeal - where raised without leave of court - effect
Practice and Procedure: Evaluation of evidence - whether duty of trial court - exceptions thereto

Issues:

1. ***Whether the decision of the lower court that it was proper of the 3rd Respondent to register Exhibit d, that is, the 1988 chieftaincy declaration during the pendency of the action at the trial court is justifiable and sustainable.***

2. ***Whether the decision of the lower court that the amendment of the Appellants' statement of claim at the trial court created a new cause of action has any basis in law.***

3. ***Whether the failure to register the 1960 chieftaincy declaration under the chiefs' law of Ondo State 1984 is not detrimental to the Appellants' case.***

4. ***Whether considering the evidence adduced by the Appellants before the trial court and a proper evaluation of same, the decision of the lower court that the Appellants failed to prove that there are four ruling houses with regard to the Olukakumo of Ikakumo chieftaincy stool is sustainable.***

Facts:

The Plaintiffs/Appellants instituted a chieftaincy action against the Defendants/Respondents claiming declaratory and injunctive reliefs, in respect of a chieftaincy stool known as Olukakumo stool. Pleadings were filed, exchanged and amended.

At the conclusion of trial, the trial court delivered it's judgment seven out of the eight reliefs sought by the Plaintiffs/Appellants.

Dissatisfied with the judgment of the trial court, the Respondents/Appellants also cross appealed. The cross-appeal of the Respondents was upheld on issues central to the main appeal.

Dissatisfied with the judgment of the Court of Appeal, the Appellants have now appealed to the Supreme Court.

Held (unanimously allowing the appeal)-

1. *On the doctrine of seperation of power-*

It is settled law that the doctrine of separation of powers is a fundamental component of the constitutional architecture of Nigeria. Under the presidential system of government entrenched in the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Legislature, Executive and Judiciary are established as distinct, co-equal arms of government, each entrusted with constitutionally assigned functions. While this doctrine prohibits any arm from

usurping or exercising the core functions of another, it must be understood that the Constitution does not envisage a rigid or absolute compartmentalization of governmental powers. Rather, the separation of powers operates in tandem with the equally vital doctrine of checks and balances, which is designed to prevent the concentration or abuse of power by any single organ of government. The objective is not to create three autonomous or disconnected spheres of authority, but a unified government functioning through three interdependent arms. Each branch is expected to operate within its constitutional limits while providing necessary oversight over the others. Consequently, what is required under the constitutional framework is a harmonious interaction and institutional coordination among the three branches, not the assertion of supremacy by any single arm, in order to uphold the rule of law and preserve democratic governance. See generally, the cases of **A**. **G**. **ABIA STATE & ORS vs**. **A**.**G**. **OF THE FEDERATION (2022) LPELR – 57010 (SC); AG LAGOS STATE VS**. **EKO HOTELS LTD & ANOR (2006) LPELR – 3161 (SC); CBN VS**. **OCHIFE& ORS (2025) LPELR – 80220 (SC); AG FEDERATION VS**. **AG OF ABIA STATE & ORS (2001) LPELR – 631 (SC); OKO & ORS VS**. **A**. **G**., **EBONYI STATE (2021) LPELR – 54988 (SC)** and **AG OF THE**

FEDERATION VS. AG OF ABIA STATE & ORS (2024) LPELR – 62576 (SC).

2. *On whether the extent of powers of an arm of government may be modified by the constitution -*

From the undisputed facts on the record, the Appellants instituted the action at the trial court on the 16th February, 1988, whereas Exhibit D was registered thereafter on 7th March, 1988. It is, therefore, incontrovertible that Exhibit D was not in existence as at the date the action was commenced. Prior to its registration, the operative document was Exhibit C, being the Government White Paper on the Olukakumo of Ikakumo Chieftaincy Declarations. Exhibit C reflected the official position of the Ondo State Government, signifying its acceptance and adoption of the recommendations of the Justice Morgan Commission of Inquiry into the Olukakumo Chieftaincy. Exhibit C, as an administrative pronouncement of government policy, constituted an actionable document capable of legal challenge, and the Appellants were clearly entitled to approach the court *for* a determination of its legal effect and implications. The lower courts rightly held that the suit, as

constituted, disclosed a reasonable cause of action and thereby validly invoked the jurisdiction of the trial court.

However, it must be noted that the cause of action arose in 1988, during the period of military rule in Nigeria when legislative authority at the federal level was vested in the Armed Forces Ruling Council, which exercised its powers through the promulgation of Decrees. Similarly, at the State level, Military Governors exercised legislative functions by means of Edicts. Notwithstanding the fusion of legislative and executive powers under the military regime, the Judiciary remained constitutionally vested with the authority to perform its adjudicatory functions and to serve as the guardian of the rule of law.

In the circumstances, the Court of Appeal was justified in invoking and applying the doctrine of separation of powers to the peculiar facts of the case. The court below correctly appreciated that, despite the concentration of powers under military governance, the Judiciary continued to function as an independent arm of government. The court below appropriately acknowledged the continued relevance of the doctrine of separation of powers even under military rule, when it held, at pages 817 – 821 of the Record of Appeal that:

'*In the instant case, it seems to me that neither the exposition of the doctrine of the Rule of law as enunciated in the case of Governor of Lagos State v. Ojukwu (Supra) and other cases in that category nor the doctrine of Lis Pendens per se could debar the operation of the appropriate law-making organ of Government from the legitimate process of law making even in the pendency of a suit. To hold otherwise, in my view will give a leeway to the law-making arrn of government to talk of "judicial Recklessness" while those of us in the Judiciary talk of "executive lawlessness".*

Indeed, the doctrine of separation of powers would have been thrown into the winds if lawmakers cannot make laws in the pendency of a law suit. This is because, the principle behind the concept of sepration of powers is that none of the three arms of government under the constitution should encroach into the powers of the other. The function of the Legislature is primarily to enact laws whilst that of the executive is to implement such laws passed by the legislature. The Judiciary, for its own part interprets and enforces such laws. Where, however, such separation of powers between the executive and the Legislature and the Judiciary is provided for by the Constitution, neither organ may encroach upon the province of the other. However, the constitution being an organic law, the ground norm and the Supreme law of the land, may restrict the operation of this principle of separation of powers.

Accordingly, the power of each arm may be restricted or expanded by an express provision of the Constitution. See: A – G, Abia State V. A – G, Fed. (2003) 4 NWLR (Pt. 809) 124. Amadi V. NNPC (2000) 6 SC (Pt. 1) 66 at 94 - 95.

3. On competency of a court to question validity of an edict or decree-

I believe, that it is the introduction of motive in the judgment of the learned trial judge to the effect that the promulgation and registration of Exhibit D by the 4th Defendant/Appellant in the pendency of the suit or "an injunctive remedy" amounts to an affront to the authority of the Courts of the land and an executive excesses" which prompted the learned counsel for the Respondents to further challenge the nullification of Exhibit 'D' on the ground that the making of Exhibit 'D' was an act done pursuant to an Edict and consequently cannot be challenged in Court. And, that the act was performed by the military governor of Ondo State at that time.

'In the case of Obada V. Military Governor of Kwara State (1990) 6 NWLR (Pt, 157) P.482 at 496, this

Honourable Court held on competence of Court to question validity of

an Edict or decree thus; ''No Court of Law has the competence to entertain any question as to the validity of any Edict or Decree, that is no Court has jurisdiction to entertain a question as to the Legislative capacity of a Governor to make an Edict or of president to enact a Decree. Further, by virtue of Decree No. 13 of 1984, anything done, purported or proposed to be done under an Edict or Decree is not subject to the jurisdiction of any Court of Law" See also, Adamolekun V. Council of University of Ibadan (Supra) Sanumi V. Governor of Ondo State (Supra).

4.*on whether courts cannot que*stion authority to make an edict or decree-

T*he position of Decree No. 13 of 1984 was further explained by the Supreme Court in the case of Chief Olori Edjerode and 5 Ors V. Chief Ohwovwiogor Ikine and 3 Ors. (2002) 2 M.J.S.C. 163 at 180. In that case, the Supreme Court per Ejiwunmi JSC (of blessed memory) while referring to the earlier decision of the*

Court in the case of Uwaifo V. A-G Bendel State (1982) 7 S. C., 124 explained as follows:

"The decision in Uwaifo's case prohibits the Courts, even after lst October 1979 from questioning any Edict or Decree made between lst January 1966 and 30th September 1979 on the ground that the person or authority which made it had no capacity or power to make it, but did not preclude the Courts from questioning the validity of such laws or any of their provisions that are inconsistent with the provisions of the 1979 Constitution. In other words, courts are precluded from questioning the capacity and power of the authorities in promulgating such laws. They are equally prohibited from questioning the validity of what the authorities did under such laws or interfering with any accrued or subsisting rights by virtue of such actions at the time they were still valid and subsisting. In Uwaifo's case (Supra) Idigbe JSC succinctly stated the law thus:

"It seems to me that the Cobititution

empowers the Courts to inquire into the validity of any existing law, it clearly intends that the Courts should not inquire into proceedings which seeks to determine issues or question as to the competence of any authority of person (i.e. legal capacity, power legal qualification or jurisdiction of any authority or person) to make any existing law promulgated between 15th January 1966 and Ist October 1979...."

5. *On whether pendency of judiciary proceeding will not preclude legislative functions in the promulgation of edicts and degree -*

Consequently, the court below was right when it held that the registration of the 1988 Chieftaincy Declaration (Exhibit D) during the pendency of the Appellants' suit did not constitute an overreach or usurpation of judicial authority by the Executive. It is necessary to emphasize that, at the material time, Nigeria was under military rule, wherein the Executive wielded both executive and legislative powers in accordance with the prevailing constitutional framework. Under such governance, the promulgation of Decrees and Edicts,

including those dealing with chieftaincy matters, was a lawful exercise of executive authority.

Indeed, the making and registration of chieftaincy declarations is a function statutorily conferred on the Executive arm of the State Government and such responsibilities are ordinarily discharged through the appropriate Chieftaincy Committee constituted for that purpose. This legal position has been clearly articulated and affirmed by this Court in decisions such as **MAFIMISEBI & ANOR VS**. **EHUWAH & ORS (2007) LPELR** – **1812 (SC)** and **OLANREWAJU VS**. **OYESOMI & ORS (2014) LPELR** – **22695 (SC)**, wherein it was reiterated that the Executive retains the competence to formulate and register chieftaincy declarations within the scope of its constitutional authority. The pendency of judicial proceedings does not, without more, preclude the Executive from exercising its lawful powers. The role of the Judiciary is not to restrain other arms of government from acting within their constitutional bounds, but rather to examine, upon being duly called upon, whether such actions comply with the law. Consequently, the act *of* registering Exhibit D during the subsistence of the Appellants' suit neither amount to contempt or interference with the judicial process nor did it

constitute an infringement of the doctrine of separation of powers. Consequently, I find no merit in the Appellants' contention impugning the propriety of the registration of Exhibit D. I hold that the court below was correct in affirming its validity.

On this note, this issue is therefore resolved in favour of the Respondents.

6. *On the nature and purpose of a statement of claim -*

A Statement of Claim constitutes a fundamental originating process in civil litigation. It is ordinarily filed contemporaneously with the Writ of Summons and is typically accompanied by the Plaintiff's witness statement on oath, a list of intended witnesses, and copies of documents upon which the plaintiff intends to rely at trial. The primary purpose of the statement of claim is to succinctly set out all material facts upon which the plaintiffs claim is founded. This serves to give the defendant adequate notice of the case he is required to answer, thereby affording him the opportunity to respond appropriately by filing a statement of defence. Collectively, these documents form what is referred to as pleadings. See cases of **CAPPA & D' ALBERTO LTD VS**, **AKINTILO (2003) LPELR – 829 (SC); STOWE & ANOR VS**.

BENSTOWE & ANOR (2012) LPELR – 7838 (SC) and **BAKARI VS. OGUNDIPE & ORS (2020) LPELR – 49571 (SC)**

It is a well-established principle of law that a claimant's pleadings must disclose a cause of action before the jurisdiction of the court can be properly invoked to entertain a grievance. Equally settled is the position that pleadings may be amended, when necessary, to enable the court to effectively and justly determine the real issues in controversy between the parties. The general principle governing the grant of amendments is that such amendments, which lie within the discretionary powers of the court, may be allowed at any stage of the proceedings, subject to the applicable rules of practice and procedure in the relevant jurisdiction, provided that they do not occasion injustice, cause embarrassment or undue surprise to the opposing party, and are not sought in bad faith. While it is trite that parties are bound by their pleadings, circumstances may arise during the course of proceedings that necessitate an amendment in order to properly articulate the issues in dispute. The purpose of such amendment is to aid the court in the fair and just adjudication of the matter. See generally, the cases of **WARRI VS. ETANOMI & ANOR (2019) LPELR – 49513 (SC); OFORISHE VS. NIGERIAN GAS CO. LTD (2017) LPELR – 42766 (SC); HUSSENI & ANOR VS.**

MOHAMMED & ORS (2014) LPELR – 24216 (SC); OKEOWO & ORS VS. MIGLIORE & ORS (1979) LPELR – 2441 (SC) and **HUSSENI & ANOR VS**.

MOHAMMED & ORS (2014) LPELR – 24216 (SC).

7. *On when pleading is deemed abandoned -*

Once an amended pleading is duly filed and accepted by the court, it takes the place of the original pleading and becomes the operative process for the purpose of adjudication. The original pleading, having been overtaken by the amendment, is deemed to be abandoned and can no longer be relied upon during trial. This position is well-established in judicial authorities. See **ROTIMI & ORS VS. MACGREGOR (1974) LPELR – 2957 (SC); TIMINIMI & ORS VS. INEC (2022) LPELR – 59474 (SC)** and **YUSUF VS. MOBIL OIL (NIG.) PLC (2019) LPELR – 55272 (SC)**.

8. *On what constitutes a cause of action -*

From the foregoing, it is manifest that at the time the action was instituted before the trial court on the 16th February, 1988, the Appellants had already anticipated the possible registration of a new Chieftaincy Declaration. This intention is clearly reflected in the relief

sought at paragraph 33(v) of their Statement of Claim reproduced earlier, wherein the Appellants prayed the court *for* an order of injunction restraining the Respondents from registering any new declaration founded upon Exhibit C. It logically follows that the eventual registration of Exhibit D on the 7th March, 1988 was not an isolated event, but rather a continuation of the chain of events forming the factual substratum of the cause of action which prompted the initiation of the suit at the trial court. The Respondents has however contended that the emergence of Exhibit D, having occurred subsequent to the commencement of the suit, gave rise to a fresh cause of action which, in their view, could not be accornrnodated within the original proceedings.

In law, a cause of action denotes the entirety of facts or legal grounds which, when taken together, confer upon a plaintiff the right to seek judicial relief against a defendant. It is the factual situation resulting from the defendant's wrongful act or omission, which infringes a legal right of the plaintiff. See generally, the cases of **SAVAGE & ORS VS**. **UWECHIA (1972) LPELR – 3018 (SC); OLATEJU VS**. **COMMISSIONER FOR LANDS & HOUSING**, **KWARA STATE & ORS (2024) LPELR 62589 (SC)** and **WOHEREM VS**. **EMEREUWA & ORS (2004) LPELR – 3500 (SC)**.

9.*on whether amendment cannot introduce a new cause of action-*

It is trite that for a suit to be competent, a cause of action must have accrued prior to the institution of the proceedings. Nonetheless, it is equally well established that where events occur after the commencement of an action, events which are connected to and arise from the same subject matter already in issue before the court, a party may, with the leave of court, amend their pleadings to incorporate such developments. This is permissible provided that the amendment does not seek to introduce a new and independent cause of action that is extraneous to the original dispute. This principle is consistent with the fundamental objective of allowing amendments in civil proceedings, which is to ensure that the real questions in controversy between the parties are effectually and completely adjudicated upon. The overriding aim is to do substantial justice between the parties and to prevent the proliferation of suits through piecemeal litigation. See generally, the cases of **OGUMA ASSOCIATED COMPANIES (NIG.) LTD VS. IBWA LTD (1988) LPELR – 2318 (SC); WARRI VS. ETANOMI & ANOR (2019) LPELR – 49513 (SC); OFORISHE VS. NIGERIAN GAS CO. LTD (2017) LPELR – 42766 (SC); HUSSENI & ANOR VS. MOHAMMED & ORS (2014) LPELR – 24216 (SC); OKEOWO & ORS VS. MIGLIORE &**

ORS (1979) LPELR – 2441 (SC) and **HUSSENI & ANOR VS**. **MOHAMMED & ORS (2014) LPELR – 24216 (SC)**.

10. *On principles governing amendment of pleadings -*

In the instant case, a thorough comparison of Exhibits C and D as contained in Volume 1 of the Record of Appeal, demonstrates that Exhibit C constitutes the formal endorsement *of* the findings of Justice Morgan's Commission of Inquiry, subsequently ratified by the issuance of a Government White Paper. Exhibit D, registered pursuant to the 1984 Chieftaincy Edict,represents the official registration of the said endorsement. Exhibit D, though registered subsequent to the commencement of the suit, does not introduce any new or distinct factual foundation capable of giving rise to an independent cause of action. Rather, its registration constitutes a continuation of the factual sequence underpinning the original suit. As such, Exhibit D remains integrally connected to the same legal and factual issues before the court. Consequently, the introduction of Exhibit D by way of amendment did not amount to the introduction of a fresh cause of action requiring the initiation of a separate proceeding. This legal position was rightly acknowledged and upheld by the trial court, which correctly held that:

'*The principle guiding amendment of pleadings is stated by the supreme court in the case of ANTHONY EHIDINIHEN Vs. AHMADU MUSA & 1 OR. (2000) 8 NWLR Part 669 p. 540 at 566 paragraph g-h and several other cases. The court held that an amendment of pleadings should be allowed unless -*

(a) it will entail injustice to the Respondent,

Or

(b) The applicant is acting mala fide or (c) By his blunder, the applicant has done some injury to the respondent which cannot be compensated by cost or otherwise.

The court went on to state at page 567, paragraph E that an amendment that is designed to create a suit that was not in existence is not permissible. I do not see how the amendment granted to the plaintiffs in the instant case to bring in the 1988 Declaration i.e. exhibit D after it was registered into the suit would entail injustice. I do not also see how the plaintiffs acted mala fide or by the blunder of the plaintiffs, the defendants in this case suffered injury which cannot be compensated in cost. There is also no way the amendment was designed to create a suit that was not in existence. The issue of the 1988 declaration

was already in existance by reason of the claim for injunction to restrain the making of the declaration in the original claims of the plaintiffs. The amendment was necessitated by the acts of the defendants by registering the 1988 declaration to hold that the amendment is wrongful in law is to foist a state of helplessness on the Plaintiffs. The Plaintiffs could only file a fresh suit which will be an abuse of Court process. I hold that the 1988 Declaration i.e. Exhibit D having been made an issue in the original statement of claim and the subsequent amendment that brought in the 1988 Declaration for nullification is proper in law, the court can pronounce on the 1988 Declaration with regard to the Olukakumo of lkakurno Chieftaincy i.e. Exhibit D in this case. There is a cause of action already against it in the original statement of claim and the amendment was to bring the real issues in controversy before the Court after it was approved and registered. It is

for the reasons stated before that I also hold that this suit is competent and that this Honourable Court has the jurisdiction to entertain it. The 1988 Declaration i.e. Exhibit D was no more a fresh issue at the time the amendrnent was granted. The amendment was not to operate to the future rather its operation is retrospective according to law i.e. to correct the statement of the pleadings from whether or not the 1988 Declaration should be made to a nullification after it was made without any order of court."

Having regard to the totality of the circumstances, it is evident that the amendment of the Appellants' Statement of Claim to include Exhibit D did not amount to the introduction of a new or distinct cause of action.

11. *On where amendment promotes the interest of justice -*

Exhibit D arose from the same factual matrix upon which the original suit was founded and was clearly part of the continuing sequence of events constituting the cause of action as at the time the suit was instituted. The subsequent registration of Exhibit D was

merely a continuation of the chain of events forming the subject matter of the dispute and did not alter the fundamental character or nature of the Appellants' suit or the reliefs originally sought therein. Consequently, the trial court was correct in permitting the amendment, as it promoted the interest of justice by enabling the court to resolve all matters in controversy between the parties in a single, comprehensive proceeding.

Consequently, this issue is resolved in favour of the Appellants.

12. *On the purpose of registering a chieftaincy declaration* -

The purpose and significance of registering a chieftaincy declaration have been extensively considered and elucidated by this Court in numerous decisions. Notably, in **MAFIMISEBI & ANOR VS. EHUWA & ORS (2007) LPELR – 1812 (SC)**, this Court held that:

> '*It is to avoid the problem of calling evidence each time a particular native law and custom needs to be established in relation to chieftaincy in the former Western Region of Nigeria that gave rise to the attempt at codification of the relevant customary laws and traditions of the relevant people in relation to particular*

chieftaincies otherwise known as Chieftaincy Declarations.

Therefore, the purpose of registered *chieftaincy deciaration is to embody in a legally binding written statement of fact*, *the customary law of the relevant area in which the method regulating the nomination and selection of a candidate to fill a vacancy is clearly stated so as to avoid uncertainty*. *From the decided cases*, *the function of making chieftaincy declarations lies with the executive arm of the state government concerned and is usually exercised by a chieftaincy committee on behalf of that government*.

13. On implication of registered chieftaincy declaration -

It is now settled law that where a declaration in respect of a recognized chieftaincy is validly made and registered, the matter 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.

> The registered declaration is therefore a declaration of the tradition, customary law and usages pertaining to the selection and appointment to a particular chieftaincy stool which necessarily dispenses with the need of proof by oral evidence of such tradition, custom and usages each time the need arises to determine the matter. See Oladele v. Aromolaran I1 (1996) 6 NWLR (Pt. 453) 180."

14. *On effect of non-registration of a chieftaincy declaration -*

There is no evidence before this Court to establish the registration of Exhibit A. In the light of the Appellants' concession, I find no reason to disturb the finding of the court below that the 1960 Olukakumo of Ikakumo Chieftaincy Declaration (Exhibit A) failed to comply with the requirements of Section 24(2)(a) of the Chiefs Law, having not been submitted to the Commissioner for approval. Consequently, Exhibit A is devoid of legal effect and shall remain ineffective unless and until it is duly registered in accordance with the provisions of Part I of the Edict. It is only a chieftaincy declaration that has been validly made in respect of a recognized chieftaincy and properly registered that can be regarded as embodying the customary law

governing the selection and appointment of a candidate to a vacant stool. Such a declaration remains valid and bindIng unti it is lawfully amended and the amendment duly registered. See generally, the cases of **FAdADE & ORS VS**. **BABALOLA & ANOR (2003) LPELR – 1243 (SC); MAFIMISEBI & ANOR VS**. **EHUWA & ORS (2007) LPELR** – **1812 (SC); OLANREWAJU vs**. **OYES6MI & ORS (20r4) LPELR** – **22695 (SC)** and **OLADELE & ORS VS**. **OBA AROMOLARAN II & ORS (1996) LPELR** – **2546 (SC)**.

15. *On where a fresh issue is raised without leave of court -*

The issue of which party has the responsibility to register the said Declaration, as argued by the parties, was neither raised nor determined by the court below, thereby rendering it a new issue before this Court. It is wbtt established law that an Appellant cannot raise a fresh issue on appeal that was not considered by the trial court without first obtaining the leave of either the trial court or this Court. Such leavd must be sought and granted prior to the introduction of the new issue on appeal. Ordinarily, an appeal is confined to the grounds of appeal as set out in the notice of appeal, which must arise from a complaint against the judgment under review.

Consequently, this point is therefore discountenanced. See **OWIE VS**. **IGHIWI (2005) LPELR** – **2846 (SC); JIBRIN VS**. **FRN (2018) LPELR** – **43844 (SC)** and **BPE & ANOR VS**. **MESSRS**. **U**. **MADUKA ENTERPRISES (NIG**.**) LTD & ANOR (2021) LPELR** – **80698 (SC)**.

In the circumgtances, I find no compelling reason -to depart from the decision of the Court of Appeal which is firmly grounded in established legal principles. This issue is thus resolved in favour of the Respondents and against the Appellants.

16. *on whether Appellant did not prove allegation-*

I have already affirmed the findings of the court below that Exhibit A lacks the force of law, having not been re-registered in accordance with the provision of the 1984 Chiefs Edict (Law) of Ondo State, and therefore cannot serve as admissible and conclusive evidence of the customary law applicable to the Olukakumo of Ikakumo chieftaincy stool. I have also upheld the finding of the court below that the registration of Exhibit D was proper and valid, being registered in accordance with the relevant provisions of the Chiefs Law. Furthermore, I have held that the amendment of the Appellants' Statement of Claim to include Exhibit D was rightly

allowed by the trial court, thereby setting aside the contrary decision of the court below on this issue. The issue before this Court now is: whether, based on the evidence presented at trial, the Appellants failed to prove the existence of four ruling houses entitled to the Olukakumo of Ikakumo chieftaincy stool?

It is settled law that a registered chieftaincy declaration is declaratory of the tradition, customary laws, and usages governing the selection and appointment to the particular chieftaincy stool. Such registration dispenses with the necessity to prove the said traditions or customs by oral evidence on every occasion the matter arises before the courts and thereby removes any uncertainty as to the applicable customary law. See **OYEFOLU & ORS VS**. **DUR&SINMI (2001) LPELR – 2869 (SC); OLADELE & ORS VS.OBA AROMOLARAN II & ORS (1996) LPELR – 2546 (SC)** and **OLANREWAJU VS**. **OYESOMI & ORS (2014) LPELR – 22695 (SC)**.

In the instant case, since Exhibit A was unregistered and therefore cannot be relied upon as conclusive proof of the customary law in dispute, the burden rests on the Appellants to prove, by credible evidence whether oral or documentary, the customary law they allege. There is no evidence before this Court *of* any other

declaration duly registered under the 1984 Chiefs Law, thus Exhibit D remain the only registered declaration.

However, the Appellants has contended that Exhibit D does not represent the true customary law of Ikakumo.

Consequently, the Appellants has the burden of proving, on a balance of probabilities and by credible evidence, that the customary law of Ikakumo recognizes four ruling houses entitled to the Olukakumo stool. it is trite that he who asserts the existence of certain facts must prove them on the preponderance of evidence. See Sections 132 and 133(1) of the Evidence Act 2011 (as amended). See also the cases of **DASUKI VS**. **FRN & ORS (2018) LPELR** – **43897** ***(SC);*** **ANIBABA VS**. **DANA AIRLINES LTD & ANOR (2025) LPELR** – **80647 (SC)** and **NNEJ1 & ANOR VS**. **INEC & ORS (2024) LPELR** – **63033** (SC).

17. On whether plaintiff relied on registered chieftaincy declaration to prove claim-

The pertinent question in this portion of the appeal is whether the Respondents established that there are four ruling Houses in Ikakumo under native law and custom outside of the 1957 and 1960 Declarations. T*he answer to this question is in the negative*.

Indeed, from the totality of the pronouncements of the learned trial judge in this case, there was no pretence that he relied solely on those ineffective Declarations to find in favour of the 1st to 3rd Respondents that the native law and custom of Ikakumo recognized four Ruling Houses. This is wrong.

I have perused the decision of the trial court contained at pages 401 to 425 of the Record of Appeal in order to determine whether, as contended, the trial court relied solely on the ineffective and unregistered chieftaincy declarations in reaching its decision .

A review of the said judgment reveals otherwise. While evaluating the evidence adduced by the parties, the trial court, at page 421 of the Record, specifically held that Exhibit B was admitted without objection. THe said exhibit chronicled events that occurred in Ikakumo from as far back as 1860, including the names of various individuals who occupied the stool of the Olukakumo, their dates of ingtallation, and dates of demise among other relevant details.

The trial court found that the traditional rulers referenced in Exhibit B included :

I. Oba–Obaro, who died in 1867;
II. Oba Olujiyan-Ape, installed in 1867;
III. Oba Olugba, installed in 1889;
IV. Oba Ireji, installed in 1902;
V. Oba Oludofin, installed in 1920; and
VI. Oba Obayori, installed in 1935.

The court, relying on the uncontroverted evidence of the plaintiffs, found that Oba Ireji and Oba Obaro were from the Ayindu ruling house; Oba Oltjjiyan-Ape, Oba Olugba, and Oba Obayori were from the Arenpen ruling house; and Oba Oludofin hailed from the Ayanwa ruling house.

The above findings, in tha view of the trial court, established that the individuals who hid historically ascended to the Olukakumo stool did not emanate from a single ruling house but rather from three distinct ruling houses namely: Ayindu, Arenpen, and Ayanwa. This fbctual conclusion, as drawn from the oral and documentary evidence, particularly Exhibit B, supported the plaintiffs' claim and materially undermined the position of the defendants that only one ruling house existed.

The trial court accordindly held that the evidence before it, including Exhibits B, K and L, coupled with the credible and unchallenged testimonies of the plaintiffs, corroborated the existence of multiple ruling houses, in contrast, the defendants failed to produce any credible or corroborative evidence in support of the existence of a sole ruling house. The trial court held:

'Exhibit B as said earlier was admitted in evidence without objection from the defendants. The defendants did not in anyway, challenge the contents of the exhibit with regard to the events stated about Ikakumo history. It is my humble view that the defendants accdpted the events as stated in connection Ikakumo history. The events stated in exhibit b about Ikakumo as stated above constitutes a confirming or corroborative evidence to support the evidence of the plaintiffs that there is not only one ruling house in Ikakumo in respect of Olukakumo of Ikakumo chieftaincy. It must be noted that the only document tendered by the defendants to show the past Obas of Ikakumo is exhibit I. As said earlier in this judgment, exhibit I was admitted to show that obas Obaude was an Olukakumo of Ikakumo. Exhibit I only showed the names of two obas of Ikakumo; oba Obaude and Oba Ajige who the 1st and 2nd defendants claimed to have come from Ayindu ruling house. Exhibit I has no probative value that will help the

case of the defendants who claimed that all past obas except Obayori and Obanobi from inception of Ikakumo were from Ayindu ruling house. "

18. *On whether the trial court did not only rely on unregistered chieftaincy declaration of 1960-*

In further evaluating the evidence before it, the trial court placed particular reliance on Exhibit K (a document relating to the Olukakumo Chieftaincy transimitted from the Ministry of Justice and Local Government of the then Western Region, Ibadan, and subsequently passed to Ondo State upon its creation, wherein the 1956 Chieftaincy Declaration on the Olukakumo stool was acknowledged.) The court also considered Exhibit L (which is the report of a referendum conducted in 1956 by the Western Region Government, Ibadan, in respect of the Olukakumo chieftaincy disputes). The trial court found both Exhibits K and L to be corroborative of the claim of the plaintiffs. Conversely, the defendants failed to adduce any credible or corroborative evidence in support of their assertions.

Consequently, in its judgmeht at page 423 of the Record of Appeal, the trial court held asfollows :

'*from the evidence before the court and the findings of the court in this judgment*, *I hold that*

the case of the plaintiffs is more consistent with the, truth, more probable and more reliable. I therefore hold that the native law and custom regulating the appointment to the throne of Olukakumo of Ikakumo chieftaincy: is that there are four ruling houses viz: :Arenpen ruling house, Ayindu Ruling house, Aparisu Ruling House and Ayanwa ruling house as stated in exhibit A i.e. the 1960 Chieftaincy Declaration of Olukakumo Chieftaincy. "

From the foregoing, the question arises whether the trial court relied solely on the unregistered declaration (Exhibit A) in reaching its decision. I answer this in the negative.

A careful perusal of the record of appeal and the excerpts *of* the judgment of the trial cburt reveals that the learned trial judge evaluated the totality of the evidence adduced by the parties, ascribed probative value thereto, and reached findings based on the weight of such evidence. In doing so, the trial court found the case of the Appellants to be more credible, consistent and probable. The finding thai there are four ruling houses as stated in

Exhibit A, was not based on a wholesale or exclusive reliance on Exhibit A, but rather upon a combined assessment of both the oral and documentary evidence presented during the trial.

19. *On duty of evaluating evidence and ascribing probative value thereto -*

It is trite that the evaluation of evidence and the ascription of probative value thereto are the exclusive preserve of the trial court, which had the unique advantage of seeing, hearing and assessing the witnesses. See **4DUKWE vs**. **LPDC & ANOR (2007) LPELR** – **1978 (sc)** and **OMOREGBE vs**. **EDO (1971) LPELR** – **2656 (sc)**.

20. *On when an appellate court will be involved in the evaluation of evidence -*

An appellate court is generally not permitted to substitute its own view of the facts for that of the trial court unless it is demonstrated that the trial judge failed to properly make use of the opportunity of seeing and hearing the witnesses, or where the interferences drawn from proven or undisputed facts are manifestly erroneous or unsupported by the evidence. It is evident in the instant case, therefore, that the decision of the trial court was not predicated solely on Exhibit A but on a holistic evaluation of the oral

testimonies and documentary exhibits before it and the court below failed to appreciate the diligence and industry of the trial court in this regard.

From the totality of the evidence, I affirm the findings of the trial court that the Appellants successfully proved the existence of four ruling houses in the Ikakurno community. The Ikakumo community, having been in existence for over four centuries, cannot reasonably be said to have been governed by a singular ruling house based solely on a limited 53-year timeframe (1901– 1954), as asserted by the Respondents. The oral testimonies of DVVI and DW2, which were uncorroborated by credible documentary evidence and stood alone, were manifestly inadequate to establish the existence of a sole ruling house, particularly when weighed against Exhibits B, K and L. These exhibits, being documentary in nature and contemporaneous with historical development, provide stronger probative value and effectively undermine the Respondents' claim.

21. *On orders of the Supreme Court -*

On the issue of the roles of Dawodus and Shabas, the evidence of PW2 and DW1 corroborated each other and

convincingly established that such roles were administrative innovations introduced through the White Paper and are not part of Ikakumo's native law and custom. I accept this evidence as credible and consistent with tradition. Thus, while Exhibit D was registered pursuant to the Chiefs Law, the Appellants have demonstrated that it does not reflect the true customary practices governing the selection of the Olukakumo. The traditional evidence, particularly Exhibits B, K and L, and the unchallenged oral testimonies, established that multiple ruling houses have historically produced Olukakumos.

In the light of the foregoing, I therefore resolve issue four in favour of the Appellants and against the Respondents.

Having resolved issues 1 and 3 in favour of the Respondents and issues 2 and 4 in favour of the Appellants, the appeal therefore succeeds in part.

I have found that while Exhibit D was validly registered under the Chiefs Law, Cap. 21, Laws of Ondo State 1984, the evidence before the trial court clearly established that it does not reflect the customary law and tradition of the chieftaincy of Olukakumo of Ikakumo. It also introduced elements alien to the traditional method

of selection. Consequently, Exhibit D is therefore declared null and void and of no effect to the extent that it purports to alter or misrepresent the customary law of Ikakumo .

As regards Exhibit A, it remains unregistered in accordance with the applicable legal requirements and thus cannot be recognized as an operative declaration governing the Otukakurno of Ikakumo until the proper legal steps are taken.

Furthermore, I affirm the finding of the trial court that the Appellants proved the existence of four ruling houses within the Ikakumo chieftaincy institution. Consequently, the decision of the Court of Appeal is hereby set aside and the decision of the trial court is affirmed with modifications as already explained in this judgment.

For the avoidance of any doubt, the reliefs granted by the trial court and now affirmed by this Court are as follows:

(i) It is declared that according to the Customary Law dealing with the Olukakumo of Ikakumo Chieftaincy in the Akoko North East Focal Government, Ondo State the following four ruling bouses have the right to provide candidates in relation for the Olukakumo of Ikakumo Chieftaincy, namely (1) Ayanwa Ruling House (2) Aparisu Ruling House (3) Arepin Ruling House and (4) Ayindu Ruling Housp respectively.

(ii) It is declared that the recommendation of the Ondo State Chieftaincy review commission otherwise called the "Morgan

Chieftaincy Review Commission on the Chieftaincy declaration of Olukakumo of Ikakumo" contained in the Comn]ission's report to the effect that there is only one ruling house i.e. the Ayindu Ruling House for the Olukakumo chieftaincy is null and void, the said recommendation being contrary to customary law regulating the selection of a candidate for the Chieftaincy.

(iii) It is declared that the decision of the Ondo State Government contained in the white paper issued on the Olukakumo of Ikakumo Chieftaincy i.e. Exhibit C in this case to the effect that only the Ayindu Ruling House that has the right to produce candidates for the Olukakumo of Ikakumo Chieftaincy are null and void, the decision being contrary to the customary law regulating the appointment to thel said Chieftaincy.

(iV) It is declared that the Registered Declaration of the Olukakumo of Ikakumo Chieftaincy of 1988 (Exhibit D) iS null and void in that it was made contrary to the native law and custom of Ikakumo

(v) A declaration that until a valid and duly registered chieftaincy declaration consistent with the customs of Ikakumo is enacted, the selection of an Olukakumo must

follow the established customary rotational system among the four ruling houses.

(Vi) The Respondents in this base, their servants and/or the Agents are hereby restrajned from acting on, executing and/or giving effects to the Chieftaincy Declaration for the Olukakurno Chieftaincy registered sometimes in 1988 by the third Respondent and the Ondo State Government and based upon the report of the Chieftaincy review commission and the Ondo State Government white paper published on the basis of the said report on the appointment and approval of candidate to fill the said vacant stool.

History of the case:

Supreme Court:

Names of Justices who sat on the appeal: *MOHAMMED LAWAL GARBA, MOORE ASEIMO A. ADUMEIN, STEPHEN JONAH ADAH, JAMILU YAMMAMA TUKUR, MOHAMMED BABA IDRIS*

Appeal No.SC/333/2014

Date of Judgment: Friday, 4th July, 2025

Names of Counsel: E. E. AJOR, Esq. for the APPELLANTS AND S. B. JOSEPH, (Jnr), SAN with CYNTHIA OGBODU, Esq.for the 1st RESPONDENT. A. OGUNLEYE, SAN with O. AYOOLA-GIWA, Esq. and D. EYITAYO, Esq. for the 2nd RESPONDENT. A. JAIYEOBA, Esq for the 3rd RESPONDENT. A. B. IHUA-MADUENYI, Esq for the 5th RESPONDENT.

IDRIS, JSC(Delivering lead Judgment): This is an appeal against the judgment of the Court of Appeal, Akure Judicial Division, delivered on the 24th day of January, 2014 in Appeal No. CA/B/309/2008, Coram: Sotonye Denton West, JCA, Mojeed Adekunle Owoade, JCA, Cordelia Ifeoma Jombo-Ofo, JCA, wherein the court below allowed in part both the appeal and cross-appeal of the Respondents and set aside the

judgment of the Ikare Akoko Judicial Division of the High Court of Ondo State, per Hon. Justice P. I. Odunwo J. delivered on the 18th day of June, 2007 in Suit No. HIK/2/88 wherein the trial court granted 7 (seven) out of the eight reliefs sought by the Appellants who were plaintiffs at the trial court.

The facts giving rise to this appeal are rooted in the chieftaincy succession of the Olukakumo of Ikakumo stool which has been in existence for over 400 years. Under the 1960 Chieftaincy Declaration made pursuant to native law and custom, 4 (four) ruling houses (Ayanwa, Arepin, Aparius, and Ayindu) were recognized as entitled to the chieftaincy in rotational order. The 1st and 2nd Respondents being dissatisfied with the said 1960 Declaration, petitioned the Ondo State Government claiming that the Ayindu ruling house was the sole ruling house entitled to present candidates *for* the Olukakumo stool.

In response, the government constituted the Justice Morgan Chieftaincy Review Committee in 1978 to investigate the matter. At the conclusion of its inquiry, the Committee accepted the position of the Respondents and recommended that Ayindu was the only legitimate ruling house under native law and custom and the

Governor of Ondo State accepted the recommendation and issued a White Paper formalizing the new position.

Aggrieved by the recommendation and the White Paper, the Appellants who were plaintiffs at the High Court of Ondo State, Ikare Akoko Judicial Division instituted this action at the trial court vide a Writ of Summons dated and filed on the 16th day of February, 1988 and sought for various reliefs as follows:

I. A declaration that according to the Customary Law dealing with the Olukakumo of Ikakumo Chieftaincy in the Akoko North East Local Government, Ondo State the following four ruling Houses have the right to provide candidates in relation for the Olukakumo of Ikakumo Chieftaincy. Namely (1) Ayanwa Ruling House (2) Aparisu Ruling House (3) Arepin Ruling House and (4)Ayindu Ruling House respectively .

II. A declaration that the recommendation of the Ondo State Chieftaincy review commission otherwise called the "Mo*rgan Chieftaincy Review Commission*" *(set up by the Ondo State Government) on the Chieftaincy declaration of Olukakumo of Ikakumo Chieftaincy in the Akoko North East Local Government of Ondo State contained in the report of the Commission to the effect that only the Ayindu Ruling House has the right to provide candidates*

for the Olukakumo of Ikakumo chieftaincy is null and void contrary to natural justice, oppressive, unjust illegal and of no effect whatsoever in that the said recommendation is contrary to customary law regulating the selection and/or appointment of a candidate for that Chieftaincy.

III. A declaration that the decision of the Ondo State Government contained in the white paper issued by the Ondo State Government on the Olukakumo of Ikakumo Chieftaincy in the Akoko North East Local Government sometimes in 1987 to the effect that only the Ayindu Ruling House has the right to provide candidates for the Olukakumo of Ikakumo Chieftaincy are null and aoid and of no effect whatsoever as they are based on the recommendation of the Chieftaincy Review Commission (i.e. the Morgan Chieftaincy Review Commission) and contrary to the customary law regulating the appointment to the said Chieftaincy.

IV. A declaration that the procedure adopted by the Military Governor and the Government of Ondo State in approving and/or registering a new Chieftaincy declaration for the Olukakumo oflkakumo Chieftaincy is illegal, null and void and of no effect in that it is contrary to the native law and custom and the provision of the

Chiefs edict 1984 of Ondo State and that the said Registered Chieftaincy Declaration is null and void.

V. A declaration that the Registered Declaration of the Olukakumo of Ikakurno Chieftaincy of 1988 is null and void in that it was made contrary to the rules of natural justice and that it is contrary to the applicable procedure and does not represent the correct native law and custom .

VI. A declaration that the 1960 Declaration in respect of the Olukakumo of Ikakumo Chieftaincy still subsists being the only Customary Law governing the appointment of a candidate to fill any vacancy in the Olukakumo of Ikakumo Chieftaincy.

VII. A declaration that the Parisu or Aparisu Ruling House is the next ruling House to provide a candidate/candidates for the new vacant stool of Olukakumo of Ikakumo Chieftaincy in accordance with the provisions of the 1960 Registered Declaration of Olukakumo of Ikakumo Chieftaincy .

VIII. An Injunction restraining all the Defendants their servants and/or the Agents from acting on, executing and/or giving effects to the Chieftaincy Declaration for the Olukakumo Chieftaincy registered sometimes in 1988 by the Third Defendant and the Ondo State Government and based upon the report of the Chieftaincy review

commission and the Ondo State Government white paper published on the basis of the said report on the appointment and approval of candidate to fill the said vacant stool.

While the suit was pending, the Ondo State Government proceeded to register the 1988 Chieftaincy Declaration pursuant to the White Paper. Pleadings were filed, exchanged and amended several times and the relevant pleadings at the trial court were :

(a) Fourth further Amended statement of claim filed by the Plaintiffs on 24/1/2006;

(b) Further 4th amended Statement of Defence filed by the 1st and 2nd defendants on 16/11/2006; and

(c) Third Amended statement of Defence of the 3rd , 4th & 5th defendants filed on 18/10/2005.

In the course of trial, the Appellants called 3 (three) witnesses and tendered documentary exhibits in support of their case. The Appellants' position was that, under the Native Law and Custom of Ikakumo, there exist 4 (four) distinct ruling houses relevant to the Olukakumo of Ikakumo Chieftaincy. These ruling houses are: Ayanwa, Aparisu, Arenpen, and Ayindu. This structure, according to

the Appellants, is reflected in the 1960 Chieftaincy Declaration governing the Olukakumo of Ikakumo Chieftaincy, which was admitted in evidence as Exhibit A. The Appellants further contended that the White Paper on the Morgan Chieftaincy Review Commission (Exhibit C), as well as the resultant 1988 Chieftaincy Declaration (Exhibit D), which recognized only one ruling house (namely the Ayindu Ruling House) was inconsistent with and contrary to the established Native Law and Custom of the Ikakumo people.

In response, the Respondents called 3 (three) witnesses and also tendered documentary exhibits. The Respondents maintained that under the Native Law and Custom of Ikakumo, there is only one ruling house associated with the Olukakurno Chieftaincy, which is the Ayindu Ruling House and that Exhibit D accurately reflects the true and customary position of the Ikakumo people, and Exhibit A does not represent the correct customary law and tradition governing succession to the Olukakumo Chieftaincy.

At the conclusion of trial, the parties filed and adopted their respective final addresses and the trial court delivered its judgment and granted 7 (seven) out of the 8 (eight) reliefs sought by the Appellants.

Dissatisfied with the judgment of the trial court, the Respondents appealed and also cross-appealed to the Court of Appeal in Appeal No. CA/B/309/2008. Pursuant to a consideration of the issues raised, the Court of Appeal allowed the appeal in part and held that the issues resolved in favour of the Respondents in both the main appeal and the cross-appeal were central and determinative of the entire appeal. Consequently, on the basis of the success of the Respondents on the decisive issues, the Court of Appeal held that none of the declarations, reliefs, or orders granted by the trial court could be sustained. Consequently, the judgment of the trial court was set aside in its entirety .

Still dissatisfied with the judgment of the Court of Appeal, the Appellants further appealed to this Court by way of an Amended Notice of Appeal. The parties thereafter filed and exchanged their respective briefs of argument.

In the Amended Appellants' Brief of Argument filed on the 10th day of May, 2022 and deemed duly filed on the 23'd day of November, 2022 and settled by Mrs. Folashade Alli, these 4 (four) issues were distilled *for* the determination of the appeal as follows :

1. ***Whether the decision of the lower court that it was proper of the 3d Respondent to register Exhibit d, that is, the 1988 chieftaincy declaration***

during the pendency of the action at the trial court is justifiable and sustainable. *(Grounds 1*, *5*, 6 *and 7)*

2. ***Whether the decision of the lower court that the amendment of the Appellants' statement of claim at the trial court created a new cause of action has any basis in law***. *(Grounds 4 and 8)*

3. ***Whether considering the evidence adduced by the Appellants before the trial court and a proper evaluation of same, the decision of the lower court that the Appellants failed to prove that there are four ruling houses with regard to the Olukakumo of Ikakumo chieftaincy stool is sustainable. (Grounds 3, 9 and 10)*** and 10)

4. ***Whether the failure to register the 1960 chieftaincy declaration under the chiefs' law of Ondo State 1984 is not detrimental to the Appellants' case***. *(Ground 2)*

On the first issue, the learned counsel for the Appellants submitted that the Respondents acted improperly by proceeding to register Exhibit D while the matter was pending before the trial court. It was argued that such registration interfered with the vested rights of the Appellants concerning the Olukakumo of Ikakumo Chieftaincy and amounted to a direct encroachment upon the authority of the court. It was submitted further that once a dispute has been submitted *for* judicial determination, parties are obligated to refrain from engaging in acts capable of prejudicing the subject matter of the litigation.

Reliance was placed on the decision of this Court in **MILITARY GOVERNOR OF LAGOS STATE & ORS VS**. **CHIEF EMEKA ODUMEGWU OJUKWU (1986) ALL NLR 233 AT 240**, wherein it was held that parties are not permitted to resort to self-help in respect of matters properly before the court. It was argued that the Court of Appeal erred in holding that the principle in **MILITARY GOVERNOR OF LAGOS STATE & ORS VS**. **CHIEF EMEKA ODUMEGWU OJUKWU (SUPRA)** was inapplicable to the facts of the instant case. It was argued that the similarity lies in the fact that in both cases, the impugned act occurred while the issue was pending in court.

It was further submitted that the Appellants' claims were rooted in the native law and custom regulating succession to the Olukakumo of Ikakumo stool and did not challenge the legislative competence of the 3'd Respondent. It was argued that the registration of Exhibit D did not constitute a legislative act but rather an executive function carried out by the Ministry of Local Government and Chieftaincy Affairs and as such the trial court acted within its jurisdiction in nullifying Exhibit D, as the nullification formed part of the specific reliefs sought by the Appellants in their amended pleadings. It was argued that the trial court had the requisite jurisdiction and inherent power to grant consequential reliefs, including the nullification of Exhibit D, upon a finding that the recommendations of the Morgan Committee and the White Paper were null and void.

On issue two, the learned counsel *for* the Appellants submittedthat although the original cause of action was predicated upon the issuance of the White Paper by the Ondo State Government, the subsequent registration of Exhibit D during the pendency of the suit warranted an amendment to the Appellants' pleadings. It was submitted that the leave of court was duly sought and obtained, and that the amendment did not introduce a new cause of action but merely added new facts ancillary to the original dispute. It was further submitted that the distinction in law between an amendment that raises a fresh cause of action and one that introduces new facts must be maintained, and in this case, the amendment was properly allowed to prevent multiplicity of suits and an abuse of court process. It was argued that Exhibit D arose from and was incidental to the matters already before the court.

On issue three, the learned counsel for the Appellants argued that the Appellants discharged the legal burden of proof to establish the existence of four ruling houses entitled to contest the Olukakumo of Ikakumo stool, Reference was made to the oraltestimony of the Appellants' witnesses which were uncontroverted under cross-examination and to the documentary evidence tendered at trial. It was submitted that the historical appointments of Obas from Arepin

and Ayanwa ruling houses, namely Oba Obayori and Oba Obanobi, evidenced a longstanding recognition of 4 (four) ruling houses and that although the Respondents conceded these appointments, they were based on the 1960 Declaration, which they claimed did not represent the true native law and custom. It was argued further that the evidence of PWI and PW2, coupled with Exhibits B, K and L, sufficiently corroborated Exhibit A. It was further submitted that the Court of Appeal erred in concluding that the trial court based its finding solely on Exhibit A without properly evaluating the totality of the evidence adduced.

The Court was urged to reverse the Court of Appeal's interference with the findings of fact made by the trial court which were based on credible and unchallenged evidence.

On the fourth issue, the learned counsel for the Appellants submitted that under Section 24(1)(a) of the Chiefs Law Cap. 21, Laws of Ondo State 1984, the re-registration of existing Chieftaincy Declarations is contemplated. It was argued that Section 24(2)(a) however imposes the obligation of registration upon the appropriate authority, namely, the 5th Respondent. It was submitted that the Appellants could not be penalized *for* the failure of the appropriate authority to comply with the statutory requirement and that

assuming, without conceding, that the duty to register the 1960 Declaration lay with the ruling houses, it was argued that the same obligation would have applied to the 1st and 2nd Respondents. It was argued that the absence of registration of the 1960 Declaration did not, in law, diminish its evidentiary value in proving the existence of 4 (four) ruling houses Consequently, the Court was urged to set aside the decision of the court below and allow the appeal.

In response, the 1st Respondent filed a Respondent's Brief of Argument on the 25th November, 2022 and settled by S. B. Joseph (Jnr) Esq., wherein the issues distilled by the Appellants were adopted .

On issue one, the learned counsel *for* the 1st Respondent submitted that the suit was instituted on the 16th February 1988, whereas Exhibit D was registered on the 7th March 1988. It was argued that the reliefs sought in relation to Exhibit D, which were introduced via amendment of pleadings filed on 24th January 2006, were incompetent. Counsel contended that because Exhibit D did not exist at the time the original suit was filed, the amendment constituted the introduction of a fresh cause of action. It was further submitted that amendments to pleadings generally relate back to the date of the original filing, and

since Exhibit D was introduced after the 1st Respondent had filed its defence, the trial court lacked the jurisdiction to adjudicate upon the new cause of action. Counsel also distinguished the case of **MILITARY GOVERNOR OF LAGOS STATE & ORS VS**. **CHIEF EMEKA ODUMEGWU OJUKWU (SUPRA)** cited by the Appellants from the instant case, arguing that unlike in the instant case, the act complained of in **MILITARY GOVERNOR OF LAGOS STATE & ORS VS**. **CHIEF EMEKA ODUMEGWU OJUKWU (SUPRA)** occurred after the matter was already before the court. It was further submitted that the registration of Exhibit D was an executive act lawfully undertaken pursuant to Edict No. 11 of 1984 and was not justiciable by reason of the provisions of Section i(b)(i)(ii) of the Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 13 of 1984. It was argued that Exhibit D, having been validly registered, represents the authoritative declaration of the customary law of the Ikakumo people concerning the Olukakumo stool.

On the second issue, learned counsel for the 1st Respondent reiterated that Exhibit D was not in existence when the original suit was instituted, and that the subsequent amendment seeking injunctive reliefs against it was incompetent. It was submitted that the amendment introduced a fresh cause of action and should

not have been allowed. It was submitted that courts are not permitted to adjudicate on causes of action that were not in existence at the time pleadings closed.

On issue three, counsel contended that the Appellants' evidence was inconclusive and largely speculative. It was submitted that DWI credibly testified that the Ayindu Ruling House had uninterruptedly held the Olukakumo stool from 1901 to 1954. It was argued that the trial court erred in relying on the unregistered 1960 Declaration (Exhibit A), and that contrary to the trial court's findings, other documentary evidence (Exhibits E – H, K and L) and the memoranda submitted to the Morgan Commission supported the exclusive entitlement of the Ayindu family.

On issue four, it was submitted that the failure of the Appellants to register the 1960 Chieftaincy Declaration pursuant to the 1984 Chiefs Law of Ondo State rendered the said Declaration a nullity. Relying on the authority of **ALOMAJA VS**. **ADEWALE (2004) 15 NWLR (PT**. **897) 589**, it was submitted that an unregistered Chieftaincy Declaration lacks legal efficacy.

The Court was urged to uphold the decision of the Court of Appeal and dismiss the appeal.

The 2nd Respondent filed a Respondent's Brief of Argument settled by Ayotunde Ogunleye Esq., on the 25th November, 2022 wherein these 3 (three) issues were distilled *for* the determination of the appeal as follows:

1. ***Whether or not the new cause of action created vide the amendment of the Appellants' statement of claim at the trial court is justifiable in law*** . (Distilled from grounds 4 and 8)

Whether or not the lower court's decision in line with the proprietary of the registration of 'exhibit D" (i.e. the 1988 chieftaincy declaration) during the pendency of the suit at the trial court is justifiable and sustainable. (Distilled from grounds 1, 5, 6 and 7)

3. ***Whether this honourable court ought to dismiss this appeal on grounds of Appellants' failure to register the 1960 chieftaincy declaration under the chiefs' law of Ondo State 1984***. (Distilled from grounds 2, 9 and 10)

On issues one and two, which were argued together, the learned counsel for the 2nd Respondent submitted that although the Appeliants' amendment to their statement of claim was effected

during the pendency of the proceedings, it was impermissible for such an amendment to be used as a vehicle *for* introducing a fresh cause of action. It was argued that the amendment was prejudicial to the Respondents and that the court below was right in setting aside the decision of the trial court which had permitted the Appellants to rely on such an amendment. It was submitted that Exhibit D was not in existence at the time the original suit was instituted by the Appellants. It was argued that its subsequent creation gave rise to a distinct and fresh cause of action which could not be competently introduced into the proceedings by way of amendment. Counsel submitted that a cause of action must crystallize before the filing of a suit and cannot arise from facts or documents that post-date the commencement of the action and thus Exhibit D could not constitute a valid cause of action in the suit filed by the Appellants .

On the third issue, learned counsel *for* the 2nd Respondent submitted that at the time the Appellants instituted the suit at the trial court, the 1960 Olukakurno Chieftaincy Declaration (Exhibit A) had not been registered pursuant to the provisions of the 1984 (Chiefs Law of Ondo State and as a result, Exhibit A was legally ineffective, null, void and of no evidential value before the trial court. It was submitted that the

Appellants themselves admitted to the non-registration of the declaration, and the court below was right to have relied on this Court's decision in **ALOMAIA VS**. **ADEWALE (2004) 15 NWLR (PT**. **897) 589** in declaring Exhibit A null and void.

It was further submitted that the Appellants' argument that the 1st and 2nd Respondents has the responsibility of registering Exhibit A was of no consequence, particularly as there was no evidence on record before the lower courts to establish that the document was ever registered. It was submitted further that such failure was fatal to the Appellants' case. The Court was urged to so hold and to dismiss the appeal.

The 3'd Respondent in response, filed the 3'd Respondent's Brief of Argument on the 29th day of June, 2022 settled by Adepeju O. Jaiyeoba (Ms.) wherein a sole issue was distilled for the determination of the appeal thus:

> '***Whether the lower court was right to have set aside the judgment of the trial court for placing reliance solely on the 1960 Olukakumo Chieftaincy Declaration***, ***which had become otiose and ineffective having not being reregistered in***

accordance with Section 24(2)(a) of the Chief's Edict of Ondo State, 1984 (as amended).

On the sole issue, the learned counsel *for* the 3rd Respondent submitted that in its Cross-Appeal before the court below, it challenged the validity of the 1960 Olukakumo Chieftaincy Declaration which the trial court relied upon in its judgment. It was argued that the said declaration was never reregistered in compliance with Section 24(2) of the Chiefs Edict of Ondo State, 1984 (as amended) and consequently lacked the *force* of law. It was argued that the court below was right in its conclusion that Exhibit A did not satisfy the requirements of the Chiefs Edict of Ondo State and despite its existence, was rendered legally ineffective due to its non-registration as prescribed by law. It was submitted further that for any amendment to a chieftaincy declaration to be valid, such amendment must comply strictly with the provisions of the applicable law and must receive the approval of the Governor or the State Executive Council. It was argued that the courts lack the jurisdiction to question the capacity or authority of the relevant executive bodies to enact legislation or to interfere with rights duly accrued under such laws.

It was argued that the decision of the court below in setting aside the trial court's nullification of Exhibit D was proper, as the nullification was based on a flawed reliance on an ineffective and unregistered declaration. It was submitted that although appellate courts generally refrain from interfering with the exercise of judicial discretion, the trial court's reliance on a document lacking legal efficacy constituted a fundamental error, thereby justifying the intervention of the court below.

The Court was urged to affirm the decision of the court below and dismiss the Appellants' appeal in its entirety.

The 5th Respondent in response also filed a Respondent's Brief of Argument on the 27th day of June, 2022 and settled by Agent Benjamin Ihua-Maduenyi Esq., wherein a sole issue was distilled for the determination of this appeal thus:

> ***Whether the lower court was right in setting aside the judgment of the trial court on the ground that it placed sole reliance on the 1960 Olukakumoof Ikakumo Chieftaincy Declaration that had become otiose and ineffective having not been re-registered in accordance with the provisions of section 24(2)(a)***

of the Chiefs Edict of Ondo State*, *1984 (as amended)?

On this issue, the learned counsel *for* the 5th Respondent submitted that the findings of the court below regarding Exhibit A correctly reflected the applicable legal position under the Chiefs Edict of Ondo State. It was argued that the failure to re-register Exhibit A in accordance with the provisions of the Edict rendered it legally ineffective. It was submitted further that the protests arising from the contents of Exhibit A led to the establishment of the Morgan Chieftaincy Review Commission, whose recommendations formed the basis of Exhibit C which was subsequently registered as Exhibit D. It was subrnitted that in the absence of a valid re-registration of Exhibit A, that Exhibit D having been duly registered in compliance with the law, remains the extant and binding chieftaincy declaration governing the subject matter of this appeal. It was further argued that the process of making a chieftaincy declaration constitutes an administrative act, and that the jurisdiction of the court to intervene is limited only to instances where the legality of the process is in question due to a breach of the right to fair hearing. It was argued that in the instant case, no such breach was established. Counsel maintained that Exhibit D was made in accordance with the

applicable legal framework and that the courts lack the competence to question the authority of the Governor to make an Edict or the validity of such exercise of executive powers.

It was further submitted that the decision of the trial court nullifying Exhibit D was unjustified and that the court below acted rightly in setting aside that decision. It was argued that where a lower court's judgment is found to be perverse or founded on a misapplication of the law, an appellate court is duty-bound to interfere.

The Court was urged to affirm the judgment of the court below and dismiss the appeal in its entirety.

RESOLUTION OF THE ISSUES

I have read and summarized the arguments contained in the briefs of argument filed by the learned Counsel for the parties herein. In order to determine the instant appeal, I shall adopt the with a slight modification, the issues formulated for the determination of this appeal by the Appellants, as in my opinion a resolution of same will adequately put to rest the issues in controversy in the instant appeal.

1. ***Whether the decision of the lower court that it was proper of the 3d Respondent to register Exhibit d, that is, the 1988 chieftaincy declaration during the pendency of the action at the trial court is justifiable and sustainable.***

2. ***Whether the decision of the lower court that the amendment of the Appellants' statement of claim at the trial court created a new cause of action has any basis in law.***

3. ***Whether the failure to register the 1960 chieftaincy declaration under the chiefs' law of Ondo State 1984 is not detrimental to the Appellants' case.***

4. ***Whether considering the evidence adduced by the Appellants before the trial court and a proper evaluation of same, the decision of the lower court that the Appellants failed to prove that there are four ruling houses with regard to the Olukakumo of Ikakumo chieftaincy stool is sustainable.***

ISSUE ONE

Whether the decision of the lower court that it was proper of the 3rd Respondent to register Exhibit D, that is, the 1988

chieftaincy declaration during the pendency of the action at the trial court is justifiable and sustainable.

This issue relates to the legal consequences of the registration of Exhibit D (the Olukakumo of Ikakumo Chieftaincy Declaration) on the 7th March, 1988, during the pendency of the Appellants' suit before the trial court. The Appellants has argued that the said registration by the Respondents after the commencement of the suit constituted an unlawful interference with the judicial process.

It is settled law that the doctrine of separation of powers is a fundamental component of the constitutional architecture of Nigeria. Under the presidential system of government entrenched in the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Legislature, Executive and Judiciary are established as distinct, co-equal arms of government, each entrusted with constitutionally assigned functions. While this doctrine prohibits any arm from usurping or exercising the core functions of another, it must be understood that the Constitution does not envisage a rigid or absolute compartmentalization of governmental powers. Rather, the separation of powers operates in tandem with the equally vital doctrine of checks and balances, which is designed to prevent the concentration or abuse of power by any single organ of government.

The objective is not to create three autonomous or disconnected spheres of authority, but a unified government functioning through three interdependent arms. Each branch is expected to operate within its constitutional limits while providing necessary oversight over the others. Consequently, what is required under the constitutional framework is a harmonious interaction and institutional coordination among the three branches, not the assertion of supremacy by any single arm, in order to uphold the rule of law and preserve democratic governance. See generally, the cases of **A. G. ABIA STATE & ORS vs. A.G. OF THE FEDERATION (2022) LPELR – 57010 (SC); AG LAGOS STATE VS. EKO HOTELS LTD & ANOR (2006) LPELR – 3161 (SC); CBN VS. OCHIFE& ORS (2025) LPELR – 80220 (SC); AG FEDERATION VS. AG OF ABIA STATE & ORS (2001) LPELR – 631 (SC); OKO & ORS VS. A. G., EBONYI STATE (2021) LPELR – 54988 (SC)** and **AG OF THE FEDERATION VS. AG OF ABIA STATE & ORS (2024) LPELR – 62576 (SC)**.

From the undisputed facts on the record, the Appellants instituted the action at the trial court on the 16th February, 1988, whereas Exhibit D was registered thereafter on 7th March, 1988. It is, therefore, incontrovertible that Exhibit D was not in existence as at the date

the action was commenced. Prior to its registration, the operative document was Exhibit C, being the Government White Paper on the Olukakurno of Ikakumo Chieftaincy Declarations. Exhibit C reflected the official position of the Ondo State Government, signifying its acceptance and adoption of the recommendations of the Justice Morgan Commission of Inquiry into the Olukakumo Chieftaincy. Exhibit C, as an administrative pronouncement of government policy, constituted an actionable document capable of legal challenge, and the Appellants were clearly entitled to approach the court *for* a determination of its legal effect and implications. The lower courts rightly held that the suit, as constituted, disclosed a reasonable cause of action and thereby validly invoked the jurisdiction of the trial court.

However, it must be noted that the cause of action arose in 1988, during the period of military rule in Nigeria when legislative authority at the federal level was vested in the Armed Forces Ruling Council, which exercised its powers through the promulgation of Decrees. Similarly, at the State level, Military Governors exercised legislative functions by means of Edicts. Notwithstanding the fusion of legislative and executive powers under the military regime, the Judiciary remained constitutionally vested with the authority to

perform its adjudicatory functions and to serve as the guardian of the rule of law.

In the circumstances, the Court of Appeal was justified in invoking and applying the doctrine of separation of powers to the peculiar facts of the case. The court below correctly appreciated that, despite the concentration of powers under military governance, the Judiciary continued to function as an independent arm of government. The court below appropriately acknowledged the continued relevance of the doctrine of separation of powers even under military rule, when it held, at pages 817 – 821 of the Record of Appeal that:

> '*In the instant case, it seems to me that neither the exposition of the doctrine of the Rule of law as enunciated in the case of Governor of Lagos State v. Ojukwu (Supra) and other cases in that category nor the doctrine of Lis Pendens per se coulddebar the operation of the appropriate law-making organ of Government from the legitimate process of law making even in the pendency of a suit. to hold otherwise, in my view will give a leeway to the law-making arrn of government to talk of* "j*udicial*

Recklessness" while those of us in the Judiciary talk of "executive lawlessness".

Indeed, the doctrine of separation of powers would have been thrown into the winds if lawmakers cannot make laws in the pendency of a law suit. This is because, the principle behind the concept of sepration of powers is that none of the three arms of government under the constitution should encroach into the powers of the other. The function of the Legislature is primarily to enact laws whilst that of the executive is to implement such laws passed by the legislature. The Judiciary, for its own part interprets and enforces such laws. Where, however, such separation of powers between the executive and the Legislature and the Judiciary is provided for by the Constitution, neither organ may encroach upon the province of the other. However, the constitution being an organic law, the ground norm and the Supreme law of the land, may restrict the operation of this principle of separation of powers.

Accordingly, the power of each arm may be restricted or expanded by an express provision of the Constitution. See: A – G, Abia State V. A – G, Fed. (2003) 4 NWLR (Pt. 809) 124. Amadi V. NNPC (2000) 6 SC (Pt. 1) 66 at 94 - 95.

I believe, that it is the introduction of motive in the judgment of the learned trial judge to Eheeffect that the promulgation and registration of Exhibit D by the 4th Defendant/Appellant in the pendency of the suit or "an injunctive remedy" amounts to an affront to the authority of the Courts of the land and an executive excesses" which prompted the learned counsel for the Respondents to further challenge the nullification of Exhibit 'D' on the ground that the making of Exhibit 'D' was an act done pursuantto an Edict and consequently cannot be challenged in Court. And, that the act was performed by the military governor of Ondo State at that time.

'In the case of Obada V. Military Governor of Kwara State (1990) 6 NWLR (Pt, 157) P.482 at 496, this Honourable Court held on competence of Court to question validity of an Edict or decree thus; ''No Court of Law has the competence to entertain any question as to the validity of any Edict or Decree, that is no Court has jurisdiction to entertain a question as to the Legislative capacity of a Governor to make an Edict or of president to enact a Decree. Further, by virtue of Decree No. 13 of 1984,

anything done, purported or proposed to be done under an Edict or Decree is not subject to the jurisdiction of any Court of Law" See also, Adamolekun V. Council of University of Ibadan (Supra) Sanumi V. Governor of Ondo State (Supra). rhe position of Decree No. 13 of 1984 was further explained by the Supreme Court in the case of Chief Olori Edjerode and 5 Ors V. Chief Ohwovwiogor Ikine and 3 Ors. (2002) 2 M.J.S.C. 163 at 180. In that case, the Supreme Court per Ejiwunmi JSC (of blessed memory) while referring to the earlier decision of the Court in the case of Uwaifo V. A-G Bendel State (1982) 7 S. C., 124 explained as follows:

> *"The decision in Uwaifo's case prohibits the Courts, even after lst October 1979 from questioning any Edict or Decree made between lst January 1966 and 30th September 1979 on the ground that the person or authority which made it had no capacity or power to make it, but did not preclude the Courts from questioning the validity of such laws or any of their provisions that are inconsistent with the*

provisions of the 1979 Constitution. In other words, courts are precluded from questioning the capacity and power of the authorities in promulgating such laws. They are equally prohibited from questioning the validity of what the authorities did under such laws or interfering with any accrued or subsisting rights by virtue of such actions at the time they were still valid and subsisting. In Uwaifo's case (Supra) Idigbe JSC succinctly stated the law thus:

"It seems to me that the Cobititution empowers the Courts to inquire into the validity of any existing law, it clearly intends that the Courts should not inquire into proceedings which seeks to determine issues or question as to the competence of any authority of person (i.e. legal capacity, power legal qualification or jurisdiction of any authority or person) to make any existing law promulgated between 15th January 1966 and lst October 1979...."

Consequently, the court below was right when it held that the registration of the 1988 Chieftaincy Declaration (Exhibit D) during the pendency of the Appellants' suit did not constitute an overreach or usurpation of judicial authority by the Executive. It is necessary to emphasize that, at the material time, Nigeria was under military rule, wherein the Executive wielded both executive and legislative powers in accordance with the prevailing constitutional framework. Under such governance, the promulgation of Decrees and Edicts, including those dealing with chieftaincy matters, was a lawful exercise of executive authority.

Indeed, the making and registration of chieftaincy declarations is a function statutorily conferred on the Executive arm of the State Government and such responsibilities are ordinarily discharged through the appropriate Chieftaincy Committee constituted for that purpose. This legal position has been clearly articulated and affirmed by this Court in decisions such as **MAFIMISEBI & ANOR VS**. **EHUWAH & ORS (2007) LPELR** – **1812 (SC)** and **OLANREWAJU VS**. **OYESOMI & ORS (2014) LPELR** – **22695 (SC)**, wherein it was reiterated that the Executive retains the competence

to formulate and register chieftaincy declarations within the scope of its constitutional authority. The pendency of judicial proceedings does not, without more, preclude the Executive from exercising its lawful powers. The role of the Judiciary is not to restrain other arms of government from acting within their constitutional bounds, but rather to examine, upon being duly called upon, whether such actions comply with the law. Consequently, the act *of* registering Exhibit D during the subsistence of the Appellants' suit neither amount to contempt or interference with the judicial process nor did it constitute an infringement of the doctrine of separation of powers. Consequently, I find no merit in the Appellants' contention impugning the propriety of the registration of Exhibit D. I hold that the court below was correct in affirming its validity.

On this note, this issue is therefore resolved in favour of the Respondents.

ISSUE TWO

Whether the decision of the lower court that the amendment of the Appellants' statement of claim at the trial court created a new cause of action has any basis in law.

A Statement of Claim constitutes a fundamental originating process in civil litigation. It is ordinarily filed contemporaneously with the Writ of Summons and is typically accompanied by the Plaintiff's witness statement on oath, a list of intended witnesses, and copies of documents upon which the plaintiff intends to rely at trial. The primary purpose of the statement of claim is to succinctly set out all material facts upon which the plaintiffs claim is founded. This serves to give the defendant adequate notice of the case he is required to answer, thereby affording him the opportunity to respond appropriately by filing a statement of defence. Collectively, these documents form what is referred to as pleadings. See cases of **CAPPA & D' ALBERTO LTD VS**, **AKINTILO (2003) LPELR – 829 (SC); STOWE & ANOR VS**. **BENSTOWE & ANOR (2012) LPELR – 7838 (SC)** and **BAKARI VS**. **OGUNDIPE & ORS (2020) LPELR – 49571 (SC)**

It is a well-established principle of law that a claimant's pleadings must disclose a cause of action before the jurisdiction of the court can be properly invoked to entertain a grievance. Equally settled is the position that pleadings may be amended, when necessary, to enable the court to effectively and justly determine the real issues in controversy between the parties. The general principle governing the grant of amendments is that such amendments, which lie within the

discretionary powers of the court, may be allowed at any stage of the proceedings, subject to the applicable rules of practice and procedure in the relevant jurisdiction, provided that they do not occasion injustice, cause embarrassment or undue surprise to the opposing party, and are not sought in bad faith. While it is trite that parties are bound by their pleadings, circumstances may arise during the course of proceedings that necessitate an amendment in order to properly articulate the issues in dispute. The purpose of such amendment is to aid the court in the fair and just adjudication of the matter. See generally, the cases of **WARRI VS**. **ETANOMI & ANOR (2019) LPELR – 49513 (SC); OFORISHE VS**. **NIGERIAN GAS CO**. **LTD (2017) LPELR – 42766 (SC); HUSSENI & ANOR VS**. **MOHAMMED & ORS (2014) LPELR – 24216 (SC); OKEOWO & ORS VS**. **MIGLIORE & ORS (1979) LPELR – 2441 (SC)** and **HUSSENI & ANOR VS**. **MOHAMMED & ORS (2014) LPELR – 24216 (SC)**.

Once an amended pleading is duly filed and accepted by the court, it takes the place of the original pleading and becomes the operative process for the purpose of adjudication. The original pleading, having been overtaken by the amendment, is deemed to be abandoned and can no longer be relied upon during trial. This

position is well-established in judicial authorities. See **ROTIMI & ORS VS**. **MACGREGOR (1974) LPELR** – **2957 (SC); TIMINIMI & ORS VS**. **INEC (2022) LPELR** – **59474 (SC)** and **YUSUF VS**. **MOBIL OIL (NIG**.**) PLC (2019) LPELR** – **55272 (SC)**.

The primary issue arising for determination in this context is whether the amendment effected by the Appellants to their Statement of Claim, particularly the inclusion of Exhibit D, amounts to the introduction of a new and distinct cause of action which was neither pleaded nor contemplated in the suit as originally constituted?

It is apposite at this stage to set out the specific reliefs originally sought by the Appellants at the trial court, as contained in their Writ of Summons and Statement of Claim filed on the 16th day of February, 1988, and which are reflected at pages 9 – 10 of the record. This will provide clarity on the scope and nature of the original claim against which the effect of the subsequent amendment can be properly assessed.

> *"33. Whereof the Plaintiffs claim as per their writ of summons as follows:*
>
> *(I) A declaration that according to the Customary Law dealing with the Olukakumo of kakumo Chieftaincy in the Akoko North East Local*

Government, Ondo State the following four ruling Houses have the right to provide candidates in rotation for the Otukakumo of Ikakumo Chieftaincy. Namely (1) Ayanwa Ruling House (2) Arepin Ruling House (3)

Parisu Ruling House and (4) Ayindu Ruling House respectively.

(II)A declaration that the recommendation of the Ondo State Chieftaincy review commission otherwise called the "Morgan Chieftaincy Review Commission" (set up by the Ondo State Government) on the Chieftaincy declaration of Olukakumo of kakumo Chieftaincy in the Akoko North East Local Government of Ondo State contained in the report of the Commission to the effect that only the Ayindu Ruling House has the right to provide candidates for the OLUKAKUMIO OF KAKUIYIO CHIEFTAINCY is null and void contrary to natural justice, oppressive, unjust illegal and of no effect whatsoever in that the said recommendation is contrary to customary law regulating the selection and/or appointment of a candidate for that Chieftaincy .

(III) A declaration that the decision of the Ondo State Government contained in the white paper issued by Ondo State Governrnent on the Olukakumo of Ikakumo Chieftaincy in the Akoko North East Local Government sometimes in 1987 to the effect that only the Ayindu

Ruling House has the right to provide candidates for the Olukakumo of kakumo Chieftaincy are null and void and of no effect whatsoever as they are based on the recommendation of the Chieftaincy Review Commission (i.e. the Morgan Chieftaincy Review Commission) and contrary to the customary law regulating appointment to the said Chieftaincy.

(IV) A declaration that the procedure adopted by the Military Governor and the Government of Ondo State in approving a new Chieftaincy declaration for the Olukakumo of kakumo Chieftaincy is illegal, null and void and of no effect whatsoever in that it is contrary to the provisions of the Chiefs law of Ondo State. An Injunction restraining all the Defendants their servants and/or the Agents from acting on, executing or giving effects to the Government Whitepaper on the report and/_or amending or re-registering a new Chieftaincy Declaration for the Olukakumo of Kakumo Chieftaincy based on the report of the Chieftaincy review commission and the Ondo State Government white paper approved and published on the basis of the said report."

From the foregoing, it is manifest that at the time the action was instituted before the trial court on the 16th February, 1988, the Appellants had already anticipated the possible registration of a new

Chieftaincy Declaration. This intention is clearly reflected in the relief sought at paragraph 33(v) of their Statement of Claim reproduced earlier, wherein the Appellants prayed the court *for* an order of injunction restraining the Respondents from registering any new declaration founded upon Exhibit C. It logically follows that the eventual registration of Exhibit D on the 7th March, 1988 was not an isolated event, but rather a continuation of the chain of events forming the factual substratum of the cause of action which prompted the initiation of the suit at the trial court. The Respondents has however contended that the emergence of Exhibit D, having occurred subsequent to the commencement of the suit, gave rise to a fresh cause of action which, in their view, could not be accornrnodated within the original proceedings.

In law, a cause of action denotes the entirety of facts or legal grounds which, when taken together, confer upon a plaintiff the right to seek judicial relief against a defendant. It is the factual situation resulting from the defendant's wrongful act or omission, which infringes a legal right of the plaintiff. See generally, the cases of **SAVAGE & ORS VS**. **UWECHIA (1972) LPELR – 3018 (SC); OLATEJU VS**. **COMMISSIONER FOR LANDS & HOUSING**,

KWARA STATE & ORS (2024) LPELR 62589 (SC) and **WOHEREM VS**. **EMEREUWA & ORS (2004) LPELR – 3500 (SC)**.

It is trite that for a suit to be competent, a cause of action must have accrued prior to the institution of the proceedings. Nonetheless, it is equally well established that where events occur after the commencement of an action, events which are connected to and arise from the same subject matter already in issue before the court, a party may, with the leave of court, amend their pleadings to incorporate such developments. This is permissible provided that the amendment does not seek to introduce a new and independent cause of action that is extraneous to the original dispute. This principle is consistent with the fundamental objective of allowing amendments in civil proceedings, which is to ensure that the real questions in controversy between the parties are effectually and completely adjudicated upon. The overriding aim is to do substantial justice between the parties and to prevent the proliferation of suits through piecemeal litigation. See generally, the cases of **OGUMA ASSOCIATED COMPANIES (NIG.) LTD VS**. **IBWA LTD (1988) LPELR – 2318 (SC); WARRI VS**. **ETANOMI & ANOR (2019) LPELR – 49513 (SC); OFORISHE VS**. **NIGERIAN GAS CO**. **LTD (2017) LPELR – 42766 (SC); HUSSENI & ANOR VS**. **MOHAMMED & ORS**

(2014) LPELR – 24216 (SC); OKEOWO & ORS VS. MIGLIORE & ORS (1979) LPELR – 2441 (SC) and **HUSSENI & ANOR VS. MOHAMMED & ORS (2014) LPELR – 24216 (SC)**.

In the instant case, a thorough comparison of Exhibits C and D as contained in Volume 1 of the Record of Appeal, demonstrates that Exhibit C constitutes the formal endorsement *of* the findings of Justice Morgan's Commission of Inquiry, subsequently ratified by the issuance of a Government White Paper. Exhibit D, registered pursuant to the 1984 Chieftaincy Edict,represents the official registration of the said endorsement. Exhibit D, though registered subsequent to the commencement of the suit, does not introduce any new or distinct factual foundation capable of giving rise to an independent cause of action. Rather, its registration constitutes a continuation of the factual sequence underpinning the original suit. As such, Exhibit D remains integrally connected to the same legal and factual issues before the court. Consequently, the introduction of Exhibit D by way of amendment did not amount to the introduction of a fresh cause of action requiring the initiation of a separate proceeding. This legal position was rightly acknowledged and upheld by the trial court, which correctly held that:

'*The principle guiding amendment of pleadings is stated by the supreme court in the case of ANTHONY EHIDINIHEN Vs*.

AHMADU MUSA & 1 OR. (2000) 8 NWLR Part 669 p. 540 at 566 paragraph g-h and several other cases. The court held that an amendment of pleadings should be allowed unless -

(a) it will entail injustice to the Respondent,

Or

(b) The applicant is acting mala fide or (c) By his blunder, the applicant has done some injury to the respondent which cannot be compensated by cost or otherwise.

The court went on to state at page 567, paragraph E that an amendment that is designed to create a suit that was not in existence is not permissible. I do not see how the amendment granted to the plaintiffs in the instant case to bring in the 1988 Declaration i.e. exhibit D after it was registered into the suit would entail injustice. I do not also see how the plaintiffs acted mala fide or by the blunder of the plaintiffs, the defendants in this case suffered injury which cannot be compensated in cost. There is also no way the amendment was designed to create a suit that was not in existence. The issue of the 1988 declaration was already in existance by reason of the claim

for *injunction to restrain the making of the declaration in the original claims of the plaintiffs. The amendment was necessitated by the acts of the defendants by registering the 1988 declaration to hold that the amendment is wrongful in law is to foist a state of helplessness on the Plaintiffs. The Plaintiffs could only file a fresh suit which will be an abuse of Court process. I hold that the 1988 Declaration i.e. Exhibit D having been made an issue in the original statement of claim and the subsequent amendment that brought in the 1988 Declaration for nullification is proper in law, the court can pronounce on the 1988 Declaration with regard to the Olukakumo of lkakurno Chieftaincy i.e. Exhibit D in this case. There is a cause of action already against it in the original statement of claim and the amendment was to bring the real issues in controversy before the Court after it was approved and registered. It is for the reasons stated before that I also hold that*

this suit is competent and that this Honourable Court has the jurisdiction to entertain it. The 1988 Declaration i.e. Exhibit D was no more a fresh issue at the time the amendrnent was granted. The amendment was not to operate to the future rather its operation is retrospective according to law i.e. to correct the statement of the pleadings from whether or not the 1988 Declaration should be made to a nullification after it was made without any order of court."

Having regard to the totality of the circumstances, it is evident that the amendment of the Appellants' Statement of Claim to include Exhibit D did not amount to the introduction of a new or distinct cause of action. Exhibit D arose from the same factual matrix upon which the original suit was founded and was clearly part of the continuing sequence of events constituting the cause of action as at the time the suit was instituted. The subsequent registration of Exhibit D was merely a continuation of the chain of events forming the subject matter of the dispute and did not alter the fundamental character or nature of the Appellants' suit or the reliefs originally sought therein.

Consequently, the trial court was correct in permitting the amendment, as it promoted the interest of justice by enabling the court to resolve all matters in controversy between the parties in a single, comprehensive proceeding.

Consequently, this issue is resolved in favour of the Appellants.

ISSUE THREE

Whether the failure to register the 1960 chieftaincy declaration under the Chiefs' Law of Ondo State 1984 is not detrimental to the Appellants' case.

At the time the cause of action giving rise to the instant appeal arose, the applicable law governing chieftaincy matters was the Chiefs Law Cap. 21, Laws of Ondo State 1984.

Specifically, Section 24(1)(a) of the Chiefs Law, Cap. 21, Laws of Ondo State 1984 provides:

> '***Subject to the provision of this section***, ***every declaration***
>
> ***a. Made under the provision of part II of the repealed law shall have effect as if it had been made or registered***, ***as the***

case may be, ***under the provision of part 1 of this edict***."

Section 24(2)(a) of the Chiefs Law Cap. 21, Laws of Ondo State 1984 also provides that:

> ***The following provisions shall apply in relation to declaration made under part II of the repealed law and in respect of which the date of registration is before the thirty-first say of December***, ***1983***
>
> ***a***. ***Every such declaration shall be submitted by the secretary to the committee to the commissioner for approval and shall cease to have effect until again registered under the provisions of part I of this***

The Respondents have contended that Exhibit A, being the 1960 Declaration of the Olukakumo of Ikakumo, remains unregistered pursuant to the provisions of the Chiefs Law, Cap. 21, Laws of Ondo State 1984, a fact which the Appellants have admitted. The purpose and significance of registering a chieftaincy declaration have been extensively considered and elucidated by this Court in numerous

decisions. Notably, in **MAFIMISEBI & ANOR VS**. **EHUWA & ORS (2007) LPELR** – **1812 (SC)**, this Court held that:

> '*It is to avoid the problem of calling evidence each time a particular native law and custom needsto be established in relation to chieftaincy in the former Western Region of Nigeria that gave rise to the attempt at codification of the relevant customary laws and traditions of the relevant people in relation to particular chieftaincies otherwise known as Chieftaincy Declarations*.
>
> Therefore, the purpose of registered *chieftaincy deciaration is to embody in a legally binding written statement of fact*, *the customary law of the relevant area in which the method regulating the nomination and selection of a candidate to fill a vacancy is clearly stated so as to avoid uncertainty*. *From the decided cases*, *the function of making chieftaincy declarations lies with the executive arm of the state government concerned and is usually*

exercised by a chieftaincy committee on behalf of that government.

It is now settled law that where a declaration in respect of a recognized chieftaincy is aalidly made and registered, the matter 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. The registered declaration is therefore a deciaration of the tradition, customary law and usages pertaining to the selection and appointment to a particular chieftaincy stool which necessarily dispenses with the need of proof by oral evidence of such tradition, custom and usages each time the need arises to determine the matter. See Oladele v. Aromolaran I1 (1996) 6 NWLR (Pt. 453) 180."

There is no evidence before this Court to establish the registration of Exhibit A. In the light of the Appellants' concession, I find no reason to

disturb the finding of the court below that the 1960 Olukakurno of Ikakumo Chieftaincy Declaration (Exhibit A) failed to comply with the requirements of Section 24(2)(a) of the Chiefs Law, having not been submitted to the Commissioner for approval. Consequently, Exhibit A is devoid of legal effect and shall remain ineffective unless and until it is duly registered in accordance with the provisions of Part I of the Edict. It is only a chieftaincy declaration that has been validly made in respect of a recognized chieftaincy and properly registered that can be regarded as embodying the customary law governing the selection and appointment of a candidate to a vacant stool. Such a declaration remains valid and bindIng unti it is lawfully amended and the amendment duly registered. See generally, the cases of **FAdADE & ORS VS**. **BABALOLA & ANOR (2003) LPELR – 1243 (SC); MAFIMISEBI & ANOR VS**. **EHUWA & ORS (2007) LPELR – 1812 (SC); OLANREWAJU vs**. **OYES6MI & ORS (20r4) LPELR – 22695 (SC)** and **OLADELE & ORS VS**. **OBA AROMOLARAN II & ORS (1996) LPELR – 2546 (SC)**.

The issue of which party has the responsibility to register the said Declaration, as argued by the parties, was neither raised nor determined by the court below, thereby rendering it a new issue before this Court. It is wbtt established law that an Appellant

cannot raise a fresh issue on appeal that was not considered by the trial court without first obtaining the leave of either the trial court or this Court. Such leavd must be sought and granted prior to the introduction of the new issue on appeal. Ordinarily, an appeal is confined to the grounds of appeal as set out in the notice of appeal, which must arise from a complaint against the judgment under review. Consequently, this point is therefore discountenanced. See **OWIE VS**. **IGHIWI (2005) LPELR** – **2846 (SC); JIBRIN VS**. **FRN (2018) LPELR** – **43844 (SC)** and **BPE & ANOR VS**. **MESSRS**. **U**. **MADUKA ENTERPRISES (NIG**.**) LTD & ANOR (2021) LPELR** – **80698 (SC)**.

In the circumgtances, I find no compelling reason -to depart from the decision of the Court of Appeal which is firmly grounded in established legal principles. This issue is thus resolved in favour of the Respondents and against the Appellants.

ISSUE FOUR

Whether considering the evidence adduced by the Appellants before the trial court and a proper evaluation of same, ***the decision of the lower court***

that the Appellants failed to prove that there are four ruling houses with regard to the Olukakumo of Ikakumo chieftaincy stool is sustainable.

I have already affirmed the findings of the court below that Exhibit A lacks the force of laW, having not been re-registered in accordance with the provisionp of the 1984 Chiefs Edict (Law) of Ondo State, and therefore cannot serve as admissible and conclusive evidence of the customary law applicable to the

Olukakumo of Ikakumo chieftaincy stool. I have also upheld the finding of the court below thaI the registration of Exhibit D was proper and valid, being registered in accordance with the relevant provisions of the Chiefs Law. Furthermore, I have held that the amendment of the Appellants' Statement of Claim to include Exhibit D was rightly allowed by the trial court, thereby setting aside the contrary decision of the court below on this issue. The issue before this Court now is: whether, based on the evidence presented at trial, the Appellants failed to prove the existence of four ruling houbes entitled to the Olukakumo of Ikakumo chieftaincy stool?

It is settled law that a registered chieftaincy declaration is declaratory of the tradition, customary laws, and usages governing the selection and appointment to the particular chieftaincy stool. Such registrbtion dispenses with the necessity

to prove the said traditions or customs by oral evidence on every occasion the matter arises before the courts and thereby removes

any uncertainty as tot he applicable customary law. See **OYEFOLU & ORS VS**. **DUR&SINMI (2001) LPELR – 2869 (SC); OLADELE & ORS VS**.**OBA AROMOLARAN II & ORS (1996) LPELR – 2546 (SC)** and **OLANREWAJU VS**. **OYESOMI & ORS (2014) LPELR – 22695 (SC)**.

In the instant case, since Exhibit A was unregistered and therefore cannot be relied upon as conclusive proof of the customary law in dispute, the burden rests on the Appellants to prove, by credible evidence whether oral or documentary, the customary law they allege. There is no evidence before this Court *of* any other declaration duly registered under the 1984 Chiefs Law, thus Exhibit D remain the only registered declaration.

However, the Appellants has contended that Exhibit D does not represent the true customary law of Ikakumo.

Consequently, the Appellants has the burden of proving, on a balance of probabilities and by credible evidence, that the customary law of Ikakumo reqognizes four ruling houses entitled to the Olukakumo stool. it is trite that he who asserts the existence of certain facts must prove them on the preponderance of evidence. See Sections 132 and 133(1) of the Evidence Act 2011 (as amended). See also the cases of **DASUKI VS**. **FRN & ORS (2018) LPELR – 43897**

(SC); **ANIBABA VS**. **DANA AIRLINES LTD & ANOR (2025) LPELR** – **80647 (SC)** and **NNEJI & ANOR VS**. **INEC & ORS (2024) LPELR** – **63033** (SC).

It is therefore necessary to examine the record to determine whether the trial court, as held by the court below and argued by the Respondents, relied solely on Exhibit A in reaching its conclusion that the Appellant proved the existence of four ruling houses, or, as argued by the jearned counsel for the Appellants, whether the trial court's decision was based on unchallenged oral and documentary evidence establishing the existence of four ruling houses entitled to the Olukakumo stool, and whether the Court of Appeal erred in overturning such findings which were grounded on credible and corrpborated evidence.

The Respondents and the court below contended that the trial court relied on ineffective and unregistered declarations in favour of the Appellants. The court below held at pages 843 – 845 of the Record of Appeal that:

> '*The picture in this appeal*, *more especially as it concerned Issue No*. *5 is thus this:*

(i) *in my treatment of issue No.2, i had earlier ruled that Exhibit ''D" did not create a cause of action in the suit filed by the 1'st - 3rd Respondents*

ii) There was a Chieftaincy declaration by the Isowopo Local Council in 1956/1957 which governed the Chieftaincy title of the Olukakumo of Ikakumo.

(iii) The 1956/1957 declaration became repealed when the 1960 Declaration came into existence.

(iv) The 1960 declaration - Exhibit 'A' was not re-registered in accordance with the provision of Section 24(2)(a) of the Chiefs Edict (Law) of Ondo State 1984.

(v) At the time this suit was instituted the native law and custom that governs The Olukakumo Chieftaincy could not be derived from the 1960 Declaration.

The pertinent question in this portion of the appeal is whether the Respondents established that there are four ruling Houses in Ikakumo under native law and custom outside of the 1957 and 1960 Declarations. The answer to this question is in the negative.

Indeed, from the totality of the pronouncements of the learned trial judge in this case, there was no pretence that he relied

solely on those ineffective Declarations to find in favour of the 1st to 3rd Respondents that the native law and custom of Ikakumo recognized four Ruling Houses. This is wrong.

I have perused the decision of the trial court contained at pages 401 to 425 of the Recoqd of Appeal in order to determine whether, as contended, the trial court relied solely on the ineffective and unregistered chieftaincy declarations in reaching its decision .

A review of the said judgment reveals otherwise. While evaluating the evidence adduced by the parties, the trial court, at page 421 of the Record, specifically held that Exhibit B was admitted without objection. THe said exhibit chronicled events that occurred in Ikakumo from as far back as 1860, including the names of various individuals who occupied the stool of the Olukakumo, their dates of ingtallation, and dates of demise among other relevant details.

The trial court found that the traditional rulers referenced in Exhibit B included :

I. Oba–Obaro, who died in 1867;
II. Oba Olujiyan-Ape, installed in 1867;
III. Oba Olugba, installed in 1889;
IV. Oba Ireji, installed in 1902;
V. Oba Oludofin, installed in 1920; and

VI. Oba Obayori, installed in 1935.

The court, relying on the uncontroverted evidence of the plaintiffs, found that Oba Ireji and Oba Obaro were from the Ayindu ruling house; Oba Oltjjiyan-Ape, Oba Olugba, and Oba Obayori were from the Arenpen ruling house; and Oba Oludofin hailed from the Ayanwa ruling house.

The above findings, in tha view of the trial court, established that the individuals who hid historically ascended to the Olukakumo stool did not emanate from a single ruling house but rather from three distinct ruling houses namely: Ayindu, Arenpen, and Ayanwa. This fbctual conclusion, as drawn from the oral and documentary evidence, particularly Exhibit B, supported the plaintiffs' claim and materially undermined the position of the defendants that only one ruling house existed.

The trial court accordindly held that the evidence before it, including Exhibits B, K and L, coupled with the credible and unchallenged testimonies of the plaintiffs, corroborated the existence of multiple ruling houses, in contrast, the defendants failed to produce any credible or corroborative evidence in support of the existence of a sole ruling house. The trial court held:

> '*Exhibit B as said earlier was admitted in evidence without objection from the defendants*.
>
> *The defendants did not in anyway*, *challenge the*

contents of the exhibit with regard to the events stated about Ikakumo history. It is my humble view that the defendants accdpted the events as stated in connection Ikakumo history. The events stated in exhibit b about Ikakumo as stated above constitutes a confirming or corroborative evidence to support the evidence of the plaintiffs that there is not only one ruling house in Ikakumo in respect of Olukakumo of Ikakumo chieftaincy. It must be noted that the only document tendered by the defendants to show the past Obas of Ikakumo is exhibit I. As said earlier in this judgment, exhibit I was admitted to show that obas Obaude was an Olukakumo of Ikakumo. Exhibit I only showed the names of two obas of Ikakumo; oba Obaude and Oba Ajige who the 1st and 2nd defendants claimed to have come from Ayindu ruling house. Exhibit I has no probative value that will help the case of the defendants who claimed that all past obas except Obayori and Obanobi from inception of Ikakumo were from Ayindu ruling house. "

In further evaluating the evidence before it, the trial court placed particular reliance on Exhibit K (a document relating to the Olukakumo Chieftaincy transimitted from the Ministry of Justice and Local Government of the then Western Region, Ibadan, and subsequently passed to Ondo State upon its creation, wherein the 1956 Chieftaincy Declaration on the Olukakumo stool was acknowledged.) The court also considered Exhibit L (which is the report of a referendum conducted in 1956 by the Western Region Government, Ibadan, in respect of the Olukakumo chieftaincy disputes). The trial court found both Exhibits K and L to be corroborative of the claim of the plaintiffs. Conversely, the defendants failed to adduce any credible or corroborative evidence in support of their assertions.

Consequently, in its judgmeht at page 423 of the Record of Appeal, the trial court held asfollows :

> '*from the evidence before the court and the findings of the court in this judgment, I hold that the case of the plaintiffs is more consistent with the, truth, more probable and more reliable. I therefore hold that the native law and custom regulating the appointment to the throne of*

Olukakumo of Ikakumo chieftaincy: is that there are four ruling houses viz: :Arenpen ruling house, Ayindu Ruling house, Aparisu Ruling House and Ayanwa ruling house as stated in exhibit A i.e. the 1960 Chieftaincy Declaration of Olukakumo Chieftaincy. "

From the foregoing, the question arises whether the trial court relied solely on the unregistered declaration (Exhibit A) in reaching its decision. I answer this in the negative.

A careful perusal of the record of appeal and the excerpts *of* the judgment of the trial cburt reveals that the learned trial judge evaluated the totality of the evidence adduced by the parties, ascribed probative value thereto, and reached findings based on the weight of such evidence. In doing so, the trial court found the case of the Appellants to be more credible, consistent and probable. The finding thai there are four ruling houses as stated in Exhibit A, was not based on a wholesale or exclusive reliance on Exhibit A, but rather upon a combined assessment of both the oral and documentary evidence presented during the trial.

It is trite that the evaluation of evidence and the ascription of probative value thereto are the exclusive preserve of the trial court, which had the unique advantage of seeing, hearing and assessing the witnesses. See **4DUKWE vs**. **LPDC & ANOR (2007) LPELR** – **1978 (sc)** and **OMOREGBE vs**. **EDO (1971) LPELR** – **2656 (sc)**. An appellate court is generally not permitted to substitute its own view of the facts for that of the trial court unless it is demonstrated that the trial judge failed to properly make use of the opportunity of seeing and hearing the witnesses, or where the interferences drawn from proven or undisputed facts are manifestly erroneous or unsupported by the evidence. It is evident in the instant case, therefore, that the decision of the trial court was not predicated solely on Exhibit A but on a holistic evaluation of the oral testimonies and documentary exhibits before it and the court below failed to appreciate the diligence and industry of the trial court in this regard.

From the totality of the evidence, I affirm the findings of the trial court that the Appellants successfully proved the existence of four ruling houses in the Ikakurno community. The Ikakumo community, having been in existence for over four centuries, cannot reasonably be said to have been governed by a singular

ruling house based solely on a limited 53-year timeframe (1901– 1954), as asserted by the Respondents. The oral testimonies of DVVI and DW2, which were uncorroborated by credible documentary evidence and stood alone, were manifestly inadequate to establish the existence of a sole ruling house, particularly when weighed against Exhibits B, K and L. These exhibits, being documentary in nature and contemporaneous with historical development, provide stronger probative value and effectively undermine the Respondents' claim.

On the issue of the roles of Dawodus and Shabas, the evidence of PW2 and DW1 corroborated each other and convincingly established that such roles were administrative innovations introduced through the White Paper and are not part of Ikakumo's native law and custom. I accept this evidence as credible and consistent with tradition. Thus, while Exhibit D was registered pursuant to the Chiefs Law, the Appellants have demonstrated that it does not reflect the true customary practices governing the selection of the Olukakumo. The traditional evidence, particularlV Exhibits B, K and L, and the unchallenged oral testimonies, established that multiple ruling houses have historically produced Olukakumos.

In the light of the foregoing, I therefore resolve issue four in favour of the Appellants and against the Respondents.

Having resolved issues 1 and 3 in favour of the Respondents and issues 2 and 4 in favour of the Appellants, the appeal therefore succeeds in part.

I have found that while Exhibit D was validly registered under the Chiefs Law, Cap. 21, Laws of Ondo State 1984, the evidence before the trial court clearly established that it does not reflect the customary law and tradition of the chieftaincy of Olukakumo of Ikakumo. It also introduced elements alien to the traditional method of selection. Consequently, Exhibit D is therefore declared null and void and of no effect to the extent that it purports to alter or misrepresent the customary law of Ikakumo .

As regards Exhibit A, it remains unregistered in accordance with the applicable legal requirements and thus cannot be recognized as an operative declaration governing the Otukakurno of Ikakumo until the proper legal steps are taken.

Furthermore, I affirm the finding of the trial court that the Appellants proved the existence of four ruling houses within the Ikakumo chieftaincy institution. Consequently, the decision of the

Court of Appeal is hereby set aside and the decision of the trial court is affirmed with modifications as already explained in this judgment.

For the avoidance of any doubt, the reliefs granted by the trial court and now affirmed by this Court are as follows:

(i) It is declared that according to the Customary Law dealing with the Olukakumo of Ikakumo Chieftaincy in the Akoko North East Focal Government, Ondo State the following four ruling bouses have the right to provide candidates in relation for the Olukakumo of Ikakumo Chieftaincy, namely (1) Ayanwa Ruling House (2) Aparisu Ruling House (3) Arepin Ruling House and (4) Ayindu Ruling Housp respectively.

(ii) It is declared that the recommendation of the Ondo State Chieftaincy review commission otherwise called the "Morgan Chieftaincy Review Commission on the Chieftaincy declaration of Olukakumo of Ikakumo" contained in the Comn]ission's report to the effect that there is only one ruling house i.e. the Ayindu Ruling House for the Olukakumo chieftaincy is null and void, the said recommendation being contrary to customary law regulating the selection of a candidate for the Chieftaincy.

(iii) It is declared that the decision of the Ondo State Government contained in the white paper issued on the Olukakumo of Ikakumo Chieftaincy i.e. Exhibit C in this

case to the effect that only the Ayindu Ruling House that has the right to produce candidates for the Olukakumo of Ikakumo Chieftaincy are null and void, the decision being contrary to the customary law regulating the appointment to thel said Chieftaincy.

(iV) It is declared that the Registered Declaration of the Olukakumo of Ikakumo Chieftaincy of 1988 (Exhibit D) iS null and void in that it was made contrary to the native law and custom of Ikakumo

(v) A declaration that until a valid and duly registered chieftaincy declaration consistent with the customs of Ikakumo is enacted, the selection of an Olukakumo must follow the established customary rotational system among the four ruling houses.

(Vi) The Respondents in this base, their servants and/or the Agents are hereby restrajned from acting on, executing and/or giving effects to the Chieftaincy Declaration for the Olukakurno Chieftaincy registered sometimes in 1988 by the third Respondent and the Ondo State Government and based upon the report of the Chieftaincy review commission and the Ondo State Government white paper

published on the basis of the said report on the appointment and approval of candidate to fill the said vacant stool.

JAMILU, JSC:I had the advantage of reading before now, the lead judgment just delivered by my learned brother **MOHAMMED BABA IDRIS JSC** and I agree with the reasoning and the conclusion arrived at in the judgment.

I adopt the judgment as mine with nothing further **to** add.

JONAH, JSC: I have had the privileged of reading in draft, the judgment jus1 delivered by my learned brother, **Mohammed Baba Idris**, **JSC** .

I fully concur with the reasoning and the conclusion that the appeal be allowed in part.

In our country, Nigeria, the place of custom in Chieftaincy Laws is fundamental and central. Customary Law forms the bedrock of every Chieftaincy Law as is reflected in the record *of* this appeal. The Chieftaincy Title of Olukakumo of lkakumo, is governed by the customs

and traditions of the people and any review designed by the Ondo State Government must take into account the customs and the age long tradition of the people. The invention of Exhibit C to the effect that it is only Ayindu Ruling House that had the right to produce

candidates *for* the Olukakumo of lkakurno Chieftaincy is an aberration and a complete departure from the custom of the people. The credible evidence which was accepted by the trial court is that the Olukakumo, is a rotation based kingship and that it rotates among four houses, namely :

1. **Anyabwa Ruling House**
2. **Aparisu Ruling House**
3. **Arepin Ruling House; and**
4. **Ayindu Ruling House**.

Since the custom and tradition of lkakumo had been credibly found/established by the trial court, the declaration of the trial court concerning the four ruling Houses remains intact.

From the foregoing therefore, and the fuller details and reasons advanced in the lead judgment of my learned brother, I also allow this appeal in part. I abide by the consequential orders as made in the lead judgment.

ASEIMO, JSC: I had a preview of the lead judgment just delivered by my learned brother, **Mohammed Baba Idris**, **JSC**.

My learned brother has advanced articulate and robust reasons for allowing this appeal. I agree with the reasoning and conclusions of my learned brother. I also allow the appeal and abide by the consequential orders made in the lead judgment.

GARBA, JSC: After reading the draft of the Lead Judgment written by my Learned Brother, Mohammed Baba Idris, JSC in this appeal, I ain in total agreement with the views expressed on and conclusions reached on the Appellants' modified issues.

For emphasis, I wish to state that even though the 1988 Chieftaincy Declaration (Exhibit 'D') was found to have been validly registered during the pendency of the Appellants' case at the trial High Court, the Appellants successfully proved and satisfactorily demonstrated, through Exhibits 'B', 'K' and 'L' as well as the credible and unchallenged evidence of witnesses that exhibit 'D' does not reflect, represent or bear the correct and true traditional and customary practices of the

Ikakumo Chieftaincy recognized, accepted and adopted by the people over the years, priof ta the declaration. In other words, the Appellants' evidence before the trial court had successfully challenged the validity of Exhibit 'D' as the accepted and recognized custom and tradition of the people of Ikakumo on the number of the Ruling Houses that are entitled to participate in the nomination and selection of candidates for appointment to the Chieftaincy Stool of Olukakumo of Ikakumo. The Appellants have the right to challenge the validity of Exhibit 'D' and the courts have the requisite jurisdiction to make pronouncements on the validity of such registered Chieftaincy declarations, even though the courts cannot make a declaration as to custornary law and tradition on Chieftaincy.

This position of the law was stated in the Lead Judgment by Onnoghen, JSC (later CJN) in Esuwoye v. Bosere (2017) 1 NWLR (pt. 1546) 256 at 321, speaking about whether there was only one Ruling House or two for the stool of Olofa of Ofa, in Kwara State, when he said:-

> "*It is settled law that customary law is unwritten and is a question offact to be proved by evidence except it is of such notoriety and has been regularly followed by the courts that judicial notice would be taken of it without evidence required in proof thereof See Giwa v. Erinrvatokbm (1961) 1 SCNL 377. However, where the customary law and tradition of the relevant people is reduced into writing, it is*

known as chieftaincy declaration and it regulates the nomination and selection of a candidate to fIll a vacancy to avoid uncertainty - See Olowu v. Otown (1985) 3 NWLR (pt. 13) 372; Agbai v. Okobgue (1991) 7 NWLR (pt. 204) 391 .

It is also settled law that the courts cannot Dromujgate a ***chieftaincy declaration or declaration of custowtarv law, but*** *have the cowIDetence to see whether a chieftaincy declaration,* ***such as exhibit*** *'J'* ***in this case. is in conformity with prevailing customary law. and where it is not; declare it invalid. The courts, therefore, have Power to setaside a registered*** *declaration that does not correctly declare the chieftaincy custom and tradition of the area concerned. see Fasade v. Babalola (2003) 11 NWLR (Dt. 830) 26; Adigun v. A.G., Oyo State (1987) 1 NWLR (Pt. 53) 678; Ajakaiye v. Idehai (1994) 8 NWLR (pt. 364) 504: Mafimisebi v. Ehuwa (2007) 2 NWLR (pt. 1018) 385 at 412.*

From the evidence on record, particularlv exhibit DFC2 ***supra, it is without doubt that exhibit " J", the chieftaincy*** *declaration. does not truly represent the customary law it professes to restate particularly in relation to the number of* ***ruling houses for the Olofa of Offa stool/throne, and*** *is* ***consequently liable to be so declared and set aside."***

Re-stating the law in the later case ofManomi v. Dakat (2022) 13 NWLR

(1853) 23 1 at 265, Nweze, JSC speaking for this court, tersely said that:-

" *Above all, it is not the business of the courts to make declarations of customary law relating to the selection and appointment of chiefs. However, it is the business of the courts to make a fInding of what the customary law is and apply the law for declaration, Lipede v. Sonekan (1995) 1 NWLR (pt. 374) 668.*"

See in addition, Kabi li v. Yilbuk (2015) 7 NWLR (pt. 1457) 26, Husseini

-v. Mohammed (2015) 3 NWL11 (pt. 144-5-) 1 00 at 132.

Another crucial question in the appeal is whether the amendment of the original Writ of Summons and Statement of Claim to incorporate Exhibit D and reliefs (v) and (viii) into the suit amounted to an introduction/creation of a new cause of action. To provide an answer,

there is the need to examine the claims of the Appellants in the initial Writ

of Summons/ Statement of Claim and the subsequent amendment on 24th June, 1988, pursuant to the registration of the Chieftaincy Declaration on 7th March, 1988. The Appellants ' claims in the original Writ of Summons/ Statement of Claim filed on 16th February 1988 are as follows:

(1) A DECLARATION that according to the Customary Law dealing with the OLUKAKUMO OF KAKUMO CHIEFTAINCY in the Akoko North Local Government. Ondo State, the following Four Ruling Houses have the right to provide candidates in rotation for the OLUKAKUMO OF KAKUMO CHIEFTAINCY, namely (1)AYANWA RULING HOUSE (2) AREPIN RULING HOUSE, (3) PARISU RULING HOUSE and (4) AYINDU RULING HOUSE respectively .

(ii) A DECLARATION that the Recommendation of the Ondo State Chieftaincy Review Commission otherwise called the "Morgan Chiehaincy Review Commission"(set up by the Ondo State Government) on the ChieRaincy Declaration of the Olukakumo ofKakumo chiefiaincy in the Akoko North Local Government of Ondo State contained in the Report of the Commission to the effect that only the AYINDU RULING HOUSE has the right to provide candidates for the OLUKAKUMO OF KAKUMO CHIEFTATNCY is null and void, contrary to natural justice, oppressive, unjust, illegal and of no effect whatsoever in that the said Recommendation is contrary to the Customary Law regulating the selection and/or appointment of a candidate for that chieftaincy.

(iiI) A DECLARATION that the decisions of the Ondo State Government contained in a White Paper issued by the Ondo State Government on the Olukakumo of Kakumo chieftaincy in the Akoko North Local

Government sometimes in 1987 to the effect that only the AYINDU RULING HOUSE has the right to provide candidates for the Olukakurno of Kakurno chieftaincy are null and void and of no effect whatsoever as they are based on the recommendation of the Chieftaincy Review Comrnission (i.e the Morgan Chieftaincy Review Commission) and contrary to the customary law regulating appointment to the said chieftaincy.

(iv) A DECLARATION that the procedure adopted by the Military Governor and the Government of Ondo State in approving a new Chieftaincy Declaration for the Olukakumo of Kakumo chieftaincy is illegal, null and void and of no effect whatsoever in that it is contrary to the provisions of the Chiefs Law of Ondo State

(V) AN INJUNCTION restraining all the Defendants, their servants and/or Agents from acting on, executing or giving effect to the Government White Paper on the Report and/or amending or re-registering a new Chieftaincy Declaration for the Olukakumo ofKakumo chieftaincy based on the Report of the Chieftaincy Review Commission and the Ondo State Government White Paper approved and published on the basis of the said Report.

Pursuant to the registration of the Chieftaincy Declaration on 7th March, 1988, the Appellants sought the leave of the trial court to arnend the Writ of Summons and Statement of Claim. The initial Reliefs (iv) and (v) were amended and new reliefs (vi) and (vii) were included. They read as

follows

(iv) A DECLARATION that the procedure adopted by the Military Governor and the Government of On(io State in approving and/or registering a new Chieftaincy Declaration for the Olukakumo of

Kakumo chieftaincy is illegal, null and void - and of no effect whatsoever in that it is contrary to the provisions of the Chiefs Edict 1987 ofOndo State and that the said Registered Chieftaincy Declaration is null and void.

(V) A DECLARATION that the 1960 Registered Declaration in respect of the Olukakumo of Kakumo chieftaincy still subsists being the only Customary Law governing the appointment of a candidate to fill any vacancy in the Olukakumo of Kakumo chieftaincy .

(vii) A DECLARATION that the PARISU RULING HOUSE is the next Ruling House to provide a candidate/candidates for the new vacant stool of Olukakumo of Kakumo chieftaincy in accordance with the provisions of the 1960 Registered Declaration of Olukakumo ofKakumo chieftaincy.

(viii) AN INJUNCTION restraining all the Defendants, their servants and/or the Agents from acting on, excluding and/or giving effect to the Chieftaincy Declaration for the Olakakumo Chieftaincy registered sometime in 1988 by the Third Defendant and the Ondo State Government and based upon the report of the Chieftaincy Review Commission and the Ondo State Government White Paper published on the basis ofthe said report on the appointment and approval of candidate to fill the said vacant stool.

It is important to state that there were subsequent amendments to the Writ of Summons and the Statement of Claim, however, the above constitutes the first amendment done pursuant to the registration of the Chieftaincy declaration, after the initial Writ of Summons and the Statement of Claim were filed.

The basic principle governing the grant of leave to amend a writ of summons or pleadings is that such amendment is/must be made for the purpose enabling the

court to determine the real issue(s) in controversy between the parties. Alsothom S.A Saraki (2000) 14NWLR (Pt. 687) 415 . Amadi v. Thomas Applin & Co. Ltd (1972) 1 All NLlt 409, Eta v. Dazie (2013) 9 NWLR (Pt. 1359) 248, MAMMAN v. SALAUDEEN (2005) 18 NWLR (PT. 958) 478. However, ,the power of the court to grant leave to amend, is discretionary, and must be exercised judicially and judiciously having regard to all the circumstances of the case.

In the cases of Okolo v U.B.N Ltd (1999) 10 NWLR (Pt. 628) 429 and Jessica Trading Co. Ltd. v. Bendel Insurance Co. Ltd.) (1993) 1 NWLR (Pt.271) 538, the principles guiding the amendment of pleadings were stated:

(a) the court must consider the materiality of the amendment sought and will not allow an inconsistent or useless amendment;
(b) where the amendment would enable the court to decide the real matter in controversy and without injustice, it would be allowed;
(c) where the amendment relates to a mere misnonicr, it will be granted almost as a matter of course;
(d) the court will not grant an amendment to change the nature of the claims before the court;
(e) the court will not grant an amendment where it will create a suit where none existed;
(f) leave to amend will not be granted if the amendrnent would not cure the defect in the proceedings;
(g) an amendment would be allowed if it will prevent injustice. Any amendment which will result in injustice to the other party or which will violate the rule of audi *alter am paterm* will not be allowed. The rule will be infringed if an amendment is introduced at such a stage that the other

side no longer has the opportunity of adducing its own answer to the point which the amendment has enabled the applicant to introduce; and

(h) an amendment will not be granted on appeal where it would be inconsistent with the testimonies of witnesses on which both parties fought the case at the trial.

In CCG (Nig.) Ltd v. Idorenyin (2015) 13 NWLR (Pt. 1475) 149, amendment will be refused where, if allowed:-

(a) it will entail injustice; or

(b) surprise or cause embarrassment to the other party; or

(c) where the applicant is acting *mala pde*\ or

(d) where the respondent cannot be compensated with costs

or otherwise.

Applying the above principles to the facts of the instant case, all the reliefs sought by the Appellants in the original Writ of Summons and Statement of Claim were predicated on the Olukakumo of Ikakumo Chieftaincy stool vis-a vis: the appropriate Ruling House to provide candidates for appointment to the stool; the setting up of the Commission to investigate the customary law pertaining to the appointment all chieftaincies; the seeking of an injunction to restrain the Respondents from giving effect to the Government White Paper and amending or re-registering a new Chieftaincy Declaration. Whilst the suit was pending, the 3'd Respondent proceeded to register the 1988 Chieftaincy Declaration, thus necessitating the application for leave to amend. The nature of the amendments sought by the Appellants were also predicated on the Olukakumo of lkakumo Chieftaincy stool and the Chieftaincy declaration

which was subsequently approved and registered in collision/contravention of the injunction sought to restrain same.

As contended by the Respondents, it is correct that Exhibit D was not in existence at the time the original statement of claim was filed, however, Exhibit C which was the basis of Exhibit D, was in existence and was made the subject matter of the suit at the trial court. Upon the 3rd Respondent's registration of the Chieftaincy Declaration after the suit was filed/while the suit was pending, the Appellants applied for leave to amend their Writ of Summons and Statement of Claim.

The trial court in its finding on whether Exhibit D was made an issue when the suit was originally filed rightly stated and found that:-

> "... By asking for an injunction to restrain the Defendants from making a new Chieftaincy Declaration, the promulgation or registering of such new Chieftaincy Declaration has been made an issue...Exhibit D or the 1988 Declaration is what is sought to be restrained in the original suit... I hold that the 1988 Declaration was made an issue in the original claims. . . The 1988 Declaration itself constitutes a cause of action in the original claim."

The purport of the amendment sought was to bring in the new fact (the approval and registration of the Chieftaincy Declaration, which was sought to be restrained by the initial suit), in line with the existing pleadings before the court. The reliefs sought in the original and

amended processes are interrelated and can be conveniently tried together to determine the real controversy between the parties. It is not correct that the amendment of the original Writ of Summons and Statement of Claim to incorporate Exhibit D and reliefs (v) and (viii) into the suit created a new cause of action/suit. No injustice was occasioned to the Respondents. The Respondents were not overreached by the amendrnents since they had the opportunity to and in fact, responded to the amendments. This issue is resolved in favour of the Appellants and against the Respondents.

In the above premises, I also allow the appeal in terms of the Lead Judgment.