IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF NNEWI JUDICIAL DIVISION
HOLDEN AT NNEWI
BEFORE HIS LORDSHIP HON. JUSTICE DENNIS C. MADUECHESI
ON TUESDAY, THE 18TH DAY OF APRIL, 2023.
SUIT NO: HN/216/2006

BETWEEN:

1. CHIEF OBIORA OBAA
2. CHIEF CHRISTOPHER OBI
3. CHIEF SUNDAY IBEZIM
4. CHIEF CHARLES UNAIGWE
5. ICHIE GEORGE CHUKWUJEKWU
6. EMENIKE OSAKWE
7. ALBERT AFOR
8. LEVI OKEKE
9. JONATHAN MADUSOLUMUO
10. GREGORY NWORAH
11. BERNARD EJINKONYE
12. CHARLES AMANCHUKWU
13. EDWIN MUONEKE
14. CHIEF (ICHIE) CHUKS MUOMA, SAN Igwe-Elect of Oraifite under the Oraifite Chieftaincy constitution.
(For themselves and as representing members of Ezumeri quarter/community of Oraifite, Ekwusigo Local Government Area)

==== PLAINTIFFS

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AND

1. DR. DANIEL UDOJI
2. THE GOVERNMENT OF ANAMBRA STATE
3. THE ATTORNEY –GENERAL AND COMMISIONER FOR JUSTICE ANAMBRA STATE

=== DEFENDANTS

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JUDGMENT

The plaintiffs originally instituted this suit in a representative capacity against the 1st defendant by a writ of summons dated 24/11/2006 but was filed on the 1/12/2006. At paragraph 32 of the statement of claim which was filed alongside the writ of summons, the plaintiffs claimed as follows:

a. A declaration that the purported recognition of the Defendant as the traditional ruler of Oraifite by the Government of Anambra State of

Nigeria was null, void and inoperative on the ground that the said recognition was obtained or procured by the Defendant fraudulently without due process of law, particularly, the Constitution of Oraifite and method for the selection of her Igwe and other Chiefs, otherwise known as the chieftaincy constitution of Oraifite which was made and adopted in 1977.

b. An Order for the delivery up, by the Defendant to the Government of Anambra State or the Registrar of this Honourable Court, of the certificate and other instruments of the purported recognition aforesaid as the traditional ruler of Oraifite granted by the Government of Anambra State to the Defendant, for cancellation.

c. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendant, his agents and privies from parading himself as Igwe of Oraifite/Obi of Oraifite, or by any other name/title whatsoever, the paramount traditional ruler of Oraifite in Ekwusigo Local Government Area of Anambra State aforesaid.

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Upon being served, the 1st defendant reacted to the suit by filing his statement of defence. The plaintiffs filed a Reply to the 1st defendant's statement of defence.

The plaintiffs applied and joined the 2nd and 3rd defendants after serving them pre-action notice. Sequel to the joinder of the 2nd and 3rd defendants, the plaintiff caused another writ of summons dated and filed on the 20/11/2007 ,to be served on the defendants. The 2nd - 3rd defendants responded to the suit by filing their statement of defence on the 19/10/2009.

In their statement of defence, the 2nd and 3rd defendants raised an objection challenging the jurisdiction of the court on the grounds that the suit was not initiated by due process of law, plaintiffs' lack of locus standi and that the suit was statute barred.

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In course of the proceedings, the plaintiffs amended their pleadings twice. The extant pleadings of the plaintiffs is the Further Amended Statement of Claim filed on the 27/7/2012. The plaintiffs maintained their reliefs in their Further Statement of Claim. The defendants did not make consequential amendment to their pleadings.

Hearing commenced on the 21/10/2020. The plaintiffs called the following witnesses:

PW1

He gave his name as Chief Chuks Momah. He is the 14th plaintiff on record. He made four statements on Oath to with 5/3/2007, 14/4/2008, 27/7/2012 and 16/10/2009 in this case. He adopted all the statement on Oath as his evidence in Chief in this suit.

A total of eighteen (18) documents were tendered through PW1. They were admitted in evidence and marked as exhibit P1 to P18 without objection. The PW1 was thoroughly cross examined by the learned counsel to the defendants respectively.

PW2

He gave his name as Ichie Charles Udeh. He was subpoenaed to testify and identify some documents tendered through PW1. The subpoena was tendered and admitted in evidence and marked as exhibit P19 without objection. PW2 identified exhibit P1 at page 7 and exhibit P3 (a) at page 16. He admitted writing his name and signing his signature on the exhibits. In exhibit P3 page 16, he stated that he is the person that was performing the "Itu nzu" ceremony.

In summary, the evidence adduced by the PW1 and PW2 include: that the plaintiffs are the representatives of Ezumeri Quarters or Community of Oraifite. That Oraifite town is made up of four (4) Quarters namely: Unodu, Ezumeri, Irefi and Ifite. That under the 1977 Chieftaincy

Constitution (exhibit "P1") the stool of Igwe of Oraifite will rotate from one quarter to the other in order of seniority starting from Unodu, Ezumeri, Irefi and Ifite. That it is the turn of Ezumeri quarters to produce the next Igwe after the demise of Igwe Gregory Udeh-Ubaka in 1985 in accordance with the said 1977 Chieftaincy constitution.

That members of Ezumeri Quarters elected the 14th plaintiff as the Igwe elect to succeed late Igwe Gregory Udeh-Ubaka. That from 1985 when Igwe Gregory Udeh-Ubaka died till 26/5/2003, the 14th plaintiff has not been allowed to succeed Igwe Gregory Ude-Ubaka. That the 1st defendant was not nominated, presented and accepted by the entire Oraifite Community. That the 1st defendant surreptiously and fraudulently assumed the Igweship of Oraifite. The 1st defendant was never selected or elected or installed by members of Oraifite town or Community as their traditional ruler. The 1st defendant is now parading himself as the traditional ruler of Oraifite town. That the selection or election of the traditional ruler of Oraifite town or community is governed by the constitution of Oraifite and method of the selection of Igwe and other chiefs (exhibit P1), was made and adopted by the community in 1977. That each quarter of the four quarters constituting Oraifite community has its own Obi who is the ruler of the quarter. That each quarter has several villages within it. The villages, in turn, has sub-Obi ruling it. That Obiship is a hereditary stool in Oraifite. That originally, the throne of Igweship/Obiship is alien to the tradition and custom of Oraifite. That upon the introduction of the stool of Igwe or Obi of the whole Oraifite, there was a rancorous and chaotic chieftaincy tussle by those interested. That the 1st defendant never contested the stool with other contestants because he was in the United State of America. That out of the contestants, Igwe Gregory Ude-Ubaka emerged victorious as the first Igwe of Oraifite and he was recognized by the then military Governor of Anambra State;

Colonel John Atom Kpera on the 30/11/77. As earlier stated, PW1 tendered exhibits P1 to P18 to support the above pieces of evidence.

On the part of the 1st defendant, he testified for himself as DW1 and he called one Ichie Kenneth Nnabuife Nduka to testify as DW2.

DW1

He gave his name as HRH (DR.) Daniel C. Udoji, the Obi (Viii) of Oraifite. He adopted his statement on Oath of 27/12/2007 as his evidence in chief. He is the 1st defendant on record. The summary of his evidence in chief includes that he was born to and heir to the stool of Obi of Oraifite on the principle of Obi stool is not rotatory (Obi a du mbugha) in accordance with the native law and custom, culture and tradition of Oraifite. That the 1977 Chieftaincy constitution relied upon by the plaintiffs recognized the aspect of Oraifite tradition and culture. That the Obi stool is Traditional Monarchical Primogeniture Hereditary Succession. That he is the 8th Obi Oraifite under the primogeniture succession of the traditional hereditary of Obi of Oraifite as recognized by the Custom, Culture and Tradition of Oraifite. That while practicing as a Medical Doctor, he went to the United State of America to pursue Post Graduate specialist Course. The plaintiffs, particularly the 14th plaintiff, in conjunction with others in Oraifite created a parallel chieftaincy institution called Igwe of Oraifite which does not affect the traditional Monarchical Primogeniture hereditary Obi stool of Oraifite. That the plaintiffs produced exhibit P1 and proceeded to install Igwe Gregory Ude Ubaka as the first Igwe of Oraifite. That the late Igwe Gregory Ude-Ubaka was the 1st defendant's uncle. That the 1977 Chieftaincy Constitution was not adopted, ratified and approved by Oraifite people in any General meeting of Oraifite Improvement Union. That exhibit P1 recognized the superior stool of Obi of Oriaifte to be the Traditional Monarchical Primogeniture Hereditary Obi stool. That the stool of Igwe of Oraifite throne is different from the stool of Obi, the paramount

traditional ruler of Oraifite occupied by him. That the plaintiffs never interfered with Obi stool traditional Governance of Oraifite until after 42 months on the 24/11/2006. That the Anambra State Government (2nd defendant) issued him certificate of recognition on the 26/5/2003. That the defunct Government of Eastern Region of Nigeria acting under Section 3 of recognition of Chief's Law No. 9, Laws of Eastern Nigeria 1960, recognized him as a second class Chief on the 1/9/63. That he never abdicated neither has he been dethroned by any government. That he practices his medicine in America and Nigeria. That since 1963 he has lived in Oraifite except between 1975 and 1978 that he went to pursue his post-graduate specialist course. That he maintains temporary residence in America but makes regular visits to Oraifite. That stool of Igweship is an aberration. That exhibit P1 was not produced by members of Oraifite town. That each quarter in Oraifite has an Obi. Obi of Unodu is always the primus inter pares and the traditional ruler of Oraifite. That from inception, Obi of Unodu had also been the Obi of Oraifite. That Igwe Ude Ubaka never claimed to be the Obi of Oraifite nor claimed possession of the Ofo Oraifite throughout his lifetime. That all the documents used in the coronation of Igwe Ude-Ubaka are not binding on him. That he occupies the Obi Oraifite stool as the Paramount and Traditional Ruler of Oraifite since 1963. That he does know the 14th plaintiff as the Legal adviser of Oraifite Improvement Union. That the Union did not direct or request the 14th plaintiff to write any book neither did the Union accept such book. That he committed no fraud, suppression and concealments of facts to procure certificate of recognition from Anambra State Government. That he has completed his new palace and performed the cleansing (Ipocha) and dedication (Ido Obi Nso) of the palace square of the 14th century ancient kingdom of Oraifite Community. That Anumanu Ezeigbo was his great, great, grandfather and the progenitor of Oraifite Community. That the ceremony took place on the 25/8/2007 and was attended by members of all the four quarters of Oraifite including the plaintiffs' Ezumeri Quarter.

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That the plaintiffs have no locus and cause of action against him and the 2nd defendant cannot withdraw the certificate of recognition given to him in 2003. Three documents were tendered through DW1 and were admitted in evidence and marked as exhibits D1 to D3.

The DW1 was vigorously cross examined by the counsel to the 1st-13th plaintiffs and the 14th plaintiff himself.

DW2

He gave his name as Ichie Kenneth Nnabuife Nduka. He adopted his Statement on Oath of 26/3/2021 as his evidence in Chief. In brief, he stated that Oraifite people has a hereditary Chieftaincy stool governed by the principle of Obi stool cannot be rotated (Obi a du mbugha). That the 1st, defendant is the 8th Obi Oraifite having been recognized by the Eastern Nigeria Regional Government in 1963 and revalidated by the Government of Anambra State in 2003. That Oraifite Improvement Union is the political organ that governs Oraifite and it has never produced or presented any Chieftaincy Constitution or any method of selecting the Obi Oraifite. That stool of Obi Oraifite is a Monarchical hereditary one. That there is nothing called Igwe of Oraifite which is strange to the native law, custom and tradition of Oraifite.

Similarly, DW2 was vigorously cross examined by the counsel to the 1st - 13th plaintiffs and the 14th plaintiff who represents himself. The defendant closed his case after DW1's evidence. The 2nd and 3rd defendants opened their defence by calling

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DW3

He gave his name as Donatus Orjika. He is a civil servant. He knows One Mr. Raphael Okoli who had retired from service. He adopted his Statement on Oath of 29/3/2022 as his evidence in Chief. The substance of ~~his~~ evidence in chief includes: that the 1st defendant was duly

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presented to the 2nd defendant by Oraifite town in accordance with their tradition and custom following which the 2nd defendant issued him with a certificate of recognition on the 26/5/2003 as the traditional ruler of Oraifite town. That there was no protest, rancor and objection to the presentation and recognition of the 1st defendant by the 2nd defendant. That the presentation was peaceful. That no concealment, fraud and suppression of material facts by the 1st defendant were detected before the 1st defendant was given Certificate of Recognition. That the plaintiffs have no locus standi to institute the suit. That the action is incompetent having been instituted more than four years after the certificate of recognition was given to the 1st defendant and that the suit should not have been initiated in a representative capacity. The witness identified the certificate of recognition which was already an exhibit.

DW3 was cross examined by the counsel to the 1st -13th plaintiffs, the 14th plaintiff and counsel to the 1st defendant. The 2nd – 3rd defendants closed their case after the evidence of DW3.

At the close of evidence, all the counsel filed and exchanged final addresses. The 2nd - 3rd defendants' final address dated 27/4/2022 but filed on the 29/4/2022 was prepared by C.E. Ezebilo, Esq. a Senior State Counsel in the Ministry of Justice, Anambra State. The final address of the 1st defendant was filed on the 31/5/202. It was prepared by Ven. Anene Nzelu of counsel. The 14th plaintiff filed his final address on the 5/7/2022 while Chris Okaro, Esq. of counsel to the 1st to 13th plaintiffs settled and filed his final address on the 24/6/2022.

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On the 16/12/2022, C.E. Ezebilo Esq. adopted his final address as his final argument in urging the court to dismiss the suit. Ven. Anene Nzelu adopted his final address as his final argument in urging the court to dismiss the suit. On his part, the 14th plaintiff: Chief Chuks Momah, SAN adopted his final address as his final argument in urging the court to enter

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judgment in favour of the plaintiffs. In similar vein, the said counsel to the 1st –13th plaintiffs adopted his address as his final argument in urging the court to also enter judgment in favour of the plaintiffs. In reaction to all the plaintiffs' final address, the 2nd and 3rd defendants' counsel filed Replies on points of law which he adopted as part of his argument.

ISSUES FOR DETERMINATION

Learned counsel to the 2nd – 3rd defendants raised a lone issue for determination, to wit:

Whether this action is statue barred.

On his part, the 1st defendant's counsel formulated the following issues for determination:

i whether the plaintiffs have the necessary locus standi to institute the action by virtue of the Traditional Rulers Law, Cap.143 Revised Laws of Anambra State, 1991.

ii. Whether the suit of the plaintiffs disclosed any triable cause of action which goes to the competence of the suit

iii. Whether this action is statute barred

The 14th plaintiff adopted the issues for determination as distilled by the counsel to the 1st -13th plaintiffs which is to the effect that:

Whether by the totality of evidence before the court whether (sic) the plaintiffs have not proved their case to warrant the grant of their claims.

It is clear that the sole issue for determination raised on behalf of the 2nd – 3rd defendant is in all fours with the third issue formulated by the 1st defendant's counsel. That issue touches on the jurisdiction of this court. Likewise, the first issue raised by the 1st defendant's counsel complains of the plaintiffs' locus standi to institute this suit. The issue also attacks the

competence of the suit which invariably touches on the court's *jurisdiction*. So also, the 1st defendant's second issue touches on the court's jurisdiction.

Due to the pre-eminence and importance of jurisdiction in Nigeria's jurisprudence, all the issues on jurisdiction would be taken first and determined. However, I would take all the issues together and determine them jointly. The lone issue formulated by the plaintiffs' counsel would be considered independently, albeit, I am minded to make slight modification to it in this way:

Whether by the totality of evidence adduced in this case, were the plaintiffs able to prove their case to entitle them to their claims.

In essence, the extant issues for determination of this suit are all the issues raised by the respective counsel to the defendants and the sole issue distilled by the plaintiffs' counsel

ARGUMENT

i. Whether this action is statute barred?
ii. Whether the plaintiffs have the necessary locus standi to institute the action by virtue of the Traditional Rulers Law, Cap, 143, Revised Laws of Anambra State 1991.
iii. Whether the suit of the plaintiffs has disclosed any triable cause of action which goes to the competence of the suit.

ARGUMENTS

The learned counsel to the defendants contended that the instant action is statute barred. Counsel to the 2nd and 3rd defendants relied on Section II (1) of the State Proceedings Law, Cap 134, Revised Laws of Anambra State, 1991. That the challenges to the recognition of the 1st defendant as the traditional ruler of Oraifite comes under the above law. He referred to averments of the plaintiffs in paragraphs 14, 15, and 20 of their statement

of claim. That the plaintiffs failed to state what took place after the nominations in 1985 and 1994 uptil 1999 as pleaded in paragraph 16 of the plaintiffs' Statement of Claim. Counsel cited and relied on section 168 (1) of the Evidence Act 2011, that raises presumption of regularity in any judicial or official acts. That the 1st defendant was issued a letter dated 20/8/2005 and that the cause of action accrued to the plaintiffs in August 2005. Counsel argued that from August 2005 to December 2006 when the suit was instituted was more than 12 months. Counsel further argued that the plaintiffs slept on their rights of action. That the 14th plaintiff admitted in paragraph 13(e) & (g) of his Additional Statement on Oath filed on the 14th day of April, 2008 of knowing about the issuance of the certificate of recognition to the 1st defendant. Relying on Section 132 of the Evidence Act, 2011, Counsel submitted that facts admitted needs no further proof. That by the above admission by the 14th plaintiff, it has been established that there were no fraud, concealment and suppression of facts leading to the issuance of the certificate of recognition. It was contended that the plaintiffs were caught by the statute of limitation. Reliance was placed on the following cases: IKOGI INDUSTRIES LTD. v. LASG & ORS (2017) LPELR-41867 (CA). EGBE v. ADEFARASIN (1987) 1 NWLR (pt. 47) 1 @ 20; DANIEL & ORS v. ADAMAWA STATE UNIVERSITY MUBI (2017) LPELR-43625 (CA), UDOH & ORS v. AKWA-IBOM STATE GOVERNMENT & ANOR (2013) LPELR-21121 (CA) and NWANKWO v. NWANKWO (2017) LPELR-42832. Counsel urged the court to hold that the action is statute barred.

Learned counsel to the 1st defendant also made similar submissions and arguments. Counsel referred to various paragraphs of the plaintiffs pleadings to shore up his arguments. Counsel also cited and relied on the same laws which the 2nd and 3rd defendants' counsel predicated his submissions and arguments on. Learned counsel to the 1st defendant relied on Sections 4(a) (i) and (ii) [illegible] Traditional Rulers Law

Cap 143 Revised Laws of Anambra State 1991 to submit that the plaintiffs lack locus standi to institute this action. He further contended that proper and competent parties are not before the court. He cited and relied on the case of BASINGO MOTORS LTD v. WOEERMAN-LINE (2009) 39 NSCQR 35 @ 334. Counsel argued that the plaintiffs violated the provisions of the above mentioned Traditional Rulers Law. Learned counsel argued further that the plaintiffs have not disclosed triable cause of action and therefore the suit is incompetent because section 4(a) i) and (ii) of Traditional Rulers Law provide that a traditional ruler can be selected or appointed in accordance with (i) customary law or (ii) Chieftaincy Constitution. That Oraifite has no chieftaincy constitution and does not operate any chieftaincy constitution in the selection or election of her traditional ruler. Counsel pointed out that exhibit P1 is defective in that it is a draft document and the secretary did not sign it. He further referred to its preamble and argued that the document is a draft recommendation which has not been ratified. That exhibit P1 does not have provision for adoption or ratification by the Oraifite Improvement Union. For the above reasons, counsel contended that the plaintiffs having based their case on the document do not have triable cause of action. That the court lacks competence and jurisdiction to determine the suit Reliance was placed on the following cases: AJADI v. AJIBOLA (2004) 16 NWLR (pt.898) 91. LAWAL v. OKE (2001) 7 NWLR (pt. 711) 88, MADUKOLI v. NKEMDILIM (1962) SCNLR, 341; OBI v. INEC (2007) 11 NWLR (pt. 1046) 565; OSHOTBA v. OLUJITAN (2005) 5 NWLR (pt. 655) 159 @ 169 and MOBILE OIL PRO. NIG UNLTD v. MONOKPO (2003) 18 NWLR (pt. 852) 346 @ 435.

In response, learned senior Advocate of Nigeria (the 14th plaintiff) submitted that court's jurisdiction is determined by the writ of summons and statement of claim but not by defence. He cited the following cases JAMES v. INEC (2015) 12 NWLR (pt. 1474) 538 @ 597. SUN

INSURANCE (NIG) PLC v. UMEZ ENGINEERING CONST. CO LTD (2015) 11 NWLR (pt. 1471) 576 @ 604 - 605, A.G FED. VS. A.G. LAGOS (2017) 8 NWLR (pt. 1566) 20 @ 46. He further submitted that issue of jurisdiction cannot be re-litigated or raised twice in a proceeding. He argued that this court per M.I. Onochie J. of blessed memory had ruled on the issues raised by the defendants pertaining to the locus standi, cause of action and statute of limitation in this suit on the 16/12/2010. It was argued that this court is now functus officio and cannot review or revisit the issues. Reliance was placed on the case of FBN PLC v. TSA INDUSTRIES LTD (2010) 7 SCNJ, 384 @ 426-427. Learned senior counsel argued that the plaintiffs' case is based on the further Amended Statement of claim and his further Amended Statement on Oath. That the defendants did not react to the plaintiff's averment and his deposition. That the plaintiffs' extant pleadings and his deposition remained unchallenged, uncontradicted, consistent and unshaken. It was contended that DW1 could not state date of his selection by Oraifite Community, date of his presentation to the local government, date of his presentation to Anambra State Government and the date of his coronation. That the DW1 failed to adduce evidence on the period his predecessors from whom he inherited the stool, reigned as traditional rulers of Oraifite. Counsel argued that none of the defendant's witnesses was an eye-witness to the facts pleaded by him (DW1). That DW1 fraudulently procured the certificate of recognition. It was submitted that the plaintiffs proved their case on the preponderance of evidence. That it was proved that there was no compliance with the law and due processes before certificate of recognition was issued to DW1. Learned senior counsel further submitted that by Sections 29 and 30 of the Chieftaincy Law (No.8) 1976 remove whatever Dw1 had under the Eastern Region of Nigeria.

In similar vein, learned counsel to the 1st – 13th plaintiffs relied on the ruling of this court Coram M.I. Onochie J. (of blessed memory) pertaining to all the issues raised by the defendants with respect to the jurisdiction, cause of action, competence of the suit and statute of limitation. He contended that it amounted to an abuse of court process for the defendants to raise the same issues in the final addresses. He cited and relied on the following cases: UKACHUKWU v. UBA 2005) 18 NWLR (pt. 956) 1 and ABUBAKAR v. B.O & A.P. LTD (2007) 18 NWLR (pt. 1066) 319.

Learned counsel maintained that based on pleaded facts by the plaintiffs there is a triable cause of action. On whether this action is statute barred, by virtue of Section 11 (1) of the State Proceedings Law, counsel submitted that no prescription runs against a person who was hindered in bringing a court action. That limitation period would not run against a plaintiff where the action is based on the defendant's fraud or the facts relevant to plaintiffs' action was deliberately concealed from by the defendants Counsel placed reliance on the case of THE ADMINISTRATORS /EXECUTORS ESTATE of ABACHA v. EKE SPIFF & ORS (2010) 14 WRN 1 @ 30-31.

Learned counsel further referred the court to Section 35 (5) (a) and (b). Counsel further argued that the plaintiffs pleaded fraud and concealment in paragraphs 23-25 of their Further Amended Statement of Claim. The court was urged to take judicial notice of its record. Counsel referred to Section 174 (i) (m) of the Evidence Act, 2011 and the case of HORST SEMER & ORS. v. FIFA (1992) 1 SCNJ, 3 @ 80. It was further submitted that where injury complained of is a continuing one, time does not begin to run until the cessation of the event leading to the cause of action. That DW1 is acting as the traditional ruler of Oraifite and that is the basis of the plaintiff's action. He cited the case of KWARA STATE CIVIL SERVICE COMMISSION & ORS. v. ABIOLA & ORS (2010) 14 WRN 52 @ 112.

114. He submitted that it is the writ of summons and statement of the plaintiff that are reckoned with in determining the court's jurisdiction. Reliance was placed on the following cases: OLORUNTOBA OJU & ORS v. PROF. DOPANU & ORS (2006) 2 SCNJ, OSUN STATE GOVERNMENT v. DALAMI (NIG) LTD (2007) 3 SCNJ 28 and BALOGUN & ORS. v. ODE & ORS (2007) 2 SCNJ, 118.

Counsel submitted that the proper person to complain about a breach of a statutory provision is the person for whose protection it was made. That DW1 is not a Public Officer and cannot claim benefit of State Proceedings Law. He cited and relied on the following cases: MOBIL PRODUCING (NIG) UNLTD v. LSEPA & ORS. (2002) 18 NWLR (pt.798) 1 @ 34, EZE v OKECHUKWU & ORS (2002) 18 NWLR (pt. 799) 348 @ 373 and NIGERIAN ARMY v. YAKUBU (2013) 1-2 KLR (pt. 323) 471. Counsel argued that immediately the plaintiffs got to know about the procurement of certificate of recognition by the 1st defendant from the 2nd – 3rd defendants, they instituted this action. The court was urged to hold that the suit is not statute barred.

On points of law, counsel to the 2nd -3rd defendants submitted that fraud is a criminal act that must be proved beyond reasonable doubt. He referred to Section 135 (1) of the Evidence Act, 2011. That the plaintiffs did not prove the alleged fraud beyond reasonable doubt. It was contended that the principles enunciated in the case of KWARA STATE CIVIL SERVICE COMMISSION v. ABIODUN supra do not apply in this case.

It was submitted that address of a counsel is not a substitute for evidence. Reliance was placed on the case of R.C.C. LTD v. R.B.B. (1993) 6 NWLR (297) 122 @ 128 -129, Section 168 (1) of the Evidence Act 2011 and the case of AJADI v. AJIBOLA (2004) 16 NWLR (pt.898) 91 to further submit that the court lacks jurisdiction to entertain the case. On the issue of this court being functus officio regarding the ruling of this court by Coram

M.I.Onochie J (deceased), counsel contended that the case began denovo and the entire proceedings before M.I. Onochie J (deceased) no longer matter. He cited the following cases: ANIELO & ANOR v. MADUBIA & ORS (2008) LPELR-44681 (CA), STATE v. MGBEAFURU (2020) LPELR-51755, OSONDU & ANOR. V. NDUKA & ANOR (1978) LPELR-2811 (SC) OMOSEYE v. STATE (2014) LPELR-22059 (SC) and AJADI v. AJIBOLA supra. Learned counsel urged the court to dismiss the suit as same is statute barred.

RESOLUTION OF THE ISSUES

It is not in dispute that the 1st defendant vide motion No: HN/301M/2014 raised a preliminary objection to the instant suit on the ground that the 14th plaintiff lacks capacity and locus standi to institute this action. The notice of preliminary objection was dated and filed on the 21/5/2014. The plaintiffs filed a counter affidavit in reaction to the preliminary objection. In another motion dated 7/10/2010, the 1st defendant raised preliminary objection seeking similar prayers like or similar to the issues for determination formulated by the respective defendants in their final addresses. The plaintiffs, particularly the 14th plaintiff responded to the notice of preliminary objection also. I must stress the point that the 2nd and 3rd defendants were already parties before the preliminary objections were filed. In a well-considered ruling on the 16/12/2010 in respect of the Notice of preliminary objection of 7/10/2010, his Lordship overruled it. There is a record that the 1st defendant argued his preliminary objection in motion No: HN/301M/2014 on the 13/09/2014 before Honourable Justice Peace N. T Otti. His Lordship, after taking arguments from all the counsel adjourned the ruling to 12/01/2015. The ruling was not delivered before Honourable Justice Chukwudi C. Okaa took over the case and began hearing the substantive case. The 1st defendant's counsel did not argue the said Notice of preliminary objection before the present court before hearing commenced before this court. It is therefore safe to presume that

the 1st defendant deemed it fit to abandon the said notice of preliminary objection. The notice is deemed abandoned and it is hereby struck out. The ruling delivered by Honouable Justice M.I. Onochie of blessed memory remains the only decision on the issues attacking the jurisdiction of this court on ground of the action being statute barred, lack of cause of action and competence of the suit.

I took time to go through the records and the case file; I did not see any attempt made by the defendants to appeal against the decision. It is too elementary that a decision of a trial court that is not challenged subsists and remains binding on the parties. See the case of PDP & ORS v. DEGI-EREMIENYO & ORS (2021) 9 NWLR (pt. 1781) 274 @ 290.

In the instant case, learned counsel to the respective defendants anchored their submission on the fact that the decision was given by another judge other than the present court. In other words, the decision is vitiated when the case began denovo before me. A clear answer to the foregoing agitations by the defendants could be seen in the case of ADEGBANKE v. OJILABI & ORS (2023) 4 NWLR (pt. 1875) 481 @ 536 where the Supreme Court held thus:

> A court after the dismissal of a suit before it lacks the competence to delve into the matter any longer. The fact the court is being presided over by another judge of the same jurisdiction as that dismissed suit No. HOY/7/97 does not make any difference. The court lacks the jurisdiction to rephrase the judgment of a court of co-ordinate and competent jurisdiction. Thus, the institution of suit No: HOY/6/98 after the dismissal of suit No. HOY/7/97 constituted an abuse of court process and suit No. HOY/6/97 dismissed the appellants case for failure to disclose a reasonable cause of action and lack of requisite locus standi to institute the action. The appellant appealed against the decision but chose

> to subsequently withdraw same. The appellant thereafter filed suit No. HOY/6/1998 against the same defendants in respect of the same parcel of land and sought similar reliefs as in the earlier dismissed suit No. HOY/7/1997. The order of dismissal entered by the court in suit No. HOY/7/1997 operated as an estoppel per rem judicatam and barred the appellant from re-litigating the subject matter. The court of Appeal was therefore right to have held that the trial court having earlier dismissed suit No: HOY/7/1997 had become functus officio in respect of the subject matter, notwithstanding that suit No. HOY/6/1998 came up before another judge of that court.

In the case of DEGI-EREMIENYO & ORS v. PDP & ORS (2021) 16 NWLR (1800) 387 @ 403-405 the Supreme Court held as follows:

> Before a court finally determines a case before it, it is seized with jurisdiction to determine whether or not it has jurisdiction: but, once the court has finally determined the issue, it is functus officio that judgment if it is by a court lower than the Supreme Court, it can only be corrected on appeal. In the Supreme Court, the decision of that court in so far as that case is concerned is final.

In the instant case, the parties joined issues on the jurisdiction of the court to hear and determine the action. This court per M.I. Onochie J. (deceased) gave a considered decision by that ruling, the court has become functus officio to all the issues pertaining to its jurisdiction to entertain the suit. I agree with the submission of the 14th plaintiff that this court is functus officio to those issues concerning its jurisdiction on the basis of the case being statute barred, lack of cause of action and the plaintiffs' locus standi. Learned counsel to the 2nd and 3rd defendants brought state proceedings law into the equation. The Supreme Court in

the case of EZE v. OKECHUKWU & ORS. supra made it clear that a traditional ruler is not protected under state proceedings law of Anambra State. I hold that the 1st defendant having not shown that he is in the employ or engaged in the Civil Service of Anambra State cannot claim any benefit under that law. With respect to the 2nd and 3rd defendants, after I ascertained from the case file that pre-action notice was duly served on them before they were joined sometime on the 7/7/2007. I hold that it is too late for them to raise the issue of non-compliance of the state proceedings laws. They did not plead the facts to support their claim. Above all, by their conduct, I hold that they have waved their rights in that respect having taken numerous steps in the proceedings up to its end. As their learned counsel correctly submitted that address of a counsel does not take place of evidence. See R.C.C. LTD v. R.B.B. supra.

Learned counsel appears to be raking up the issue in his final address. There is no supporting averments in the 2nd and 3rd defendants' pleadings and evidence to base such submissions and arguments. I hereby disregard it in its entirety. The resultant effect is that all the issues on the action being statute barred, lack of cause of action and plaintiffs locus standi are hereby resolved against the defendants.

WHETHER BY THE TOTALITY OF EVIDENCE ADDUCED IN THIS CASE, WERE THE PLAINTIFFS ABLE TO PROVE THEIR CASE TO ENTITLE THEM TO THEIR CLAIMS

Apart from arguing that the instant action is statute barred and that the plaintiffs did not establish any cause of action, therefore this court has no jurisdiction to entertain and determine the suit, learned counsel to the 2nd - 3rd defendants did not proffer any argument on the above issue. Similarly, the counsel to the 1st defendant almost toed the same path. However, from holistic consideration of the submissions by the 1st defendant's counsel, I could deduce that apart from challenging the competence of the

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suit and jurisdiction of the court, he alluded that the plaintiffs did not prove their case on the preponderance of evidence. Learned counsel further argued that the plaintiffs' case fails or succeeds on exhibit P1. He attacked exhibit P1 for being grossly defective and inconsistent. He proceeded to enumerate the ways exhibit P1 is defective and inconsistent. He summed all the defects in the exhibit P1 thus: that exhibit P1 is a draft document which has not been adopted and ratified by the members of Oraifite town through their political organ: Oraifite Improvement Union.

On his part, the 14th plaintiff aligned himself and adopted the submissions of the counsel to the 1st-13th plaintiffs. In addition he submitted that the plaintiffs proved their case on the preponderance of evidence to entitle them to their claims, he emphasized the fact that the defendants have no counter claim. That the averments in the plaintiffs' Further Amended Statement of Claim remain largely unchallenged and their evidence uncontradicted.

For the counsel to the 1st -13th plaintiffs, the plaintiffs proved their case on balance of probability and preponderance of evidence. It is his contention that the facts pleaded by the plaintiffs in their Further Amended Statement of Claim were not challenged. That the pieces of evidence of the plaintiffs were not contradicted. He relied on the documents tendered and admitted as exhibits P1-P18. It was contended that the exhibits are reliable, cogent and credible. He submitted that the issue of traditional throne and qualification thereto depend on the custom of the people concerned. He cited the case of OLARENWAJU v. OYESOIMI (2014)4 KLR (pt. 344) 147

It was contended that the ascendancy to the throne is as set out by the Chieftaincy constitution of Oraifite 1977. (Exhibit P1). That in accordance with the tenets of exhibit P1, the Obishi and Ibuweshi is rotational and

subject to the appointment by Oraifite Community. That it was by virtue of exhibit P1, that Igwe Gregory Ude-Ubaka was enthroned or installed. He referred to exhibit P3. Counsel submitted that the issue as to who is qualified to ascend to any traditional stool or throne is subject to the customary law and tradition of the people concerned and it is a question of fact to be proved by calling evidence. Reliance was placed on the case of MAFIMISEBI v. EHUWA (2007) 2 NWLR (pt. 1018) 385. It was contended that PW1's (14th plaintiff) evidence regarding the ruling house was not contradicted or shaken during his cross examination. He cited the case of OKULEYE v. ADESANYA (2014) 6 KLR (pt. 350) 2549. That the recognition accorded to the 1st defendant on the 1/9/63 by Eastern Region Government did not state he (the 1st defendant) was born as an Obi. That Chiefs Law of Eastern Nigeria 1963 had been set aside by Anambra State Chieftaincy Edict of 1976. He referred to the plaintiffs' averment in paragraph 27 of their extant pleadings. Counsel argued that whatever recognition that was accorded the 1st defendant under the Chiefs Law, 1963 became extinguished by the emergence of the Chieftaincy Edict of 1976. That only the traditional stool of Obi of Onitsha was saved. That Igwe Gregory Ude-Ubaka was enthroned under Oraifite Chieftaincy constitution (exhibit P1) under the supervision of Anambra State Government and subsequently Anambra State Government under the administration of Col. John Atom Kpera recognized the Igwe as the traditional ruler of Oraifite. He argued that the plaintiffs pleaded these facts in paragraph 28 of their extant pleadings. The court should give legality where a custom and tradition of a people for the selection of their traditional ruler is written either as chieftaincy declaration or the chieftaincy constitution as seem in exhibit P1. He cited the case of OLARENWAJU v. OYESOIMI supra and ESUWOYE v. BOSERE (2016) 1 KLR (pt. 390). That as at the time Oraifite Improvement Union called for nomination of Igwe to succeed Late Igwe Gregory Udeh-Ubaka, it was the turn of Ezumeri quarters to [illegible] 1st defendant was not qualified

having hailed from Unodu quarters like late Igwe Gregory Ude-Ubaka. Counsel contended that the 1st defendant failed to prove that he was born a heir to the throne of Obi of Oraifite. It was submitted that he who asserts must prove. Counsel cited the cases of ELIAS v. OMO-BARE (1982) JSC 25 and AGBI v. OGBEH (2006) 11 NWLR (pt. 990) 65. Learned counsel contended that the 1st defendant did not prove that the Igweship or the stool of traditional ruler of Oraifite is hereditary. It was further argued that the 1st defendant has never been elected or selected, installed or recognized by Oraifite people as their traditional ruler. That the 1st defendant did not adduce evidence to show the exclusiveness of the throne to his clan. That it is the chieftaincy Edit No. 8 of 1976 that governs the selection or election or appointment of traditional rulers. That upon the promulgation of the Edict in 1976, communities in Anambra were empowered to select their paramount rulers. That the Edict propelled and engendered the birth of exhibit P1. It was contended that the 1st defendant's people migrated from Abor and Utagba in the present Delta State and were led into Oraifite by Anumanu Ezeigbo. That the plaintiffs pleaded these facts in paragraph 9 of their extant pleadings and same were not denied. He referred to exhibit P17 and stated that the evidence was not challenged. That having not been challenged the court should deem it as proved. Counsel argued that the 1st defendant's ancestry is not from the ruling class in Oraifite. Counsel urged the court to resolve the issue in favour of the plaintiffs.

RESOLUTION OF THE ISSUE

It is trite that the standard of proof in civil cases is on balance of probabilities and preponderance of evidence. A party who proves his case will obtain judgment based on such preponderance of evidence and the balance of probabilities in his favour. See the following cases: NEWBRED ORGNISATION LTD v. ERHOMOSOLE (2006) 5 NWLR (pt. 974) 499-527, ONOVO & ORS v. MBU & ORS (2006) 11 NWLR (pt.124) 391 @

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414-428. It is also pertinent to state that in a civil case the claim presented by the plaintiff is won or lost first on the pleadings and secondly on the evidence led in support of the averments in the statement of claim.

A claim is circumscribed by the reliefs claimed. The duty of a plaintiff is to plead only such facts and materials as are necessary to sustain the reliefs and adduce evidence to prove same. He may at the end of the day obtain all the reliefs sought or less but not more. He cannot obtain reliefs not claimed. See the case of ATIVIE v. KABEL METAL (NIG.) LTD (2008) 10 NWLR (pt. 1095) 399.

In the instant case, the first relief sought by the plaintiffs is declaratory in nature. In a plethora of cases, it has been held that declaratory relief is essentially an equitable relief in which the plaintiff prays the court to exercise its discretionary jurisdiction to pronounce on existing state of affair in law in his favour as may be discernible from the averments in the statement of claim. The onus of proof lies on the claimant and he must succeed on the strength of his case and not on the weakness of the defence except where the case of the defence supports the claimant's case. The burden of proof on the plaintiff in establishing declaratory reliefs to the satisfaction of the court is quite heavy in the sense that declaratory reliefs are not granted even on admission by the defendant, in the event that the plaintiff fails to establish his entitlement to the declaration through his own evidence. See the case of OBC v. MTN (NIG.) COMMUNICATION LTD (2021) 18 NWLR (pt.1809) 415 @ 436-447.

On the other hand, the defence of the defendant is premised on the facts averred in his statement of defenc e and the evidence adduced in support thereof. See the case of APENA & ANOR v. ALIERU & ANOR (2014) 14 NWLR (pt. 1426) 111 @ 127-128.

In the instant case, exhibit D1, is the certificate of recognition issued to the 1st defendant on the 1/9/89 as the Head of Orafite and Ichi clan. The

1st defendant was described in the exhibit as a second class Chief. In exhibit D2, the 1st defendant was issued with the document as the Obi of Oraifite on the 26/5/2003.

In paragraphs 3(i), (ii), (iii) of his Statement of Defence, the 1st defendant averred as follows:

i. The 1st defendant was born heir to the stool of Obi of Oraifite, which is a hereditary stool governed by the principle of Obi a du mbugha, which means the stool is not rotatory. This principle is an entrenched aspect of the custom, culture and tradition of the people of Oraifite recognized by the plaintiffs themselves.
ii. On the 1st day of September 1963 the Government of Eastern Region of Nigeria acting under Section 3 of the Recognition of Chiefs Law No. 9 Laws of Eastern Nigeria, 1960, recognized the 1st defendant as the Eze of Oraifite and Ichi clans of the then Onitsha division and issued a certificate of Recognition as a second class Chief to the 1st defendant.
iii. The 1st defendant has never abdicated the stool of Oraifite and was never dethroned by any Government in force in Nigeria.

On the side of the plaintiffs, they pleaded in paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of their Further Amended Statement of Claim that after the 1st defendant arrived from his self-imposed exile from United States of America, he began scheming, styling and parading himself as the Igwe/Obi of Oraifite when he was never selected/elected or installed as the traditional ruler of Oraifite. The selection/election of traditional ruler of Oraifite is governed by the Chieftaincy Constitution in 1977.

That originally and traditionally, idea of Igweship/Obi of Oraifite is strange to the tradition and custom of Oraifite but during the regime of Col; John Atom Kpera in Anambra State, towns and communities, with the exception of Onitsha town, were directed pursuant to Chieftaincy Edict of 1976 to select/elect or appoint their traditional rulers and present them for

recognition. After the rancorous and chaotic tussle by contestants, Late Igwe Gregory Udeh-Ubaka emerged as the first Igwe of Oraifite and was recognized by the military Government in 1977. That the Chieftaincy Constitution governs the selection/election of traditional ruler. The constitution provides for the rotational traditional rulership or Igwe of Oraifite among the four autonomous quarters that made up Oraifite town. The first Igwe of Oraifite in the person of Igwe Gregory Ueh-Ubaka emerged from Unodu quarters and after his demise, it is the turn of Ezumeri quarters to produce the next Igwe of Oraifite. In 1985, Ezumeri quarters nominated a candidate to the Oraifite Community vide a letter dated 18/7/85 which was addressed to National president of Oraifite Improvement Union. Ichie George Ngozi Chukwujekwu who hailed also from Ezumeri quarters was nominated. That the Ndi ichies of Oraifite resolved to abide by the provisions of Oraifite Chieftaincy Constitution. The 1st defendant was never selected/elected or nominated because he belongs to the same Unodu quarters like the deceased Igwe Udeh-Ubaka. That on the 6/10/2006, it came to the knowledge of the plaintiffs for the first time that the 1st defendant had fraudulently and clandestinely obtained or procured a certificate of recognition as the traditional ruler from the 2nd and 3rd defendants. The plaintiffs asserted that the 1st defendant fraudulently concealed vital facts and information to the 2nd defendant in order to procure the certificate of recognition. The plaintiffs pleaded the particulars of fraud. The plaintiffs then instituted this suit.

The 2nd and 3rd defendants stated that the 1st defendant was duly selected and presented to them by Oraifite Community in accordance with the tradition and custom of Oraifite. The 2nd defendant accepted and issued certificate of recognition to the 1st defendant as the traditional/ruler of Oraifite.

It is settled that in civil cases the burden of proof lies on the person who desires the court to give judgment as to any legal right or liability which

depends on facts, which he asserts to prove that those facts exist. Also, the burden of proof in a particular proceedings lies on the person who would fail if no further evidence is given on either side. The burden of first proving the existence or non-existence of a particular fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. Where a party adduces sufficient evidence to satisfy the court that the fact sought to be proved is established, the burden shifts to the person against whom judgment would be given if no further evidence were adduced. The burden of proof would then continue to shift until all the issues in the pleadings have been dealt with. The standard of proof in civil cases is on the balance of probabilities. See the case of AKINBADE & ANOR. V. BABATUNDE & ORS (2018) 7 NWLR (pt 1618) 366 @ 394. This was re-asserted in the case of EKWEOZOR & ORS v THE REGD TRUSTEES, S.A.C.N. (2020) 11 NWR (pt. 1734) 51 @ 87-89 the Supreme Court held as follows

The burden of proof in civil cases has two distinct facets, viz.

a the burden of proof as a matter of law and pleadings, normally termed as the legal burden or the burden of establishing a case. It is always static and never shifts and

b the burden of proof in the sense of adducing evidence, usually described as the evidential burden. This burden shifts or oscillates constantly as the scale of evidence preponderates. The primary onus of proof in civil cases lies on the plaintiff or claimant.

The onus of proof does not exist in vacuo. The onus or burden of proof is the legal duty or obligation to prove or establish facts in relation to an issue. There cannot be any burden of proof where there are no issues in dispute between the parties. For example, if the plaintiff's claim is

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admitted there will generally be no onus on the plaintiff to go into in proof of his claim. Similarly, if a particular averment of the plaintiff is admitted, there will no longer be an onus to prove what has been admitted by the opposite party. Therefore, in order to discover where the onus lies in any given case, the court has to look critically at the pleadings.

I am bound to follow the decision in the above cases. The decisions would be my guide in this case.

From the state of pleadings, as I have outlined above, the onus of proof lies on the plaintiffs to discharge in respect of their assertions that exhibit P1 governs the selection/election or appointment of the traditional ruler of Oraifite. And that the traditional stool rotates among the four quarters of Oraifite and it is the turn of Ezumeri quarters after the demise of Igwe Gregory Udeh-Ubaka. The plaintiffs must prove that the 1st defendant fraudulently concealed and suppressed facts and information before secretly obtaining and procuring exhibit D2 from the 2nd and 3rd defendants. The 1st defendant having asserted that the traditional stool of Oraifite is hereditary and does not rotate among quarters that constitute Oraifite, he must prove his assertions. He must prove that he was born, heir of the stool of Obi of Oraifite. The 2nd and 3rd defendants must discharge the onus of proof of their assertions that Oraifite community duly selected/elected the 1st defendant as their traditional ruler and presented him before he was accepted and issued with exhibit D2. The legal Mantra is he who asserts must prove. See OBE v. MTN (NIG.) COMM. LTD supra @ 436. ONOVO v. MBA, supra

In the instant case, while the defendants relied on the Traditional Rulers Law, Cap 143 Revised Laws of Anambra State, the plaintiffs referred to Chieftaincy Edict, No.8 1976. They tendered the certified true copy of the

Edict in evidence and same was admitted and marked as exhibit P2 on the 21/10/2020. The defendants did not challenge the existence of that law. On the margin of the Traditional Rulers Law relied on by the defendant, Chieftaincy Edict No.8 1976 was shown 1976 while Laws of Eastern Nigeria Cap 21 1963, 1978 and 1981 were also shown. From my appreciation of exhibit P2 and Traditional Rulers Law, the latter has superceded the former (Chieftaincy Edict No. 8 1976) even though there is no section in the Traditional Rulers Law that expressly repealed the Chieftaincy Edict of 1976. Furthermore, the Traditional Rulers Law has virtually the same provisions contained in chieftaincy Edict of 1976. The two laws provided for the method of selection, appointment, recognition, suspension or withdrawal of recognition of a traditional ruler; to prescribe title and style for a traditional ruler to provide for other incidental matters. Since exhibit P2 was promulgated under a military regime, it is no longer appropriate under the current democratic dispensation in Nigeria to cite it as an existing law. The extant law now that regulate the method of selection, appointment, recognition suspension or withdrawal of recognition of a traditional ruler is the Traditional Rulers Law.

The purpose and the reasons the plaintiffs are bringing in exhibit P2 is not lost on me. I believe that it was to show that it abolished pre-existing recognitions apart from that of Onitsha.

However, for the sake of this judgment, I shall give preference to the provisions in the Traditional Rulers Law and, where possible show the equivalent in the Chieftaincy Edict of 1976. It is imperative to state that the extant law now is Traditional Rulers law caps 143 Revised Laws of Anambra State 1991. Under Section 2, the interpretative section of Traditional Rulers Law "Customary Code of Conduct" in relation to a town or community having a traditional ruler means a list of forbearances set out in its town or community, constitution the breach of which by such traditional ruler constitutes under its customary law an act of misconduct

which may be penalized with suspension or deposition of such traditional ruler.

"Igwe" or "Obi" means a title designated exclusively to describe the office, style or title of a recognized traditional ruler.

"Town" or "Community" means an autonomous community bound together by a common tie, usage and custom who inhabits a definite area of land which comprises villages and has for some time been identified as a town, and in some cases, forms a sub-division of a community or forms a division. "Town or Community Constitution" in relation to a town or community who has selected or appointed a traditional ruler, means the written document regulating the selection, appointment, installation, deposition, suspension and prescribing code of conduct of the traditional ruler prepared for the purposes of this law. "Recognized Traditional Ruler" means an "Igwe" or "Obi" selected and appointed by a town or community as the town's or community's traditional ruler and recognized as such by the Governor in accordance with the provisions of this law, so however, that such a recognized person shall ascribe himself the title of "His/Her Highness"

"Traditional ruler" means a person selected and appointed "Igwe or Obi" of a town or community in accordance with this law who, on his recognition by the Governor, shall be styled or known as a recognized traditional ruler.

The Chieftaincy Edict 1976 made similar interpretations in its sections 2

Under section 3(1) (2) (3) of the Traditional Rulers law (which is in pari-materia with section 3(1) (2) (3) Chieftaincy Edict 1976) it is provided as follows:

Sect 3 (1)----subject to the provisions of Section 6 of this Law, where on the date of coming into force of this Law, there is a town or community a

person who is the traditional ruler of the town or community such community may at anytime thereafter and in accordance with the provisions of this Laws present such a traditional ruler to the Government for the purpose of his being recognized by the Governor as that traditional ruler of the town or community in accordance with this law.

2. Where, on the date of coming into force of this law, a town or community has not selected or appointed any person as traditional ruler such community or town may at any time thereafter and in accordance with the customary law of that town or community select or appoint a person as the traditional ruler of that community.

3. At any time, after a person is selected or appointed as a traditional ruler of a town or community under subsection 2 of this section, the town or community may in accordance with the provisions of this law, present such traditional ruler to the Governor for recognition in accordance with this law.

Section 5(1)(a)(b) and (c) as well as sub-section 2 (i)(ii)(iii) make the following provisions:

5(1) (a)-subject to the provisions of section 6 of this law, the presentation of a traditional ruler of a town or community for the purpose of his recognition under this law shall be carried out on a date and at a place and time fixed by the town or community such place being a place to which members of the public may have access;

b. Such date, place and time shall be publicized in the traditional manner or otherwise within the town or community;

c. A written notice of a proposed presentation and of the date, place and time of the presentation shall be delivered to the Secretary to the Local Government of the town or community concerned.

2. The traditional ruler of a town or community shall be deemed to be presented to the governor for the purpose of his recognition under this law if, on the date and at the place and time publicized and notified in the manner specified in subsection (i) of this section, and in the presence of members of the town or community. Such traditional ruler is presented by the town or community to

   i. the commissioner or
   ii. the secretary to the Local Government in charge of the town or community concerned or
   iii. any other person appointed by the governor in that behalf.

Under section 6 of the Traditional Rulers Law, it is provided thus:

> Where a town or community certifies in writing to the secretary to the Local Government of such town or community that the town or community has on the date of coming into force of this law, a traditional ruler commanding popular support and selected or appointed in accordance with the customary law of the town or community the town or community shall present such a traditional ruler to the Governor for recognition under this law, by forwarding to the secretary to the Local Government of the town or community particulars of the traditional ruler, which particulars shall include:-
>
> i. the traditional rulers personal name;
> ii. his chieftaincy designation or title which shall be either "Igwe" or "Obi", and
> iii. the date on which he was selected or appointed as such traditional rulers.

Under section 7 of the Traditional Rulers Law; it is provided that:

> Where a traditional ruler of a town or community presented to the Governor under the provisions of section 5 or section 6 of this law the Governor may in accordance with the provisions of this law recognize such a person as a traditional ruler of the town or community

Section 12 of the Traditional Rulers Law provides as follows:

> Every town or community whose traditional ruler has been recognized as a traditional ruler by the Governor shall forward to the Secretary to the Local Government in charge of the area of that community.

a. the town or community constitution of that community; and
b. customary code of conduct existing between the town or community and the traditional ruler and which shall be signed by the traditional ruler

2. The provisions of section 10 of this law shall apply to a traditional ruler who has subscribed to such code of conduct

Under section 10 (a) and (b) of this Law, the conditions under which the Governor may withdraw or suspend the recognition accorded to a traditional ruler.

Under section 13 of this law, the highest authority in a town or community and functions are provided for. Section 13 (1) (a) and (b), 2, 3 and 4, of this law outlined the contents of what a town or community constitution of a town should contain for it to be valid. Under section 14 (1) and (2), the traditional ruler of a town or community must subscribe to the customary code of conduct.

Notably, the Chieftaincy Edict of 1976 under sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 made similar provisions.

The only remarkable difference in the provisions of Chieftaincy Edict of 1976 and Traditional Rulers Law Is the perseveration of the recognition of Obi of Onitsha under Section 29 of Chieftaincy Edict of 1976. In that section, it was provided that:

> Obi Ofala Okagbue 1, the Obi of Onitsha shall for the purposes of this Edict be deemed to be recognized as a chief under the Edict and section 3, 4, 5, 6, 12, 14 and 28 of this Edict shall not apply in respect of him.

Section 30 (1) and (2) invalidated all the recognitions except that of Obi of Onitsha made under Chiefs Law Caps 112 and 21 of Eastern Region of Nigeria. Both Laws were effectively repealed. For the sake of clarity and deeper comprehension; let me reproduce the provisions under section 30 (1) and (2).

Section 30 (1) The recognition of Chiefs Law (cap.112) is hereby repealed and all recognitions made thereunder with the exception of the recognition of Obi Ofala Okagbue I, the Obi of Onitsha, shall cease to be valid

(2) The classification of Chiefs Law (Cap.21) is hereby valid.

The implication of the foregoing is that exhibit D1 which was issued under Recognition of Chiefs Law and Classification of Chiefs Law was invalidated and repealed, Therefore exhibit D1 died and was buried upon the promulgation of Chieftaincy Edict of 1976. The Traditional Rulers Law (Cap.143) Revised Laws of Anambra State 1991 does not provide for any antidote for the resurrection of exhibit D1. In other words, Exhibit D1 no longer has any legal effect. I do not believe the evidence of DW1 that the

Chieftaincy Edict of 1976 was targeted at the communities that do not have a defined method of ascension to a traditional stool. That the said law did not abolish all chieftaincy stool. That since Oraifite town or community has a Monarchical traditional method of succession which is primogeniture, the Obi of Oraifite was not affected by the Chieftaincy Edict of 1976.

In order for me to unravel and discover the intention of the Chieftaincy Edict of 1976, I read the entire provisions in line with the decision in the case of STANBIC IBTC HOLDING PLC v. FEDERAL REPORTING COUNCIL OF NIGERIA (FRCN) & ORS (2020) 5 NWLR (pt. 1716) 91 @ 141.

Similarly, it is settled that the court lacks the requisite judicial power and authority to read into a statute what is not there or import into and assign unusual and distorted meanings to words of a statute. In other words, a statute must be interpreted as it is. Neither the court nor a party is empowered to import into a statute what it does not contain. See the following cases: SANI v. PRESIDENT, FRN & ANOR (2020) 15 NWLR (pt. 1746) 151 @ 178-179.

In similar vein, the established rule of interpretation of clear, unambiguous and plain words of a statute is to exclude what is not specifically stated in the provisions.That is to say, that the express mention of one thing automatically excludes any other which otherwise would have been included by implication. See the case of JEGEDE & ANOR. V. INEC & ORS (2021) 14 NWLR (pt. 1797) 409 @ 575-576.

In the instant case, Sections 29 and 30(1) and (2) of Chieftaincy Edict of 1976 specifically excluded the Obi of Onitsha from the effect of its application. There is no mention of any other traditional stool, whether under primogeniture or hereditary systems in the provisions of sections 29 and 30 of Chieftaincy Edict of 1976 that was excluded apart from that of

the stool of Obi of Onitsha. The implication therefore is that the Chieftaincy Edict No. 8 of 1976 affected the traditional stool and recognition given to the 1st defendant. I so hold.

Exhibit D2 was issued to the 1st defendant by virtue of Sections 4, 5, 6 and 7 of the Traditional Rulers Law. On the face of exhibit D2, it was stated that the 1st defendant was duly selected and presented to the then Governor of Anambra State by the people of Oraifite town/community in accordance with the customary law and usages of that town/community and under the requisite provisions of Traditional Rulers Law. It must be re-emphasized and reiterated that it was due to the issuance of exhibit D2 to the 1st defendant that precipitated and provoked the instant action.

The question then is: Did the members of Oraifite town or community select or elect or appoint the 1st Defendant before he was issued with exhibit D2?

Before I proceed to answer the above question, it is imperative to state that the plaintiffs and the 1st defendant agreed on some facts. Firstly, they agreed that there are four quarters that constitute Oraifite town or community, viz: Unodu, Ezumeri, Irefi and Ifite. I did not state these quarters in order of their seniority. Secondly, they agreed that each of the quarters has their respective Obi. The villages, kindreds and families in those quarters have the Obi stools which are mainly hereditary. Thirdly, the stool of Igwe of Oraifite is alien or strange to the tradition and custom of Oraifite. They slightly differed on the stool of Obi of Oraifite. To the plaintiffs, Igwe or Obi of Oraifite is alien to their custom and tradition. To the 1st defendant, they are different. Igwe of Oraifite is a strange concept while Obi of Oraifite is not and it is hereditary and is governed by primogeniture traditional system.

Back to the question posed above. The plaintiffs emphatically stated that the 1st defendant was never selected or elected or appointed by Oraifite

community or town. The plaintiffs' evidence has been summarized above. The entire case of the plaintiffs appear to me to have been captured during the cross examination of PW1 when the following episode occurred:

Q: It is not correct that among all the heads (Obis) there is the overall head (Isi Obi) of all the heads of the quarters. The overall head is the traditional ruler of all the communities in Oraifite, is that correct?

A: It is not correct. Oraifite, as a town, is made up of four autonomous communities federating under the name of Oraifite. Each quarter has its own Isi Obi and the villages within each quarter have their own Obi. It is a hierarchy of authority under native law and custom. No Obi of a quarter pays tribute to Obi of another quarter. The village and diokpala Oraifite is Ezumeri Okefi, which is now shortened to Ezumeri. Obi Unodi is not the Isi Obi of Oraifite. In the traditional hierarchy of Oraifite, there is nothing as Isi Obi. Isi Obi is the manipulation of Unodu people or quarter who are settlers in Oraifite by virtue of history of Oraifite.

Q: When you came back from United Kingdom as a lawyer, who did you meet as the traditional ruler of Oraifite town as a whole?

A: I did not meet any traditional ruler called Igwe or Obi of Oraifite when I came back.

Q: Are you aware that the defunct Eastern Regional government gave the 1st defendant a certificate of recognition as the traditional ruler of Oraifite?

A: I am aware that Late Janet Mokelu, a top member of N.C.N.C. then and one of the aides and associates of Late Michael Okpala, the then Premier of Eastern Nigeria, influenced the government then to issue a Chieftaincy Certificate to Chief Daniel Udoji (the 1st

defendant) who was then a Medical Doctor at Abiriba Joint Hospital, now in Abia State, as the traditional ruler of Oraifite and Ichi clan. When he was issued with the certificate, the 1st defendant remained in Abiriba and did not return back to Oraifite. Late Janet Mokelu and the 1st defendant are cousins from the same extended family.

The Eastern Nigeria Chieftaincy Law under which the 1st defendant was purportedly made the traditional ruler of Oraifite and Ichi clan was abrogated and annulled by Chieftaincy Edict of 1976. The only stool that was not touched by that law was that of Obi of Onitsha.

Q: It is correct that in 2003, Dr. C.C. Mbadinuju validated 1963 Chieftaincy certificate issued to the 1st defendant as the traditional ruler of Oraifite town, is that correct?

A: It is correct. That is the reason this suit was instituted. At the end of the Civil War, the 1st defendant relocated to USA and took up employment as a Medical practitioner. He was in self-exile when Emeka Offor who was privy to the emergence of Dr. C.C. Mbadinuju as Governor of Anambra State, collected the certificate of Recognition for the 1st defendant and travelled to New York to give same to the 1st defendant. The people of Oraifite objected to it.

Q: How has Oraifite, as a community been selecting her traditional ruler before 1977?

A: Before 1977, Oraifite has no overall traditional ruler. Oraifite had the opportunity to select its first traditional ruler sequel to Chieftaincy Edict of 1976 promulgated by Col. Atom Kpera. The Edict abrogated the old Eastern Nigeria Chieftaincy Law and annulled all presumed or the existing traditional chieftaincy stools in Anambra State excepting the Obiship of Onitsha. The said Edict directed various

communities to find how they would select their traditional rulers. Oraifite community complied.

Q: Before the chieftaincy Edict of 1976, who was the traditional ruler of Oraifite?

A: The 1st defendant was the traditional ruler of Orajfite and Ichi clans. However, the 1st defendant was imposed on the Oraifite and Ichi clans through the instrumentality of Chief (Mrs.) Janet Mokelu. The 1976 Edict abrogated that imposition.

Q: It is correct that the 1st defendant is also born heir to the stool of Obi of Oraifite, which is also a hereditary stool is that correct?

A: It is not correct. The stool of Obi of Oraifite and Ichi was a creation of Late Chief Janet Mokelu under the 1963 Chieftaincy Law of Eastern Nigeria. She did that in order to make her kindred to lord over the other kindreds who hosted members of her kindred who settled in Oraifite. It was a political opportunism.

Q: It is correct that the 1st defendant on record in this case is the 8th Obi of Oraifite, is that correct?

A: It is not correct. The 1st defendant and his people migrated from Aboh and Utagba in the present Delta State.

Q: It is correct that you are only contesting the stool of Igwe of Oraifite and not that of Obi of Oraifite is that correct?

A: I am here to propagate the particulars of claim and statement of claim.

From the totality of evidence adduced by DW1 in his evidence in chief, I am unable to see where he was contradicted in his cross examination. As a matter of fact, the evidence elicited from PW1 under cross examination

amplified, embellished and strengthened the plaintiffs' case. I hold that his evidence remained uncontradicted. Moreso, I have earlier showed that exhibit D1 is no longer valid in view of the subsequent laws particularly the Chieftaincy Edict of 1976 that expressly repealed the law under which exhibit D1 was given to the 1st defendant. I agree with the counsel to the 1st defendant in his submission that the plaintiffs substantially relied on exhibit P1 (which is the constitution of Oraifite and the method for selection of her Igwe and other chiefs).

Let me pause here to reiterate that the Traditional Rulers Law 1981 is a predecessor of the Traditional Rulers Law Cap 143, Revised Laws of Anambra State 1991 which is the current existing law for the method of selection, appointment, recognition, suspension or withdrawal of recognition of a traditional ruler. The provisions of Sections 3, 4, 5, 6, 7, 8, 9, 11, 12, 13 and 14 of the extant Traditional Rulers Law, expressly provided the method of selection and presentation of traditional ruler, conditions for recognition, general method of presentation of existing traditional ruler enjoying support, publication of the recognition in the Gazette, certificate of recognition, the participation of the highest authority in a town or community in the selection of traditional ruler, the town or community constitution, contents and validity of town or community constitution and the customary code of conduct of the town or community which the traditional ruler must subscribe to.

In particular reference to Town/Community constitution under the provisions of sections 4, 12 and 13 of the Traditional Rulers Law, it is compulsory that such constitution must be forwarded to the Local Government. There must be a customary code of conduct existing between the community and the traditional ruler. The existence of the town's constitution is a sine qua non for the recognition and presentation of a traditional ruler. It is obvious that there must be proof of the selection and presentation of the traditional ruler. The methods of selection or

appointment or election and presentation must be in accordance with Sections 4, 5, and 6 of the Law. The purpose of the constitution and its contents are clearly spelt out under Section 131(a) and (b) of this law. The constitution must embody the customary law that regulates ascension to the throne. The constitution must set out the method that regulates the nomination and selection of a candidate to fill a vacancy in the chieftaincy of that area. This is to avoid uncertainty in the customary law of the area. See the case of EHINLE & ORS V. IKORODU LOCAL GOVERNMENT & ORS (2021) 1 NWLR (pt. 1757) 279 @ 320-341.

By the community interpretation of the provisions of Sections 4, 5 and 6 of the extant Traditional Rulers Law, the existence of the town's constitution is compulsory or mandatory even if the traditional stool is hereditary or governed by a monarchical traditional system. In some climes, it is called Chieftaincy declarations.

In Anambra State, it is called constitution as can be seen in Section 12 of the Traditional Chiefs Law above. The constitution must contain all the information and facts required under Section 13 (1) (a) and (b) 2, 3 and 4 of this law.

The Supreme Court in the case of AKANDE v. ADISA & ANOR (2012) 15 NWLR (pt. 1324) 538 @ 565-574 put it this way:

A party who claims a chieftaincy declaration must prove sufficiently that he is entitled to the throne. Thus, a party who asserts that he is a recognized chief is expected to plead the following facts:

a. the native law, custom, tradition and procedure governing the appointment to the traditional stool.
b. that he was validly nominated and appointed to the stool.
c. when he was appointed, (that is the day, month, year) he was appointed and produce a gazette to that effect.

d. names of the persons who had previously held the title before him and the ruling house or houses responsible or which produces the holder of the title.

He must lead evidence in support of the pleadings.

The Supreme Court went on to articulate the reasons for the above requirements in this way:

> These, in the least, are necessary in appointing a person who is expected to lead and be responsible to and for the people and authorities he should interact with. It should not be left open like a wild fire which knows no limit or bound. If the Chieftaincy stools should be left to chances, a day would come when only the strongest man or the most influential will grab everything into his palms. That certainly will pose danger, anarchy and destabilization to the throne. It shall cease to be monarchical but autocratic. It will endanger jungle justice. People will be subjected to fear, intimidation and subservience.

Perhaps, it is to avoid the above scenario, that the provisions of sections 4, 5, 6, 9, 11, 12, 13 and 14 of the Traditional Chiefs Law of Anambra State were made mandatory.

The plaintiffs in the instant case, relied heavily on exhibit P1 (that is, Constitution of Oraifite and Method For Selection of Her Igwe and Other Chiefs) to strengthen their case. In their evidence, it was stated that it was in compliance with the requirements under the Chieftaincy Edict of 1976 that propelled members of Oraifite town and community to make exhibit P1, in order to comply with the said law. That in pursuance to exhibit P1, Igwe Gregory Udeh-Ubaka was selected or elected from among other contestants and was enthroned and coronated as HRH, Igwe Udeh-

Ubaka, Ezeora 1 of Oraifite on the 7th day of January, 1978. Exhibits P3, P5, P6, P9, P10, P11, P12, P13, P14 and P15 are the documentary evidence to prove that Igwe Udeh-Ubaka was selected, presented, recognized, coronated and exercised the functions and powers as the traditional ruler of Oraifite and was so recognized as such. The plaintiffs pleaded the above facts in paragraphs 9, 10, 11, 12, 28, and 29 of their Further Amended Statement of Claim. PW1 led evidence to support the averments. I have summarized PW1's evidence in Chief as encapsulated in his statement on Oath and Additional Statement on Oath. I have equally shown and reproduced some of his vital evidence under cross examination.

I have also summarized the evidence of DW1 earlier in this judgment. The same applies to DW2 and DW3. Principally, the defendants' position is that exhibit P1 is a contraption of the 14th plaintiff and other people in his (PW1's) league to corrupt the existing custom, traditions and culture of Oraifite people. The central point and most important evidence of the defendants is that the native law and custom recognizes primogeniture and hereditary throne. DW1 insisted that he was born a heir to the traditional stool of Obi of Oraifite. That the custom of Oraifite is that whosoever occupies the stool of Obi of Unodu quarter automatically occupies the stool of Obi of Oraifite. That he was recognized as the Head of Oraifite and Ichi clans as second class Chief on the 1/9/63 and same was revalidated on the 26/5/2003. To prove his assertions, he relied on exhibit D1 and exhibit D2. I have earlier considered and dealt with the law that gave life to exhibit D1 and the effect of the abrogation of that law on exhibit D1. I can only re-emphasize that exhibit D1, died and was given a decent burial when the Chieftaincy Edict of 1976 was promulgated. Exhibit D2 was issued under Sections 4, 5, and 6 of the Traditional Rulers Law, 1981. I take judicial notice of the fact that upon the enactment of the extant Traditional Rulers Law, cap. 140 of the Revised Laws of Anambra State.

1991, Traditional Rulers Law 1981 went into oblivion and extinction. Nonetheless the two laws have identical provisions.

It is settled that it is the customary law and tradition of the people concerned that regulates the selection and ascension of any person to the traditional stool. In the case of AKANDE v. ADISA, supra, the Supreme Court held that where there is no formal declaration in respect of the appointment and selection to a particular chieftaincy the custom of the people and the tradition of the people concerned must be strictly adhered to. It is trite that customary law and tradition is a question of fact that must be proved unless it has attained the status of notoriety so as to be judicially noticed. See the case of MAFIMISEBI & ANOR v. EHUHA & ORS (2007) 2 NWLR (pt. 1018) 385 @ 428-429.

The onus, therefore, lies on the 1st defendant to prove that the custom and tradition of Oraifite recognizes primogeniture as a method of ascension to the throne of Obi of Oraifite. Also, that he is a heir to the throne and that Anambra State Government revalidated his recognition by virtue of exhibit D2.

First and foremost, it is important to state that there is no provision for revalidation of recognition in the extant Traditional Rulers Law apart from the provisions under Section 24 of this law. I have held that by the promulgation of Chieftaincy Edict 1976, the recognition of the 1st defendant as Eze of Oraifite and Ichi became extinguished. The 1st defendant himself under cross examination expressly stated that he knows only the title of Obi of Oraifite unlike Eze of Oraifite and Ichi clan shown on exhibit D1. According to him, the title of Eze on exhibit D1 might be a matter of semantic. It is clear that the title on exhibit D1 is "Eze" and not "Obi" as stated by the 1st defendant.

It is settled that oral evidence is not allowed to discredit the contents of a document. Oral evidence is not admissible to alter, vary or subtract or add

to the contents of document. See Section 128 of the Evidence Act, 2011, NAMMAGI v. AKOTE & ORS (2021) 3 NWLR (pt. 1762) 170 @ 193, ABDULAZIZ v. GARBA (2021) 1 NWLR (pt. 1785) 379 @ 393. It is also trite that documentary evidence is used as a hanger to test the credibility of oral evidence. See the case of JWAN v. ECO BANK (NIG) LTD & ANOR (2021) 10 NWLR (pt. 1785) 449 @ 481-482.

In the instant case, the 1st defendant (as DW1) cannot vary or add to the contents of exhibit "D1". Assuming that exhibit D1 is still valid, the 1st defendant was only recognized as Eze of Oraifite and Ichi clan and certainly not Obi of Oraifite. There were no pleaded facts to support DW1's evidence, that "Eze" means "Obi" under Oraifite tradition. Facts were not pleaded to support the 1st defendant's evidence that exhibit D1 was re-validated. It accords with common sense and law that if exhibit D2 was meant to revalidate exhibit D1, the provisions of Sections 4, 5 and 6 would not have been referred to on the face of exhibit D2. The mere reference to sections 4, 5 and 6 on exhibit D2 suggests that the conditions precedent made under the Traditional Rulers Law of 1981 were clearly satisfied before the Governor, acting under Section 7 of the same law, issued the certificate of recognition. Above all, the act of revalidation has no root in law because exhibit D1 on which the defendants based their evidence of revalidation had died and was buried upon coming into effect of Chieftaincy Edict No.8 of 1976. The famous legal principle that say: one cannot put something on nothing and expect it to stand. See MACFOY v. U.A.C.LTD (1962) A.C 152.

In the instant case, exhibit D1 cannot be used as a basis for issuance of exhibit D2. The 1st defendant as the Obi of Oraifite on exhibit D2. In accordance with the tenets of Sections 4, 5, and 6 of the Traditional Rulers Law, it is mandatory that there must be evidence of the selection and presentation by the people of Oraifite town and community to the secretary of the Local Government and Chieftaincy for under

Section 7 of the said law. The date, place and time must be proved. The presence of members of Oraifite town or community is equally mandatory. The 1st defendant did not show the date, place and time he was so presented in accordance with the provisions of the law. It is only when a traditional ruler is so nominated, selected/elected or appointed in compliance with the law that the Governor can act under Section 7 to recognize him and issue certificate of recognition. The recognition must then be published in the Gazette. In this case, the defendants failed to prove that they complied with the provisions of sections 3, 4, 5, 6 and 7 of the Traditional Rulers Law before the 1st defendant began proclaiming himself as the Traditional Ruler of Oraifite.

Another glaring acts of the defendants particularly the 1st defendant, that affected their case is the denial of existence of any constitution that brought the emergence of the 1st defendant as the obi of Oraifite. As I found earlier, the existence of the town/community's constitution which codifies the custom and tradition of the people of the community is a compulsory requirement. Despite admitting that Late Igwe Udeh-Ubaka emerged through exhibit P1, the 1st defendant dissipated so much energy to discredit exhibit P1, and P16. His reliance on the custom and tradition of Oraifite did not assist him because of lack of proof of such custom. In paragraph 5 of the 1st defendant's statement of defence, he averred that Obi of Unodu is always the primus inter pares among other quarter heads or Obi. That Obi of Unodu has also been the Obi of Oraifite. From paragraph 5(i)-(viii), the 1st defendant pleaded the names of those who had been Obi of Unodu and who became Obi of Oraifite. He testified in his evidence in chief along that line. Taking into consideration that the 1stdefendant based his case on the fact that the stool of Obi of Oraifite is hereditary and primogeniture, he is expected to prove that the people he listed in paragraph 5(i)-(viii) were his fore fathers who had occupied the Obi of Oraifite stool and their sons who succeeded them. Not only that

there was no such pleaded facts linking the persons as fathers and sons, the 1st defendant under cross examination stated that David Udoji and Gregory Udeh-Ubaka were uncles while Late Obi Omeifeukwu Ben Udoji was his father. Therefore, Late Obi Ogbuefi Udoji Ubaka listed as No. VI was not the father of Late Obi Omeifeukwu Ben Udoji. There were no pleaded facts connecting Late Obi Anumanu Ezeigbo as the father of Late Obi Chiji and the latter as the father of Late Obi Ezeliora. In the same vein the 1st defendant did not plead and lead evidence that Late Obi Ezeliora was the father of Late Obi Okenwa and that the latter begat Late Obi Ubaka Ezeigbo (Osuachala) who in turn begat Late Obi Ogbuefi Udoji Ubaka. The 1st defendant also failed to plead and lead evidence of the year or period these people ruled as Obi of Oraifite before it became his turn to ascend the throne.

Above all, the 1st defendant admitted being told that his uncles were among those who contested for the throne of Igwe of Oraifite in 1977 which Late Gregory Udeh-Ubaka won and became Igwe of Oraifite till he died. Despite being told and becoming aware that his two uncles were enmeshed in their struggles to become the Igwe of Oraifite, the 1st defendant failed to protest or object when one of his uncles: Gregory Udeh-Ubaka won and became the Igwe of Oraifite. It is on record that Late Gregory Udeh-Ubaka reigned as the Igwe of Oraifite from 1978 to 1984 and had his last Ofala in 1985. In one breath, the 1st defendant claimed that he was in the United State of America during the reign of Igwe Udeh-Ubaka, in another breath, he stated that he became the Obi(viii) of Oraifite after the death of his late father. He does not know the periods the people he listed in paragraphs 15 of his statement on Oath (which he adopted as his evidence in chief) reigned. Worst of it all, he does not know the period Late Obi Omeifeukwu Ben Udoji his (1st defendant's) father reigned. The 1st defendant (as DW1) did not know the history of Oraifite, neither did he knew that Oraifite was the second son of

Agbaja. He only has a vague idea that Agbaja was the ancestral father of Anaedo clan but he is conversant with the fact that Nnewi, Oraifite and Ichi belong to Anaedo clan. He does not know that Nnewi was the first son of Agbaja while Oraifite and Ichi were the second and last sons respectively despite the fact that he was the Eze of Oraifite and Ichi clan as shown by exhibit "D1".

Under cross examination, still the 1st defendant stated that Oraifite people needed not to select him as Igwe because they know that the stool is hereditary. He stated that the requirement of his presentation to the local government was not necessary. That Oraifite people accompanied him to the Governor of Anambra State for the issuance of certificate of recognition. That the Obi of Ezumeri quarters were among those that accompanied him for the presentation of the certificate even when the 1st defendant had stated that he did not recognize the 1st plaintiff in this suit. The 1st defendant could not recall the date of the presentation of the certificate of recognition by the Governor to him. He guessed that it was in the month of July, 2003. As far as the 1st defendant is concerned; he became the Obi of Oraifite in 1963 when exhibit D1 was issued to him and was revalidated in 2003.

I am greatly astounded that the 1st defendant could not tell the period his late father reigned as Obi of Oraifite and the date his late father began to reign. It is safe to say that the entire case of the 1st defendant was destroyed during his cross examination. The 1st defendant (as DW1) manifested his ignorance and lack of knowledge of the customs, tradition, culture and the history surrounding the traditional stool of Oraifite. To him, exhibits D1 and D2 are all he needed to be the Obi of Oraifite. He failed in his attempt to distinguish the title of Obi stool from that of the Igwe stool because he could not plead and adduce believable evidence to establish that whoever ascends the throne of Obi of Unodu quarter of Oraifite automatically becomes Obi of Oraifite. By his evidence, he admitted that

he was not nominated, selected or elected by Oraifite people and presented to the Local Government before being presented to the Governor of Anambra State for issuance of certificate of recognition (exhibit D2).

Let me be clear and at the risk of repetition, apart from Section 24 of the extant Traditional Rulers Law, which the 1st defendant cannot claim benefit of because his recognition was not made in accordance with the law, there is no other provision in the Traditional Rulers Law that recognizes ratification and re-validation of certificate of recognition. Having admitted that he was not nominated and selected/elected by Oraifite people, the 1st defendant cannot hide under the cloak of his imaginary custom of primogeniture and hereditary of the stool. He did not prove such custom. In the case of EZE v. OKECHUKWU supra, @ 370, the Supreme Court made it clear that under the Traditional Rulers Law of Anambra State, a traditional ruler is a person selected and appointed as Igwe or Obi of a town or community in accordance with the constitution of the town or community who after being presented to and duly recognized by the state Governor is styled or known as the recognized chief.

Having not been so selected or elected or appointed and presented by Oraifite town or community, I hold that the 1st defendant ought not to have been issued with exhibit D2 by the 2nd and 3rd defendants. The evidence of DW2 did not assist the 1st defendant in any way. I view DW2 as a lackey of the 1st defendant. He (DW2) was made the palace secretary. Like the 1st defendant (DW1), DW2 could not tell the period and the order in which those who has occupied the throne of Obi of Oraifite reigned. He evaded giving answers to questions regarding the coronation and reign of Igwe Udeh-Ubaka from 1978-1985, yet he (DW2) was about 20 years old as at that period. Like the DW1, he feigned ignorance of and refused to accord any recognition to exhibit P1 yet he stated that Oraifite Improvement Union was registered at the Corporate Affairs Commission by the 14th plaintiff. The question is: can a town union be registered at Corporate Affairs Commission without the constitution of that town? This witness could not adduce any convincing evidence of Custom and

Traditions of Oraifite that support primogeniture and hereditary as a method of ascendancy to the throne of Obi of Oraifite. The strident efforts made by DW1 and DW2 to make ascendancy to the Obi of Oraifite as the traditional ruler by traditional method of primogeniture and hereditary has no evidential value and basis because they failed to prove that custom. The Traditional Rulers Law made the requirement of a town's constitution as a mandatory requirement for the recognition of a traditional ruler in Anambra State, I so hold.

DW3 certainly gave a hearsay evidence which is not admissible. It is trite that a hearsay evidence has no probative value or weight. Therefore, I attach none to DW3's evidence. I hold that from the totality of evidence adduced in this case, the plaintiffs evidence outweighed that of the defendants on the imaginary scale of justice.

After considering the entire evidence given by all the parties, I am of the firm view that the plaintiffs proved their assertions and case. I have also come to the irresistible conclusions that the defendants, particularly the 1st defendant failed to prove the custom and tradition they asserted in any manner. I hold that in the light of evidence before me, it is obvious that Oraifite Town or Community has a constitution that regulates the selection or election of the Igwe or Obi of Oraifite otherwise known as the Traditional Ruler of the town. This constitution produced the first traditional ruler in the person of Igwe Gregory Udeh-Ubaka. There is no denying the fact that this constitution regulated the method of the selection of their Igwe and other chiefs.

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DIRECTOR

I critically read and compared exhibits P1 and P16. Both documents are substantially the same. The attempt by the 1st defendant to contradict the documents lacks evidential weight. Any difference in the versions as the 1st defendant attempted to do can only be corrected by the Oraifite people in accordance with the provisions of section 13(1) to (5) of the Traditional Rulers Law. It does not matter whether the document was a draft or recommendations. The fact remains, it is a constitution. I do not believe

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that Oraifite community has no constitution. If the town or community has no constitution, it would have been impossible for Oraifite Improvement Union to be registered at the Corporate Affairs Commission. It would have been impossible for Late Igwe Gregory Udeh-Ubaka to be recognized as the traditional ruler of Oraifite as shown in most of the documentary evidence. The recognition accorded to Late Igwe Udeh-Ubaka was not challenged by anybody including the 1st defendant and his cohorts. It is on record, and in evidence that Igwe Udeh-Ubaka reigned for almost ten years and he performed the functions of the traditional ruler of Oraifite. The 1st defendant began hallucinating about his unproved custom of primogeniture and hereditary of the stool after the demise of Igwe Udeh-Ubaka and last Ofala of the Igwe.

As I said earlier, the 1st defendant failed to prove this custom of hereditary and primogeniture method. The 2nd and 3rd defendants goaded the 1st defendant in his day dream and hallucination without considering and adhering to the express provisions of Sections 3,4,5,6,7,8,9,11,12,13 and 14 of the Traditional Rulers Law. Rather than follow the law as prescribed above, the 2nd and 3rd defendants' counsel began taunting this court with technicalities by raising unnecessary issues bordering on lack of cause of action, locus standi and competence of the suit all of which were geared towards attacking the jurisdiction of this court to hear and determine the suit. The 2nd - 3rd defendants' counsel last weapon against the action was the provisions of Section 168 of the Evidence Act, 2011 to the effect that:

SECTION 168:

(1) When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.

(2) When it is shown that any person acted in a public capacity, it is presumed that he had been duly appointed and was entitled to so act.

It is not in doubt that the above provisions constitute rebuttable presumptions. In other words, it means that everything is presumed to be rightly done until the contrary is shown. See the case of S.E.E.v. IFEGWU & ORS (2021) 80 NWLR (1778) 326 @ 345 -346.

In the instant case, the defendants have been shown to have disregarded and breached the extant provisions of the Traditional Rulers Law when the 1st defendant, acting on a false traditional and customary premise procured certificate of recognition as the Obi of Oraifite. The 1st defendant and of course the 2nd - 3rd defendants cannot claim the benefit of the presumption under Section 168 of the Evidence Act, 2011. It is trite that non-compliance with the existing law cannot be trifled with. The defendants cannot benefit from their own wrong. I so hold.

In the case of NWOSU v. A.P.P & ORS (2020) 16 NWLR (pt. 1749) 28 @ 61-81, the Supreme Court emphasized this point in this way:

> No person is allowed to benefit from his own illegality as illegality confers no right. A party in adjudication particularly the defendant, cannot rely on an illegal act to enforce either a claim or right. The court will not readily shut its eye to an apparent illegality. Where illegality is apparent, the court of justice will not hesitate to investigate it, and if established, give the appropriate judgment. A party who founded either his claim or defence besmirched with illegality, on the principle of ex turpi causa non oritur action, cannot be assisted by any court of justice. Equity follows the law.

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REGISTRY

It insists that whoever comes to court of justice to seek justice must come with clean hands.

Any act that is not authorized by law is an illegality. The law insists that a court should never allow itself to be used as a vehicle or instrument to enforce an illegality. For the courts. for the courts administer (sic) the law of the land, and will not a plaintiff, who breaks it.

In the instant case, the very actions or acts of the 1st defendant in not complying with the provisions of the Traditional Rulers Law before proclaiming and declaring himself as the Obi of Oraifite as well as proceeding to procure certificate of recognition (exhibit D2) from the 2nd - 3rd defendants were unlawful. Both the 1st defendant and 2nd -3rd defendants clearly violated or breached the law. They would not be allowed to seek equity because their hands are unclean or dirty. I so hold.

In the light of all I have stated above and after weighing the totality of the evidence on the proverbial imaginary scale of justice, the plaintiffs' evidence outweighed that of the defendants. On that score, the plaintiffs proved their case on the balance of probabilities and preponderance of evidence.

In the final result, I hereby make the following declaration and orders.

1. It is hereby declared that the recognition of the 1st defendant by the 2nd and 3rd defendants is null, void and of no effect on the ground that the recognition was made without regard to due process of law most particularly, in total violation of Sections 3, 4, 5, 6, 7, 8, 9, 11, 12, 13 and 14 of the Traditional Rulers Law of Anambra State.

2. The 1st defendant is hereby ordered to deliver up the certificate of recognition and other instruments of recognition to the 2nd defendant

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DIRECTOR

IGH COURT
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for cancellation. In the alternative, the 2nd defendant is hereby ordered to withdraw the certificate of recognition of the 1st defendant forthwith.

3. An Order of injunction is hereby made restraining the 1st defendant from parading himself as the Obi of Oraifite or Igwe of Oraifite or any other name/title whatsoever suggesting or implying that he is the traditional ruler of Oraifite in Ekwusigo Local Government Area of Anambra State. This order binds the 1st defendant's agents, privies and servants.
4. The defendants are hereby ordered jointly and severally to pay the sum of One Million Naira (N1, 000,000.00) to the plaintiffs as cost of this action.

HONOURABLE JUSTICE DENNIS C. MADUECHESI
(JUDGE)

Appearances:

C.C. Okaro, Esq. for the 1st to 13th plaintiffs.

Chief Chucks Momah (SAN) appears for himself as the 14th plaintiff

Ven. Anene Nzelu for the 1st defendant.

C.E. Ezebuilo Esq. for the 2nd and 3rd defendants

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Cert- ₦2000.00
STF- ₦1,572.00
₦1,700.00 Pd
on CR no
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