

Presumption of Regularity of Official Acts - Exceptions Thereto

In The Supreme Court of Nigeria
Holden at Abuja
On Friday, the 21st Day of June, 2024

Before Their Lordships

Uwani Musa Abba Aji
Helen Moronkeji Ogunwumiju
Chidiebere Nwaoma Uwa
Stephen Jonah Adah
Abubakar Sadiq Umar
Justices, Supreme Court

SC.971/2017

Between

- OBA J.O. AINA**
- CHIEF MICHAEL AWOYEMI**
(The Edemorun of Erinmope-Ekiti)

APPELLANTS

AND

- CHIEF ISRAEL ADEBAYO DADA**
- MOBAL LOCAL GOVERNMENT**

RESPONDENTS

(Lead judgement delivered by Honourable Abubakar Sadiq Umar, JSC)

Facts

The 1st Respondent alleged that he, as the title holder of Obajemu of Erinmope-Ekiti from Ijewu quarters is the 4th in rank to the 1st Appellant (Obaleo, the Oba of Erinmope Ekiti) among the nine High Chiefs in Erinmope Ekiti while the 2nd Appellant comes after him as the 5th in rank. The 1st Respondent further alleges that this arrangement has been in existence from time immemorial and has been

religiously followed by the people of Erinmope Ekiti. The arrangement has been recognized by the Government *via* Intelligence Report - Exhibits P5, Western States Chieftaincy Declaration of 1957- Exhibit P10, as well as Morgan Report and Government Views on it - Exhibit P9.

Decades ago, a dispute arose between the 2nd Appellant and 1st Respondent over the sharing of traditional meat and other items meant for the High Chiefs in Erinmope - Ekiti when the 2nd Appellant (i.e. by his predecessor in office in person of Late Chief J.O. Oyebola) on the instigation of the 1st Appellant, after the sharing of all other items in order of seniority without protest, got up from his seat and seized the portion of meat belonging to the 1st Respondent. The 1st Respondent immediately resisted the 2nd Appellant from attempting to usurp his position which resulted in the manhandling and tearing of the 1st Respondent's clothes by the 2nd Appellant. The dispute between parties could not be resolved; this led the 1st Respondent to institute an action at the trial court seeking amongst others, a declaration that the Appellants herein, as Defendants in the suit, cannot in collusion usurp his rightful position or change the order of seniority of hierarchy as contained in the Morgan Commission Report and accepted by government and which position represents the custom and tradition of Erinmope Ekiti.

At the trial court, the Appellants and Respondents called two witnesses respectively with several exhibits tendered. At the end of the trial, the court found that the 1st Respondent proved his claims through credible evidence and as such, granted the reliefs sought. Dissatisfied with the judgement of the trial court, the Appellants appealed to the lower court, which court dismissed the appeal. This is a further appeal to the Supreme Court.

Issues for Determination

The Supreme Court adopted two issues for determination of the appeal, to wit:

1. *Whether the lower court was right in not considering the points canvassed under issues two and three in the Appellants brief before the lower court?*
2. *Whether having regards to the oral and documentary evidence on record and the entire circumstances of this case, the lower court was right in affirming the judgement of the trial court?*

Arguments

Counsel argued for the Appellants that though the Appellants distilled three issues for determination of their appeal before the Court of Appeal and each of the issues is complaint against different errors in the judgement of the trial court, the lower court which decided to adopt only one issue to resolve the appeal ended up addressing only one complaint and failed to pronounce on the complaints in the remaining two issues as it promised to do. The two complaints not addressed by the lower court were the Appellants' complaint against the decision of the trial court to expunge Exhibits P11, P12 and D3. Counsel contended that there was no legal basis for the trial court's decision to expunge the said exhibits and if the trial court had not wrongfully expunged the said exhibits, the court would have dismissed the claim of the 1st Respondent. Counsel relied on **IYAGBA v SEKIBO (2010) ALL FWLR (PT. 518) 949 at 964**, amongst others, and urged the Supreme Court to invoke its power under Section 22 of the Supreme Court Act to step in and resolve the issues. In response, counsel for the 1st Respondent submitted that the lower court has the power to adopt issues distilled by either of the parties or formulate issues on its own to resolve an appeal and that where a court adopts issues distilled by either of the parties, the lower court is not bound to address and render a decision on every issue that counsel formulated but can decide to restrict itself to issues that raise recognizable complaint or grievance of the parties not issues that amount to mere academic or wasteful exercise.

Arguing issue two, counsel for the Appellant posited that evidence from parties indicate the Intelligence Report Exhibits P5 which the trial court relied upon to give judgement in favour of the 1st Respondent contained certain facts that were not correct and that being the case, the presumption of validity of the said Exhibit P5 is deemed in law to have been rebutted. He submitted that since the presumption of regularity of Exhibit P5 is not irrebuttable, the lower court was wrong to have rejected the oral evidence adduced at the trial to rebut the presumption in favour of the Intelligence Report on the premise that the content of a document cannot be varied or altered by oral evidence. In addition, counsel contended that the oral and documentary evidence adduced at the trial show that the 2nd Appellant's Chieftaincy title of Edemorun is senior and enjoys more pre-eminent status in the Erinmope-Ekiti custom and tradition than the 1st Respondent's Obajemu title, contrary to the finding of the trial court affirmed by

the lower court. He submitted that the 1st Respondent also admitted that the arrangement on Exhibits P6, P7, P9, P10 and D4 were not in order of seniority and urged the apex court to hold that the concurrent findings of the trial and the lower court were against the weight of evidence.

The 1st Respondent countered the submissions above. On the exhibits admitted and relied on by the trial court, his counsel argued that page 17 of the said Intelligence Report, which was specifically admitted as Exhibit P2A, with the heading "*Village Erinmope Order of Seniority*" listed the 1st Respondent as the 4th in rank above the 2nd Appellant. Counsel contended that the said document had been in existence since 1933 and had been used by the people of Otun District since then without any objection from any quarters because the document is presumed to represent unbiased information from a personality that had no attachment to any quarter, village or town in Otun District and same was based on vivid historical facts, custom and tradition of the people of Otun District. He concluded by stating that the 1st Respondent's oral and documentary evidence adduced in proof of that claim outweighs that of the Appellants. He argued that the 1st Respondent's claim is on seniority and the claim is supported by Exhibits P2, P5, P6, P7, P9, P10 and D4 all of which listed the 1st Respondent's Obajemu Chieftaincy title as No 4 and the 2nd Appellant's Chieftaincy title of Edemorun as No. 5 among the High Chiefs in Erinmope-Ekiti.

Court's Judgement and Rationale

Resolving the first issue, the Supreme Court held that the only issue decided by the Court of Appeal was comprehensive enough to subsume the other two issues raised and it was within the lower court's prerogative to choose the issues to adopt for the resolution of the appeal before it. However, having chosen only one issue out of three issues, the lower court was obligated to consider all points canvassed under the remaining two issues in the course of resolving the lone issue it adopted. It is only when that is done that the lower court can say that the other two issues were subsumed under the first one. Their Lordships noted that the lower court did not consider the points canvassed by the Appellants under issues two and three and that there could be no meaningful resolution of the lone issue it adopted for the resolution of the appeal without addressing the Appellants' complaints canvassed under issues two and three placed before it. Consequently, the apex

court invoked its powers under Section 22 of the Supreme Court Act and considered the complaints that the lower court neglected.

The complaints of the Appellants which were not considered by the lower court bothered on the assertion by the Appellants that (i) a comment made by the trial court in its judgement was not supported by the evidence on record and it therefore amounted to speculation and (ii) the trial court wrongfully expunged Exhibits P11, P12 and D3 on the grounds that Exhibit P11 had been withdrawn in a former suit before Agbelusi J, and Exhibit D3 on the basis that the findings in it are neither tenable nor valid in law.

On the former, Supreme Court held that the trial court's comment complained about was just an *obiter* and *it is elementary law that a mere obiter cannot form a valid ground of appeal*. Regarding the latter, Their Lordships held that *the grounds relied on by the trial court above were not grounds of law which could justify the rejection of a document when it is being tendered not to talk of justifying the expurgation of documents that are already admitted and marked as exhibits. The law is firmly settled that the only basis upon which a piece of evidence already admitted can be expunged at the stage of writing judgement or on appeal is where the evidence is in no circumstances admissible in law and not even where the evidence is admissible under certain conditions*. The Supreme Court therefore set aside the trial's court order expunging Exhibits P11, P12 and D3 and held them to be admissible.

Resolving the second issue, the Supreme Court highlighted that the concurrent decision of the trial and the lower courts in favour of the 1st Respondent were hinged on the weight attached to Exhibits P5, P9, and P10 all of which mentioned the Chieftaincy title of Obajemu before Edemorun in the list of High Chiefs in Erinmope-Ekiti. Their Lordships noted that the Appellants's adverse oral evidence on Exhibits P5, P9, and P10 appear cogent, but they could not dislodge the binding effect of the exhibits.

The court held that Exhibits P5, P9 and P10 were official documents endowed with presumption of regularity and validity pursuant to Section 168(1) of the Evidence Act 2011 and that *the law is firmly settled that when a declaration is approved by the appropriate authority as regulating a major chieftaincy title, the document is not only presumed to be a correct declaration of the custom and practice on the chieftaincy matter it regulates to the exclusion of any other custom but also becomes a subsidiary legislation on the Chieftaincy matter*.

Their Lordships clarified that *the presumption of regularity of these documents are rebuttable and could be set aside, as the court is cloaked with the power or competence to set aside a Chieftaincy Declaration such as Exhibit P10, if it is not truly reflective of the existing customary law of the people. Another instance where the court will invalidate a registered Chieftaincy Declaration is where the process of making that declaration is in breach of the right to fair hearing or where it offends any Constitutional provision or Act of the National Assembly or Law of a State.* As such, the right of 4th position of the 1st Respondent secured under the said Exhibits P5, P9 and P10, remains alive and kicking until the Appellants succeed in setting aside the said exhibits in a proceeding where the jurisdiction of the court is invoked for that purpose and all necessary parties are before the court.

Also, though Exhibit D3 resolved the issue of seniority in favour of the 2nd Appellant, there is no evidence that the report of the Chieftaincy Committee of Mobal Local Government was accepted by the then Ondo State Government. The law is that *recommendations contained in the reports of a committee or a body set up by government has neither the force of law nor can it confer a right or benefit on any person until the recommendation is accepted in a white paper or enacted into law.*

Ultimately, the Supreme Court held that the appeal was without merit and affirmed the judgement of the lower court.

Appeal dismissed.

Representation:

K.B.A. Badmus, for the Appellants.

Rotimi Bunmi Adabembe, for the Respondents.

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