**THE EXECUTIVE GOVERNOR OF OSUN STATE AND OTHERS**

**V.**

**IREWOLE LOCAL GOVERNMENT, IKIRE AND OTHERS**

IN THE COURT OF APPEAL OF NIGERIA

THE 27TH DAY OF FEBRUARY, 2015

CA/AK/157/2012

**LEX (2015) - CA/AK/157/2012**

OTHER CITATIONS

2PLR/2015/137 (CA)

(2015) LPELR-24431(CA)

**BEFORE THEIR LORDSHIPS**

MOJEED ADEKUNLE OWOADE, JCA

MOHAMMED A. DANJUMA, JCA

JAMES SHEHU ABIRIYI, JCA

**BETWEEN**

1. THE EXECUTIVE GOVERNOR OF OSUN STATE

2. THE ATTORNEY GENERAL OF OSUN STATE

3. THE COMMISSIONER, MINISTRY OF LOCAL GOVERNMENT AND CHIEFTAINCY AFFAIRS - Appellant(s)

AND

1. IREWOLE LOCAL GOVERNMENT, IKIRE

2. VICTORY ADEFIOYE AYOADE (For himself and other members of Momimi family)

3. HRM OBA OLATUNDE FALABI (LAMBELOYE II) The Akire of Ikire

4. ALHAJI SAMOTU ADEWOLE

5. ALHAJI MORUFU AKINWALE

6. MR. GASALI LAWAL

7. MR. ADENIRAN ALIDU

(For themselves and other members of metiku, Ademuyiwa, Atere and Falade Ruling Houses of Shoko Chieftaincy of Ikire) - Respondent(s)

**ORIGINATING COURT(S)**

OSUN STATE HIGH COURT HOLDEN AT OSOGBO (S.O. Falola., Presiding)

**REPRESENTATION**

I.A. MIKAHEEL with Z. I ANTHONY and K. A. JAJI - For Appellant

AND

1st Respondent was served with Hearing Notice, but was absent

J. D. OLANIYAN - for the 2nd Respondent

OLAYINKA SOKOYA - for the 3rd Respondent

O. J. ERHABOR with I. AREWA and O.A JEGEDE - for the 4th-7th Respondents - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

CUSTOMARY LAW – CHIEFTAINCY MATTERS: Selection and installed of a community chief – where there is an existing declaration pursuant to the law of the State regulating Chieftaincy affairs – duty of prescribed authority thereto – effect of failure of prescribed authority to adhere thereto

ADMINISTRATIVE AND GOVERNMENT LAW: Registered Chieftaincy declaration made as a subsidiary legislation to the Chiefs Laws, 1957 – validity thereof having regards to the fact that the said parent legislation is no longer operational – role of prescribed authority in administering chieftaincy declarations – limits

**PRACTICE AND PROCEDURE ISSUES**

COURT - CASE LAW - DOCTRINE OF STARE DECISIS/JUDICIAL PRECEDENT**:** Meaning - Nature of - as judgment or decision of a court of law operating as an authority for deciding a similar state of facts in the same manner, or on the same principle, or by analogy – bounden duty of court lower in the judicial hierarchy to apply the ratio decidendi of a higher court in facts and legal principles to the case under consideration – whether lower courts are bound to follow the decision of higher courts in all cases – when a judicial precedent is seen not to be in line with the case at hand

**MAIN JUDGMENT**

MOJEED ADEKUNLE OWOADE, J.C.A. (DELIVERING THE LEADING JUDGMENT):

This is an appeal against the judgment of Honourable Justice S.O. Falola of the Osun State High Court of Justice Osogbo delivered on 27th day of February, 2012.

This appeal is at the instance of the 1st to 3rd Respondents in the suit instituted by the 4th to the 7th Respondents as plaintiffs against the 1st to the 3rd Respondents and the Appellants as the 1st to 3rd Defendants at the Osogbo Judicial Division of the Osun State High court of Justice. The 4th to 7th Respondents as plaintiffs by an originating Summons sought the determination of the following questions:

1. Whether the Registered Shoko of Ikire Chieftaincy Declaration dated 23rd of June, 1958 and made as a subsidiary legislation to the Chiefs Law, (Cap. 19) Laws of Western Nigeria 1957 is still valid and operational having regards to the fact that the said parent legislation is no longer operational having been repealed and replaced first by the Chiefs Law Cap. 21, Laws of Oyo State- 1978 and Chief Law Cap. 25 Laws of Osun State 2004.

2. Whether the Shoko Chieftaincy having been de-recognized by The Recognized Chieftaincy (miscellaneous provisions) Order 1978 and made a minor chieftaincy is still subject to the provisions of the written Chieftaincy Declaration of 1957 and who between and amongst the Defendants has the duty to now install any Chief Shoko of Itaakun Ikire.

3. Whether the Osun State Government, as represented by the 1st - 4th Defendants, is not obliged to complete the amendment of the Registered Shoko of Ikire Chieftaincy Declaration dated 23rd June, 1958 (if found to be still operative) having been found to be defective by the inclusion of Momimi Ruling House as a ruling house entitled to present candidate for the Shoko Chieftaincy by the J.B. Abegunde Commission of Public Inquiry and accepted by Government which commenced the process of amending the said Declaration before the Chieftaincy was derecognized.

4. Whether by the findings of the J.B. Abegunde Commission of Inquiry (which findings were accepted by the Government) to the effect that Momimi family is not entitled to be made a Ruling House entitled to nominate candidate for the Shoko Chieftaincy of Ikire, the 5th Defendant or any other member of Momimi is still entitled to become or parade himself as Shoko of Ikire.

And upon the determination of the said questions, the plaintiffs (4th -7th Respondents) prayed for the grant of the following claims:

1. A declaration that the Registered Shoko of Ikire Chieftaincy Declaration dated 23rd of June, 1957 and made as a subsidiary legislation to the Chiefs Laws, 1957 is no longer valid or operational having regards to the fact that the said parent legislation is no longer operational having been replaced first by the Chiefs Laws Cap. 21, Laws of Oyo State, 1978 and Chiefs Law Cap. 21 Laws of Osun State 2004.

2. A declaration that the 1st- 4th Defendants have no direct role to play in the selection and installation of Chief Shoko of Itaakun, Ikire, the Shoko Chieftaincy having been de-recognized by the Recognized Chieftaincy (miscellaneous provisions) order 1978  and made a minor Chieftaincy over which the 6th Defendant has installation duty as the prescribed Authority.

3. A declaration that the 6th Defendant as the prescribed Authority over the Shoko Chieftaincy is the person entitled to approve and install Chief Shoko or determine any dispute as to the rightful person entitled to be so installed.

4. A declaration that the findings and conclusions or judgment of the J.B. Abegunde Commission of Inquiry to the effect that there are only four Ruling House namely, Metiku, Ademuyiwa, Atere and Falade to the exclusion of Momimi family is still valid and binding customary law relating to Shoko Chieftaincy.

5. A declaration that the 5th Defendant as a member of the Momimi family and other members of the said Momimi Ruling family are not entitled to be installed as Chief Shoko of Itaakun Ikire.

6. An order compelling the Osun State Government as represented by the 1st-4th Defendant to forthwith complete the amendment of the Shoko Chieftaincy Declaration in line with the findings of J.B. Abegunde Commission of Public Inquiry and the amendment processes commenced thereafter by the Government which accepted the findings and recommendations.

7. An order restraining forthwith the 5th Defendant from parading himself as Chief Shoko or as person entitled to become Chief Shoko of Itaakun Ikire.

8. An order restraining the 1st, 2nd, 3rd, 4th and 6th Defendants from recognizing and or paying any salary or allowances to the 5th Defendant as the Shoko of Ikire.

The case of the 4th - 7th Respondents as Plaintiffs from the affidavit evidence is that before the making of the Shoko Chieftaincy Declaration of 1958, there had always been four Ruling Houses of Shoko Chieftaincy, namely (a) Metiku (b) Ademuyiwa (c) Atere and (d) Falade.

The Chieftaincy Declaration of 1958 included the 2nd Respondent's Momimi Ruling House which led to series of protests by the four (4) Ruling Houses mentioned above and resulted in the setting up of J.B. Abegunde Commission of Enquiry. The Abegunde Commission of Enquiry found the Shoko Chieftaincy Declaration of 1958 to be defective and the commission's findings were accepted by the Government through the statement issued by Dr. L.O. Adegbite, the then commissioner for Local Government and Chieftaincy Affairs and steps were taken to disregard the defective declaration.

Consequently, upon that, the 2nd Respondent's family instituted an action in suit No. HOY/5/73 which action was later withdrawn and in 1976 the Shoko Chieftaincy was derecognized and relegated to a part III chieftaincy which meant the Shoko Chieftaincy Declaration no longer subsist and as such excludes Momimi family from filing of Shoko Chieftaincy. Furthermore, in 1993 the 2nd Respondent's family instituted an action in suit No. HIW/170/93 on the matter but the Appellants and the 4th - 7th Respondents were not made parties to the action and since the judgment, there have been outside court acrimonies between the four (4) families and the 2nd Respondent's family, hence there is need for the Osun State Government to complete the amendment of the Chieftaincy Declaration or declare it void in line with the findings of the Abegunde Commission of Inquiry.

Finally, it is the case of the 4th-7th Respondents that sometime in 2010, the 2nd Respondent started to lay claim to the office of Shoko of Ikire and also demanding for his allowances and that it is the Akire of Ikire who is the prescribed authority to Shoko of Ikire and he has not approved and or installed the 2nd Respondent as Shoko of Ikire.

The Appellants filed a counter affidavit in the court below. They deposed that the 3rd Respondent is a mere consenting authority and not a prescribed authority to the Shoko of Ikire Chieftaincy, and that the 1958 Chieftaincy Declaration was validly made and reflect the true and correct tradition and customary law relevant to the Shoko of Ikire Chieftaincy. They conceded that the J. B. Abegunde commission made some recommendations, but such remains recommendations and that suit No. HOY/5/73 instituted by the Momimi family was not determined on merit. They further deposed that by a letter Exhibit MOJ 1, the 2nd Respondent has since been recognized and that suit HIW/170/93 has decided many issues raised by the 4th - 7th Respondents (Plaintiffs).

Appellants further contended that since the 1958 Chieftaincy Declaration of Shoko of Ikire has not been amended or revoked, it is still the subsisting declaration governing the appointment and selection of Shoko of Ikire Chieftaincy. That though the Recognized Chieftaincy (Miscellaneous Provisions) Order 1978 derecognized the Shoko of Ikire Chieftaincy by reducing the rank of the Chieftaincy to Minor Chieftaincy, this does not change the customary law as codified in the Chieftaincy Declaration, and such should prevail until amended contrary to the prayers contained in the 4th and 5th reliefs of the Plaintiffs 14th - 7th Respondents). They contended that the 2nd Respondent has been installed since 1998 and that by a letter dated 15th July, 2003 Exhibit MOJ 1 the 2nd Respondent cannot now be restrained from performing the function of that office.

The 1st Respondent, the Irewole Local Government Ikire contended that the Chiefs Law 1957 under which Chieftaincy Declaration was made had been repealed and replaced by the Chiefs Law of Oyo State 1978 and finally Chiefs Law Osun State Cap. 25 of 2002.

That the report of Abegunde Commission of Inquiry and the attempt to implement it by amending the Chieftaincy Declaration have all become obsolete. The 1st Respondent conceded that Government has concluded the amendment process and was about sealing it when it was decided that since the chieftaincy has become a minor chieftaincy, there was no need for an amendment of the Declaration which does not apply to the Shoko of Ikire chieftaincy anymore. The 1st Respondent contended further that the principal law having been repealed with its subsidiary legislation (Shoko of Ikire chieftaincy Declaration) the two have become so obsolete and no longer valid for purpose of actions not commended or completed before the repeal.

The 2nd Respondent averred that he is the Shoko of Itaakun Ikire and a traditional Oba recognized by Osun State Government. He admitted that the 3rd Respondent the Akire of Ikire is the paramount Traditional Ruler of Ikire. He also admitted that Shoko chieftaincy was derecognized as a part III chieftaincy. He admitted that there had been litigations between his Momimi Ruling family and other four ruling families. He disclosed that after his installation as the Shoko of Itaakun he pressed for his salary.

He further deposed that Abegunde Commission of Inquiry and the subsequent acceptance through the Commissioner for Local Government and Chieftaincy Affairs was the issue in contention in suit No. HIW/170/93. That his family filed a separate suit when the Abegunde Commission for Inquiry recommended the removal of his Momimi family from the entitled Ruling House. But, when it was realized that the time for amendment of the Declaration had lapsed, they withdrew the suit.

He deposed that officers of Government who should have completed the amendment had refused to do so till the time it lapsed, and that being public servants they cannot be called upon to conclude the exercise in view of the provisions of public officers protection law. He disclosed that his counsel R.O. Ogunwole (SAN) had alerted him that all the issues being raised in this case had been resolved in HIW/170/93 hence this suit is no longer maintainable, and an abuse of court process, the plaintiffs (4th-7th Respondents) having filed series of suits against his family. He insisted that the chieftaincy Declaration is still binding on the plaintiffs and himself, and that the fact that the chieftaincy has been derecognized has not taken away any effect of the Registered Declaration.

The 3rd Respondent agreed that after it's de-recognition the Shoko of Ikire became a minor chieftaincy. He described the process of installation culminating in the presentation of the candidate ratified by the kingmakers to the prescribed Authority who would approve and install the candidate.

He contended that the last holder of the title died in 1992 and ever since, no candidate has been presented to him for approval and installation as the Shoko of Ikire. He further contended that unlike Shoko Mudashiru Oyekanmi who occupied the title last, the 2nd Respondent has never been presented to him for approval and installation. He wondered how the 2nd Respondent could be claiming to have been installed without the input of the Prescribed Authority. He further contended that the Government cannot recognize a chief that has not been installed. The 3rd Respondent emphasized that his position as the Prescribed Authority over Minor chieftaincies in Ikire has not been repealed and the government cannot approbate and reprobate.

He deposed that the intention of the 2nd Respondent to parade himself as Shoko of Itaakun within Ikire land who is not under him would lead to chaos and total breakdown of law and order in Ikire town with two Obas of coordinate status.

The learned trial judge reviewed the affidavit evidence and considered the submissions of the parties.

On the application of the public officers protection Law to the suit, the learned trial judge held that the Public Officers Protection law, even if it exists in Osun state is not applicable to chieftaincy disputes and that the Public Officers Protection Act cannot be used either as a substitute because its application is restricted to Federal Public Officers.

After holding that the 3rd Respondent is the Prescribed Authority over all Minor Chieftaincies in the area traditionally associated with Ikire town, including Shoko Ikire chieftaincy the trial court went further to say that the fact that a chieftaincy has been relegated to Minor Chieftaincy does not preclude the chieftaincy from having a Chieftaincy Declaration. However, such Chieftaincy Declaration should be read, interpreted and applied in line with the repealing and parent law if there is any conflict or inconsistency between the parent law (Chiefs Law) and derecognition Law and the relegated Chieftaincy Declaration, the Chieftaincy Declaration shall be void to the extent of such inconsistency.

The learned trial judge also considered that there is no issue of estoppels created by the decision in suit No. HIW/170/93 which led to Appeal No CA/I/211/99 because the parties, the claims/issues and the subject matter in the previous suit was not the same with the present suit. In particular, that the res in the previous suit are the subsistence  of the Chieftaincy Declaration pending the amendment, eligibility of Momimi family to Shoko Chieftaincy and the incompetence of the candidature of Adeoye Oairo. That the res in this case is the completion of the proposed amendment of the chieftaincy Declaration and the incompetence of the claim of the 2nd Respondent as the incumbent of Shoko of Ikire

He dismissed the suggestions that the court lacked jurisdiction to entertain the suit on the ground that domestic remedies were not exhausted and or that the suit constituted an abuse of process.

The learned trial judge found as a fact that the Government has abandoned the Shoko Chieftaincy Declaration of 1958 that the Report of the J.B Abegunde's Commission of Inquiry has also been abandoned.

Consequently, the learned trial judge at pages 332 - 335 of the record resolved the questions raised by the 4th -7th Respondents (plaintiffs) as follows:

1. The Registered Shoko of Ikire Chieftaincy Declaration dated 23rd June, 1958 and made as a subsidiary legislation to the Chiefs Law Cap. 19 Laws of Western Nigeria 1957 has been abandoned by the 1st - 4th Defendant (1st-4th Respondents) in view of Exhibit OJ2, OJ6 and OJ7 and therefore no longer operational.

2. The Shoko of Ikire Chieftaincy having been de-recognized by the Recognized Chieftaincy (Miscellaneous Provisions) Order 1978 and made minor Chieftaincy, it is the 6th Defendant the Akire of Ikire and the prescribed Authority to Minor chieftaincies in areas associated with Ikire town.

3. Osun State Government as represented by the 1st-4th Defendants is obliged to, rather than complete the amendment of the Registered Shoko of Ikire Chieftaincy Declaration made 23rd June, 1958 which has been found to be defective by J.B. Abegunde Commission of Public Inquiry and abandoned by the 1st to 4th Defendants conduct a fresh public inquiry and make and approve a new Chieftaincy Declaration for Shoko of Ikire.

4. The report of J. B. Abegunde Commission of Inquiry having been abandoned, the new Commission of Inquiry to be set up by the 1st to 3rd Defendants shall determine whether or not, the Momimi ruling house as represented by the 5th Defendant in this suit, is entitled to produce Shoko of Ikire.

The court below then made the following orders:

1. It is hereby declared that Registered Shoko of Ikire Chieftaincy Declaration approved 23rd June, 1958 and registered on 24th June, 1958 and made subsidiary legislation to the Chiefs Law 1957 is no longer valid or operational, having been abandoned and rendered obsolete by the 1st -4th Defendants in view of Exhibits OJ2, OJ6 and OJ7 attached to the Originating Summons.

2. It is hereby declared that the 1st-4th Defendants have no direct role to play in the selection and installation of Chief Shoko of Ikire, the Shoko Chieftaincy having been de-recognized by the Recognized Chieftaincy (Miscellaneous Provision) Order 1978 and made a minor chieftaincy over which the 6th Defendant has installation duty as the prescribed Authority.

3. A declaration is hereby made that the 6th Defendant as the Prescribed Authority over Shoko of Ikire Chieftaincy is the person entitled to approve and install Chief Shoko of Ikire and determine any dispute as to the rightful person entitled to be so installed.

4. It is hereby declared that the report of J.B. Abegunde Chieftaincy Commission of Inquiry having been abandoned, the 1st - 4th Defendants shall cause a fresh Commission of Inquiry to determine the correct customary law applicable to Shoko of Ikire Chieftaincy with regards to the name and number of entitled ruling houses. Pending the approval of a new Chieftaincy Declaration, the 6th Defendant shall determine the eligible candidates in line with the applicable customary law.

5. The claim No. 5 is dismissed. Rather it is hereby declared that the 6th Defendant as prescribed Authority in exercise of the powers conferred on him under the law shall determine whether the 5th Defendant and members of Momimi Ruling family are entitled to be selected and installed as Shoko of Ikire pending when a new declaration is approved and registered.

6. The 6th relief hereby fails and is accordingly dismissed. The report of J.B. Abegunde Commission of Inquiry having been abandoned and rendered obsolete and in operational can no longer be used to amend the Shoko of Ikire Chieftaincy Declaration which has also been abandoned and rendered obsolete and in operational by the 1st-4th Defendants.

7. An order is hereby granted restraining forthwith the 5th Defendant from parading himself as Chief Shoko of Ikire pending his appointment by the person entitled by customary law so to appoint and approve by the prescribed Authority.

8. An order is hereby made restraining the 1st, 2nd, 3rd, 4th and 6th Defendants from recognizing and or paying any salary or allowances to the 5th Defendant as the Shoko of Ikire until his appointment is approved by the 6th Defendant being the prescribed Authority.

Dissatisfied with the judgment the 1st to 3rd Respondents (agencies of the Government of Osun State) filed a Notice of Appeal containing two (2) grounds of appeal before this court on 30/3/2012. The relevant briefs of argument in this appeal are as follows:

1. Appellants brief of argument dated and filed on 14/1/2013 but deemed filed on 25/2/2013.

2. 3rd Respondent's brief of argument dated 7/4/2014 filed on 8/2/2014 and deemed filed on 16/9/2014.

3. 4th -7th Respondent's brief of argument dated 20/1/2014 but deemed filed on 16/9/2014.

4. Appellant's reply brief dated 28/10/2014 but deemed filed on 29/10/2014.

The 1st and 2nd Respondents did not file any brief of argument in this appeal. Learned counsel for the Appellants nominated two (2) issues for determination in this appeal.

They are:

1. Whether the trial court was right when he directed or ordered the 1st - 3rd Appellants to set up a Committee of Enquiry with a view to making another chieftaincy Declaration for Shoko of Ikire when a court of competent and co-ordinate jurisdiction as well as Court of Appeal have decided that the 1958 Shoko of Ikire Chieftaincy Declaration still subsist and has never been abandoned or amended (Ground 1 of the Notice of Appeal).

2. Whether the trial judge was right when he decided that the provision of Public Officers (Protection) Laws does not exist in Osun State (Ground 2 of the Notice of Appeal).

The 3rd Respondent formulated three (3) issues as follows:

1. Whether the Shoko Chieftaincy is a Minor Chieftaincy having been so relegated by law.

2. Whether the lower court was not right in holding that the 3rd - Respondent - Oba Olatunde Falabi is the Prescribed Authority over the Shoko Chieftaincy.

3. Whether the 2nd Respondent can without been presented to the 3rd Respondent - Oba Olatunde Falabi for installation as the Prescribed Authority can validly claim to be Shoko of Ikire.

Learned Counsel to the 4th-7th Respondents also formulated three (3) issues as follows:

1. Whether or not the reliefs granted by the lower court to the effect that the 1958 Shoko of Ikire Chieftaincy Declaration has been abandoned flow from the resolution of the questions posed before the court and the established and undisputed evidence before the court.

2. Whether or not the learned trial judge did not correctly apply the principle of stare decisis emanating from HIW/170/93 and CA/I/113/99 to its best possible applicability giving the facts and reliefs sought in this Suit No. HOS/128/2011 now on appeal.

3. Whether the learned trial judge was right having regards to the law and undisputed facts in coming to the conclusion that the Public Officers Protection Laws does not exist in Osun State.

This appeal shall be decided on the issues nominated by the Appellants. Meanwhile, the case of the Appellants shall be considered on one side of the scale while the cases of the 3rd Respondent and the 4th-7th Respondents shall be considered together on the other side of the scale as that of the "Respondents" This is for the reason of the shared common interest between the two sets of Respondents and also for convenience.

On issue No 1, Learned Counsel for the Appellants quoted passages from the previous judgments in suit No. HIW/170/93 and Appeal No. CA/I/211/99 and submitted that the resultant effect of the above decisions is that the 1958 Chieftaincy Declaration of Shoko of Ikire which is held to be in existence shall continue to govern the appointment into Shoko Chieftaincy stool.

He referred to the cases of Olu Ogunsola V. National Insurance Corporation of Nigeria (2010) 8 SCM p.154; Okonji V. Dr. Mudiaga & Ors (1985) 10 SC 267 and Osakue V. Fed. College of Education Asaba & Anr. (2010) 5 SCM 185 and  submitted that the lower court, by ordering the 1st -3rd Appellants to set up another committee with a view to making another declaration as well as the holding that the 6th  defendant (3rd Respondent) as the prescribed Authority in exercise of the powers conferred on him under the law shall determine whether the 5th defendant (2nd  Respondent) and members of Momimi Ruling family are entitled to be selected and installed as Shoko of Ikire pending when a new declaration is approved and registered  amount to flagrant disregard of the decision of the Court of Appeal.

Learned Counsel for the Appellants submitted that on the strength of the authorities cited above, the court below ought to have followed the decision of the Court of Appeal in Appeal No. CA/I/211/99 and hold that the 1958 Declaration of Shoko of Ikire is still subsisting and not amended instead of ordering the 1st -3rd Appellants to set up  another committee with a view to making another declaration.

He argued that the learned trial judge also erroneously held at page 49 of the judgment (page 332 of the Record) that the 1958 Declaration has been abandoned.

He referred to and quoted paragraphs 18 and 19 of the counter affidavit of the 2nd Respondent at pages 130 - 131 of the Record as follows:

18. That after the death of incumbent from Atere Ruling House, Chief Arasi Oyebitan, Momimi Ruling House was called upon to provide a candidate to fill the vacant stool. A public notice duly signed by the Secretary of Aiyedade District Council dated 10/9/70 was sent to my family to provide a candidate.

19. That in accordance with the said declaration, the Plaintiffs family met and presented Raimi Aderibigbe (Deceased) a member of their family but the other ruling Houses using the kingmakers refused the candidature of the plaintiffs family on the ground that the candidate was a politician and they would not want politics to divide the family. The family made an attempt to present another candidate but the kingmakers still refused.

The 4th -7th Respondents (Plaintiffs) said counsel did not deem it necessary to file further affidavit to deny or controvert these pieces of evidence. That, despite those uncontroverted averments, the trial judge went ahead to decide that the Shoko Chieftaincy declaration has been abandoned.

Learned Counsel submitted that assuming without conceding that the Akire of Ikire (3rd Respondent) is the prescribed Authority over the Shoko chieftaincy having been derecognized, any selection or appointment to the chieftaincy should be made using 1958 Declaration which has been held to exist by the Court of Appeal as the reduction in rank of that chieftaincy to a minor one does not change the customary law as contained in the declaration relating to entitlements, selection and appointment to it.

The provision of such a Declaration should prevail until it is amended.

He referred to the cases of Agbetoba V Lagos State Executive Council (1991) 4 NWLR (Pt.158) 664; Oladele & Ors V Oba Adekunle Aromolaran & Ors (1996) 6 5 NWLR (pt. 453) 207 -208.

Finally, on issue 1, counsel submitted that the trial judge was wrong in deciding that the 1958 Declaration of Shoko of Ikire has been abandoned and the consequential order that the 1st -3rd Appellants should set up another panel of Enquiry with a view to making another Declaration for Shoko of Ikire amount to setting aside the decision of the Court of Appeal.

The response of the Respondents to Appellants issue 1 could be seen more particularly from the treatment of issue 1 and 2 in the brief of the 4th -7th Respondents.

Learned Counsel for the Respondents submitted that the reliefs granted by the lower court flow from the claims of the 4th -7th Respondents. That the 1st leg of the claims at the lower court was for a Declaration that Shoko Chieftaincy Declaration was no longer valid or operational. The 6th leg of the claims was for an order compelling the Osun State Government to amend the chieftaincy Declaration which exercise will only be necessary if the said Chieftaincy Declaration is found to still be valid and operational.

The lower court, counsel said, justifiably found that the Chieftaincy Declaration was no longer in operation having been abandoned by the Government. There was therefore no need for an amendment and the court below instead of making an order for amendment directed the making of a new Declaration. This, according to Counsel is even unnecessary having regard to the fact that the chieftaincy has now become a minor chieftaincy that is now under the authority of a prescribed Authority.

The Respondents counsel submitted that the role of 1st -3rd Appellants or more appropriately counsel representing (or misrepresenting them) is both confusing and incongruous.

That they were never parties in HIW/170/93 and yet they are celebrating a decision against their interest unlike their predecessors, civil servants of old that abandoned the Shoko Chieftaincy Declaration. Counsel submitted that the reason for the abandonment of the Shoko Chieftaincy Declaration may be found in paragraph 21 of affidavit of the 3rd Respondent at page 200 of the record of appeal. That it was the Government that abandoned the chieftaincy declaration. That in page 51 lines 1 - 4 of the record of appeal, the Ministry wrote thus:

"This Ministry accepted the need for an amendment to the Shoko of Ikire Chieftaincy Declaration as far back as October 1972 when the Ministry accepted the Abegunde Report..."

That in explaining the delay in submitting the file for approval of Exco for the amendment, one of the 5 reasons given in paragraph 2 (e) in pages 53 - 54 of the record of Appeal was that:

"The Shoko of Ikire Chieftaincy has become a minor chieftaincy under the new chieftaincy reform w.e.f. 1/2/76 and the need for a declaration no longer arises".

Respondents counsel submitted that the Government did not just stop at the symbolic abandonment of the chieftaincy Declaration, but also went ahead to fill the Shoko of Ikire Chieftaincy in 1976 when Mudasiru Oyekanmi from Metiku ruling house was installed as Shoko of Ikire against the provisions of the Declaration. There was no protest from the 2nd Respondent's family in 1976 and throughout the tenure of Mudasiru Oyekanmi until he died in 1992.

Counsel referred to the contents of the instrument of appointment of Mudasiru Oyekanmi (attached to the Affidavits of 4th Respondent as 1st plaintiff as Exhibit OJ2 at page 56 of the record and the affidavit of 3rd Respondent as Exhibit SO4 at page 210 of the record).

Relatedly, but on another wicket, Learned Counsel for the Respondents submitted that the decision by the learned trial judge in Suit No. HIW/170/93 to the effect that the 1958 Declaration still subsists was based on the fact that the executive Governor failed to amend the declaration which the commissioner had declared defective. However, that in the instant case, one of the reliefs sought by the 4th - 7th Respondents in their originating process was for an order compelling the Osun State Government as represented by the 1st - 3rd Appellants to forthwith complete the amendment of the Shoko chieftaincy Declaration in line with the findings of J.B. Abegunde Commission of Public Inquiry. He referred to relief 6 in page 3 of the record. He further noted that the Osun State Government (even as represented by the Appellants herein were NEVER made parties in HIW/170/93 or CA/112/99 and there was no injunction granted restraining the amendment or abandoning of the declaration by the Government.

This appeal by the Government, said Counsel is strange indeed.

Learned Counsel submitted that the learned trial judge in his judgment up held the decisions in HIW/170/93 and CA/I/112/99 and further went ahead to grant the reliefs  sought by the 4th -7th Respondents. That at pages 331 - 332 of the record, the court below held thus:

"In a situation like this, judicial wisdom dictates that I take a decision that is rational and executable without running four of the earlier decisions given in HIW/170/93 and CA/I/112/99 and at the same time protect the interest of the parties in this case who were not joined in the previous suit. But I must point out clearly that the decision of the Supreme Court in the case of Alese v Aladetuyi (supra) has effectively cancelled out the decisions in HOS/170/1993 and CA/I/211/1999 on the application of the Shoko of Ikire Chieftaincy Declaration. All the same I hereby acknowledge the decisions of the previous judgments in HOS/170/93 and CA/I/120/99 to the effect that until it is to amend, the Chieftaincy Declaration of Shoko of Ikire is the Law governing the selection of Shoko of Ikire.

However, in view of the letter Exhibit OJ6 quoted above it has been abandoned by the 1st, 2nd, 3rd and 4th Defendants and can no longer be used.  
  
I am fortified by these two cases (1) Oba of Otan Ayegbaju v. Adesina (supra) (2) Umeji V A.G. Imo State (supra) and especially the Supreme Court decision in Alese v. Aladetuyi (supra). Although the report of J.B. Abegunde Commission of Inquiry is subsisting in view of the time lag, the report of the Commission of inquiry is hereby declared abandoned too - Consequently, the 1st, 2nd, 3rd and 4th Defendants are hereby ordered to conduct fresh inquiry into the Shoko of Ikire Chieftaincy with a view to drawing up and registering a fresh Chieftaincy Declaration.  
  
In the mean time 6th Defendant who is the Prescribed Authority to Shoko of Ikire Chieftaincy shall continue to exercise his right under the law, that is Section 22 (2) and (3) Chiefs Law, Cap. 25 Laws of Osun State of Nigeria 2002, to resolve any dispute that may arise in filling the vacant stool of Shoko of Ikire pending the time the 1st - 4th Defendants shall constitute a fresh Commission of Inquiry and register a new Chieftaincy Declaration for Shoko of Ikire.

Counsel submitted that the learned trial judge held the said chieftaincy Declaration as subsisting having not been amended but that same had been abandoned. He argued that throughout the gamut of HIW/170/93 and CA/I/211/99, neither the court nor parties took a step further by praying or ordering the completion of the amendment of the Dr. J.B. Abegunde Chieftaincy Commission's findings (even though it was copiously noted as pointed out by the learned trial judge in HIW/170/93 at page 105 of the record that the 1958 Declaration had not been amended) but in this suit, amending the 1958 Declaration in line with the J.B. Abegunde's findings was a relief sought by the 4th - 7th Respondents as Plaintiffs and thereby draws the line of distinction between Suit No. HIW/170/93 and Suit No. HOS/128/2011 which is subject of this appeal.

Learned counsel referred to the cases of University of Ilorin v Akinrogunde (2002) FWLR (Pt. 98) 106 and Dongtore V S.C. Plateau (2001) FWLR (Pt. 50) 1639 at 1651 for the proposition that a decision is authority for what it actually decides. That judgments should be read in the light of the facts on which they were decided. The all important question here, said counsel is: if the chieftaincy Declaration subsists, in a situation where the Government has abandoned same by failing to amend the Declaration or make appointments pursuant to the Declaration, is it not right for interested parties to seek redress in court by praying that those concerned do the right thing?

He submitted that in HIW/170/93 and CA/I/112/99 heavily relied upon by the Appellants, there was no call made that the executive should amend the 1957 Declaration as provided by the Dr. J.B. Abegunde Chieftaincy Commission and the judgment as delivered in the said suit should therefore be read in the light of facts on which it was decided and between the parties before the court.

In deciding Appellants issue 1, there is no gainsaying the fact that the Appellants heavily relied on the failure, refusal or inability of the court below to rely on the earlier decisions in HIW/170/93 and CA/I/112/99 which declared the status of the 1958 declaration as subsisting in the absence or failure of an amendment.

However, it must be pointed out that the parties, the claims and the subject matter in the instant appeal are not the same with those in HIW/170/93 and CA/I/211/99.

Beyond this, the facts and circumstances of suit No. HIW/170/93 are distinguishable from those of the present case and therefore there is no basis for a blind application of the doctrine of stare decisis.

The ratio decidendi in suit No. HIW/170/93  which was confirmed by the Court of Appeal in CA/I/211/99 was the declaration that the vested right of the Momimi Ruling House to the Shoko Chieftaincy has not been taken away in view of the statement of customary law as contained in the Shoko Chieftaincy Declaration of 1958. In the words of Oluborode J. in Suit No. HIW/170/93 at page 109 of the record.

"In view of this finding therefore I wish to reiterate that Exhibits 'O' and 'K' wit have no effect whatever on the Exhibit 'A' which is still binding on all the parties and the plaintiffs family cannot thereby be denied the right of succession to the throne which had vested in them once the vacancy had occurred. See Afolabi v. Governor of Oyo State (1985) 2 NWLR (Pt.9) page 734 at 736 - 739) and I find accordingly that the reliefs claimed in 31 (b) (c) (d) and (e) of the Plaintiffs Amended Statement of Claim have been proved to the satisfaction of this court and they are therefore granted".

It seems to me that the recognition of the Momimi Ruling House to the Shoko Chieftaincy by virtue of the 1958 Declaration as stated above is somewhat different from the claims of the 4th - 7th Respondents in the present suit which is to subject the candidature of the 2nd Respondent within his entitlement to the Shoko Chieftaincy to the authority of the Akire of Ikire (the 3rd Respondent) as the Prescribed Authority under the Recognized Chieftaincy (Miscellaneous Provisions) Order 1976 and to compel the Appellants to amend the said Declaration.

A judicial precedent is a judgment or decision of a court of law as an authority for deciding a similar state of facts in the same manner, or on the same principle, or by analogy. The doctrine of stare decisis is an enduring feature of juris prudence because a court lower in the judicial hierarchy is bound by the ratio decidendi of a higher court in facts and legal principles to the case under consideration. However, although lower courts are bound to follow the decision of higher courts, it is not in all cases that the lower court is bound to follow all the cases before it, it must be seen to be in line with the case at hand.  
See: Tejumade A. Clement & Anor V Bridget J. Linuanyanwu & Anor (1989) 3 NWLR (Pt. 107 39; C.N. Ekwuogor Investment (Nig.) Ltd V ASCO Investment Ltd (2011) 13 NWLR (Pt.1265) 565 at 587.

In the instant case the learned trial judge was not bound by the decisions in HIW/170/93 and CA/I/211/99.

On the second leg of Issue 1, the learned trial judge was also right to have declared that the Shoko Chieftaincy Declaration of 1958 has been abandoned and that the Appellants should order a fresh inquiry into the Shoko of Ikire chieftaincy. The reason for this is that from the questions posed for determination in the originating summons filed by the 4th -7th Respondents, the declarations sought and consequently the issues joined by the parties, the instant case does not only deal with the operational validity of the 1958 Declaration but also with the customary law entitlement of the Momimi Ruling House to the Shoko of Ikire Chieftaincy. For example, questions 3 and 4 of the questions sought for determination by the 4th-7th Respondents read thus:

3. Whether the Osun State Government, as represented by the 1st - 4th Defendants, is not obliged to complete the amendment of the Registered Shoko of Ikire Chieftaincy Declaration dated 23rd June, 1958 (if found to be still operative) having been found to be defective by the inclusion of Momimi Ruling House as a ruling house entitled to present candidate for the Shoko Chieftaincy by the J.B. Abegunde Commission of Public Inquiry and accepted by Government which commenced the process of amending the said Declaration before the Chieftaincy was derecognized.

4. Whether by the findings of the J.B. Abegunde Commission of Inquiry (which findings were accepted by the Government) to the effect that Momimi family is not entitled to be made a Ruling House entitled to nominate candidate for the Shoko Chieftaincy of Ikire, the 5th Defendant or any other member of Momimi is still entitled to become or parade himself as Shoko of Ikire.

Similarly, reliefs 4, 5, and 6 sought by the 4th -7th Respondents are as follows:

4. A declaration that the findings and conclusions or judgment of the J.B. Abegunde Commission of Inquiry to the effect that there are only four Ruling House namely, Metiku, Ademuyiwa, Atere and Falade to the exclusion of Momimi family is still valid and binding customary law relating to Shoko Chieftaincy.

5. A declaration that the 5th Defendant as a member of the Momimi family and other members of the said Momimi Ruling family are not entitled to be installed as Chief Shoko of Itaakun Ikire.

6. An order compelling the Osun State Government as represented by the 1st -4th Defendant to forthwith complete the amendment of the Shoko Chieftaincy Declaration in line with the findings of J.B. Abegunde commission of public inquiry and the amendment processes commenced thereafter by the Government which accepted the findings and recommendations.

In such a situation and to settle the various questions and issues once and for all, the learned trial judge was right having declared the 1958 Declaration as no longer valid  and operational and the J.B. Abegunde Report of Chieftaincy Commission of Inquiry abandoned to grant an order that the Appellants (1st -3rd Defendants) shall cause a fresh Commission of Inquiry to determine the correct customary law applicable to Shoko of Ikire Chieftaincy with regards to the name and number of entitled ruling houses. And, that pending the approval of a new Chieftaincy Declaration, the 6th Defendant (3rd Respondent) shall determine the eligible candidates in line with the applicable customary law.

Issue No. 1 is resolved against the Appellants.

On issue 2, Learned Counsel for the Appellants submitted that the learned trial judge held at page 309 of Record that Public Officers Protection Law of Oyo State which ought to be an existing law at the creation of Osun State had been repealed by the State proceedings Edict No. 5 of 1990 of Oyo State and that there is no re-enactments of the Public Officers Protection Law of Osun State till date. He argued that it is not in dispute that Section 2 (a) of the Public Officers (Protection) Law is conspicuously contained in the Law of Osun State 2002, Cap 137 and that a cursory look at the marginal note of the Public Officers Protection Law of Osun State 2002 also shows that Public Officers Protection Law of Osun State was also adopted from 1959 Laws of Western Region of Nigeria.

Appellants Counsel contend that assuming but not conceding that Oyo State had no Public Officers Protection Law codified in her book as at the time Osun State Laws were revised and reprinted, the marginal notes of the Osun State Public Officers Protection Law, Cap. 137 shows that the Western Region Law was equally adopted. Thus, he said, it would be wrong to premise Osun State Law, solely on the repealed law of Oyo State.

Appellants Counsel also referred to the case of OSIEC V A.C. & Ors (2010) 12 (Pt.2) SCM 224 at 227 and argued that by the doctrine of "Covering the field" the provisions of the Public Officers Protection Act indeed applies to Osun State.

He submitted further that the learned trial judge also erred when he held that the Public Officers Protection Law, even if it exists in Osun State is not applicable to chieftaincy disputes on the ground that the authority to make a declaration of customary law is legislative in nature. To the contrary, counsel submitted, relying on the cases of Mafimisebi v Eituwa (2007) 2 NWLR (Pt. 1018) 385 and Nureni Adele Ogunbamibi V Badagry L.G. & Ors (2009) 9 WRNthat the position of the law is that the function of making Chieftaincy Declaration lies with the executive arm of the state Government and is usually exercised by a chieftaincy committee on behalf of the Government.

The Respondents, first from the 4th - 7th Respondents submitted that the Appellants in challenging the competence of the action at the trial court relied on statute of Limitation Section 2 of the Public Officers Protection Law Osun State. On this, Counsel submitted that reliance on the alleged

Public Officers Protection Law is totally misconceived. That, the cause of action in this matter cannot be said to have arisen from the statement of Dr. L.O. Adegbite made on 23/10/72.

In the first place, that statement, he said, is in favour of the 4th - 7th Respondents who were Plaintiffs in this case. That it is so clear from a calm reading of the entire questions raised and the Reliefs claimed in the originating summons that the cause or action is the 2nd Respondent's continued acts of parading himself as Oba Shoko of Ikire since 2010 which is ongoing. The action therefore is not as a result of either the Shoko Chieftaincy Declaration or statement of Dr. L.O. Adegbite but on the interpretation of these documents vis-a-vis the ongoing claim of the 2nd Respondent that he has been installed as Oba Shoko of Ikire. The 4th - 7th Respondents (Plaintiffs) said Counsel, had no cause to sue the Government or her officers as aggrieved by their action and that the cause of action is the proclamation of the 2nd Respondent that he is now Oba Shoko of Ikire.

The Respondents, more especially through the 4th - 7th Respondents further submitted that the Public Officers Protection Law of Oyo State was not one of the laws received into Osun State in 1991. That in 1989, Oyo State enacted State Proceedings Edict No. 5 of 1990 which repealed the Public Officers Protection Law. So upon the creation of Osun State, the existing Laws of Oyo State made applicable in Osun State by the Decree creating Osun State included the State Proceedings Edict No 5 of 1990 which effectively repealed the Public Officers Protection Law.

On this, Counsel referred to the cases of Ayorinde V Oyo State Government (2007) ALL FWLR 709 at 721 and Uwaifo V ATT. Gen Bendel State & Ors (1982) 7 SC 124 also in (1982) NSCC (vol.13) 221.

Counsel, further referred to Section 4 of the State (Creation and Transition Provisions (No.2\_ Decree 41 of 1991 which created Osun State on August 27, 1991 and submitted that the Decree effectively received the Edict No. 5 which repealed Public Officers Protection Law in Osun State.

Counsel further referred to the cases of Rasheed Busari V Osun State Water Corp. (2008) All FWLR 1587; Olawole Akinbode V CR, Osun State High Court & Judicial Service Commission(Unreported Court of Appeal Judgment in CA/I/36/96.

He argued that the Ministry of Justice, Osun State that ought to initiate or advise the State Government on the need for legislation that will repeal State Proceedings Edict No. 5 from the Laws of Osun State continues to merely wish it away. That, there have been many decisions of the High Courts of Osun State declaring that the Public Officers Protection Law does not exist in Osun State.

Again, said Counsel, assuming but not conceding that the Public Officers Protection Law, which has not been enacted, is in operation in Osun State, it does not apply to this action which merely has to do with the interpretation of the effect of Shoko Chieftaincy Declaration and statement made in relation to legislative function of amending Chieftaincy Declaration which is not contemplated by S. 2 of Public Officers Protection Law.

He referred to the case of Eghe V Belgore (2004) 33 WRN 146 at 163. He submitted that this action is competent and is not affected by any Public Officers Protection Law or any statute of limitation as it is just an action challenging the action of the 2nd Respondent in declaring himself as Shoko of Ikire and parading himself as such - an action that is ongoing. The action is not challenging Exhibit OJ 2 made on 23rd day of October, 1972 or anything done pursuant to it as even the said Exhibit OJ 2 is in favour of the 4th -7th Respondents who were plaintiffs in the court below.

He referred to the case of Ikine V Edjerode (2002) FWLR (Pt. 92) 1775 at 1780 to buttress the argument that no cause of action arose with the promulgation of the 1958 chieftaincy Declaration but until the 2nd Respondent started parading himself as the Shoko of Ikire.

Learned counsel to the 3rd Respondent buttressed the submissions of the counsel to the 4th -7th Respondents that assuming without conceding that there is a valid Public Officers Protection Law in Osun state, such law is not applicable to this case because the cause of action by the 4th - 7th Respondents as plaintiffs arose when the 2nd Respondent started parading himself as the Shoko of Ikire despite the unchallenged and undisputable fact that the 2nd Respondent had never been installed by the 3rd Respondent whom the law had made the prescribed authority with respect to the Shoko Chieftaincy and not the offshoot of the statement of Dr. L.O. Adegbite made on 23/10/1972.

The Respondents through the 3rd Respondent counsel submitted further that it is the claim of the Plaintiff that determines the jurisdiction of the court. After referring to the case of Capital Bancorp Limited V Shelter Savings and Loans Limited & Anor (2007) 2 SC (Pt.11) they argued that in any event, there are conditions that must be put into cognizance for the Public Officers Protection Law to avail, which are:

i. It must be established that the person against whom the action is commenced is a Public Officer or a person acting in the execution of public duties within the meaning of that law.

ii. That act done by the person in respect of which the action is commenced must be an act done in pursuance or execution of any public duty or authority or in respect of any law, neglect or default in the execution of any such law, duty or authority.

After referring to the case of A-G Rivers State v A-G Bayelsa State & Anor (2012) 10 SCM 1 at 22the Respondents through the 3rd Respondent submitted that the 2nd Respondent has failed and/or neglected to satisfy those conditions to enjoy the protection of the Public Officers Protection Law. He said there is no modicum of doubt that the 2nd Respondent is not a public officer and the action complained of is not connected with the execution or in pursuance of any public duty. Counsel referred to paragraphs 25, 26, 27, 28, 29, 30, 31, 32 and 33 of the affidavit in support of the originating summons by the 4th - 7th Respondents. He submitted that the act complained of by the 4th- 7th Respondents evolves on a continuous act of the 2nd Respondent parading himself as Oba Shoko of Ikire. That the Public Officers Protection Law cannot aid the 2nd Respondent.

Counsel further submitted that the claim of the 4th - 7th Respondents are declaratory in nature and therefore could not have been defeated by the Public Officers Protection Law, If found to be in existence in Osun State.

In deciding Appellant issue No. 2, I must observe that the Learned Counsel for the Appellants based his Issue No.2 as well as the Ground No 2 of the Notice of Appeal on the equivocal statement of the learned trial judge contained on page 309 of the Record as to the existence vel non of a Public Officers Protection Law in Osun state. With due respect to the Learned Counsel for the Appellants, it is not entirely clear whether in the process of this reliance on the statement of the learned trial judge, he ever bothered to appreciate what exactly could be regarded as the ratio decidendi of the judgment appealed against on the said statute of limitation.

The full text of the opinion rendered by the learned trial judge on the existence of the Public Officers Protection Law in Osun state and/or the applicability of a Public Officers Protection Law to the case at hand as given by the learned trial judge as contained from pages 309 - 310 of the Record is quoted below:

"The third issue is the validity otherwise of Public Officers Protection Law in Osun State. My brief reaction to this issue is that Public Officers Protection Law of Oyo State which ought to be an existing law at the creation of Osun State had been repealed by the State Proceedings Edict No. 5 of 1990 of Oyo State. There is no re-enactment of the Public Officers Protection Law of Osun State till date. This is the position taken by the Court of Appeal in Busari v. Osun State Water Corporation (2008) All FWLR (Pt.114) page 1583 at 1601 and Ayorinde v. Oyo State Government (2007) FWLR (Pt.356) at 709.

Learned Counsel for the 1st -3rd Defendants has drawn my attention to the ruling of Abdulkareem J. (Supra) on the issue. I have read the ruling. It is obvious that the attention of my learned brother Abdurrazaq Abdulkareem J. was not invited to any of the decisions of the Court of Appeal cited above. With due respect to my learned brother Abdulkareem J. the decision was rendered per incuriam.

Though the decision of Abdulkareem J. has persuasive effect on this court, but certainly it cannot stand against the two decisions of the Court of Appeal. The Public Officers Protection Act cannot be used either or substitute because the application is restricted to Federal Public Officers. See the unreported case of Olawale Akinbode v. C.R. Oyo State, CR, Osun State & JSC, Court of Appeal Ibadan Division No CA/36/96 and NAWA V AG. Cross River State (2008) All FWLR 809 at 819.

Moreover, the Public Officers Protection Law even if it exists in Osun State is not applicable to Chieftaincy disputes. In the case of Adejuwon V Minister of Local Government & Anor (1962) WRNLR the court held "The authority to make a declaration of customary law which is conferred on the ministry by the Chiefs Law is of a legislative nature and as a result an action in respect of the making of such an instrument is not one to which Section 2 of the Public Officers Protection law applied". (Underlined emphasis supplied).

It seems to me that the unequivocal position of the learned trial judge on this issue is that even if there is a Public Officers Protection Law in Osun State, it could not apply to the Chieftaincy dispute before him.

Furthermore, I do agree with the Respondents that the cause of action in this case is the challenging the 2nd Respondent in declaring himself as the Shoko of Ikire and parading himself as such - an action that is ongoing. The action did not challenge Exhibit OJ 2 or Exhibit MOJ 1 as newly and recently alleged in paragraphs 2.03 - 2.05 of the Appellants Reply brief. Indeed Exhibit OJ2 is in favour of the 4th - 7th Respondents who were Plaintiffs. Also, in the case of Eghe v Belgore (2004) 33 WRN 146 at 162 the court held as follows:

"The Authority to make a declaration of customary law is conferred on the ministry by Chiefs Law is of a legislative nature and as a result an action in respect of the making of such an instrument is not one to which Section 2 of the Public Officers Protection Law applied".

See also, Daramola V Governor. Osun State (2003) 14 NWLR (Pt. 839) 190.

As such, the action of the 4th - 7th Respondents is competent and not caught by any Public Officers Protection Law or any statute of limitation.

Issue No. 2 is also resolved against the Appellants.

Having resolved the two (2) issues in this appeal against the Appellants, the appeal lacks merit and it is accordingly dismissed.

I make no order as to costs.

**MOHAMMED AMBI-USI DANJUMA, J.C.A.:**

I agree.

**JAMES SHEHU ABIRIYI, J.C.A.:**

I agree.