**VICTOR ADEFIOYE AYOADE**

**V.**

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

IN THE COURT OF APPEAL OF NIGERIA

THE 28TH DAY OF JANUARY, 2015

CA/AK/41/2012

**LEX (2015) - CA/AK/41/2012**

OTHER CITATINS

2PLR/2015/144 (CA)

**BEFORE THEIR LORDSHIPS**

MOJEED ADEKUNLE OWOADE, JCA

MOHAMMED A. DANJUMA, JCA

JAMES SHEHU ABIRIYI, JCA

**BETWEEN**

VICTOR ADEFIOYE AYOADE (for himself and other members of Momimi family) Appellant(s)

AND

1. THE EXECUTIVE GOVERNOR OF OSUN STATE

2. THE ATTORNEY GENERAL OF OSUN STATE

3. THE COMMISSIONER, MINISTRY OF LOCAL GOVERNMENT AND CHIEFTAINCY AFFAIRS

4. IREWOLE LOCAL GOVERNMENT, IKIRE

5. HRM OBA OLATUNDE FALABI (Lambeloye II, The Akire of Ikire)

6. ALHAJI SAMOTU ADEWOLE

7. ALHAJI MORUFU AKINWALE

8. MR. GASALI LAWAL

9. MR. ADENIRAN ALIDU

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

**REPRESENTATION**

J. D. OLANIYAN - For Appellant

AND

I.A. MIKAHEAL for the 1st - 3rd Respondents

C.A. OGUNMUYIWA - for the 4th Respondent

OLAYINKA SOKOYA - for the 5th Respondent

O.J. ERHABOR with OLAMIDE O.J. - for the 6th - 9th Respondents - For Respondent

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

CUSTOMARY LAW - CHIEFTAINCY MATTERS - CHIEFTAINCY DECLARATION CONTAINED IN A REPEALED LAW: Effect of repealing a Chieftaincy Law on a Chieftaincy declaration contained in it

CUSTOMARY LAW - CHIEFTAINCY MATTERS - REGISTERED DECLARATION: Effect and applicability of registered declaration

**PRACTICE AND PROCEDURE ISSUES**

JUDGMENT AND ORDER - CONSEQUENTIAL ORDER: Meaning of a consequential order

EVIDENCE - ESTOPPEL: Essence and Pre-requisite for the application of the doctrine of estoppel

ACTION - ORIGINATING SUMMONS: Restrictions on the use of originating summons – Whether objection to the use of originating procedure on a contentious issue can be raised on appeal

WORDS AND PHRASES - "JOINDER OF ISSUES": Meaning of "joinder of issues"

WORDS AND PHRASES – “STARE DECISIS” - "JUDICIAL PRECEDENT": Meaning of “Stare Decisis” and " Judicial precedent"

**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.

The appeal is at the instance of the 5th Defendant in the suit instituted by the 6th to the 9th Respondents as Plaintiffs against the 1st to the 4th Respondents the Appellant as the 5th Defendant and the 5th Respondent as the 6th Plaintiff at the Osogbo Judicial Division of the Osun State High Court of Justice. The 6th - 9th 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 (6th - 9th Respondents) prayed for the grant of the following claims:

1. A declaration that the Registered Shoko of Ikire Chieftaincy Declaration dated 23rd of June 1958 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 installation.

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 6th - 9th 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 Appellant'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 Appellant's family instituted an action in suit 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 Appellant's family instituted an action in Suit No. HIW/170/93 on the matter but the 6th - 9th Respondents and Government were not made parties to the action and since the judgment, there have been outside court acrimonies between the four (4) families and the Appellant'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 6th - 9th Respondents that sometime in 2010, the Appellant 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 Appellant as Shoko of Ikire. The 1st to 3rd Respondents filed a counter affidavit in the court below. They deposed that the 5th Respondent (6th Defendant) 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 I, the Appellant (5th Defendant) has since been recognized and that suit HIW/170/93 has decided many issues raised by the 6th - 9th Respondents (Plaintiffs).

1st to 3rd Respondents (Defendants) 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 (6th - 9th Respondents). They contended that the Appellant (5th Defendant) has been installed since 1998 and that by a letter dated 15th July 2003 Exhibit MOJ 1 the 5th Defendant (Appellant) cannot now be restrained from performing the function of that office.

The 4th Respondent (4th Defendant) 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 4th 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 any more. The 4th 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 commenced or completed before the repeal.

The Appellant as 5th Defendant averred that he is the Shoko of Itaakun Ikire and a traditional Oba recognized by Osun State Government. He admitted that the 6th Defendant (5th 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 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 5th Respondent (6th Defendant) 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 Appellant (5th Defendant) has never been presented to him for approval and installation. He wondered how the Appellant (5th Defendant 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 5th Respondent (6th Defendant) 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 Appellant (5th Defendant) 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 as contended by the Learned Counsel to the Appellant (5th Defendant) 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 5th Respondent (6th Defendant) 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 de-recognition 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 estoppel 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 Dairo. 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 5th Defendant (Appellant) 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 and 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 records resolved the questions raised by the 6th -9th 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.

However, until a new Chieftaincy Declaration is approved and registered, the prescribed Authority (the 6th Defendant) shall exercise his powers under Section 22 (2) and (3) Chiefs Law cap. 25 Laws of Osun State 2002 to determine disputes which may arise as to whether a person has been appointed in accordance with the applicable customary law as the 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 inoperational can no longer be used to amend the Shoko of Ikire Chieftaincy Declaration which has also been abandoned and rendered obsolete and inoperational 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 orallowances to the 5th Defendant as the Shoko of Ikire until his appointment is approved by the 6th Defendant being the prescribed Authority.

Dissatisfied with this judgment the 5th Defendant as Appellant filed a Notice of Appeal containing thirteen (13) grounds of appeal before this court on 5/3/2012.

On 10/10/2012, the Appellant filed an Amended Notice of Appeal containing fourteen (14) grounds of appeal in this Honourable court. The relevant briefs of argument in this appeal are as follows:

1. Appellant's brief of argument dated 10/10/12 and filed on the same day but deemed filed on 26/11/2012 - settled by J.D. Olaniyan Esq.

2. 4th Respondent brief of argument dated 4/5/2013 and filed on 16/5/2013 - settled by C.A Ogunmuyiwa Esq.

3. 5th Respondent's brief of argument dated 22/2/2013 and filed on 25/2/2013 - settled by Olayinka Sokoya Esq.

4. 6th - 9th Respondents brief of argument dated 29/1/2013 and filed on the same day and deemed filed on 25/2.2013 - settled by O.J. Erhabor Esq.

5. Reply on points of law to the 5th Respondent's brief of argument dated 6/3/2013 and filed on 7/3/2013 - settled by J.D. Olaniyan Esq.

6. Reply on points of law to the 6th - 9th Respondents brief of argument dated 6/3/2013 - settled by J.D Olaniyan Esq.

The 1st - 3rd Respondents did not file any brief of argument in this appeal. Learned Counsel for the Appellant nominated five (5) issues for determination in this appeal.

They are:

1. Whether or not the action is competent.

2. Whether or not the court can grant reliefs not claimed by any of the parties before it.

3. Whether or not the Appellant, 6th, 7th, 8th and 9th Respondents and indeed the court are not bound by the decision of the Appeal court in Appeal No. CA/I/211/99.

4. Whether the Appellant has been given fair hearing by the Honourable trial court by raising certain issues suo motu and making pronouncement on same without giving him the opportunity to address the Honourable trial court on them before his pronouncement.

5. Whether or not the Chieftaincy Declaration of 1958 is the native law and custom which regulates the appointment of Shoko Chieftaincy title.

The 4th Respondent adopted the same five (5) issues formulated by the Appellant. The 5th Respondent formulated three (3) issues for the determination of the appeal as follows:

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

2. Whether the lower court was not right in holding that the 5th Respondent - Oba Olatunde Falabi is the prescribed authority over the Shoko Chieftaincy.

3. Whether the Appellant can without been presented to the 5th Respondent - Oba Olatunde Falabi for installation as the prescribed authority can validly claim to be Shoko of Ikire.

The 6th - 9th Respondents also formulated five (5) issues as follows:

i. Whether or not the action at the lower court was competent.

ii. Whether or not the reliefs granted by the lower court do flow from the resolution of the questions posed before the lower court and the reliefs claimed from the court upon the determination of those questions.

ii. Whether the parties and issues in this case were the same with the issues and parties before the court in HIW/170/93 and CA/I/211/99.

iv. Whether the lower court was not right, having regards to the law and undisputed facts, in coming to the conclusion that the process of appointment of the Appellant (then 5th Defendant) as Shoko of Ikire has not been completed and that parading himself as the Chief Shoko of Ikire pending the appointment by the person entitled under customary law and approved by the prescribed Authority was inappropriate.

v. Whether the lower court was not right in holding that the 5th Respondent Oba Olatunde Falabi, was the Prescribed Authority over the Shoko Chieftaincy.

This appeal shall be decided on the issues nominated by the Appellant. Meanwhile, the case of the Appellant shall be considered on one side of the scale while the cases of the 4th Respondent, the 5th Respondent and the 6th - 9th 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 three sets of Respondents and also for convenience of treatment.

Learned Counsel for the Appellant argued issues Nos. 1 and 3 together under different headings as follows:

(a) The propriety of the use of originating summons procedure.

(b) Abuse of court process.

(c) Condition precedent

(d) Estoppel

(e) Principle of Stare decisis

(f) Statute of limitation.

On (a) above, Learned Counsel submitted that from the gamut of the affidavit evidence before the trial court and its findings, the life issues before the court are chieftaincy issues in which facts are in dispute.

He submitted that in circumstances like this where facts are in dispute, Originating Summons cannot be applied in resolving such dispute.

He said the issue of native law and custom regulating the Shoko Chieftaincy Declaration, the status of the Abegunde Commission of Inquiry, the entitlement or otherwise of the Appellant's family to present a candidate to fill the vacant stool of Shoko, the validity or otherwise of the selection of the Appellant as Shoko are all issues of disputed facts before the trial court which ordinarily should have been resolved by calling evidence.

He submitted on the authority of the cases of *Orji V Dorji Textiles & 3 Ors (2009) 12 SC (Pt.111) 73 at 122 and Dipianlong & 5 Ors V Dariye & Anor (2007) 4 SC (Pt. 111) 116 at 167 - 168* that the position of the law is clear on the use of Originating Summons and it is to the effect that Originating Summons can only be applied in interpretation of documents or statutes and certainly not in a matter where facts are in dispute as in chieftaincy matters of this nature.

Appellant's Counsel submitted further that the issue of the manner of approaching the court by the Plaintiffs (6th - 9th Respondents) herein touches on the issue of jurisdiction and it is trite that the issue of jurisdiction cannot be waived or acquiesced by the parties.

He referred to the cases of *Aderibigbe & Anor v Abidoye (2009) 4 - 5 SC (Pt.111) pages 142 - 143; Colecna v Church Gate (Nig.) Ltd 18 NWLR (Pt. 1225) 346.*

He urged us to set aside the judgment or strike out the matter on this ground.

On (b) above, Counsel submitted that the action which culminated in this appeal is an abuse of the process of the court as it was a blatant act of forum shopping by the 6th, 7th, 8th and 9th Respondents in collaboration with the 5th Respondent within the High court of Osun State.

He submitted that the parties in the present suit are one and the same with the parties in Suit No. HRE/5/2001. And, that the reliefs, the subject matter in the suit culminating in this appeal and the subject matter in HRE/5/2001 are the same but for a little language variation in the ways the reliefs were couched and any decision reached by the court in HRE/5/2001 will certainly affect the Appellant, the 5th, 6th, 7th, 8th and 9th Respondents.

That, rather than to wait the outcome in suit HRE/5/2001 the 6th - 9th Respondents (Plaintiffs herein) also filed Suit No. HRE/22/2009 but later withdrew the said action.

He submitted that the act of the 6th-9th Respondents withdrawing Suit No. HRE/22/2009 from Ikire Judicial Division and refilling same at Osogbo Judicial Division before another judge amount to abuse of court process.  
He referred to the case of *Olawale v Olanrewaju (1998) 1 NWLR (Pt. 534) 455.*

Again, said Counsel, rather than waiting for the outcome of the Suit No. HRE/5/2001 the 6th - 9th Respondents filed this action. That, the learned trial judge not averting his mind to the statement of claim in Suit No. HRE/5/2001 held inter alia at page 328 of the records as follows:

"... it is obvious on the face of the pleadings that the Plaintiffs on record and the class of persons they represent in the subsisting cases and the two already decided are clearly different.

Even the defendants are largely not the same. The reliefs and claims are also not entirely the same. The Plaintiffs have only this present case in court and no other one in this suit (sic) court or elsewhere.

Therefore I hold that there is no basis for the issue of abuse of court process raised by the 5th Defendant against the Plaintiffs in this suit".

Counsel submitted that the learned trial judge rightly stated the position of the law on the principle of abuse of court process in his judgment, but wrongly applied same when he held that the parties are not the same as the Plaintiffs in Exhibit A (HRE/5/2001) and the Plaintiff in the action before the court below are the same.

He submitted further that the 1st - 4th Respondents are just official nominal parties who were brought in to clothe the court with jurisdiction as whatever decision reached in HRE/5/2001 will affect the Appellant, the 5th Respondent and the 6th, 7th, 8th and 9th Respondents.

In support of his submissions above, Counsel referred to the cases of *Nyah V Noah (2007) 4 NWLR (Pt.1024) 337 and Dingyadi & Anor v INEC & 2 Ors (2010) 4 SC (Pt. l) 76 at 180 - 181* which described abuse of process as arising in a situation where the process of the court has not been used bona fide or which is wanting in bona fide and is frivolous, vexatious and oppressive.  
On (c) above, Appellant's Counsel submitted that the action before the lower court was not competent as the mandatory internal mechanisms for resolving dispute in relation to minor chieftaincy were not explored. That, by virtue of Sections 22 (2) (3) (4) and Sections 23 (1) of the Chiefs Law of Osun State 2000 before the 6th, 8th and 9th Respondents could institute the action before the lower court, they must have as stipulated by the foregoing provisions applied to the Commissioner for Local Government and Chieftaincy Affairs of the State.

He argued that from the Writ of Summons and Originating Summons, there is nothing to suggest that the 6th, 7th, 8th, and 9th Respondents complied with these provisions before approaching the lower court.

Counsel referred to the cases of *Bamisile V Osasuyi (2007) 10 NWLR (Pt. 1042) 225 at 267 and 282; Abioye V Alawode (2012) 13 WRN 71* for the view that a party aggrieved in respect of a Chieftaincy matter must exhaust all domestic remedies provided by the Chiefs Law before going to court otherwise his action is premature.

On (d) above, that is the doctrine of estoppel, Appellant's Counsel submitted that it was a common ground between all parties in the court below that there was a judgment in Suit No. HIW/170/93 and that the said judgment was affirmed by the Court of Appeal in Appeal no. CA/IB/211/99 between the appellant's family as the Plaintiff and Adeoye Dairo from Ademuyiwa Shoko Ruling House. One of the branches of the 6th, 7th and 8th Respondents in this appeal; and the 5th Respondent in this appeal (as the 1st Defendant in HIW/170/93 and CA/IB/211/99.

He submitted that the 6th, 7th, 8th and 9th Respondents in this appeal instituted this action on behalf of Shoko Chieftaincy family; just as Adeoye Dairo, the 2nd Defendant in Suit No. HIW/170/93 is a privy in blood to the 6th, 7th, 8th and 9th Respondents in this appeal.

He submitted further that Adeoye Dairo, the 2nd Defendant in Suit No. HIW/170/93 and Appeal No. CA/IB/211/99 being a nominated candidate of Shoko family (the 6th, 7th 8th and 9th Respondents in this suit) the decision reached in the said Chieftaincy matter is binding on the entire family.

Learned Counsel submitted further that assuming without conceding that the 2nd Defendant in suit No. HIW/170/93 was not a privy to the 6th, 7th, 8th and 9th Respondents (which is denied) as held by the honourable lower court. The said 6th, 7th, 8th and 9th Respondents cannot still validly maintain this action against the Appellant as they had knowledge of the matter and even the court's judgments on them which were exhibited by them.

He submitted that the 6th, 7th, 8th and 9th Respondents having had prior knowledge of the said suits both at the High Court and the Court of Appeal and having waited for the matter to be decided, it is now too late in the day for them to wake up and ask the lower court to determine issues affecting them which had earlier on been decided by competent courts including the Court of Appeal.

He referred to the cases of *A.G. Federation V Abia State & 35 Ors (2002) 4 SC (Pt. 1) 1 at 151; Ndulue v Onyekwu Iwnne (2002) 5 SC (Pt. 11) 124 at 134; Agbogunleri V Depo & 3 Ors (2008) 1 SC (Pt. 11 158 at 170; Bamigbesin V Oriade (2009) 13 NWLR (Pt. 1158) 370 at 388* and submitted that on the doctrine of standing by, if a person stood by and see his battle fought by someone else in the same interest, he should be bound by the result and not be allowed to re-open the case. Furthermore said Counsel, the subject matter of this appeal has been determined in Suit No. HIW/170/93 and CA/IB/211/99.

He submitted that by the decisions in HIW/170/93 and CA/IB/211/99 the Shoko Declaration of 1958 Exhibit A remains the customary law of appointment to the Chieftaincy on the traditional history. Counsel repeated the four (4) declarations and argued that on page 331 of the records, the learned trial judge tactically set aside the judgment of the Court of Appeal No. CA/IB/211/99 when he said:

"But I must point out clearly that the decision in the case of Alese V Adetuyi (supra) has effectively cancelled out the decisions in HOS/170/1993 (sic) HIW/170/1993 and CA/IB/211/99 on the   application of Shoko Chieftaincy Declaration".

He submitted that the honourable trial judge is without jurisdiction to make any pronouncement on the status of the Abegunde Commission of Enquiry report, the status of the Shoko Chieftaincy Declaration 1958, the status of the 5th Respondent in relation to the Chieftaincy Declaration and the rights of the Appellant or his Omomimi family in relation to the Shoko Chieftaincy same having been determined by a court of a coordinate jurisdiction and confirmed by the Court of Appeal in Appeal No. CA/IB/211/99.  
He referred to the case of *Nwaru & 11 Ors v Okoye & 19 Ors (2009) 7 - 12 SC 63 at 68.*

On (e) above, Counsel submitted that rather than following the precedent in Appeal No. CA/IB/211/99 on the status of the 1958 Chieftaincy Declaration, the status of the 1958 Chieftaincy Declaration, the status of the Abegunde Commission of Enquiry, the effect of the Hon. Commissioner's statement in respect of same, the status of the 5th Respondent to the said Shoko Chieftaincy title, the status of the Appellant and that of the 6th, 7th and 8th Respondents as decided by the Court of Appeal, the learned trial judge set aside the said decision in his judgment on page 316 of the records, when he held first that:

"... the 6th Defendant is the prescribed authority over all minor Chieftaincies in the area traditionally associated with Ikire Town, including Shoko of Ikire Chieftaincy's. and later, that "the fact that the Shoko of Ikire Chieftaincy Declaration describes the Akire as the consenting authority cannot stand in the face of the principal legislation which is the Chiefs Law".

In fact, said Counsel, the trial judge categorically stated in his judgment on page 331 of the Records that the case of *Alese V Aladetuyi (Supra)* has effectively cancelled out the decisions in HIW/170/1993 and CA/IB/211/99 on the application of Shoko Chieftaincy Declaration. That, although the 5th Respondent in this appeal has been restrained from recognizing or installing any other person from the family of the 6th, 7th and 8th Respondents but is only to recognize the Appellant in the said Court of Appeal's decision, but as shown above the learned trial judge set aside the decision and charted a new course for himself and made a distinct and unparallel order.

He submitted that the Appellant, the 5th, 6th, 7th, 8th and 9th Respondents and even the court is bound by the decision of the Court of Appeal and the various issues decided by the Court of Appeal cannot be given any other interpretation by the honourable trial court; that, it amounts to serious judicial rascality on the part of the learned trial judge to state and go ahead as he has done to make a different finding between same parties on issues in which the Court of Appeal has made its findings.

He stated that the 1st, 2nd, 3rd and 4th Respondents are just nominal parties the real contenting parties had their contentions ruled upon in Appeal No. CA/I/211/99 and should not be allowed to relitigate same under any guise.

He referred to the cases of *Ohefeaoba & 43 Ors V Abdul Raheem & 3 Ors (2009) 12 SC (pt. 11 1 at 46; Amaechi V INEC & 2 Ors (2008) 1 SC (pt. 1) 36 at 128; Yakubu Ent. Ltd V Omobolaji (2006) 1 SC (Pt. 111) 1 at 7* and noted that the trial judge properly stated the principles guiding the law on stare decisis and gave copious decisions of the superior courts on them but failed to make any finding on the issue of stare decisis on whether he was bound by same or not but rather tactically lumped same up with the issue of estoppel which he held was not present in the case before him.

On (f) above, Counsel referred to the case of *Okafor V A.G. Anambra State (2005) 14 NWLR (Pt.945) 2010 at 222- 223* and submitted that in construing whether an act is statute barred or not, the court will look at the Writ of Summons and Statement of Claim to determine when the act complained of first occurred and will view same vis-a-vis the statute of limitation over the subject matter.

He argued that the gravamen of the case of the 6th - 9th Respondents (Plaintiffs) was the Abegunde Commission of Enquiry and the Acceptance of the Commission of Enquiry Report by the Government through the statement issued by Dr. L.O. Adegbite, the then Commissioner for Local Government and Chieftaincy Affairs, that steps should be taken to amend the defective Declaration.

Counsel submitted that the above cause of action arose on the 23rd day of October, 1972 when Dr. L.O. Adegbite made the statement. Dr. Adegbite was acting in his official capacity as the then Commissioner for Local Government and Chieftaincy Affairs:

In effect, he was a public officer. That, by virtue of the Public Officers protection Law, Osun State, 2000 particularly Section 2 (a) thereof an action against public Officers must be commenced within 3 months next after the act complained about. The cause of action said Counsel, occurred on the 23rd of October 1972 whereas the action was not instituted until 10th October 2011 i.e. 39 years later. But, that the learned trial judge failed to apply the provision, first on the ground that the 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 was not re-enacted in Osun State and secondly on the ground that the Public Officers Protection Law even if it exists in Osun State is not applicable to Chieftaincy dispute.

On the applicability of the Public Officers Protection Law in Osun State, Counsel referred to the case of *NPA PLC V Lotus Plastics Ltd (2005) 12 SC (Pt. 1) 19 at 27* and furthered that there is no provision in the law excluding Chieftaincy matters in its application. In any event said Counsel, the matter is still statute barred. That by the provisions of Section 18 of the Limitation Law of Osun State, 2000 this action ought to have been brought within 5 years from the 23rd day of October 1972 when Exhibit OJ2 was made if no effect was given to the said statement within the stated time.

He referred to the case of *Texaco Panama Incorp V Shell (2002) 2 SC (Pt. 11) 16 at 25,* to the effect that time begins to run on the date the act complained of is first done or occurs.

The Respondents more especially through the 6th - 9th Respondents furnished their response to Appellant's issues 1 and 3. On the proprietary of the use of Originating Summons, it was argued that there was no such issue before the lower court for the simple reason that there was no material fact in dispute. There is nowhere in the counter affidavit where it was alleged that there was irreconcilable dispute over issue of facts. That, the now Orchestrated Clamour that the facts are disputed is borne out of an afterthought attempt to disparage the judgment of the lower court as that was not the case of the Appellant during trial at the lower court.

They submitted that the material facts of the case which are not disputed in any way and upon which the resolution and determination of the case by the lower court rested are as follows:

(a) Before the Politically Motivated Shoko Chieftaincy Declaration of 1958, there were four Ruling Houses entitled to produce Shoko and these Ruling Houses are (i) Metiku (ii) Ademuyiwa (iii) Atere (iv) Falade.

(b) The J.B. Abegunde Commission of Inquiry faulted the inclusion of the Appellant's Momimi family as a Ruling House and that Government accepted the Report and there are documentary evidence that the Government of the day jettisoned the Chieftaincy Declaration which led to the de-recognition of the Shoko Chieftaincy by Recognized Chieftaincy (Miscellaneous Provisions) Order 1978 thus effectively returning the now Minor Chieftaincy under the 5th Respondent Oba Olatunde Falabi, the Akire of Ikire as prescribed Authority.

(c) There is no dispute regarding the fact that the 5th Respondent, Oba Olatunde Falabi, the Akire of Ikire has not approved the Appellant as Shoko of Ikire.

Counsel stated that the resolution of the posed questions by the lower court was therefore based on legal principles and settled facts:

(a) The effect of the judgment of courts in HIW/170/93 and the appeal thereon on this case is not a matter of facts but on proper apprehension and application of the principles of the doctrine of estoppel.

(b) The question of whether the 1st - 3rd Respondents have any role o play in the installation of Shoko of Ikire, now a Minor Chieftaincy, is not a question of fact but on the interpretation of the Chiefs Law and the Recognized Chieftaincy (Miscellaneous) provisions Order 1978 and

(c) The question of who is the prescribed Authority over the Minor Chieftaincy of Shoko of Ikire is not a question calling for the resolution of conflicting facts but on applicable law to the Chieftaincy.

Learned Counsel for the Respondent submitted further that there was no material controversy over issue of facts in this case. That, contrary to the contention of the Appellant, there is no resolution of facts needed in deciding for example, the status of Shoko Chieftaincy Declaration, the legal effect of the acceptance of the Abegunde Commission of Inquiry, whether or not the 5th Respondent is the Prescribed Authority or who has authority over the Minor Chieftaincy of Shoko of Ikire. These, Counsel said were and still are the central issues in this case.

The Respondents submitted further that the lower court exhaustively dealt with the issue of the action constituting abuse of process as the 6th - 9th Respondent have never been parties to any previous or pending action against or by the Appellant.

The Respondents submitted on the question of condition precedent that the Appellant's contention that the 6th - 9th Respondents did not exhaust domestic remedy required in Minor Chieftaincy is totally misconceived. That in the first place this is not a chieftaincy dispute arising from a contest between two candidates. That the Appellant who is the sole candidate do not recognize the 5th Respondent as Prescribed Authority, let alone allow him to determine any dispute that can bring into play the resort to domestic remedies as envisaged by Section 22 (2) (3) and (4) and Section 23 (1) of the Chiefs Law of Osun State 2000.

After reproducing the relevant provision of Section 22 (4) of the said Chiefs Law Respondents Counsel submitted that the Appellant has not alleged that the Prescribed Authority has taken any decision to install him and the Respondents are not aggrieved by any such decision. That it is indeed amazing how the Appellant can in one breath admit that the Chieftaincy is a Minor Chieftaincy under a Prescribed Authority provided for in Chiefs Law of Osun State 2000 and in another breath hold on to Shoko Chieftaincy Declaration of 1958 that does not make room for Prescribed Authority but applicable only to recognized Chieftaincy. They submitted that the 5th Respondent deposed that the Appellant was never presented to him by the kingmakers and that he never approved him as Chief Shoko of Ikire. The Appellant did not contradict this averment or state in any paragraph of his counter affidavit that he was installed or approved by the Prescribed Authority.

Respondents Counsel further submitted that this action was an action calling for judicial interpretation of applicability of Shoko Chieftaincy Declaration of 1958, the Recognized Chieftaincies (Miscellaneous Provisions) Order 1976, The Report and proceedings of J.B. Abegunde Commission of Inquiry into Shoko of Ikire Chieftaincies and the various documented actions of Government on the outcome of the said Inquiry vis a' vis the claims of the Appellant that he has been installed as Shoko of Ikire without recourse to the 5th Respondent as Prescribed Authority. Counsel urged us to hold that the case of *Abidoye V Alawode (supra)* and Section 22 (4) of Osun State Chiefs Law 2000 will not be applicable.

On estoppel, Respondents Counsel referred to the cases of *Tsokwa Oil & Marketing Co. Nig. Ltd V UTC Nig. Plc & Ors (2003) FWLR (Pt. 173) 130; Dzungwe V Gbishe (1985) 2 WNLR (Pt. 545) 1* and submitted that the case is not caught by the doctrine of estoppel.

He argued that the 6th-9th Respondents (Plaintiffs) were never party to the action in HIW/170/93. The Defendants in HIW/170/93 were not sued in any representative capacity. That the present action was filed by the four (4) Ruling Houses of Shoko Chieftaincy of Ikire. The Appellant only sued one Dairo Adeoye and the 5th Respondent herein in HIW/170/93. The claims are different and none of 1st - 4th Respondents was a party to any previous actions. The judgment in HIW/170/93 did not declare the Appellant as Shoko of Ikire or restrain any of the 1st - 4th Respondents from performing what they are being asked to do namely to complete the amendment of the Chieftaincy Declaration if it is found to still be applicable.

The authorities cited according to Respondents Counsel are misapplied to the facts of the case. He argued that the cause of action in this matter is the continued agitation of the Appellant that he is the installed and recognized Shoko of Ikire while the central issue in HIW/170/93 was whether Momimi family was one of the Ruling Houses of Shoko Chieftaincy. The Iwo High Court's comments on the status of the Shoko Chieftaincy Declaration of 1958 and the statement of Dr. L.O. Adegbite (then Commissioner for Chieftaincy Affairs) to the effect that the Government has rejected the Chieftaincy Declaration must be regarded as Obiter by the very serious reason that the author of the Chieftaincy Declaration and the Government as represented by Dr. L. O. Adegbite, then Commissioner for Chieftaincy Affairs were not made parties in the said case in HIW/170/93.

He referred to the case of *Obala of Otan-Aiyegbaju V Adesina (1999) 2 NWLR (590).*

Counsel for the Respondents adopted the above arguments on issue of estoppel in dealing with the twin issue of stare decisis. It was argued that it is patently erroneous to at the address stage of Counsel to declare that 6th - 9th Respondents were parties in Suit HIW/170/93. That, the 2nd Defendant in HIW/170/93 one Adeoye Dairo could not constitute the whole community of Itakun Ikire. There is no such evidence before the lower court and the address of Counsel cannot constitute such evidence in this Honourable court. Adeoye Dairo was a candidate to Shoko Chieftaincy in HIW/170/93 who happens to come from Ademuyiwa Ruling House which in itself is made up of several families. He was sued in his personal capacity. The Government, the author of Shoko Chieftaincy Declaration, Dr. L.O. Adegbite, then Commissioner for Chieftaincy Affairs were never made parties yet the Appellant wants to enforce the judgment against the whole world. There is no affidavit evidence that the four Ruling Houses and Adeoye Dairo are of the same family.

Respondents Counsel conceded that this is not an appeal against the decision of Iwo High Court in HIW/170/93 but urged that justice be done by limiting the scope of that judgment to the parties before that court and looking at the authorities closely. What then asked Respondents Counsel are the binding findings in the decision of the Iwo High Court? He answered, the issue of whether the Appellant was installed as Shoko was not decided by the Iwo High Court, the issue of whether the 5th Respondent was a Prescribed Authority was not in issue in that case and the 1st - 3rd Respondents who were not parties in that case were not restrained from amending the Shoko Chieftaincy Declaration. The finding was that it has not been amended.

Learned Counsel for the Respondents submitted further that even 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 interpretation of the effect of Shoko Chieftaincy Declaration and statement made in relation to legislative function of amending Chieftaincy Declaration which is not an action contemplated by Section 2 of Public Officers Protection Law. He referred to the case of *Eghe V Belgore (2004) 33 WRN 146 at 163.*

He submitted that the action is competent and is not affected by any Public Officer's Protection Law or any statute of limitation as it is just an action challenging the action of the Appellant in declaring himself as Shoko of Ikire and parading himself as such - an action that is ongoing. The action, Counsel said is not challenging Exhibit OJ2 made on 23rd day of October 1972, or anything done pursuant to it as even the said Exhibit OJ2 is in favour of the Respondents who were Plaintiffs.

Appellant's Issues Nos. 1 and 3 cover six items. They are (a) the propriety of the use of Originating Summons (b) Abuse of court process (c) Condition Precedent (d) Estoppel (e) Principle of Stare decisis (f) Limitation including public officers protection law.

On (a) above, I do agree with the Learned Counsel to the Respondents that there is nothing on record to show that Appellant ever objected to the use of the Originating Summons procedure to try the matter in the court below. Thus, indeed the question at this stage is not in fact whether the case between the parties involve questions of facts or substantial questions of facts for it to be tried by the Writ of Summons procedure but really whether the Appellant can now be heard to complain on appeal after consenting, participating and or acquescesing if any in an irregular procedure. This is because by the concept of waiver the Appellant has agreed to conduct the proceedings by way of originating summons and can therefore be no longer heard to complain.

See*N.U.B. Ltd V Samba Petroleum Co. Ltd (2006) 12 NWLR (Pt. 993) 98; Carribean Trading & Fidelity Corp V N.N.P.C. (1992) 7 NWLR (Pt. 252) 161.*

Furthermore, in the instant case, the concept of waiver applied because at best the adoption of the Originating Summons procedure by the parties rather than the Writ of Summons procedure is in the circumstances of the case a mere irregularity which could be waived by any of the parties and has nothing to do with the jurisdiction of the court below to entertain the case.

Undoubtedly, Originating Summons is used for non-contentious actions, that is actions where facts are not likely to be in dispute. However, objections to the use of a particular procedure for the commencement of an action should be raised timeously by the Defendant and not on appeal after such a defendant has participated in an irregular procedure.

In any event, as far as the present case is concerned Learned Counsel for the Respondents were right when they argued that there is no material dispute on issue of facts in the case and the resolutions of the court were not on disputed facts but on the interpretation of the documented actions of state Government, the Chiefs Law and subsidiary legislations made there under and the effect of the judgment in HIW/170/93.

On (b), that is the issue of abuse of process, the learned trial judge himself correctly stated the position of the law at pages 326 - 328 of the records to the effect that a litigant should not employ the instrument of law to annoy his adversary either by instituting multiple action against the same party in the same or court of coordinate jurisdiction. A litigant should also not be allowed to destabilize the judiciary by engaging in forum shopping - that is, seeking out a court where he can receive sympathy or favourable decision. He also referred to the decision of the Supreme Court (per Kutigi JSC) in the case of *Alhaji Umaru Musa Yar'adua & Anor V Alhaji Atiku Abubakar & 3 Ors (2009) 4 WRN 184 at 190* where it was held that "It is an abuse of process of court for a Plaintiff to relitigate an identical issue which had been decided against him".

The learned trial judge painstakingly applied the law to the facts of the case before him and came to the conclusion rightfully so that the 6th - 9th Respondents have never been parties to any previous or pending action against or by the Appellant.

At page 328 of the record, the learned trial judge held thus:

"It is obvious on the face of the pleadings that the Plaintiffs on record and the class of persons they represent in the subsisting cases and the two already decided are clearly different. Even the Defendants are largely not the same. The reliefs and claims are also not entirely the same. The Plaintiffs have only this present case in court and no other one in this court or elsewhere. Therefore I hold that there is no basis for the issue of abuse of court process raised by the 5th Defendant against the Plaintiffs in this suit".

The third item under Appellant's issue 1 and 3 is whether the 6th - 9th Respondents as Plaintiffs were obliged to exhaust domestic remedies before approaching the court as provided for in Section 22 (4) of the Chiefs Law, Osun State 2000.

The provision reads thus:

"Any person aggrieved by the decision of the prescribed authority in exercise of the powers conferred on the prescribed authority by sub Sections (2) and (3) of this Section may within twenty - one days from the date of the decision of the prescribed authority, make representations to the commissioner to whom responsibility for Chieftaincy Affairs is assigned that the decision be set aside and the commissioner may, after considering the representations, confirm or set aside the decision".

Obviously, the Respondents were right to have said that the above provision does not apply to the instant case. This is because, the case on appeal is not strictly about a Chieftaincy dispute but on the interpretation of laws and documents relating to entitlements in chieftaincy. Secondly, and as pointed out by the Learned Counsel to the Respondents "The Appellant who is the sole candidate do not recognize the 5th Respondent as Prescribed Authority, let alone allow him to determine any dispute that can bring into play the resort to domestic remedies as envisaged by Section 22 (2) (3) and (4) and Section 23 (1) of the Chiefs Law of Osun State 2000"

The court below was therefore perfectly in order in this respect when it held at page 318 - 319 of the records as follows:

"Learned Counsel for the Plaintiff Mr. R.O. Ogunwole, SAN has argued that the court lacks jurisdiction to entertain this suit in that necessary domestic remedy has not been exhausted before the Plaintiffs rushed to court.

In the first instance the 5th Defendant did not present his nomination before the kingmakers, much more the Prescribed Authority. The 5th Defendant seems to have been contented with his mere nomination and he on his own assumed office. The 5th Defendant by his deposition in his Affidavits and Address of Counsel does not recognize the 6th Defendant as the Prescribed Authority to the Shoko of Ikire Chieftaincy. Therefore it does not lie with him to now use the case of *Abidoye v Alawode (supra) (2001) 13 WRN 71* as a defence".

One of the major issues in this case is estoppel, which is the fourth item on the list of the Appellant's submission on issues 1 and 3 put together.

It is however trite law that for issue estoppel as raised by the Appellant to apply in relation to this case and Suit No, HIW/170/93 the parties and questions in the two cases must be the same. See *Ibuluya V Dikibo (1976) 6 SC 97 at 104*.

This is because estoppel is an admission of something which the law views as an admission. By its very nature, it is so important, so conclusive, that the party whom it affects is not allowed to plead against it or adduce evidence to contradict it. However, it operates against both parties. See: *Jacob Oyerogba & Anor V Egbewole Olaopa (1998) 13 NWLR 509; Shola Coker & Anr V Rufai Sanyaolu (1976) 9 - 10 SC 203 at 221*.

Thus, once an issue has been raised and distinctly determined between the parties, then as a general rule, neither party can be allowed to fight that issue all over again, it does not matter that the issue is one of fact or law or even a mixture of the two.

Clearly, however, in issue estoppel, the parties and the questions in the two cases must be the same.

In the case of *Taye Oshoboja V Alhaji Surakatu Amida & 2 Ors (2010) 5 WRN page 1 at pages 23 - 24,* the Supreme Court again stated the law on issue estoppel thus:

"A party is precluded from contending the contrary of any precise point which, having once been distinctly put in issue has been solemnly and with certainty determined against him. Even if the objects of the first and second actions are different the findings on a matter which came directly (not collaterally or incidentally) in issue in the first action, provided it is embodied in a judicial decision that is final, is conclusive in a second action between the same parties and their privies...

The conditions for the application of the doctrine have been stated that;

1. The same question was decided in both proceedings.

2. The judicial decision said to create the estoppels was final and

3. The parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies...".

These conditions were restated and adopted by the Court of Appeal (per Uwa JCA) in Lateef Tiamiyu v Lasisi Eniola Olaogun (2009) 9 WRN 68 at 89.

In the instance case, the learned trial judge was right to have held first at page 324 of the record that:

*"It is not sufficient for the 5th Defendant to make a general statement on the defence of estoppel, he has to assist the court by establishing clear link between the parties in the previous and the instant case.*

*In the absence of that I have to agree that the parties in the two cases are not the same"*.

Secondly, the court below came to a right conclusion in my view at pages 327 - 328 of the record when it held that the parties and the claims in the previous cases (HIW/170/93, CA/I/211/99) and this case are different.

Indeed the central issue in HIW/170/93 was the inclusion or exclusion of the Appellant's Momimi family as a Ruling House entitled to present candidate and not whether the Appellant has been installed as Shoko of Ikire which is the central issue in this case.

The comments of the Iwo High Court in HIW/170/93 on the status of the Shoko Chieftaincy Declaration of 1958 and the statement of Dr. L.O. Adegbite (then Commissioner for Chieftaincy Affairs) to the effect that the Government has rejected the Chieftaincy Declaration must truly be regarded as obiter by the serious reason that the author of the Chieftaincy Declaration and the Government as represented by Dr. L.O. Adegbite, then Commissioner for Chieftaincy Affairs, were not made parties in the said Suit No. HIW/170/93.

In the case of *Obala of Otan Aiyeobaju V Adesina (1999) 2 NWLR (Pt. 590) 163 also in (1999) 3 SCNJ I* the court faced with similar situation on the binding effect of judgments of courts had this to say:

*"I now consider the matter raised in issue 3, where it has been observed that since the Government of Oyo State and the Ila Local Government were no longer parties to the proceedings the Learned trial judge was in error to entertain the counter claim of the 3rd Respondent Edward A.A. Adeniran; I cannot see how Chief Folake Solanke, SAN, could fault this opinion. In the first declaration prayed for by the 3rd Respondent in the counter claim he sought for the nullification of Owa of Otan Aiyegbaju 1957 Chieftaincy Declaration and declare instead that there was only one ruling house instead of four for succession to the throne of Owa of Otan-Aiyegbaju, This obviously cannot be justiceable without making both the Oyo State Government and Ila Local Government necessary parties to the action".*

Appellant's item (5) on stare decisis is closely related to the issue of estoppel. This is because the binding effect of the position of law in judgment in personam can only operate in the given facts and circumstances between the parties to a case. Thus as a general rule, one decision cannot be authority for another. The doctrine of stare decisis admits as settled law that, where a court of coordinate jurisdiction has stated the position of law in relation to an issue in dispute, the decision will be binding not only on lower courts but other coordinate courts.

See: *Ogunremi Mufutau V Animashahun Muideen Kayode & 6 Ors (2009) 32 WRN 150 at 167; Osakue V Federal College of Education (Technical Asaba & 2 ors (2010) 10 NWLR (Pt. 1201) 1; Mrs. Clemment & Anr v Mrs Iwuanyanwu & Anr (1989) 4 SCNJ (Pt. 11) 312 at 220; Foreign Finance Corporation V Lagos State Development and Property Corporation & 2 Ors (1991) 5 SCNJ 52.*

In Black's law Dictionary 7th Edition page 1195 precedent is defined as:

"1. The making of law by a court in recognizing and applying new rules while administering justice.

2. A decided case that furnishes a basis for determining later cases involving similar facts or issues".

Jowett's Dictionary of English Law (2nd Edition) Vol. 2 at page 1405 defines precedent, thus:

"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 jurisprudence 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 cited before it, it must be seen to be in line with the case at hand.

See: *Tejumade A. Clement & Anor V Bridget J. Iwuanyanwu & 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 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 Records.

"In view of this finding therefore I wish to reiterate that Exhibits 'O' and 'K' will 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 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 6th - 9th Respondents in the present suit which is to subject the candidature of the Appellant within his entitlement to the Shoko Chieftaincy to the authority of the Akire of Ikire (the 5th) Respondent as the Prescribed Authority under the Recognized Chieftaincy (Miscellaneous Provisions) Order 1976 and or to compel the 1st - 4th Respondents to amend the said Declaration.

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.

On limitation, including the application of the Public Officers Protection Law, I agree with the Respondents that the cause of action in this case is the challenging the action of the Appellant in declaring himself as Shoko of Ikire and parading himself as such - an action that is ongoing. And, not an action challenging Exhibit OJ2 made on 23rd day of October 1972, or anything done pursuant to it as suggested by the Learned Counsel for the Appellant. In any event, the said Exhibit OJ2 is in favour of the Respondents who were Plaintiffs.

Furthermore, in the case ofEghe V Belgore (2004) 33 WRN 146 at 162, the court held as follows:

*"The authority to make a declaration of customary law which 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 6th - 9th Respondents is competent and is not affected by any Public Officers Protection Law or any statute of limitation. Having decided all the items in the Appellant's issues 1 and 3 against the Appellant. Issues I and 3 are resolved against the Appellant.

On issue 2, Learned Counsel for the Appellant submitted that there was nowhere the 6th - 9th Respondents prayed the honourable court for any order compelling the 1st - 3rd Respondents to carry out an enquiry so as to make another Chieftaincy Declaration for Shoko of Ikire as ordered by the learned trial judge in his judgment on page 333 of the Records.

Also, that there is no order or prayer before the honourable court praying the court for an order directing the 5th Respondent to deal with the Shoko of Ikire Chieftaincy in accordance with native law and custom. However, this unsolicited order was made by the learned trial judge in his judgment on page 334 of the Records.

The position of the law, said Counsel, is that the court and the parties are bound by the pleadings before the court and the court cannot grant a relief not claimed before it. The court is not a father christmas that gives out presents that parties have not asked for even where they do not merit such. He referred to the cases of *Dumez Nig. Ltd V Nwakhoba & 3 Ors (2008) 12 SC (Pt. 111) 142 at page 162; Ekpenyong v Nyong (1975) 32 SC 71 at 81 - 82; Kalio v Daniel Katio (1975) 3 NWLR (Pt.108) 192 at 206; Olurotimi v Ige (1993) 8 NWLR (Pt. 311) 257 at 271.*

He added that the learned trial judge had no power to make a case for the parties particularly the 6th - 9th Respondents as he has done. He referred to the cases *of G.S. Pascuto V Ade Catro Nig. Ltd (1997) 11 NWLR (pt.529) 467; Commissioner for Works Benue State V Devcom Development consultants Ltd (1988) 3 NWLR (Pt. 83) 407* and urged the court to resolve the issue in favour of the Appellant.

The Respondents submitted on issue 2 that the reliefs granted by the lower court flow from the claims of the 6th - 9th 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. That the lower court justifiably found that the Chieftaincy Declaration was no longer in operation haven been abandoned by the Government.

Counsel submitted there was therefore no need for any amendment and the lower court instead of making an order of amendment directed the making of a new Declaration. This, according to Respondents is in fact unnecessary having regard to the fact that the Chieftaincy has now become a Minor Chieftaincy.

On another wicket the Respondents submitted that the issue of Obaship of the Appellant, the issue of the Appellant not presenting himself to the 5h Respondent through the kingmakers were effectively raised and made issues in this action. That the 3rd leg of the claims before the lower court was for a Declaration that the 5th Respondent was the Prescribed Authority. It was therefore a legitimate exercise for the lower court to find and grant that leg of prayer. The further directive that the 5th Respondent deal with the Shoko of Ikire Chieftaincy in accordance with native law and custom and resolve dispute arising there from was also apart of the claim in leg 3, a declaration of what in fact the law provides for in Section 22 (2) and (3) Chiefs Law, cap 25 Laws of Osun State 2002.

He referred to the case of *National Union of Civil Engineering Construction D. Furniture & Wood Workers V UBA Plc & 3 Ors (2010) WRN 164* and submitted that it is legitimate for the court to explore all angles and aspect of the facts and laws in making directives and findings.

In my opinion, the order of the trial court directing the 1st - 3rd Respondents to carry out an enquiry so as to make another Chieftaincy Declaration and the one directing the 5th Respondent to deal with the Shoko of Ikire Chieftaincy in accordance with native law and custom are consequential orders which do not detract from the judgment of the court.

A consequential order is an order necessarily flowing directly and naturally from, and inevitably consequent upon, the judgment already given. It therefore need not be claimed.

**See** *Liman V Mohammed (1999) 9 NWLR (Pt. 617) 116; Momah V Vab Petroleum Inc. (2000) 6 SC (Pt. 1) 175; Broad Bank of Nigeria Ltd V Odjemu (2001) 12 WRN 40.*

Issue No. 2 is resolved against the Appellant.

Learned Counsel for the Appellant adopted his submissions on issue 2 in the treatment of issue 4. He repeated his complaints in issue No 2 in issue No. 4 but added that the learned trial judge did not invite any of the parties to address him before making his findings thereon.

He submitted that the attitude of the lower court ran foul of the principles of fair hearing and indeed constitutes a serious breach of the Appellant's right to fair hearing which occasioned a miscarriage of justice.

He referred to the cases of *Adegoke v Adidi (1992) 5 NWLR (Pt. 242) 410 at 420; Oje V Babalola (1991) 4 NWLR (Pt. 185) 280*.

He added there was nowhere the issue of the Appellant not presenting himself to the kingmakers or the issue of the Appellant's candidature running out of the table of king makers was raised or argued. But that the learned trial judge went ahead without calling any party to address him on same to make subjudiced pronouncements on the said issue even though the matter was not pending before him.

Learned Counsel for the Respondents, on the other hand submitted on issue 4 that it is not correct to state that the issue of the Appellant not presenting himself to the kingmakers and in turn to the Prescribed Authority was not raised. He referred to paragraphs 27, 28, 29, 30, 31, 32 and 33 of the affidavit in support of the Originating Summons at pages 8 and 9 of the record. These averments, he said were confirmed by paragraphs 17, 18, 19, 20 and 21 of the affidavit of the 5th Respondent on page 200 of the record.

That all the paragraphs of the affidavit in support of the Originating Summons except paragraph 25 were admitted in paragraph 5 of the counter affidavit of the 4th Respondent - Local Government, that the issue was in fact raised.

Furthermore, said Respondents Counsel, the issue of whether the Appellant has been installed as Shoko and approved by the 5th Respondent as Prescribed Authority was effectively an issue in the lower court and the Appellant had the opportunity of defending his installation as Shoko of Ikire and the lower court was perfectly in order in pronouncing on the issue.

He referred to the claims of the Plaintiffs (6th - 9th Respondents) in legs 2, 3, 5, 7 and 8 in the Originating Summons, paragraphs 27, 28, 29, 30, 31 and 33 of the affidavit in support of the Originating Summons, paragraphs 5 - 22 of the Affidavit of the 5th Respondent, the Akire of Ikire land as contained in pages 198 - 200 of the record.

In relation to Appellant's issue 4, I have carefully gone through the records in this appeal and have come to the conclusion that the parties indeed joined issues on the issues raised by the Appellant in the said issue 4. That is, issues were joined on the question of the Appellant not presenting himself to the kingmakers and on whether the Appellant has been installed as Shoko and approved by the 5th Respondent as the Prescribed Authority. The said issues were not raised suo motu and the learned trial judge was perfectly in order in pronouncing on them.

The 7th edition of the Black's Law Dictionary at page 854 says of joinder of issues as follows:

"1. The submission of an issue for decision.

2. The acceptance or adoption of a disputed point as the basis of argument in a controversy - Also term joinder in issue Simpliciter.

3. The taking up of the opposite side of a case, or of the contrary view on a question".

In the instant case, having joined issues on the questions of the Appellant's Obaship, the allegations that the issues were raised suo motu or that the parties were not giving an opportunity to address on them are unfounded.    
Issue No. 4 is resolved against the Appellant.

On issue 5, Learned Counsel for the Appellant submitted that the position of the law on the issue of the status of the Chieftaincy Declaration 1958 and the status of the 5th Respondent has been laid to rest between the contending parties before the lower court as earlier on argued and the lower court could not rightly hold otherwise as he did.

He referred to the case of *Oladele & Ors V Oba Adekunle Aromolaran & Ors (1996) 6 NWLR (Pt. 453) pages 207 - 208* to the effect that where a registered declaration exists, it is admissible evidence of the customary law relating to the selection and appointment of the Chief it pertains to. Notwithstanding that the chieftaincy is a recognized or minor chieftaincy.

Learned Counsel further referred to the cases of *Eleran V Aderonpe (2008) 11 NWLR (pt. 1097) page 50 at 59 and Nwabueze V NIPOST (2006) 8 NWLR (Pt. 983) 480 at 494*. The first for the proposition that rights which have vested will not be affected by subsequent change in policy decisions or even the law. And the second to demonstrate that one of the statutory effects of the repeal of an enactment is that the amendment does not affect any right, privilege, obligation or liability accrued or incurred under the enactment.

He submitted that while the Chiefs Law has been repealed, Shoko Registered Declaration which was a subsidiary legislation on its own has not been repealed. He argued that the case of *Umeje V Attorney General of Imo State (1995) 4 NWLR (Pt. 391) 552 at 589*relied upon by the trial court is irrelevant and inapplicable and referred to the case of*Oyefolu V Durosinmi (2001) 7 SC (Pt. 1) page 1 at pages 28 - 30* on the bindiness of the 1958 Chieftaincy Declaration.

In defence of the judgment appealed against, Learned Counsel for the Respondents referred to paragraph 21 of the affidavit of the 5h Respondent at page 200 and submitted in respect of issue 5 that it was the Government that abandoned the Chieftaincy Declaration. That at 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 to Exco for the amendment, one of the five (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 ... and the need for a declaration no longer arises".

Counsel submitted that the Government then felt there was no longer any need to amend the Chieftaincy Declaration. That the position of the Government in halting the amendment process appear to tally with the position of the High Court which was accepted by the Supreme Court in the case of Oladoye V Administrator of Osun State (1996) 10 NWLR (Pt 476) P.38 at 55 were the Supreme Court stated it this way:

"... The evidence adduced at the trial did not support the above averments. The Appellants not only knew of the inquiry conducted by the 3rd Defendant but made representations as well. The learned trial judge would have dismissed claims (2) and (3) but for the reason given by him that a Chieftaincy Declaration was no longer necessary as the Baale of Ijimoba Chieftaincy had been relegated to the status of a minor Chief under part III of the Law.

There was therefore no need, according to him, to amend the 1957 declaration pertaining to the title. He said:

"... a declaration is not to be amended for its own sake as said in Adigun v A.G. Oyo State (1982) 1 NWLR (Pt. 53) 678 at 806 but the Baale Ijimoba Chieftaincy having been derecognized by the Recognized Chieftaincies (Revocation and Miscellaneous Provisions) order W.S.L.N. No. 6 of 1976 as confirmed by O.Y.S.L.N 18 of 1978 there can be no more existing declaration envisaged under the Chiefs Law of the state but statements of customary law which may guide the prescribed authority in the settlement of dispute in respect of the Baale Ijimoba Chieftaincy".

Learned Counsel for the Respondents submitted that the Government did not just stop at the symbolic abandonment of the Chieftaincy Declaration, the Government went ahead to fill the Shoko of Ikire Chieftaincy in 1976 when Metiku Ruling House was installed as Shoko of Ikire against the provisions of the Declaration. There was no protest from the Appellant family in 1976 and throughout the tenure of Mudasiru Oyekanmi until he died in 1992.

Counsel made reference to Exhibit OJ2 (attached to the affidavits of 6h Respondent as 1st Plaintiff at page 56 and the affidavit of 5th Respondent as Exhibit 504 at page 210 of the record).

He therefore submitted that the functions of the Prescribed Authority are set out by law and the 5th Respondent is appointed as Prescribed Authority by law. He argued that the Shoko Chieftaincy Declaration of 1958 cannot operate to divest the 5th Respondent of his appointment under the Chiefs Law, cap. 25 Laws of Osun State 2002 as Prescribed Authority. That in the Supreme Court case of *Oladoye V Administrator of Osun State (1996) 10 NWLR (Pt. 476) p. 38 at 53 - 54*it was emphasized that the power of the Prescribed Authority to install or settle dispute as to who is entitled to setting up a panel of inquiry to determine which families constitute the Ruling Houses.

That the apex court on the role of Prescribed Authority in a Minor Chieftaincy stated as follows:-

"As regards a Minor Chieftaincy, the kingmakers are to appoint a candidate to a vacancy before a prescribed authority appointed by the executive Council approves such appointment or settles a dispute as to whether a person so appointed to fill the vacant stool has been properly appointed. "I think the above passage correctly states the law. For, Section 22 (3) states: "Where there is a dispute whether a person has been appointed in accordance with customary law to a minor chieftaincy, a prescribed authority may determine the dispute".

It is my considered view in relation to Appellant's issue 5 that the learned trial judge held as a fact that in all the circumstances of the case the Shoko Chieftaincy Declaration of 1958 has been abandoned by the Government. This finding of fact to my mind is unassailable from the evidence presented to the trial court by the parties.

Incidentally, the above finding of fact by the learned trial judge is collaterally supported by the position of law in relation to the relegation of a recognized chieftaincy to a minor chieftaincy as in the instant case.

For example, in the case of *Mosojo V Oyetayo (2003) FWLR (Pt. 165) 545*, the Supreme Court held that by the provisions of the Recognized Chieftaincies (Revocation and Miscellaneous Provisions) Order 1976 (W.S.C.N. 6 of 1976) the Obasinkin Chieftaincy became a minor Chieftaincy and it is no more a recognized Chieftaincy. As such it is no longer subject to part 2 of Chiefs Law and consequently any declaration in respect of the Chieftaincy.

In the particular case, Exhibit D was held no longer to be deemed to be the customary law regulating the selection of a person to be holder of that Chieftaincy to the exclusion of other customary usage or rule. Tobi JSC had this to say at pages 552 - 553.

***"Exhibit D is the Chieftaincy Declaration in respect of the Obasinkin Chieftaincy of 1960. By the Chiefs law of Western Region 1959, the Obasinkin Chieftaincy was a recognized Chieftaincy. But the situation changed in 1976 when the Recognized Chieftaincies (Revocation and Miscellaneous) Order was made, an order which made the Obasinkin Chieftaincy a minor Chieftaincy. In the circumstance, I agree with learned Counsel for the Appellant that by virtue of the Recognized Chieftaincies (Revocation and Miscellaneous) Order 1976, the Obasinkin Chieftaincy declaration is no longer applicable or relevant to that chieftaincy".***

It is settled that while part 2 of the Chiefs Law governs recognized Chieftaincy, part 3 of the Chiefs Law governs minor chieftaincy in Oyo and Osun States of Nigeria. It is only in part 2 of the Chiefs Law that provisions are made in respect of registered chieftaincy declaration. Hence, the requirement of registered chieftaincy declaration by the Chiefs Law only relates to recognized chieftaincy and no more.

The position of the law that registered declaration does not apply to minor chieftaincy as there is nothing in part 3 of the Chiefs Law to suggest this was earlier upheld in the case of *Lipede V Shonekan (1995) 1 NWLR (Pt.374) 668* where the court held that chieftaincy declaration does not apply to minor chieftaincy.

The learned trial judge was therefore right to have declared inter alia at pages 332 - 333 of the record as follows:

*"1. The registered Shoko of Ikire Chieftaincy Declaration dated 23rd June 1958 and made a subsidiary legislation to the Chief Law cap. 19 Laws of Western Nigeria 1957 has been abandoned by the 1st - 4th Defendant 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".*

Issue No. 5 is also resolved against the Appellants.

Having resolved the five (5) issues in this appeal against the Appellant, the appeal lacks merit and it is accordingly, dismissed.

N30,000,00 costs is awarded jointly in favour of the 6th,7th, 8th and 9th Respondents against the Appellant.

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

I agree that the appeal be dismissed as the Chieftaincy declaration upon which the claims were based at the trial court had been shown to be in applicable to the Claimant/Appellant's claims, the declaration having been abandoned and departed from by the appropriate Authority. As if to strengthen the abandonment, the Appellant's Ruling house appeared to have acquiesced in acts by the 1st - 3rd Respondents against the existence of the Chieftaincy declaration, which declaration had become a minor Chieftaincy. The Compliance with the requirement of the law in claims in respect thereto had also not be shown to have been complied with as a condition precedent to the institution of the suit leading to this appeal.

Appeal dismissed.

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

I had the privilege of reading in advance the draft of the judgment just delivered by my learned brother MOJEED ADEKUNLE OWOADE, JCA.

He had dealt extensively with all the issues for determination. I have thing more to add.

I agree that the Appellants having consented to the originating summons procedure should not be allowed to now argue that it was inappropriate in the circumstances of this case.

As the 6th - 9th Respondents were not parties to the previous suit HIW/170/93 CA/I/211/99 estoppel per rem judicata is inapplicable.

Sections 22 and 23 of the Chief Law of Osun State were inapplicable as the 5th Defendant did not recognize the prescribed authority. In any case, a chieftaincy declaration does not apply to a minor chieftaincy.

For the reasons ably and adroitly demonstrated in the lead judgment, I too dismiss the appeal.

I abide by the order as to costs.