IN THE CUSTOMARY COURT OF APPEAL
EDO STATE OF NIGERIA
HOLDEN AT BENIN CITY

ON TUESDAY, THE 22ND DAY OF JUNE, 2010

BEFORE THEIR LORDSHIPS

MARY NEKPEN ASEMOTA - JUDGE (PRESIDED)
PETER AKHIMIE AKHIHIERO - JUDGE
OHIMAI OVBIAGELE - JUDGE

APPEAL NO: CCA/7A/2008

B E T W E E N:

SUNDAY ADESOTU : : : : : : : APPELLANT

A N D

JOSEPH ADESOTU : : : : : : : RESPONDENT

J U D G M E N T
DELIVERED BY MARY NEKPEN ASEMOTA (JCCA)

This is an appeal against the judgment of the Oredo Area Customary Court, Benin City, in Suit No. ORACC/158/2000 delivered on the 16th day of October, 2007.

The respondent (as plaintiff) claimed against the appellant (as defendant) as follows:

ñ(a) A declaration that the plaintiff is the proper person to inherit the house situate, lying and known as No. 15A Osaretin Street, off Ehaekpen Street, Uzebu Quarters, Benin City, property of late Chief

Richard Adesotu, the Bazuaye of Benin Kingdom in accordance with Bini Native Laws and Custom and not the defendant.

(b) An order ejecting the defendant from the said property, having inherited the Igiogbe of late Chief Richard Adesotu, the Bazuaye of Benin Kingdom i.e. No. 2, Lagos Street, Benin City, in accordance with the Bini Native Laws and Custom.

(c) ₦500,000.00 (five hundred thousand naira) for trespass to the property, in that himself, his wives and children have refused to vacate the said property and have vowed to continue the trespass, in disobedience to the decision of the Oba of Benin, dated 7th day of August, after willingly submitting to his arbitration as the supreme custodian of the Bini Native Laws and Custom.

(d) A declaration that the continuous occupation of parts of the plaintiffôs house after the Obaôs judgment in favour of the plaintiff in respect of the house in dispute, having consented to the traditional arbitration of the Oba, is without lawful authority and therefore illegal, null and void.ò

The appellant also counterclaimed against the respondent as follows:

ñ1. As the eldest son of late Chief Richard Adesotu, the Bazuaye of Benin Kingdom, he is entitled exclusively to the Igiogbe of his late father at No. 15A Osaretin Street, off Ehaekpen Street, Uzebu

Quarters, Benin City which is the only Igiogbe the defendant inherited from his late father.

2. An order ejecting the plaintiff, his wife and children from No. 15A, Osaretin Street, Benin City.

3. Perpetual injunction restraining the plaintiff, his wife and children from occupying No. 15A, Osaretin Street, Off Ehaekpen Street, Uzebu Quarters, Benin City.

4. General damages and costs.ò

The respondentôs case at the trial court was that he is the second son of late Chief Richard Adesotu, the Bazuaye of Benin Kingdom, while the appellant is the first son. The parties are not uterine brothers. Their father during his life time, made a gift ***inter vivos*** of house No. 15A, Osaretin Street, off Ehaekpen Street, Uzebu Quarters, Benin City to him.

After the death of their grandfather, their father inherited No. 2, Lagos Street. He lived there but used to spend time at No. 15A, Osaretin Street, off Ehaekpen with the mother of the respondent and her children. On the demise of their father and after the completion of the traditional funeral rites, their late fatherôs family members attempted to share his property. The respondent objected when the house which his father had given to him was shared into two parts, with a portion given to the appellant while the other half was given to him. He reported the matter at the palace of the Oba of Benin.

The Obaôs directives to the family of the parties on two occasions to share the property in accordance with the wishes of the deceased were ignored. On the further complaint of the respondent, the Oba referred the matter to the palace society, ñIbiwe Nokhuaò, which the father of the parties belonged to while he was alive. As a mark of respect for the Oba, the Chiefs requested the Oba to do the sharing, more so when the father of the parties occupied the third highest traditional title in the land.

The Omo NôOba nominated palace Chiefs to investigate the matter. The Chiefs submitted their findings. The Oba and the Chiefs deliberated on the findings and took a decision.

At the end of the deliberations, the appellant was given house No. 2, Lagos Street, being the Igiogbe of their late father, while No. 15A, Osaretin Street, off Ehaekpen Street was shared to the respondent. The other properties of their deceased father was shared to the eldest male child of each of the other wives.

The respondent maintained that the Igiogbe of their late father is at No. 2, Lagos Street, Benin City and not the house in contention which is No. 15A, Osaretin Street, off Ehaekpen Street, Benin City.

Despite the decision by the Oba, the appellant continued to occupy a part of house No. 15A, Osaretin Street, off Ehaekpen Street, Uzebu, Benin City, hence the action at the trial court.

The appellantôs case, on the other hand, was that when their father, Chief

R. A. Adesotu died, he was buried at No. 2, Lagos Street, Benin City. After the funeral obsequies were completed, his properties were shared by the Okaegbe and other family members and this was documented, as per exhibit ñBò

The house at No. 2, Lagos Street was never shared to anyone. It is Okun family property. The said property passes from one first son to another. The appellant being the first son, holds the said house in trust for the larger Okun family. There is a subsisting Federal Court of Appeal judgment, exhibit ñEò in which the house was held to be Okun family property.

The house at No. 15A, Osaretin Street, off Ehaekpen Street, Benin City was shared between the appellant and the respondent. A dispute arose between the respondent and the family over the sharing of the said property. The respondent was not satisfied with the sharing of the property and he took the matter to the palace of the Oba of Benin. The verdict reached by the Oba of Benin was not acceptable to the family, because they were not given an opportunity to present their case. The family subsequently wrote three letters to the palace protesting against the sharing of the property done by the palace.

The appellant was emphatic that he is entitled to inherit absolutely No. 15A, Osaretin Street, off Ehaekpen Street, Benin City being the Igiogbe of his late father. The sharing of half of the house to the respondent by the family was done at his instance when he pleaded with the family to do so.

After hearing evidence in the case, the trial court in a considered judgment found in favour of the respondent and granted reliefs (a) and (b) of the claim and dismissed the appellantôs counterclaim in its entirety.

Dissatisfied with the decision of the trial court, the appellant filed an original ground of appeal. With leave of this Court, he discarded the original ground of appeal and filed nine new grounds of appeal.

The grounds of appeal without their particulars are set down below as follows:

ñGROUND 1

The learned trial President and members of the trial court erred in law and on the facts when they held at page 108 lines 14 ï 16 of the record óthat house No. 2, Lagos Street, is not a family property but the property of late Chief R. A. Adesotu at the death of the Chiefô and therefore that constitute his Igiogbe which holding is perverse having regard to the evidence on record.

GROUND 2

The learned trial President and the members of the trial court erred in law and on the facts when they held that No. 15A, Osaretin Street, Benin City is not the personal Igiogbe of late Chief R. A. Adesotu.

GROUND 3

The learned trial President and members of the trial court erred in law and

on the facts when they held that the appellant was not entitled to inherit the property at No. 15A, Osaretin Street, off Ehaekpen Street, Benin City, the property in dispute.

GROUND 4

The learned trial President and members of the trial court erred in law and on the facts when they held that the entire No. 15A, Osaretin Street, goes to the Defendant/Respondent being the 2nd son of late Chief R. A. Adesotu from the 2nd ñUrho.ò

GROUND 5

The learned President and members of the trial court misdirected themselves in law and on the facts when they held that the Defendant/Appellant entirely changed his case on exhibit D, which is a judgment of the High Court in respect of house No. 2, Lagos Street, Benin Cityô, the subject matter in dispute, despite the fact that exhibit E, a judgment of the Court of Appeal was also before them.

GROUND 6

The learned trial President and the members of the trial court erred in law and on the facts when they failed to follow the decision of the Federal Court of Appeal delivered in exhibit ñEò, a judgment of a Superior Court of record, which failure occasioned a very serious miscarriage of justice.

GROUND 7

The learned President and members of the trial court erred in law and on the facts when they held that there was a valid customary arbitration over the subject matter in dispute between the Plaintiff/Respondent and the Defendant/Appellant and therefore such valid customary arbitration constitute estoppel against the appellant, which findings has (sic) occasioned a very serious miscarriage of justice.

GROUND 8

Judgment is against the weight of evidence led in support of the family tradition and custom of the Okuns family in respect of the property at No. 2, Lagos Street, Benin City.

GROUND 9

The learned President and members of the trial court erred in law and on the facts when they held at page 33 of the judgment that ówe find as a fact that the Defendant was given a fair hearing at the Palace and what happened at the Palace was not a kangaroo thingé ò

In consonance with the rules of this Court, counsel for the parties filed and exchanged their respective briefs of argument, including a reply brief of argument.

B. O. Ojumah, Esq., counsel for the appellant in his brief of argument dated the 10th day of June, 2009 and filed on the 11th day of June, 2009 formulated four

issues for determination as follows:

ñ1. Whether the learned trial President and the members of the trial court were right in holding that the defendant/appellant was given a fair hearing at the proceedings in the Oba of Benin palace. (Based on ground 9 in the notice of appeal.)

2. Whether the learned trial President and the members of the trial court were right in holding that there was a valid customary arbitration over the subject matter in dispute between the plaintiff/respondent and the defendant/appellant. (Based on ground 7 in the notice of appeal.)

3. Whether the learned trial President and members of the trial court were right in holding that the property at No. 2, Lagos Street is not a family property but the personal property of late Chief R. A. Adesotu at the time of his death and therefore that constitutes his Igiogbe having regard to the judgment of the Court of Appeal, exhibit ñEò. (Based on grounds 1, 2, 5, 6 and 8 of the notice in appeal.)

4. Whether the learned trial President and members of the trial court were right in holding that the defendant/appellant is not entitled to inherit the property at No. 15A, Osaretin Street, Benin City. (Based on grounds 3 and 4.)ò

The respondentôs counsel, Chief C. O. Ihensekhien, did not formulate

separate issues for determination, but he adopted the issues as formulated by the appellantôs counsel. Counsel, however sought leave of this Court to argue Issues 1 and 2 together as well as Issues 3 and 4 together.

We have carefully considered the issues formulated by the learned counsel for the appellant, we are of the view that they are comprehensive and germane to this appeal and we adopt them.

On issue one, counsel submitted that the appellant was not given a fair hearing at the palace of the Oba of Benin. He contended that one of the issues submitted to the trial court by the respondent was whether there was a valid customary arbitration over the subject matter in dispute between the parties at the Palace. He argued that there was no valid customary arbitration because the appellant was not heard before the Oba arrived at his decision. Counsel submitted that the provisions of section 36 of the Constitution and one of the rules of natural justice require that parties whether in a traditional setting or in the regular courts or tribunal should be heard. He cited in support, the cases of Wappah v. Mourah (2006) 18 NWLR (Part 1010) 18 at 48 ï 49 paragraphs B ï A and Udo v. State (1988) 3 NWLR (Part 82) 316 at 342 paragraphs B ï D.

Counsel referred to the appellantôs testimony at pages 40 ï 47 as well as that of the respondent at pages 16 ï 18, lines 18 ï 20 of the record of appeal and argued that it was apparent that the appellant was not given an opportunity to say anything at the palace.

He submitted that where the right to fair hearing has been breached, the entire proceeding is vitiated and becomes a nullity. He cited in support, the case of Ndukauba v. Kolomo (2005) 2 MJSC at 14 paragraphs A ï E.

He added that the trial court was wrong when it endorsed the decision of the Oba of Benin when the principles of fair hearing had been breached.

We earlier stated that the learned counsel for the respondent sought leave to argue issues 1 and 2 together. It does appear that the two issues are intertwined. However for the sake of clarity and uniformity, the argument presented by the respondentôs counsel will be separated in line with the issues as formulated by the appellantôs counsel. More so when the appellant whose issues have been adopted had treated the issues under distinct heads.

Replying on issue one, learned counsel for the respondent submitted that the lower court was within the ambit of the law when it held that the complaint by the appellant that he was not given a fair hearing at the palace did not arise. He argued that the Oba reached a decision on the matter based on the advice of the committee which he had set up. He maintained that the appellant was given a fair opportunity to put up a defence against the case of the respondent.

Counsel further submitted, that the Oba of Benin abided by the rules of fair hearing based on the principle of ***audi alteram partem*** before he reached a decision based on Bini native law and custom.

He further contended that the Oba is well groomed to handle matters of this

nature, being a lawyer called to the British Bar in 1958. According to counsel, ñthe Oba before his ascension to the throne went through the Bini Finishing School where he was prepared to be more than just a Philosopher King.ò

We have carefully considered the submissions of both counsel on this issue. The bone of contention of learned counsel for the appellant is that the appellant was not given an opportunity to present his case at the palace before the Oba reached a decision.

The principle of natural justice dictates that no man shall be a Judge in his own case and that the two sides of a dispute must be heard. It is mandatory that each party in a suit must be given an opportunity to state his case. This is provided for under Section 36(1) of the 1999 Constitution.

The evidence of what transpired at the palace of the Oba of Benin was given by the appellant and his witness at the trial court. P.W.1, Osazuwamwen Oronsaye, who was on subpoena stated that he is the Secretary of His Majesty, the Oba of Benin. He stated at page 27 lines 24 ï 29 of the record as follows:

> ñThe defendant submitted himself to the investigation that was concluded (sic) by the chiefs. After the investigations, the chiefs submitted their finding to the Omo NôOba and the Omo NôOba and His chiefs deliberated on the finding and took a decision.ò

This witness also stated that after the decision, the parties thanked His Majesty.

On the other hand, D.W.1 Johnson Erhumwunsee, when he was being

cross-examined at page 35, lines 6 ï 10 of the record stated inter alia:

ñThe Oba of Benin went into the matter between the parties in this suit. We all went to the Oba. Both sides presented their cases before the Oba. When both side (sic) finished, the Oba gave a verdictò

However, D.W.2, Erhumwunsee Osanah, gave a different version of what transpired at the palace. This witness was emphatic that the parties were not given an opportunity to present their cases before the Oba of Benin. The appellant, as D.W. 3 at page 42, lines 1 ï 3 also stated as follows:

ñWe rejected the verdict of the Oba palace because the family was not given a fair hearing.ò

From the totality of the evidence, it is apparent that D.W.1, a witness for the appellant gave a conflicting testimony to that of the appellant and his other witness.

It is trite law that a trial court cannot pick or choose the evidence to be assessed. See the case of: Mogaji & Ors v. Cadbury (Nig) Ltd (1985) 2 N.W.L.R (Part 7) 393.

The evidence of D.W.1 supports and strengthens the case of the respondent that the appellant was afforded an opportunity to present his case at the palace. This witness was not treated as a hostile witness and his testimony further reinforced that of the respondent that the appellant was given a fair hearing.

Furthermore, the evidence of the witness, was an admission against interest

and it is best evidence in favour of the respondent, the opposing party. See the following cases:

1) Ojiegbe v. Okwaranyia & Ors (1962) All N.L.R 605.

2) Onyenge v. Ebere [2004] 13 N.W.L.R. (Part 889) 20 at 26 ratio 7.

3) Onisaodu v. Elewuju [2006] 13 N.W.L.R. (Part 998) 577 at 521 ratio 3.

From the above, the trial court rightly held that the appellant was given a fair hearing at the palace of the Oba of Benin and we do not find any cogent reason to disturb that finding of fact by the trial court.

Issue one is therefore resolved in the affirmative.

Issue two is whether the learned trial President and members of the trial court were right in holding that there was a valid customary arbitration over the subject matter in dispute between the respondent and the appellant.

Learned counsel for the appellant submitted that there was no valid customary arbitration in respect of the dispute between the parties. He referred to the case of Nwannewuihe v. Nwannewuihe (2007) 16 N.W.L.R. (Part 1059) 1 at 16 ï 17 paragraphs D ï A; 19 paragraphs E ï H and submitted that it is settled law that the conditions precedent for a valid customary arbitration are:

1. That there had been a voluntary submission of the matter in dispute to an arbitration of one or more persons by the two parties.

2. That it was agreed by the parties either expressly or by implication

that the decision of the arbitrators would be accepted as final and binding.

3. That the arbitrator(s) reached a decision and published their award.

4. The decision or award was accepted at the time it was made.

Counsel maintained that the parties at the arbitration and the dispute at hand must be the same. He argued that by the respondentôs own showing at pages 16 ï 17 of the record, it was the family that was reported to the Oba and not the appellant. According to counsel, the customary arbitration was between the respondent and the family and not the appellant.

He submitted that the conditions precedent must be present and operate conjunctively as the absence of one or more of the conditions will adversely affect the validity of the decision reached by the arbitrators.

Counsel further submitted that there was no voluntary submission of the dispute by the parties to the Oba for arbitration as the appellant or the family did not consent that the matter be taken to the Oba for adjudication.

He contended that the familyôs response to the call by the Oba is not ***ipso facto*** conclusive evidence of their voluntary submission to the Oba. He added that it was when the family got to the palace that they realized the purpose of the call. He stated that there was no prior discussion or agreement between the parties and the family that the matter be taken to the Oba for adjudication.

Counsel submitted that the family only honoured the invitation from the Oba because as subjects of the Oba, they were bound to do so.

He contended that in such a situation it cannot be said that there was a voluntary submission to arbitration by the parties to the dispute. Counsel cited in support the case of Agu v. Ikewibe [1991] 3 N.W.L.R (Part 180) 385 at 420 ï 421 paragraphs F ï C.

Counsel submitted further, that there was no express or implied agreement between the family and the respondent that they would be bound by the decision of the Oba. Counsel referred to page 16, lines 20 ï 24 of the Record and contended that the conduct of the family before the Oba reached a final decision over the matter pointed to the fact that they did not accept that they would be bound by the decision. He argued that the letters exhibits C ï C2, showed that the family protested against the outcome of the decision immediately.

Finally on this issue, counsel urged this Court to hold that there was no voluntary submission of the dispute to the Oba and that the appellant did not agree to be bound by the decision despite the fact that they honoured the Obaôs call.

In his response to issue two, learned counsel for the respondent submitted that learned counsel for the appellant misinterpreted and misapplied the case of Nwannewuihe v. Nwannewuihe (supra), when in his submission he stated that there must be a VOLUNTARY submission to an arbitration panel by the two

parties. He argued that the addition of the words ñby the two partiesò by counsel to the conditions spelt out in that authority is to hoodwink and mislead this Court as a party to any arbitration need not have the consent of the adverse party before an arbitration can commence.

It was submitted that the first condition for the validity of a customary arbitration which is that there must be voluntary submission must be read in conjunction with the second condition in order to properly understand its purport. He maintained that the voluntary submission anticipated is that which can be expressly stated or implied.

He also submitted that the Supreme Courtôs case of Agu v. Ikewibe (supra) which the Court of Appeal relied upon in Nwannewuihe v. Nwannewuihe (supra) supports the case of the respondent.

Counsel referred to the case of Mbagbu v. Agochukwu (1973) ECSLR (part 1) 90, one of the cases examined by the Supreme Court in Agu v. Ikewibe (supra) and the dictum of Karibe-Whyte (JSC) at page 408, paragraphs F ï H in Aguôs case where the conditions for a valid customary arbitration were spelt out. He contended that the respondent reported the dispute to the Oba who is the traditional head of the Benin Kingdom and more so when the father of the parties during his lifetime was a member of one of the palace societies.

He urged this Court to uphold the decision of the trial court which had the opportunity to take evidence and to observe the witnesses, that the disputants

were not cajoled, forced or intimidated to appear before the Oba.

On the third condition that the arbitration was in accordance with the custom of the parties and their trade or business, counsel submitted that the restatement by the trial court of the Benin Customary Law of Inheritance, that the award made at the palace of the Oba was in consonance with Benin Customary Law should be upheld. He submitted that the findings of fact made by the trial court were not perverse to warrant a reversal by this Court.

Counsel submitted that the fourth condition which is that the arbitration reached a decision and published their award was complied with. He contended that the decision was pronounced in the presence of the parties and the Council of Chiefs. He added that exhibit ñAò ï a certified true copy of the decision of the arbitration was tendered by P.W.2, the Secretary to the Oba of Benin.

It was his further submission that the decision or award was accepted at the time it was made, as can be gleaned from the evidence of two of the appellantôs witnesses, D.W.1 and D.W.2. Counsel argued that while D.W.1 stated inter alia that: ñwhen both sides finished, the Oba gave a verdict, after the verdict, we all left the palaceò, D.W.2 stated that ñthe Oba of Benin reached or gave a verdict, but we did not agree with the verdict. We did not tell the Oba that we did not agree because we were not called. At the palace we were all praising the Oba.ò

Counsel urged this Court to hold that the appellant did not reject the

decision of the Oba at the time it was made and that he was bound by it and cannot resile from it.

Finally, he submitted that exhibits ñCò, ñC1ò and ñC2ò were belated and that the letters were written well over two weeks after the decision had been taken.

In his amended reply brief, learned counsel for the appellant submitted on issue two, that there was no misrepresentation or misapplication of the law on his part. It was his submission that the requirement of the two parties submitting the dispute to arbitration is the law and not one of the parties as erroneously canvassed on behalf of the respondent. He added that the case of Mbagbu v. Agochukwu (supra) discussed in Agu v. Ikewibe supports the appellantôs case.

Furthermore, he contended that the family has by exhibits ñCò ï ñC2ò resiled from the decision of the arbitrators and the fact that the family did not protest to the face of the Oba at the moment the decision was taken, did not make the said exhibits worthless. He argued that it would have amounted to rudeness on the part of the family to tell the Oba to his face that his decision was not acceptable to them.

Counsel submitted that an appellate Court, is in a good position to evaluate the evidence as the trial court when the issue in controversy between the parties is an inference to be drawn from established facts on record and not on the credibility of witnesses as a result of their demeanour in court. He cited the case

of: Dumez (Nig.) Ltd v. Nwankhoba (2008) 18 N.W.L.R. (Part 1119) 361 at 378 paragraphs F ï H; page 367 ratio 6 in support of this proposition.

He contended that the respondentôs counselôs argument that the appellantôs case was based on exhibit ñDò was not tenable, as the argument was not supported by the evidence on the record. He added that the case of the appellant was based primarily on the interpretation given to exhibit ñDò by the Court of Appeal in exhibit ñEò.

We have carefully examined the submissions of both counsel on this issue. It is instructive to note however, that the parties are agreed that there was a customary arbitration. The main thrust of this issue is whether there was a valid customary arbitration as relied upon by the trial court.

Customary law arbitration has been defined in Raphael Agu v. Christian Ikewibe (supra) at page 407 by Karibi-Whyte JSC as ñan arbitration in dispute founded on the voluntary submission of the parties to the decision of the Arbitrators who are either the Chiefs or Elders of their community and the agreement to be bound by such decision or freedom to resile where unfavourable.ò

An award by a customary arbitration has the same effect as an ***estoppel per rem judicatam*** if certain preconditions are fulfilled. See the following cases:

1) Odonigi v. Oyeleke (2001) 6 N.W.L.R. (Part 708) 12 at 28

2) Oparaji v. Ohanu (1999) 9 N.W.L.R. (Part 618) 290 at 308

3) Ohiaeri v. Akabeze (1992) 2 N.W.L.R (Part 221 1 at 23 ï 24.

The principles as enunciated in the above decisions gave the following as preconditions for a valid customary arbitration:

1) That there has been a voluntary submission of the matter in dispute to an arbitration of one or more persons.

2) That it was agreed by the parties either expressly or by implication that the decision of the arbitrators will be accepted as final and binding.

3) That the arbitration was in accordance with the custom of the parties or of their trade or business.

4) That the arbitrators reached a decision and published their award.

5) That the decision or award was accepted at the time it was made.

On the first condition, learned counsel for appellant had argued strenuously that there was no voluntary submission of the apppellant to arbitration because his consent was not sought and obtained before the dispute was taken to the Oba of Benin for arbitration.

We pause here to examine what voluntary submission entails in this context. Voluntary submission is understood to mean simply that the parties were not cajoled, forced or intimidated into the arbitration.

A careful examination of the evidence of the witnesses for the appellant, showed that none of them claimed that they were forced into the arbitration. In

this regard, the evidence of D.W.1, D.W. 2 and the appellant himself become very germane. Their grouse was that they were not given an opportunity at the palace to present their own side of the story. This issue has been dealt with in our consideration of issue one when we held that the rules of fair hearing were not breached at the palace because of the apparent contradiction in the evidence of the appellant, D.W.2 on the one hand and D.W.1, on the other.

Learned counsel for the appellant in his submission stated that the response of the family to the call of the Oba is not conclusive evidence of voluntary submission by the appellant because as subjects of the Oba they were bound to honour the call. However, we are unable to see how learned counsel came to that conclusion because it is not borne out of evidence. It is trite that counselôs submission no matter how brilliant cannot take the place of evidence. We have also read the case of Nwannewuihe v. Nwannewuihe (supra) cited by learned counsel for the appellant. The words voluntary submission by the ñtwo partiesò were an importation by the appellantôs counsel and did not feature in the conditions as laid down in that case. It is sufficient if any of the parties took the matter before an arbitration and to our mind, this cannot be stretched to include that the consent of the other party must be sought and obtained before arbitration. The trial court was therefore right when it held that there was a voluntary submission by the parties to arbitration.

On the second condition, we have held already that the parties voluntarily

submitted to an arbitration. The implication of this is that the parties by their conduct agreed to be bound by the decision of the arbitration which would be regarded as final and binding. Counsel for the appellant had submitted that the refusal of the family (when they discovered the purpose of the invitation) to carry out the Obaôs orders showed that they were not prepared to be bound by any further decision of the Oba. This submission is also not borne out of the evidence. Neither the appellant nor his witnesses testified to the effect that they were not prepared to be bound by the decision of the arbitration. The parties need not expressly agree to be bound. See the following cases: Eke v. Okwaranyia (2001) 12 N.W.L.R. (Part 726) 181, and Ojibah v. Ojibah (1991) 5 N.W.L.R (Part 191) 296.

On the third condition that the arbitration was in accordance with the custom of the parties or of their trade or business, it is not in contention that the Oba of Benin is the custodian of Benin Custom and traditions. See the book : A HANDBOOK ON SOME BENIN CUSTOMS. In other words, the customs and tradition of the Benin people is not alien to the Oba. He is the repository of Benin customs and traditions. Since the parties are agreed that they are subjects of the Oba, the arbitration can safely be said to be in accordance with Benin customary law.

On the publication of the award, D.W.2, the Secretary to the Oba of Benin gave evidence of how the arbitration was conducted. He stated ***inter alia*** at page

27, lines 29 ï 30:

ñthe parties were present and the decision was made known to themò

This witness tendered exhibit ñAò, a letter which contained the decision of the arbitration. From the above analysis, we are satisfied, that the arbitrators reached a decision and published their award.

On whether the decision or award was accepted at the time it was made, the evidence of D.W.1 and D.W.2 are quite important. Their testimonies in a nutshell were that after the verdict by the Oba of Benin, they did not tell the Oba that they did not agree with the verdict although they had reservations about it. However, about two weeks after the arbitration, the family caused exhibits ñCò, ñC1ò and ñC2ò to be written. They protested against the decision reached by the arbitrators. Can the said exhibits be read to imply that the appellant and the family did not accept the award when it was made? We do not think so. The appellant not having taken steps immediately the award was made can be said to have accepted it; and cannot thereafter resile from it. See the following cases:

1) Ohiaeri v. Akabeze (supra)

2) Oparaji v. Ohanu (1997) 7 N.W.L.R. (Part 618) 290

3) Ieka v. Tyo (2007) 11 N.W.L.R. (Part 1045) 385 at 388 ratio 2.

From the above analysis, the trial court was therefore right when it held that there was a valid customary law arbitration, the preconditions having been fulfilled in this case.

In the circumstances, Issue two is resolved in the affirmative.

Learned counsel for the appellant as well as the respondent took issues Nos. 3 and 4 together.

It was submitted for the appellant that the trial court was in error when it held that No. 2, Lagos Street was not a family property, but the Igiogbe of Late Chief Richard Adesotu at his death.

He contended that it was common ground that No. 2, Lagos Street was held in trust by the father of the parties, Chief Richard A. Adesotu, for the entire larger Okun family by virtue of his position as the eldest surviving son of his father, Chief Agbonfi Irughe. He referred to the evidence of D.W.1, D.W.2, D.W.3 and the respondent during cross examination at page 23 lines 15 ï 23 of the record as well as exhibits ñDò & ñEò to buttress this fact.

He contended by virtue of exhibit ñDò, the High Court upheld the contention of the father of the parties, that No. 2, Lagos Street is Okun Family property, and could therefore not be given out by a Will by his father, Chief Agbonfi Irughe. According to counsel, the status of No. 2, Lagos Street as Okun family property had earlier been settled in exhibits ñDò & ñEò which are the record of proceedings of the High Court and the judgment of the Court of Appeal respectively.

He argued that the trial court was in error when it held that the property at No. 2, Lagos Street was the personal Igiogbe of late Chief Richard Adesotu. He

submitted that the trial court erroneously misinterpreted and misapplied some portions of exhibit ñDò, the judgment of the High Court where No. 2, Lagos Street was stated to have been inherited by Chief Richard Adesotu in his personal capacity without adverting its mind to exhibit ñEò, in which High Courtôs judgment was clarified by the Court of Appeal.

Counsel referred to portions of exhibit ñDò, and submitted that the primary issue in exhibit ñDò was whether house No. 2, Lagos Street can be disposed of by a Will. He contended that the courtôs reference to Okun family property was to enable the Court show that the said house was ñIgiogbeò which by custom cannot be devised by a Will. He cited the case of Idehen v. Idehen [1996] 2 N.W.L.R. (Part 198) 382 at 424 paragraphs C ï F.

He contended that the Court of Appeal in exhibit ñEò, after a careful examination of the relevant portion referred to by the trial court in its judgment, resolved that the property, No. 2, Lagos Street was not given to Chief Richard Adesotu, the father of the present parties in his personal capacity because it was family property. He maintained that the said house cannot be the Igiogbe of late Chief Richard Adesotu.

It was his submission, that the Court of Appeal judgment is still subsisting until set aside by a superior Court. He added that the trial court did not consider exhibit ñEò but based its judgment solely on exhibit ñDò.

Counsel cited the case of Dalhatu v. Turaki (2003) 15 N.W.L.R. (Part 843) 310 at 320 ï 351 paragraphs C ï E; 336 paragraphs E ï F; paragraphs A ï D; and

347 paragraphs C ï H., and submitted that on the basis of the principle of ***stare decisis***, the trial court cannot reinterpret or make a contrary finding or opinion in respect of the property even if it believed that the Court of Appeal was wrong.

Furthermore, he submitted that where the inferences drawn from the facts are erroneous or where the facts are not reasonably justified and supported by credible evidence, an appellate court is in a good position to deal with the facts and make findings as the trial court. He cited the case of Fabuniyi & anor v. Obaje & anor (1968) N.M.L.R. 243 ratio 3 in support of this proposition.

Counsel submitted that the first son of a Benin deceased man does not inherit family property exclusively because it is not his personal property and therefore cannot deal with it the way he deems fit. For this proposition, counsel cited in support, the case of Olowu v. Olowu [1994] 4 N.W.L.R. (Part 336) 90 at 97 paragraph D.

It was also his submission, that ñIgiogbeò, a Benin word which literally means the house or houses in which the deceased lived and died, is inherited exclusively by the first son. He added that it is the personal property of the first son and he can deal with it as he deems fit. He cited in support, the case of Ogiamien v. Ogiamien (1967) A.N.L.R. 203.

Counsel further cited the cases of Lawal-Osula v. Lawal-Osula (1995) 9 N.W.L.R. (Part 419) 259 at 274 paragraph C; Idehen v. Idehen (1991) 6 N.W.L.R. (Part 198) 382 at 424 paragraphs C ï F; Arase v. Arase (1981) 5 S.C 33

at 62 ï 63 and submitted that the deceased must have an absolute interest in the property before a house where he lived and died could qualify as Igiogbe.

He submitted that where a Benin man built a house and lived there for a while and partly moves into another house and died there, the former house will still be his Igiogbe. He cited in support, the case of Idehen v. Idehen (supra).

Counsel submitted, that neither Chief Richard Adesotu, nor his predecessor in title had personal and absolute interest in the property at No. 2, Lagos Street, as it was held in trust for the entire Okun family.

It was his submission, that no other house other than No. 15A, Osaretin Street, Benin City, built by the father of the parties, in this appeal qualifies as his Igiogbe. He argued that there is evidence that he was living in the said house and partly moved to No. 2 Lagos Street, Benin City. He added that late Chief Adesotu had his ñOsunò shrine at No. 15A, Osaretin Street, Benin City.

He submitted also, that the appellant as the eldest surviving son, is entitled to inherit absolutely, No. 15A, Osaretin Street, Benin City, being the Igiogbe of his late father. He cited in support, the case of Lawal-Osula v. Lawal-Osula (supra). He also referred to: ñA HANDBOOK ON SOME BENIN CUSTOMS AND USAGESò issued by the Bini Traditional Council on the authority of the Omo NôOba NôEdo Oba Erediauwa, Oba of Benin where the mode of sharing a deceased Benin manôs property are clearly spelt out as well as a press statement made by the Oba of Benin and signed by his Secretary in the Nigerian Observer,

Friday February 13, 2009 Edition page 4.

He submitted that the sharing of No. 15A, Osaretin Street, by the family between the parties, was not contrary to Benin Customary law, as held by the trial court, because that function is purely at the discretion of the family.

He referred to the case of Agidigbi v. Agidigbi [1996] 6 N.W.L.R (Part 454) page 300 at 315 paragraphs C ï D, and submitted that where the deceased had other properties, other than the Igiogbe, which goes to the eldest surviving son, the other houses/properties are shared per ñurhoò, i.e to the 1st son of each wife.

Finally, counsel submitted that there was nothing wrong with the familyôs decision to give to the 1st son the Igiogbe, as well as No. 15A Osaretin Street.

In the alternative, he submitted that if this Court finds as a matter of fact that No. 2, Lagos Street, is the Igiogbe of late Chief Richard Adesotu, house No. 15A, Osaretin Street, Benin City, also qualifies as Igiogbe. He contended that the father of the parties was living in both places as clearly shown by the evidence.

He cited in support, the case of Idehen v. Idehen (supra) for the proposition that under Benin Customary law, a Benin man can have more than one Igiogbe. He contended that the trial court, erred when it awarded house No. 15, Osaretin Street, Benin City, to the respondent.

Replying on this issue, learned counsel for the respondent contended that the lower court was right, when it held that ñthe concept of family property is

unknown to Benin Customary law where the house in dispute is Igiogbe.ò

He submitted that exhibits ñDò and ñEò, judgment of the High Court and the Court of Appeal respectively, determined the issue of the status of house No. 2, Lagos Street, Benin City, as the Igiogbe of each first son of the descendants of the first line of the Okun family.

Furthermore, he submitted that there was evidence before the trial court that when the first son as in this case the appellant inherits No. 2, Lagos Street, the second son who is the respondent takes as his inheritance, the house built by their father which is at No. 15A, Osaretin Street, Benin City.

He submitted, that the appellant and his witnessesô testimonies that the appellant keeps all the rent collected from tenants at No., 2 Lagos Street, Benin City of which he accounts to no one, negates the concept of trust.

He added, that it has been shown by evidence that it is customary that house No. 2 Lagos Street is the Igiogbe of Okun family which falls on the appellant as first son to inherit and not No. 15, Osaretin Street which is that of the 2nd son, the respondent.

It was counselôs submission, that the respondentôs evidence that No. 15, Osaretin Street, was devised to him ***inter-vivos*** by his father was not challenged or rebutted. He contended that since this piece of evidence was not challenged or controverted, it must be acted upon by this Court unless it is palpably incredible. He cited the following cases in support:

1) Dr. Joseph Akhigbe v. Ifeanyi Chukwu Osondu Co. Ltd & anor (1999) 7 SC (Part 1) 1

2) Iyere v. Bendel Feed and Flour Mill (2008) 7 ï 12 SC 151 at 187.

He urged this Court to hold that house No. 15A, Osaretin Street is not an Igiogbe of any sort as no evidence was led to that effect. More so, when it was listed along with other distributable properties of Chief R. A. Adesotu in exhibit ñBò.

He submitted that there was no evidence before the trial court that the father of the parties lived in the two houses simultaneously during his lifetime, and contended that this case can be distinguished from Idehen v. Idehen (supra). He argued that the evidence that the deceased used to visit the respondent and his mother in the house at No. 15A, Osaretin Street, Benin City does not meet the required standard under Bini Customary Law to make the said house a second Igiogbe.

It was his submission that the trial court did not make a finding of fact with regard to the lawfulness of the committee headed by D.W.2 which performed the burial rites and thereafter shared the estate of this late R. A. Adesotu.

He argued that in the circumstance, this Court can make a relevant finding in the face of the evidence on the record. He cited the following cases in support:

1) Akpan v. Otong (1996) 10 N.W.L.R. (Part 470) 108 ratio 6 at page 124;

2) Ehimare v. Emhonyon (1985) N.W.L.R. (Part 2) 1777; and

3) Metalimpex v. A.G. Leventis (Nig.) (1976) 2 S.C 91

He argued that a trial court is duty bound to consider all issues properly raised before it. He cited in support, the case of Owners of MV. Arabella v. Nigerian Agricultural Insurance Corporation (2008) 4 ï 5 S.C 189 at 218 ï 219.

In a reply brief by the appellant on issues 3 and 4, counsel submitted, that from the evidence adduced it cannot be concluded that the appellant admitted that compensation was paid to their fatherôs younger brother in respect of a house at Ekiuwa Street.

He further submitted that the respondentôs assertion that the house at No. 15A, Osaretin Street, Benin City, was a gift ***inter vivos*** to him was not supported by evidence, and that the trial court did not base its judgment on the gift ***inter vivos***.

He urged this Court to discountenance the respondentôs counselôs submission that house No. 15A, Osaretin Street, Benin City, could not have been Igiogbe as it was listed as a distributable property in exhibit ñBò, because the appellant gave evidence that he allowed the family to share it out of his own good will.

He submitted, that contrary to the finding of the trial court and respondentôs counselôs submission, which was not borne out of the evidence adduced, there was evidence from the respondent that his late father had five

wives. Furthermore, he argued that the respondent did not say he was the one living in the said house with his mother.

On the respondentôs counselôs submission in which he urged this Court to make a finding of fact whether the Committee headed by D.W.2 was lawfully constituted, he submitted that not having cross appealed, he cannot do so. In any event, he argued, the respondent is expected to defend the judgment appealed against. For this proposition, he cited the case of: C.S.S Bookshops v. R.T.M. C.R.S. [2006] 11 N.W.L.R (Part 992) 530 at 559, paragraphs C ï E.

Finally, he urged this Court to hold that the house at No. 2, Lagos Street, Benin City, is not Igiogbe under Bini Customary Law but a family house in accordance with the unique tradition instituted by Okun family.

We have carefully considered the submissions of both counsel on these issues. The bone of contention under these two issues are two fold. It involves whether No. 2, Lagos Street, Benin City is the family property of Okun family rather than the Igiogbe of late Chief R. A. Adesotu and whether No. 15, Osaretin Street, Off Ehaekpen Street constitutes the Igiogbe of the deceased. In other words, the question of the status of the two properties vis a vis Benin Customary law. The answer lies in what constitutes Igiogbe under Benin Customary Law.

Igiogbe simply means a house where a Benin man lived and died. The first surviving son is entitled to exclusive ownership of the house after the completion of the funeral obsequies. See the following cases:

(1) Olowu v. Olowu (1994) 4 N.W.L.R (Part 336) 90 ï 92 ratio 3.

(2) Agidigbi v. Agidigbi (supra)

(3) Arase v. Arase (1981) 5 S.C 33 at 62 - 63

(4) Idehen v. Idehen (supra)

(5) Lawal-Osula v. Lawal-Osula (1995) 9 N.W.L.R. (Part 419) 259

The parties in this appeal are on common ground that their late father, Chief R. A. Adesotu inherited, lived and died at No. 2, Lagos Street, Benin City. Prior to that, he had lived at No. 15, Osaretin Street, Benin City, which was his personal property.

The counsel for the appellant had argued strenuously before this Court that neither the late Chief Adesotu nor his predecessors in title had personal or absolute interest in the property at No. 2, Lagos Street, which was held in trust for the entire Okun family because of exhibits ñDò and ñEò

We have examined exhibits ñDò and ñEò which are the Record of proceedings in Suit No. B/61/71 and judgment of the Court of Appeal Benin Division in Appeal No. FCA/B/103/79, an appeal which emanated from the former case.

The trial High Court judge, Ogbobine J. (of blessed memory) in exhibit ñDò, specifically referred to the property at No. 2, Lagos Street, Benin City, as the ñIGIOGBEò, the place of their ancestral shrine when at page 195 of Exhibit ñDò he stated as follows:

ñthe issue as to whether No. 2, Lagos Street was a family house was fully admitted by 4th defendant who stated that the deceased inherited the house on the death of his father,. There was no evidence by any of the defendant nor their witnesses that the deceased built any house at No. 2, Lagos Street, Benin City. The conflict in the family arose when it became known that the deceased was trying to will out hat they thought was their joint property and which was the ñIGIOGBEò the place of their ancestral shrine.ò

The issue that came before the High Court and the Court of Appeal was in respect of whether the deceased, the grandfather of the parties could devise by will, the said property at No. 2 Lagos Street, Benin City. The trial High Court held at page 196 of exhibit ñDò as follows:

ñFinally, on this point, I hold and find as a fact that No. 2, Lagos Street, Benin City, is the family house or property of OKUN family which the deceased could not dispose of either in his lifetime or by WILL.ò

The trial High Court Judge went further to hold that the said property has not been the personal property of the grandfather of the parties, he was not competent to devise it by WILL. He had only a life interest in the property which devolved on the eldest son on his death.

Counsel for the appellant made heavy weather out of the fact that the trial court failed to consider exhibit ñEò which according to him clarified the issue of the status of No. 2 Lagos Street as Okun family property. In our view, the

conclusion reached in exhibits ñDò and Eò are similar. On the contention of the appellants in the Court of Appeal that the trial court was wrong to have given the father of the parties in this appeal No. 2, Lagos Street, Benin City in his personal capacity, the Court Appeal per Agbaje JCA held inter alia é

> ñThe short answer to this submission is that the learned trial Judge did nothing of that nature. All that the learned trial Judge said in his judgment is that the said property devolves according to Bini Customary Law on the deceasedôs eldest son which happens to be the plaintiff. He did not give it to the plaintiff in his personal capacity. According to the judgment of the learned trial Judge, the plaintiff acquired the property by virtue of his status in the family as the eldest son of the deceased. The property evidently does not go to him in his personal capacity in that the property remains family propertyò.

We agree with the trial Area customary court, when it held that the reference by the High Court that the house was Okun family property, was simply to show that it was Igiogbe which cannot be devised by a Will. See the following cases:

1) Idehen v. Idehen (supra)

2) Lawal-Osula v. Lawal-Osula (supra)

In any event, as rightly held by the trial court the concept of family property is unknown to Benin Customary law . This is even more apparent,

where the house in dispute is an Igiogbe. See the Supreme Court decision in Olowu v. Olowu (supra).

In the circumstance, we hold that the Igiogbe of late Chief R. A. Adesotu is house No. 2, Lagos Street, Benin City. On the authority of decided cases referred to earlier the appellant as the first surviving son of late Chief R. A. Adesotu is entitled, to inherit same exclusively.

Learned Counsel for the appellant had contended that No. 15A, Osaretin Street, off Ehaekpen Street, Benin City is also the Igiogbe of the late father of the parties and the fact that he partly moved to No. 2, Lagos Street, Benin City did not deprive No. 15A Osaretin Street of the status of Igiogbe. He had asserted that the deceased must have an absolute and personal interest in the property before the property where he lived and died can qualify as Igiogbe.

It is pertinent to state here, that the case of Idehen v. Idehen (supra) relied upon by counsel for his submission is not on all fours with this appeal. Both parties in that case conceded that the two houses involved were the Igiogbe of the Testator. The issue of which of the two houses was Igiogbe did not arise. In any event, Idehen v. Idehen (supra) was not contested on the basis of whether or not the two houses constituted the Igiogbe and is therefore of little benefit to this appeal in this regard.

On the other hand, in the case of Agidigbi v. Agidigbi [1996] 6 N.W.L.R. (Part 454) 300, the Supreme Court reaffirmed the concurrent findings of facts by

the trial High Court and the Court of Appeal which held that although there were three buildings at No. 34, Dawson Road, namely: 34A, 34B and 34C, only No. 34C was the principal house where the testator lived and died was the Igiogbe.

The parties are on common ground that No. 15A Osaretin Street was built by late Chief R. A. Adesotu. He lived in that house until the death of his father, Chief Irughe Agbonifi, when he inherited and he moved over to No. 2 Lagos Street. He lived and died at No. 2, Lagos Street. There was evidence on Record which was believed by the trial court that for all intents and purposes, Chief Adesotu performed all his activities as a traditional Chief from the said house and he regarded it as his principal dwelling house or Igiogbe.

In our view, the issues raised and decided in the two judgments, exhibit ñDò and ñEò do not diminish the status of No. 2, Lagos Street as the Igiogbe of Chief R. A. Adesotu. The High Courtôs decision, exhibit ñDò reaffirmed in exhibit ñEò by the Court of Appeal was stating the obvious, that an Igiogbe cannot be devised by Will to any other person, other than the first surviving son, who then assumes absolute and personal right over the said property.

From the above, the trial court was therefore right when it held that No. 2, Lagos Street, Benin City is the Igiogbe of late Chief R. A. Adesotu and not No. 15A, Osaretin Street, Benin City.

The question that arises at this stage is whether the appellant is entitled to inherit No. 15A Osaretin Street, Benin City as well. The respondentôs counsel

had submitted that there was a gift ***inter vivos*** of the said property to the respondent. We agree with the appellantôs counsel that sufficient evidence was not led to show that there was indeed a gift of the house ***inter vivos*** to the respondent. In any case, the judgment of the trial court was not based on a gift ***inter vivos.*** It is trite that only the ***ratio decidendi*** of a case can form the basis of an appeal. Furthermore, there was evidence at the trial court that the other properties of the late father of the parties were distributed to the other children according to ñurhoò that is according to the number of wives with the male child of each urho having a property each except the respondent.

The trial court found as a fact, that house No. 2 Lagos Street automatically devolved on the appellant as Igiogbe, and that he is not entitled to any other property until the initial sharing has gone round the órhoô. It also found as a fact that the sharing of other property of the father of the deceased as per Exhibit óBô was in accordance with Benin Customary Law save for No. 15A, Osaretin Street, Benin City. It then held that the division of the house in exhibit ñBò between the parties in this appeal, was null and void as it was contrary to Benin Customary law. The trial court relied on the Book: A HANDBOOK ON SOME BENIN CUSTOMS AND USAGES, issued by the Benin Traditional Council on the authority of Omo NôOba Erediauwa, Oba of Benin to reach a decision on the matter. The customs and usages regarding inheritance for non-hereditary traditional titleholders and ordinary persons are clearly stated therein. The trial

court relied particularly on Appendix D (a) ï (c).

The trial court held that the award made at the palace of the Oba of Benin in giving No. 15A, Osaretin Street, Benin City to the appellant was in consonance with Benin customary law. The trial courtôs findings were clearly borne out of evidence and it was in accordance with Benin Customary Law. We do not see any reason to disturb its far-reaching findings of fact which we have found not to be perverse. See the following cases:

1. Fashanu v. Adekoya (1974) 1 All N.L.R. 35
2. Woluchem v. S. Gudi (1981) 5 S.C 319
3. Okegbemi v. Akintola [2008] 4 N.W.L.R. (Part 1076) 53 at 58 ratio 7.

We do not see the wisdom in considering the other matters raised by both counsel which, were not borne out of the evidence on the Record, as to do so would be mere academic exercise which courts do not indulge in. See the case of Ministry of Works v. Tomas (Nig.) Ltd. (2002) 2 N. W. L. R. (Part 752) 740 at 757 ratio 20.

In the circumstance, Issues three and four are resolved in the affirmative.

We wish to note that some measure of equity is now discernible in the pattern of distribution of the estate of a deceased Benin man because an eldest surviving son now has an option in that instead of inheriting an Igiogbe, he could forfeit same and opt to have another property of his choice. See the case of Isaac

Osawe v. Godwin Albert Ogbebor in Appeal No. CCA/16A/96 decided by this Court on Thursday, the 26th day of July, 2001 and reported in (2004) 1 Q.C.L.R.N. 100 at 101 and 102 r.r. 3 and 4. See also ñA HANDBOOK ON SOME BENIN CUSTOMS AND USAGESò, issued by the Benin Traditional Council on the authority of Omo NôOba Erediauwa, Oba of Benin (supra).

It must however be added that there can be no waiver or repudiation by the descendants of the eldest surviving son who had so opted

The four issues having been resolved in favour of the respondent, we hold that this appeal lacks merit, and is accordingly dismissed.

Consequently, the judgment of the Oredo Area Customary Court, Benin City delivered in this case on the 10th day of October, 2007, with the consequential orders made therein are hereby affirmed.

The appellant is to pay the respondent costs which we have assessed at ₦3,000.00 (Three thousand naira).

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HON. JUSTICE M. N. ASEMOTA

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HON. JUSTICE P. A. AKHIHIERO

_____
HON. JUSTICE O. OVBIAGELE

B. O. Ojumah, Esq : : : Counsel for the Appellant

Chief C. O. Ihensekhien : : : Counsel for the Respondent