

IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE AUCHI JUDICIAL DIVISION, HOLDEN AT AUCHI
BEFORE HIS LORDSHIP, THE HON. JUSTICE E.O. AHAMIOJE,
JUDGE, ON FRIDAY THE 18TH DAY OF DECEMBER, 2015

BETWEEN:

SUIT NO. HAU/2/2008

CHIEF SHAKA INUSA AMUDAH **CLAIMANT**
(The Village Head of Elele)

A N D

(1) ALH. SEIDU ZIBIRI
(2) H.R.H. KADIRI IMONIKHE OMOGBAI IV
 (The Ogieneri of Uzairue)
(Joined by order of Court dated 22/4/2007) } **DEFENDANTS**

JUDGMENT

The Claimant's claim against the Defendants is as formulated in paragraph 25 of the further Amended Statement of Claim filed on the 12/6/12 wherein he sought the following reliefs:

- (i) A declaration that the Claimant is the recognized Village Head of Elele and that he cannot be removed from office by 2nd Defendant until his death except in accordance with the custom of Elele and the Traditional Rulers and Chiefs Law 1979 as amended.
- (ii) A declaration that any purported withdrawal of recognition accorded the Claimant as Village Head of Elele by the 2nd Defendant is contrary to the custom of Elele and/or the Traditional Rulers and Chief Law 1979 and in breach of Claimant's right to fair hearing and therefore null, void and of no effect.

- (iii) A declaration that any purported withdrawal of the Claimant's Chieftaincy Registration Certificate by the 2nd Defendant or the Ministry of Local Government and Chieftaincy Affairs is in breach of Claimant's right to fair hearing and therefore null, void and of no effect.
- (iv) A declaration that the 1st Defendant cannot be validly nominated/selected or appointed and installed by any persons including 2nd Defendant as the Village Head of Elele until the Claimant is dead or has been validly removed from office in accordance with the provisions of the Traditional Rulers and Chiefs Law 1979.
- (v) An order declaring null and void any decision by Edo North Traditional Rulers Committee or any report emanating from the work of the Committee in so far as it relates to Elele village headship crisis for being in breach of Claimant's right to fair hearing.
- (vi) An order of perpetual injunction restraining the 1st Defendant from parading himself or allowing himself to be paraded or held out as village head of Elele or perform any functions or receive any perquisites pertaining to the office of village head of Elele during the life time of the Claimant.

Pleadings were duly filed and exchanged by the parties. In proof of his case, the Claimant testified on oath, called two witnesses and tendered Exhibits "B, C, D & E". The 1st Defendant testified on oath, called two witnesses and tendered Exhibits "A, F1 – F5" respectively. The 2nd Defendant failed to testify.

The case of the Claimant can be summarised in a nutshell as follows: The Claimant stated that in 2003, the “Edionedie” of Elele village recommended him to be the village Head of Elele in accordance with their custom. They took or presented him before the Ogieneri of Uzairue Clan, the 2nd Defendant who approved his appointment and consequently installed him as the Village Head of Elele. He stated that after the installation, the 2nd Defendant issued him a certificate, Exhibit “B”.

He stated that the 2nd Defendant also wrote to the Ministry of Local Government and Chieftaincy Affairs, Benin City which issued him Certificate of Registration of Chieftaincy that is in the custody of the 2nd Defendant. He stated that he was installed as the village head after the former village head, Chief Raphael Momodu Oshiobugie was removed by the 2nd Defendant. He stated that Chief Raphael Oshiobugie sued the 2nd Defendant in the High Court after his removal but died during the pendency of the suit. As a result of his death, the suit was struck out. He further stated that one Chief Anthony Omolue, after the death of Mr. Raphael Oshiobugie started to parade himself as the Village Head of Elele. He then reported the matter to the Police which led to his arrest and subsequently arraignment at the

Magistrates' Court, Jattu. That the charge was struck out when Mr. Anthony Omolue died and tendered the certified true copy of the record of proceedings, Exhibit "C". He further gave evidence of the custom of Elele that a Village Head can only be removed from office if he is blind, insane or suffering from epilepsy, or commits offence of stealing or adultery. That upon the discovery of any of the aforementioned disease or act, the Edionedie will inform the 2nd Defendant. If the 2nd Defendant accepts, they will recommend any person for appointment as the Village Head. He stated that he was not found to be suffering from any of those diseases and the acts aforementioned, and was never recommended to the 2nd Defendant for removal by the "Edionedie" as the Village Head.

He further stated that he instituted the suit against the 1st Defendant when sometime in 2007, he saw an invitation card wherein the 1st Defendant claimed to be the Village Head of Elele. That when the suit was pending, and sometime in April 2008, he received a letter, Exhibit "D" from the Local Government Council purporting to remove him from office as the Village Head and the withdrawal of his certificate. That upon the receipt of Exhibit "D", he went to protest to the 2nd Defendant who was not willing to see him. He said that before

the receipt of Exhibit "D", he was not invited by the Ministry of Chieftaincy Affairs. That he is not aware that Edo State Executive Council discussed the matter before Exhibit "D" was issued to him. That he was never invited to any of the meetings of the Edo North Traditional Rulers Council. He finally urged the Court to grant his reliefs.

In answer to questions under cross-examination by O. B. Uade Esq. of learned Counsel for the Defendants, the Claimant stated that late Raphael Oshiobugie sued him along with the 2nd Defendant. That the dispute between the parties was that the 2nd Defendant could not remove Mr. Raphael Oshiobugie as Village Head while he was alive. He denied the fact that during the pendency of the suit, the Local Government Council invited them to a meeting. He stated that he did not receive Notices of meeting from the Local Government Council. He stated that he was not aware that chieftaincy dispute relating to Elele went to Court in 1985 vide Exhibit "A". He stated that he is not from Umosor Ruling House of Elele. He said that Anthony Omolue Aminu is from the Umosor Ruling House. He gave the names of the four Edionedie who recommended him to the 2nd Defendant to be installed as the Village Head. He denied the fact that they are not the

Edionedie of Elele. He stated that Alhaji Musa Aderoro, Pa. Michael Ozola, Pa Bernard Oshionoroya and Pa. Bawa did not recommend him to be installed as the Village Head because they were not the “Edionedie” at that time. He said that Chief Raphael Oshiobugie was still alive when he was installed as the Village Head. He stated that he cannot be removed from office while he is still alive. He stated that he is not aware that the Edo North Traditional Rulers Council looked into the Chieftaincy disputes in Iyuku, Emeke and Elele, He said that Chief Michael Momodu Oshiobugie died in 2007, and after his death nobody was appointed a Chief because he was appointed in 2003.

Next to testify is Momodu Amudah, C.W.1. He stated that he is an Elder in the village and that the Claimant has been the Village Head of Elele for the past 9 years. He stated that he knew the process of his selection. That about 9 years ago, the Elders of the village known as the “Edionedie” which include himself, Ogie, Oshiomegie and Lawani elected and presented the Claimant to the 2nd Defendant for installation. He stated that before the selection of the Claimant, the “Edionedie” went to the 2nd Defendant to lodge a complaint about Chief Raphael Oshiobugie. That Oshiobugie was removed by the 2nd Defendant based on their complaint. He gave the conditions under

which a Village Head can be removed under Elele Native Law and Custom to include if the person is blind, deaf, a thief or suffers leprosy. He stated that the Claimant did not suffer any of the aforementioned disability. That the “Edionedie” never met to recommend the Claimant to the 2nd Defendant for removal as the Village Head.

Cross examined by O.B. Uade, Esq. C.W. 1 stated that the Elders of “Edionedie” are not members of Igbolo Quarters. He admitted that once a Village Head is appointed he can never be removed from office until he dies. He stated that Raphael Oshiobugie was the village Head before he became blind and deaf. That he was alive when the Claimant was appointed the village Head. He stated that he is unaware that the 2nd Defendant stated that he removed Raphael Oshiobugie in error contrary to the custom of Elele, and has withdrawn the certificate he issued to the Claimant. He stated that Umosor has not been the Ruling House in Elele but the Oshiomege House where the Village Head is selected. That he is not aware that the issue of the Ruling House in Elele has been decided at the High Court and the Court held that it is the Umosor in Exhibit “A”. He stated that it is not correct that the people in Elele were still attending meetings at Mr. Oshiobugie’s house before his death. That it is not true that after his

death, the Umorsor Ruling House selected one Chief Anthony Omolue as the Village Head.

C.W. 2 is Abu Momoh. He stated that before the Claimant became the Village Head, the four Elders known as the “Edionedie” met and presented him to the 2nd Defendant. That Chief Momoh Oshiobugie was the Village Head before the Claimant. That he was blind and deaf before the Claimant was made the Village Head. That it was because of his disability that prompted the “Edionedie” to approach the 2nd Defendant to present the Claimant as the Village Head for his approval. That based on their complaint, the 2nd Defendant removed Chief Oshiobugie as the Village Head.

Cross examined by O.B. Uade, Esq. C.W. 2 stated that Chief Oshiobugie did not tell them that he could not perform the function of the Village Head, but he was no longer attending meetings at the 2nd Defendant’s Palace. He stated that he was not one of the “Edionedie” in-Council. He stated that it is not true that under Elele Custom a Village Head cannot be removed unless by death. That it is not true that the 2nd Defendant reinstated Chief Oshiobugie when he realized that he acted in error. That the Claimant was appointed the Village Head while Chief Oshiobugie was still alive which was not contrary to

Elele Custom. That Umosor is not the only Ruling House in Elele. That there are three Ruling Houses. He said further that he is not aware of the Judgment of Court which affirmed Umosor as the only Ruling House in Elele. That he is not aware that the Edo North Traditional Rulers met and looked into the traditional dispute in Elele Village.

At the close of the case for the Claimant, the 1st Defendant testified on oath in his defence on the 20/9/13. The 1st Defendant adopted his sworn deposition wherein he stated that he is the Village Head of Elele having been turbaned by the 2nd Defendant. That the Claimant was never at any time nominated, selected and presented by the Edionedie (four most senior men) to the 2nd Defendant. He further stated that the only Ruling House in Elele is known as Umosor Ruling House which has been decided by the High Court in Suit No. HAU/15/85 vide Exhibit "A". He said that the Claimant is not qualified to be nominated, selected and presented to the 2nd Defendant not being a member of the only Ruling House. That the Claimant did not inform the 2nd Defendant of his intention to contest the position of Elele Village Headship. He stated that at the time the Claimant claimed to have been turbaned as the village head in September 2003, Chief Raphael Momoh Oshiobugie was the Village Head who was issued

with Certificate of Registration. He stated that when the Claimant claimed to be the Village Head, Chief Oshiobugie sued him at the High Court in Suit No. HAU/7/2003. That during the pendency of the suit, the Etsako Local Government Council sent series of Notices of meeting to the parties and the Claimant was told not to parade himself as the Village Head. That the Certificate of Registration issued to the Claimant was set aside by the 2nd Defendant. He said that Chief Oshiobugie ruled as the Village Head until he died in 2007. After his death the only Ruling House, Umosor nominated and presented Chief Omolue Anthony to the King makers to be turbaned, but he died before the 2nd Defendant approved his appointment. He said that after his death, the Umosor Ruling House met and selected him being the most suitable candidate from the Umosor Ruling House, and presented him to the four most senior men (Edion-ne-die) who appointed and installed him. That his name was forwarded to the 2nd Defendant who approved same and was turbaned as the village Head. He stated that the Edo North Traditional Rulers Committee was set up to address the issue of the unlawful withdrawal or deposition of Chief Raphael Oshiobugie as the Village Head by the 2nd Defendant and the unlawful installation of the Claimant. That the parties testified before the

Committee which led to a finding which is now being implemented by the 2nd Defendant. He stated that Chief Oshiobugie was removed contrary to the custom of Elele that once a Village Head is installed and turbaned, he occupies the position for life. He stated that the 2nd Defendant acted within his power under the custom to withdraw or depose the Claimant as the Village Head. He urged the Court to dismiss the Claimant's suit.

Cross-examined by S.K. Mokidi, Esq. the 1st Defendant stated that it is not correct that it is the "Edion-nedie" (four – Elders) that recommends a person as a village head to the 2nd Defendant. That it is not correct that they also recommend the removal of a village head to the 2nd Defendant. That it is not possible for the 2nd Defendant to unilaterally remove a village head without any recommendation. He said that the Edo North Traditional Rulers Committee was set up to look into the crisis in Iyuku and Emeke. That the Committee submitted its Report to the Government. He said that he is not aware that the Claimant was issued a Certificate of Chieftaincy registration by the Ministry of Local Government and Chieftaincy Affairs. He stated that Anthony Omolue who is his elder brother was charged to Magistrates' Court, Jattu for parading himself as the Village Head.

DW 1 is Philip Inalina. His evidence is substantially the same with the evidence of the 1st Defendant which needs no reproduction or repetition. It suffices to say that he adopted his sworn deposition where he stated that he is the eldest man from the Umosor Ruling House of Iyukpuye Quarters. That the Claimant is from Igbolo Quarters of Elele where the village head do not come from.

In answer to questions under cross-examination by S.K. Mokidi Esq. of learned Counsel for the Claimant, he stated that in 2003, the 2nd Defendant removed Chief Oshiobugie Momoh as the Village Head of Elele, and he sued the 2nd Defendant at the High Court. That in 2005, he attended a meeting with the Chairman of Etsako West Local Government Council concerning the Chieftaincy dispute of Elele. That he is unaware of the Edo North Traditional Rulers Committee which looked into the Iyuku/Emeke chieftaincy dispute. That the 2nd Defendant did not install the Claimant as the Village Head, and was not given any Certificate of Registration. He stated that a person installed as a Village Head cannot be removed until he dies. That the Edionedie do not recommend the village head to the 2nd Defendant for removal.

D.W. 2 is Chief M.O. Aliu, who is the Secretary of Etsako west Local Government Traditional Council who came to testify on a

subpoena. He adopted his sworn deposition which is substantially the same with the evidence of the 1st Defendant and D.W. 1. He equally tendered Exhibits “F1 – F5” respectively.

Cross-examined by S.K. Mokidi, Esq. D.W. 2 stated that he certified Exhibit “E”, the extract of a meeting in which he was the Secretary. That he was the person who passed the information to the members contained in page 6, paragraph 9.59 thereof. He stated that the Claimant was issued with Chieftaincy Certificate of Registration by the Etsako West Local Government Council which Exhibit “F5” seeks to withdraw. That he cannot remember if at the time the Claimant was issued the Chieftaincy Certificate, Chief Raphael Oshiobugie had been removed as the village head. He said further that it is not true that the Village Head cannot be removed from office until his death under the Elele Custom. That he was the secretary to the Edo North Traditional Rulers Committee which looked into the crisis between Iyuku and Emeke Villages, and the Committee issued a written Report to the Edo State Government. That Exhibits “F1 – F4” are certified copies from his office record.

At the close of the Defence, learned Counsel filed their Written Addresses in compliance with the Rules of Court.

The 1st and 2nd Defendants' written address was brought in vide a Motion on Notice filed on the 19/12/2014.

O.B. Uade, Esq. of Learned Counsel to the Defendants gave a brief introduction, and summary of the facts of the case of the parties, and distilled two issues for determination thus:

1. Whether this action is not caught by the doctrine of estoppel *per rem judicatam*?
2. Whether the Claimant have been able to prove his case on the preponderance of evidence?

On issue one, he submitted that by paragraphs 4, 5 and 33 of the 2nd Amended Joint Statement of Defence, the Defendants raised the issue that the numbers of ruling houses in Elele was once litigated upon by this Court in Suit No. HAU/15/1985 – MR. VINCENT S. AISEKHAUNO & ORS. VS. HIS ROYAL HIGHNESS ALHAJI F.A. OMOGBAI, III & ANOR. That at the close of evidence in that case, this Court found that there is only one Ruling House in Elele which is Umosor Ruling House at page 14 of the Judgment, Exhibit "A". He argued that there was no appeal against this judgment. He further argued that the Claimant did not controvert or challenged these paragraphs by way of reply to the Statement of Defence or in his Statement of Claim. That the Claimant did not also adduce oral evidence challenging that the issue of Ruling

House in Elele was not laid to rest. He contended that DW1, DW2 and DW3 in paragraphs 9, 5 and 6 of their respective written statement on oaths stated that there is one Ruling House in Elele village and they were not cross examined on this point.

He further contended that in proof of these paragraphs of the 2nd Amended Joint Statement of Defence, the Defendants tendered Exhibit "A".

He submitted that unchallenged and uncontroverted evidence which is relevant, the Court can believe same to be true and act on it, and cited MAERSK LINE VS. ADDIDE INVEST. LTD. (2002) 11 NWLR (PT. 778) 327; AND LAWAL VS. P.G.P. (NIG.) LTD (2001) 17 NWLR (PT. 742) 393 AT 404 PARAS. H – B.

He further submitted that Suit No. HAU/15/85 laid to rest the issue of the Ruling Houses in Elele village and therefore the decision in HAU/15/85, Exhibit "A" can be used as estoppel *per rem judicatam* against the Claimant as a sword.

On when a previous judgment will act as a estoppel res judicatam, he cited ADONE V. IKEBUDU (2001) 7 M.J.S.C 170 AT 190 PARAGRAPHS A-G.

He argued that the cause of action in suit No. HAU/15/85 was the appointment of Chief Raphael Momoh Oshiobugie as the Village head of Elele by Ogenieni of Uzairue, while one of the issues that arose for determination was that there are three Ruling Houses in Elele. The parties in that action were member of the various quarters of Elele as well as representing the ruling houses.

It was contended that the cause of action is the appointment of the 1st Defendant by the 2nd Defendant as the village head of Elele. That there is also the issue of Ruling house and Umosor is claimed to be the only Ruling House, the Claimant and his witnesses are saying there are other ruling houses.

He posited that the cause of action and the issues for determination are one and the same in HAU/15/85 and the present case. He further posited that the cause of action and the issues in the former suit having been decided upon by this Honourable Court, which are one and the same with this present suit, and relied on A.I.B. LTD VS. PURIFICATION TECH. LTD. (2000) 10 NWLR (PT.676) 552 AT P. 559 PARAGRAPHS B-D.

He submitted that the parties and their privies in suit HAU/15/85 are the same with this present suit. He referred to pages 1,2 and 3 of

the judgment in HAU/15/85. He further submitted that the cause of action is the same, the issues decided are also the same and the judgment is the judgment of a superior Court and the Claimant being a privy, he is estopped from bringing this action, and cited ADONE V. IKEBUDU (SUPRA).

He finally submitted on this issue that the Defendants successfully pleaded, raised and proved the issue of *res judicata* against the Claimant, and urged the Court to so hold and resolve this in favour of the Defendants.

On issue two, Learned Counsel referred to paragraphs 3,4,5,6,10,11,13,14,15,16,17,18,19,20,21 and 22 of the 2nd Amended Statement of Claim and paragraphs 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 of the 2nd Amended Joint Statement of Defence, and submitted that before a party such as the Claimant can bring an action of this nature, he must first and foremost protest to the prescribed authority in accordance with section 22 of the Traditional Rulers and Chiefs Law of Bendel State, 1979 as applicable to Edo State.

He argued that from the Claimant 2nd Amended Statement of Claim and the evidence led in support of his pleading, there is nowhere

it was mentioned that he protested to the prescribed authority or any other body before instituting this action. He submitted that the Claimant having failed to protest, his action is pre-mature and same must fail.

He argued that the Claimant in the course of the trial maintained that he is not from Umosor Ruling House. That only the Ruling House in Elele is entitled to produce the village head.

It was submitted that the Claimant having not come from Umosor Ruling House, he has no locus stand to contest the village Headship of Elele and therefore, lack the locus standi to institute this action. He further submitted that for a party to show that he has locus standi in a chieftaincy matter, he must show by his evidence and Statement of Claim that he is from a Ruling House or family that is entitle to produce the village head, and cited TANGALE TRADITIONAL COUNCIL V. FAWU (2001) 17 NWLR (PT. 742) 293 AT PAGES 320-321 PARAGRAPHS D-B.

He argued that on the efficacy of Exhibit "A", a judgment from a Superior Court of record is a tangible document that the Court can rely on.

He posited that it is trite law that documentary evidence is a hanger upon which oral evidence is tested, and cited AKINGBADE V. STATE (2006) 17 NWLR (PT. 1007) 184 AT P. 201 PARAGRAPHS G.

He urged the Court to hold that the Claimant's action is caught up by the doctrine of estoppel *per rem judicatam*, and he has no locus standi to institute this action.

He finally urged the Court to hold that the Claimant has failed to prove his case on the balance of probability or on preponderance of evidence, and further urged the Court to dismiss the Claimant's action.

On his part, S.K. Mokidi, Esq. of Learned Counsel for the Claimant gave a brief introduction of the case, the summary of the case of the Claimant and the Defendant and facts not in dispute at pages 1-3 of his written address and formulated a sole issue for determination thus:

“whether the Claimant has prove his claim on the balance of probabilities or on preponderance of evidence.”

Arguing the sole issue, Learned Counsel submitted that it is settled principle of law that he who asserts must prove. That in Civil matter, the burden of proof is on the Claimant, and cited PURIFICATION TECHNIQUE (NIG.) LTD. V. JUBRIL (2002) ALL FWLR (PT. 642) 1657 AT 1687, ORAEKWE V. CHUKWUKA (2012) ALL FWLR (PT. 612) 1677 AT 1721; SECTION 136(1) OF EVIDENCE ACT 2011.

He posited that the Claimant has proved his case on the balance of probabilities or preponderance of evidence. He argued that in order to determine whether the Claimant proved his case, the following questions need to be answered:

- “1. At the time that cause of action arose who was the recognized village head of Elele?
2. Can the 1st Defendant be validly installed as village head of Elele without the Claimant first being validly removed from office?”

On the first question, he submitted that the Claimant proved that he was the recognized village head of Elele at the time the cause of action arose, and referred to paragraphs 1-8 and 21 of the Statement of Claim, the evidence of CW1 and CW2, and Exhibits “B, C, D and E”.

He submitted that a cause of action is a factual situation which if substantiated, entitles the Claimant to a remedy against the Defendant. That it therefore accrues where there is a party who can sue and another to be sued and all facts which are material to ensure the success of the suit exist, and cited PHCN V. ALABI (2011) ALL FWLR (PT.557) 698 AT 712 PARAGRAPHS D-G.

He reproduced paragraphs 8 and 21 of the Further Amended Statement of Claim, and argued that the Claimant testified that in

December, 2007, he saw an invitation card wherein 1st Defendant was referred to as village head of Elele, hence he sued him.

He submitted that this piece of evidence was not contradicted or denied by the 1st Defendant. He argued that it is clear that the cause of action arose in December, 2007. That Exhibit "F" was issued after this suit was commenced in January 2008, and therefore cannot constitute the cause of action. He urged the Court to hold that as at the time the cause of action arose, the Claimant was the recognized village head of Elele.

On the second question, he submitted that the Claimant has proved that under the prevailing laws the 1st Defendant cannot be nominated or parade himself as the village head of Elele unless Claimant has first been validly removed from office. He further argued that the Claimant led evidence of how he was nominated and presented by the four elders whom he gave their names. That was never alleged that the persons mentioned by the Claimant were not the four elders at that time.

He contended that the Claimant stated the conditions under which a village head may be removed from office in paragraphs 14, 15, 16 and 20 of Statement of Claim, and that none of the conditions were

met in this case. He further contended that the Claimant and his witnesses led evidence on this custom which was neither challenged nor discredited under cross examination. That the only response of the Defendants is that the Claimant was not qualified at the time he was appointed and installed as the Village Head. He referred to paragraphs 25-27 of the Amended Joint Statement of Defence and paragraphs 10-12, 23, 26 and 29 of the 1st Defendant's Written Statement on Oath.

He posited that the Defendants did not Counter Claim in this action to set aside the nomination, approval and installation of Claimant as the Village Head of Elele, if they seriously believed he was not validly installed. That the evidence of DW1 under cross examination is that a village head cannot be removed at all from office except he dies. DW2 on the other hand said a village head of Elele can be removed from office before death. The 1st Defendant on the other hand said Ogieneri cannot *suo moto* remove a village head in Elele but did not state how a village head can be removed by the Ogieneri. He further said that it is not Edionedie (Four elders) that recommend a person to be appointed or removed as village head to the Ogieneri, although in his pleadings and evidence he said he was recommended

by them. He cited section 28(1) of the Traditional Rulers and Chiefs Law 1979.

He argued that the Elele village headship being one recognized under the Traditional Rulers and Chiefs Law, 1979, the power is vested on the Executive Council and not on 2nd Defendant or Edo North Traditional Rulers to withdraw the recognition, remove or suspend Claimant from office.

He further argued that looking at Exhibit "D", the 2nd Defendant is the one who purportedly withdrew the recognition; and the reason he gave is that it is in compliance with the Report of Edo North Traditional committee. That the 2nd Defendant was given an opportunity to testify but did not and the so-called report was not tendered. He urged the Court to invoke section 167 of the Evidence Act, 2011 for failure to tender the Report.

He submitted that since the Claimant has not been validly removed, he remained the village head of Elele and the 1st Defendant cannot be selected or presented to 2nd Defendant for installation. That as at today, 2nd Defendant has not approved any other person as the village head of Elele and has not forwarded any particulars of any person as successor to the Claimant to any authority.

He finally submitted that the Claimant has proved his case on the balance of probabilities.

On whether the action is not caught by the doctrine of estoppels *per rem judicatam*, he submitted that the Defendants cannot rely on the doctrine of estoppel *per rem judicatam* at this stage having not specifically pleaded same.

He also submitted that for estoppel *per rem judicatam* to succeed, certain conditions must be present which he enumerated, and cited POLYVALENT (NIG.) LTD. V. AKINBOTE (2011) ALL FWLR (PT. 557) 638 AT 660-661.

He submitted that the parties in suit HAU/15/85 and this suit are not the same. He further submitted that the cause of action and the issues in HAU/15/85 and the present action are not the same. He referred to the reliefs in Exhibit "A" and the relief claimed in the present suit.

He urged the Court to hold that the conditions for sustaining plea of estoppel *per rem judicatam* have not been satisfied in this case.

He contended that the Defendants raised the issue of locus standing. He submitted that locus standing is the legal capacity to institute proceedings in Court of Law. That it will be accorded a

Claimant who shows that his Civil rights and obligations have been or are in danger of being violated or adversely affected, and cited ADEKUNLE V. ADELUGBA (2003) ALL FWLR (PT. 675) 333 AT 353 PARAGRAPH 9.

He submitted that is settled principal of law that it is the Statement of Claim that determines a Claimant locus standing to sue, and cited BEWAJI V. OBASANJO (2008) 9 FWLR (PT. 1083) 540 AT 569. He referred to paragraphs 1, 3, 4, 5, 8, 9, 14, 20 and 22 of the Statement of Claim.

He finally submitted that the action is not premature, and cited Section 22 of the Traditional Rulers and Chiefs Law 1979.

He argued that the Defendants' Counsel misconceived the import of section 22 of the TRCL, 1979. That subsections (1), (2), (3), (5) and (6) of Section 22 must be read together. That it is the responsibility of the Prescribed Authority or the Executive Council to approve the appointment of a person as a traditional Chief. That it is only when there is a dispute as to whether a traditional Chieftaincy has been conferred on a person in accordance with Customary Law that the Prescribed Authority may determine the dispute. That once the Prescribed Authority has approved the conferment of a Chieftaincy

title, it is the aggrieved party that will apply to the Executive Council for a review.

He finally urged the Court to hold that the Claimant has proved his case and therefore entitled to judgment.

I note that learned Counsel for the Defendants filed a Reply on points of law. I shall have recourse to same where necessary during the course of the judgment.

It is the principle of law that in every civil case, the onus of proof is always on the party who asserts, and he has to prove his case on credible and cogent evidence. Where a party fails to discharge the burden, he cannot therefore be entitled to judgment.

See: *ATAKPA V. EBETOR* (2015) 3 NWLR (PT. 1447) 549, R. 9.

LONGE V. FBN PLC. (2006) 3 NWLR (PT. 967) 355.

UMEANIA V. EMORDI (1996) 2 NWLR (PT. 430) 384.

The standard of proof required is proof on the balance of probability and not beyond reasonable doubt as in criminal cases.

OBIAZIKWOR V. OBIAZIKWOR (2008) 8 NWLR (PT. 1090) 551 AT 569.

The Claimant, in the main is claiming that he is the recognized Village Head of Elele at the time the cause of action arose, and that the 1st Defendant cannot be validly nominated/selected or appointed and

installed as the Village Head until he dies or validly removed in accordance with the law.

From the pleadings of the parties and the oral evidence before the Court, the following facts appear not to be disputed:

- (1) That the 2nd Defendant is the prescribed authority in Uzairue Clan of which Elele Village is one of the villages making up the clan.
- (2) That late Chief Raphael Momoh Oshiobugie was the Village Head of Elele.
- (3) That the said late Chief Raphael Momoh Oshiobugie was removed by the 2nd Defendant as the Village Head of Elele in 2003.
- (4) That the Claimant was installed as Village Head of Elele in September, 2003 during the life time of Chief Raphael Momoh Oshiobugie.
- (5) The Claimant was issued with a Certificate of Appointment dated 1/10/2003 by the 2nd Defendant, Exhibit "B" and a Certificate of Registration of Chieftaincy by the Ministry of Local Government and Chieftaincy Affairs, Benin City.
- (6) That Chief Raphael Momoh Oshiobugie challenged his removal at the High Court, Auchi, but died during the pendency of the suit which led to the suit being struck out.

The Claimant in proof of his case, gave evidence of how he was selected by the Edionedie (four elders) in accordance with the Elele custom, presented to the 2nd Defendant who appointed and installed

him as the Village Head. He stated that his appointment was confirmed by the issuance of certificate to him by the 2nd Defendant, Exhibit "B" and Ministry of Local Government and Chieftaincy Affairs. He also gave evidence of how a Village Head can be removed from office in accordance with Elele Custom. The evidence of the Claimant was amply corroborated by the testimonies of C.W. 1, Momoh Amudah who was one of the four elders (Edionedie) who selected and presented the Claimant for appointment and turbanning by the 2nd Defendant, and C.W. 2, Abu Momoh.

On his part, the 1st Defendant contends otherwise and stated that the Chief Raphael Momoh Oshiobugie was not validly removed from office as Village Head by the 2nd Defendant at the time the Claimant was installed. He further contended that the Claimant is not from the only recognized Ruling House in Elele – the Umosor Ruling House, and therefore not qualified to be the Village Head.

The central or live issue in this case is whether the Claimant was validly removed as the Village Head of Elele by the 2nd Defendant before the 1st Defendant was selected or nominated and installed as the Village Head of Elele by the 2nd Defendant. The learned Counsel for the Claimant posed the question thus:

“At the time of the cause of action who was the recognized Village Head of Elele?”

I have earlier reproduced the evidence of the Claimant and his witnesses, C.W. 1 and C.W. 2. At the risk of repetition, the Claimant and his witnesses gave detailed evidence to the effect that the Claimant was the recognized Village Head of Elele and tendered Exhibits “B, C, D and E.” It is important to note that the Claimant was issued with Exhibit “B”, the certificate of appointment and turbained by the 2nd Defendant, and also a Certificate of Registration issued by Ministry of Local Government and Chieftaincy Affairs in custody of the Ministry with Reg. No. TC/ETW/2007/187 dated 15/2/2007 which Exhibit “F” seeks to revoke. There is evidence from the Claimant that late Chief Raphael Oshiobugie was also removed by the 2nd Defendant wherein he challenged the removal at the High Court Auchi. There is evidence that he died during the pendency of the suit and was not reinstated by the 2nd Defendant before his death. The Claimant stated that he has been performing his duties until December, 2007 when the 1st Defendant started to parade himself as the Village Head of Elele which led him to institute this action in January 2008.

In the result, I hold and find as a fact from the unchallenged evidence of the Claimant and his witnesses and the documentary

Exhibits tendered, particularly Exhibit "B", C, and E" that the Claimant was the recognized Village Head when the cause of action arose.

The next question is whether the 1st Defendant can be installed as the Village Head of Elele without the Claimant first being validly removed from the office?

The Claimant in his further Amended Statement of Claim particularly paragraphs 14, 15, 16 and 20 stated the conditions under which a Village Head can be removed from office under Elele custom. The Claimant and his witnesses, C.W. 1 and C.W. 2 led copious evidence on this custom that a Village Head once installed occupies the office until his death, and cannot be removed except he is blind, deaf, insane or suffers contagious disease and commits offence of stealing or adultery. That before he can be removed, the four Elders (Edionedie) must recommend him to the 2nd Defendant. They specifically stated that late Chief Oshiobugie was blind and deaf before the Edionedie recommended him for removal to the 2nd Defendant. The Claimant stated that he suffers none of the above disability and was never recommended by the Edionedie to the 2nd Defendant for removal from office.

The 1st Defendant reacted to this issue in paragraphs 21, 22, 23, 24, 25, 26 and 27 of their 2nd Amended Joint Statement of Defence. The 1st Defendant gave evidence that the Claimant was not qualified and that he was appointed and selected when he is not from the only recognized Umosor Ruling House. That there was no vacancy at the time of his installation and that late Chief Oshiobugie was invalidly removed as the Village Head by the 2nd Defendant. It is important to note that the 1st Defendant did not file a Counter-Claim in this suit to challenge or set aside the selection, nomination, approval and installation of the Claimant as Village Head of Elele by the 2nd Defendant in September, 2003. Rather, the late Chief Oshiobugie challenged same at the High Court Auchi, but before it could be determined, he died and the suit was struck-out or terminated. The 1st Defendant and his learned Counsel have made a heavy weather out of a mole hill on the issue of late Chief Raphael Oshiobugie not having been validly removed as the Village Head by the 2nd Defendant.

With the greatest respect, it is my firm view, that it does not lie in their mouth to continue to maintain that Chief Reaphael Oshiobugie was not validly removed by the 2nd Defendant as the Village Head of Elele. This is a classical case of a sympathizer weeping more than the

bereaved. After all, the said Oshiobugie challenged his purported invalid removal at the High Court, Auchi. Regrettably as it may seem, the issue was not determined before his death and the suit was struck out. It is my view that his death puts a final end to the issue of his purported invalid removal by the 2nd Defendant since the action is a personal action. The implication of this is that the Claimant remained the recognized Village Head of Elele. Therefore, to remove him as the Village Head, the prescribed Authority must comply with the custom regulating the removal of a Village Head in Elele and the relevant law.

It is remarkable to note that during the pendency of this suit, the Claimant stated that he received a letter dated the 26/3/2008, Exhibit "F5" which purports to remove him from office as the Village Head. It is quite apposite to reproduce the content of the said Exhibit "F5" thus:

REVOCATION OF CERTIFICATE OF REGISTRATION AS THE VILLAGE HEAD OF ELELE

1. I am directed to inform you that His Royal Highness Alh. K.I. Omogbai, the Ogieneri of Uzairue has confirmed that he has revoked the approval he gave to you as the Village Head of Elele.
2. Consequent upon the aforesaid, the certificate of registration No. TC/ETW/ 2007/187 dated 15th February, 2007 that was issued to you by this Ministry as the Village Head of Elele has

been revoked. You are therefore directed to return the certificate to this office, please.

3. You are also advised not to parade yourself as the Village Head of Elele forthwith.

SIGNED
(Iraoya, S.A.),
For: Hon. Commissioner.

It is settled that Elele Village being one of the villages recognized under the Traditional Rulers and Chiefs Law, 1979 makes provision for removal of Traditional Rulers or Chiefs. Section 28 (1) provides thus:

“The Executive Council may withdraw the approval of the appointment of, or suspend or depose, any traditional ruler, regent, traditional Chief or an Honourary Chief whether appointed before or after the commencement of this Edict, if it is satisfied that such withdrawal, suspension or deposition is required according to Customary Law or is necessary in the interest of peace or order or good government.”

It is demonstrably clear from the aforesaid proviso that the power to remove the Claimant in this case is vested in the Executive Council of Edo State and not the 2nd Defendant or the Edo North Traditional Rulers Council. It is patently clear that the 2nd Defendant lack the power or vires to withdraw the recognition, remove or suspend the Claimant from office after he has been installed, confirmed and issued a Certificate of Recognition which is acknowledged by Exhibit “F”. A

critical perusal of Exhibit "D" particularly the letter dated the 21/12/2008 written and signed by the 2nd Defendant shows quite clearly that it was the 2nd Defendant who purportedly withdrew the recognition accorded the Claimant. The 2nd Defendant categorically stated that he acted in compliance with the Report of Edo-North Traditional Rulers Committee set up to look into the crisis at Iyuku and Imeke villages in Uzairue and Elele village headship crisis. Curiously, the said Report was never tendered before this Court to enable this Court to ascertain their recommendation regarding the Elele village headship crisis. It is important to note that the 2nd Defendant who is a party to the suit was given ample opportunity by the grant of several adjournments but failed to testify and tender the said Report. Aside from this, a critical examination of Exhibit "F5" earlier reproduced clearly shows that it was not also issued pursuant to the directive of the Executive Council of Edo State. Rather, it is categorically stated by the author of the letter Mr. Iroaya, S.A. that the 2nd Defendant has confirmed that he has revoked the approval he gave to the Claimant as the Village Head of Elele.

Quite worrisome and baffling in this case is that these letters of revocation of Certificate of Registration or withdrawal of Registration of

Certificate of the Claimant as the Village Head of Elele, Exhibits “D and F5” were all issued to the Claimant during the pendency of this suit. The Claimant commenced this suit against the 1st Defendant on the 8/1/2008. The cover letter of Mr. M.O. Aliu, is dated the 10/1/2008. The letter written by the 2nd Defendant titled “withdrawal of Registration Certificate of Shaka Amuda as Village Head of Elele” is curiously dated the 21st December, 2008”, Exhibit “D”. The second letter written by Iraoya S.A. for Hon. Commissioner, Exhibit “F5” is dated 26/3/2008.

It is settled that a Court will frown against a situation where the act being challenged is carried out after the commencement of the suit. In the instant case, the Claimant as earlier stated, on the 8/1/2008 filed this suit to challenge the legality of the 1st Defendant parading himself as the Village Head of Elele. It is my view, that acts of the 2nd Defendant proceeding to remove the Claimant from office vide Exhibit “F5” dated 26/3/2008 and Exhibit “D” dated 21/12/2008 during the pendency of the suit was a deliberate and calculated disrespect to the Court, the real aim being to render this Court’s eventual decision nugatory.

In the case of EZEGBU V. F.A.T.B. LTD. (1991) 1 NLWR (PT. 220)

669 AT 725, it was held thus:

“What then is the remedy of the Court where it finds itself in this situation? I have earlier said that any Court found in the same situation would frown against it. I also add that the Court must in addition take a positive and mandatory act in order to instill judicial discipline on the erring party and in order to maintain, restore and preserve the dignity and respect of the Court. This includes the undoing of what has been done by the erring party irrespective of what the Court will decide on the merits, when the matter is properly heard.”

The same approach has been further endorsed in ABIODUN V.

CHIEF JUDGE, KWARA STATE (2007 18 NWLR (PT. 1065) 109 At 139.

Where the Court of Appeal (Ilorin Division) held as follows:

“Once parties have turned their dispute over to the Courts for determination, the rights to resort to self help ends. It is not permissible for one of the parties to take any step during the pendency of the suit which may have the effect of foisting upon the Court a situation of complete helplessness or which may give the impression that the Court is being used as a mere subterfuge, to tie the hands of one party while the parties are expected to await the result of the litigation and the appropriate order of Court before acting further ----- . In other words, it is a reprehensive conduct for any party to an action pending in Court to proceed to take the law into his hands, without any specific order of the Court and to do any act which would pre-empt the result of the action. The Courts frown against such conduct and would always invoke their disciplinary powers.”

See: ADEFARANTI V. GOV. OF ONDO (2006) 1 NWLR
(PT. 960) 145 AT 157.

COMBINED TRADE LTD. V. A.S.T.B. LTD. (1995) 6 NWLR
(PT. 220) 699.

In the recent case of EDEBI V. B.S.H.A. (2012) 5 NWLR (PT. 1292)

Muhammad (JCA) poignantly held thus:

”One agrees with learned Senior Counsel to the Appellant that in case the acts of the Respondents of proceeding to remove the Appellant from office during the pendency of the instant suit is a deliberate and calculated disrespect to the Court the real aim being to render the Court’s eventual decision nugatory. We must discourage the indiscipline and ensure the evolution of real democratic culture where law and due process reign supreme”.

See also REGISTERED TRUSTEES, APOSTOLIC CHURCH V.

OLOWOLENI (1990) 6 NWLR (PT. 158) 514, M. L. GOV., LAGOS STATE V.

OJUKWU (1986) 1 NWLR (PT. 18) 621.

In the result, all act done by the 2nd Defendant in the removal of the Claimant, i.e. the letters dated the 21/12/2008, Exhibit “D” and the letter dated 26/3/2008, Exhibit “F5” during the pendency of the suit are hereby set aside and declare null and void.

This should have been the end of the matter. But, I wish to make some comments on some issues raised by the learned Counsel for the Defendants. He submitted on issue 1 that this suit is caught by the

doctrine of Estoppel per *rem judicatam*. Let me say and quickly too, that the conditions for the invocation of the doctrine of estoppel per *rem judicatam* are completely lacking in this suit. Learned Counsel and the Defendants relied heavily on the judgment in suit HAU/15/85, Exhibit "A". It is patently clearly that the parties in Exhibit "A" are different in this suit. The cause of action and issues in HAU/15/85, and in the instant suit are completely different.

It is important to note that the crux of the Claimant's claim is not the determination of the appropriate Ruling house in Elele as misconceived by the learned Counsel for the Defendants. The reliefs sought by the Claimant are clearly stated in paragraph 25 of the Further Amended Statement of Claim. It was the Defendants who introduced the issue of Umusor being the only Ruling House in Elele in paragraphs 4 and 5 of their 2nd Amended Statement of Defence.

It is trite that a Defendant in a suit cannot set up a different case put up by a Claimant in his pleading and call upon the Court to adjudicate on same, where there is no Counter-Claim. The Defendant is only expected to respond to the case put forward by the Claimant in his pleading and not to set up a different case.

Accordingly, I hold that the 1st Defendant has not established the conditions to sustain the plea of Estoppel per *rem judicatam*.

In addition, learned Counsel for the Defendants has submitted that before the Claimant can bring an action of this nature, he must first protest to the prescribed authority in accordance with section 22 of the Traditional Rulers and Chiefs Law of Bendel State 1979 as applicable in Edo State. In other words, he submitted that this suit is pre-mature.

Let me quickly say straight away that I do not see the relevance of section 22 or its applicability to the facts of this case. Section 22 has seven (7) sub sections which ought to be read together. If learned Counsel had taken little time to read the whole sub sections, he would have discovered that it has no relevance to the fact of this case.

In any event, there was no contest between the Claimant and the 1st Defendant because the Claimant was installed as the Village Head of Elele in October, 2003 and issued with certificate of recognition and Certificate of Registration No. TC/ET/W/2007/187 dated 15/2/2007 – See Exhibit “F5” and has been on the throne since 29/9/2003. If there was anybody to protest to the executive authority or prescribed

authority as the case may be, it is the 1st Defendant if he has any reason to do so, and not the other way round.

On the whole, and after due consideration, I hold that the Claimant has successfully proved his case as required by law.

Accordingly, I enter judgment in favour of the Claimant as per his claim in the following terms.

- (i) A declaration that the Claimant is the recognized Village Head of Elele and that he cannot be removed from office by 2nd Defendant until his death except in accordance with the custom of Elele and the Traditional Rulers and Chiefs law 1979 as amended.
- (ii) A declaration that the purported withdrawal of recognition accorded the Claimant as Village Head of Elele by the 2nd Defendant is contrary to the custom of Elele and/or the Traditional Rulers and Chief Law 1976 and in breach of Claimant's right to fair hearing and therefore null, void and of no effect.
- (iii) A declaration that the purported withdrawal of the Claimant's Chieftaincy Registration Certificate by the 2nd Defendant or the Ministry of Local Government and Chieftaincy Affairs is in breach of Claimant's right to fair hearing and therefore null, void and of no effect.
- (iv) A declaration that the 1st Defendant cannot be validly nominated/selected or appointed and installed by any persons including 2nd Defendant as the Village Head of Elele until the Claimant has been validly removed from office in accordance

with the provisions of the Traditional Rulers and Chiefs Law 1979.

- (v) An order declaring null and void any decision by Edo North Traditional Rulers Committee or any report emanating from the work of the Committee in so far as it relates to Elele village headship crisis for being in breach of Claimant's right to fair hearing.
- (vi) An order of perpetual injunction restraining the 1st Defendant from parading himself or allowing himself to be paraded or held out as village head of Elele or perform any functions or receive any perquisites pertaining to the office of village head of Elele.

I award costs of N30, 000 in favour of the Claimant against the Defendants.

E. O. AHAMIOJE,
JUDGE.
18/12/15.

COUNSEL:

S. K. MOKIDI, ESQ. FOR THE CLAIMANT
(with him S. N. Okojie (Mrs.)

O. B. UADE, ESQ. FOR THE DEFENDANTS