IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE AGENEBODE JUDICIAL DIVISION
HOLDEN AT AGENEBODE
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON MONDAY THE
22ND DAY OF MAY, 2017.

BETWEEN: SUIT NO. HAG/05/2015

1. HIGH CHIEF JOSEPH IMANOBE
2. HIGH CHIEF D.A. OBALO
3. HIGH CHIEF P.I. OKUN
4. CHIEF JOSEPH OMAKE
5. CHIEF JAMES DAMISA
6. HIGH CHIEF J.O. SADO
7. CHIEF SEGUN A. BALOGUN
8. CHIEF MATTHEW OKPETU
9. HIG CHIEF M.A. AFFAH
10. CHIEF PETER AFIABOR
11. CHIEF KOLAWOLE OZUOMODE
12. CHIEF M.O. ALIU
13. CHIEF E. OKPETU
14. CHIEF P.O. ILABESHI
15. CHIEF A.E. UNAH
16. CHIEF MICHAEL BELLO
17. CHIEF J.O. OFEOSHI
18. CHIEF TUNDE AGBADU
19. CHIEF FREDRICK YELUMOH
20. CHIEF OKUMAGBE OGENE
    (For and on behalf of Komunio
    Community of Okpella)

… CLAIMANTS

AND

ALHAJI A.Y.E. DIRISU, JP OON
The Okuokpellagbe of Okpella … DEFENDANT

JUDGMENT

The Claimants filed an Originating Summons on the 6th of August, 2015 for the determination of the following question:

"Whether the Defendant has power under the Constitution of the Federal Republic of Nigeria, 1999 and/or any other law to amend the Declaration of Custom regulating Succession to Traditional Title of Okuokpellagbe of Okpella by increasing the Ruling Houses from Two to Six."

If the answer to the aforesaid question is in the negative, then the Claimants claim against the Defendant as follows:-

1. A Declaration that there are two Ruling Houses in Okpella known as Ogute comprising Ogute-Oke, Awuyemi, Imiekuri and Imiegeli branches and Oteku comprising Komunio and Iddo branches;
2. A Declaration that the Defendant has no power in any form whatsoever to enlarge and/or abridge the said ruling house by amending same to the effect that there are six ruling houses in Okpella; and
3. An injunction restraining the Defendant whether by himself, his servants and/or agents howsoever from enlarging and/or abridging the said ruling house by amending same to the effect that there are six ruling houses in Okpella.

The Summons is supported by a 12 paragraphs affidavit to which are attached several exhibits and a Written Address of Counsel.

Upon receiving service of the Originating Summons, the Defendant filed a Memorandum of Conditional Appearance together with a Counter Affidavit of 22

paragraphs with several annexures. With the leave of this Court, the Defendant also filed a Written Address of counsel. Again, the Defendant filed a Further and Better Affidavit with some annexures in opposition to the Summons.

Thereafter, the Claimants filed a 14 paragraphs Reply to the Counter Affidavit.

Subsequently, the Defendant filed a Notice of Preliminary Objection dated and filed on the 21st of January, 2016. In the Preliminary Objection, the Defendant prayed the Court for the following reliefs:-

1. **AN ORDER** striking out and/or dismissing in its entirety, the suit filed by the Claimants/Respondents herein for want of competency, as the suit is speculative, an academic exercise, hypothetical, discloses no reasonable cause of action against the Defendant/Applicant, constitutes a gross abuse of court process and for this Honourable Court lack the requisite jurisdiction to entertain same.

   OR ALTERNATIVELY

   AN ORDER of this Honourable Court either striking out of the suit for being improperly initiated by way of Originating Summons, or directing that the parties herein file their pleadings as there are substantial issues of contentious and adversarial facts that are irreconcilably in conflict and cannot therefore be solely resolved by affidavit evidence, except by evidence viva-voce.

2. **AND FOR SUCH FURTHER ORDER(S**) as this Honourable Court may deem fit to make in the circumstances of this cases.

GROUNDS FOR THIS APPLICATION

FURTHER TAKE NOTICE THAT THE GROUNDS FOR THIS APPLICATION ARE AS FOLLOWS:-

1. This suit as presently constituted and instituted by the Claimants/Respondents, discloses no reasonable cause of action against the Defendant/Applicant, and same is speculative, hypothetical and constitutes a mere academic exercise.

2. There are no facts disclosed by the Claimants to support their claims. The facts as stated on the face of the affidavit in support of the Originating Summons are not supported by any iota of credible evidence, or at all, and are at best speculative.

3. Courts do not exist to determine or resolve speculative or academic issues.

4. There are substantial dispute on the facts of this case which are irreconcilably in conflict such as cannot be determined by affidavit evidence alone in an Originating Summons, but ought to be resolved through oral evidence by way of a Writ of Summons and statement of claim.

5. The counsel representing the Claimants/Respondents cannot be seen to be approbating and reprobating, as he had on two occasions headed a 3-man committee whose recommendations are completely at variance with the claims and contentions of the Claimants/Respondents herein.

The Notice of Preliminary Objection is supported by an affidavit of 27 paragraphs and a Written Address of counsel.

In opposition to the Preliminary Objection, the Claimants filed a Written Address of counsel.

With the leave of Court, the Claimants filed a document titled: ***Reply on Points of Law to the "Written Address in support of the Defendant's Counter Affidavit dated and filed on the 22nd of September, 2015"***

Finally, the Defendant filed a ***Reply on Points of Law to the Claimants' Written Address dated 22/04/16, filed on 25/04/16.***

On the 11th of April, 2017, when the matter came up for address, both Counsel adopted their Written Addresses and proffered additional oral arguments.

It is settled law that when the defence raises a preliminary objection in an action, the Court must dispense with it before proceeding to determine the substantive case. See: ***Nwosu vs. Imo State Environmental Sanitation Agency & Ors (1990) 2 NWLR (Pt.135) 688; Olosunle & Ors. vs. Chief Eyialegan & Ors. (2005) All FWLR (Pt.242) 503 at 510.***

Consequently, I will consider the Preliminary Objection before I determine the substantive suit.

Opening his arguments on the preliminary objection, the learned Defence counsel, Chief Mike Ozekhome SAN urged the Court to strike out the suit, or out rightly dismiss same, or in the alternative, that the Claimants be ordered to file a writ of summons, as there are substantial disputes on the facts of this case which said facts are irreconcilably in conflict and cannot therefore be resolved in an action commenced by Originating Summons.

He submitted that as can be gleaned from the Claimants affidavit in support of their Originating Summons, the Claimants' action is based on the purported "threat" and "intention" that the Defendant intends to continue to impose on his claim (sic) that there are six Ruling Houses in Okpella.

He maintained that it is trite law, that to determine the issue of jurisdiction, it is the Claimants statement of claim or originating processes that the court looks at. He said that it is clear from the processes filed by the Claimants that they express anxiety that the Defendant claims that there are Six Ruling Houses in Okpella and he threatens and intends to impose this claim that there are six ruling Houses in Okpella.

He alleged that to prove their alleged assertion, the Claimants attached Exhibit A (Traditional Rulers and Chiefs Edict, 1979 sic) , whose provisions are clear and have never in any way been in doubt that there are two ruling Houses in

Okpella known as Ogute, comprising Ogute-Oke, Awuyime, Imiekuri, and Imiegeli branches and Oteku, comprising Kumunio and Iddo branches.

According to him, the Claimants have not provided any evidence to support their claim that the Defendant has the intention to enlarge the ruling Houses beyond two.

He said that at best, the Claimants' suit is asking this Court to stop or prevent what is not in existence, but which they feel may crop up.

The learned senior advocate formulated three Issues for Determination as follows:

1. **Whether this Honourable Court has the requisite jurisdiction and/or competence to entertain matters that border on and float in the realm of speculation, when there is no scintilla of credible evidence in support of, or to prove the allegations contained therein.**
2. **Whether the Claimants/Respondents' suit disclose any reasonable cause of action against the Defendant/Applicant and same is not liable to be struck out or dismissed.**

OR ALERNATIVELY:

3. **Whether this suit from the contentious nature of facts surrounding it that are irreconcilably in conflict, can be resolved strictly on affidavit evidence as per the Originating Summons, without calling for evidence viva voce.**

ISSUE ONE

Arguing Issue One, Counsel submitted that this Court does not have the requisite jurisdiction and competency to entertain matters that border on and float in the realm of speculation such as the instant case, when there is no scintilla of credible evidence to prove the allegations contained therein.

On the Competence of a Court to hear a matter, he referred the Court to the case of: **Udoete V. Heil (2003) FWLR part (43) p. 362 AT 403 to 404, para H –** C, following the celebrated case of: **Madukolu & Ors Vs Nkemdilim(1962) ANLR, Part 2, p.581 at 583,** where the Court held thus:

> "**It is well established that a court is competent to hear a case only when all the conditions precedent to hearing the case is fulfilled. Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided; the defect is extrinsic to adjudication. See the State V. Onogoruwa (1992) 2 NWLR (Pt. 221), 23.**"

He maintained that the issue of competence is tied to the jurisdiction of the court to hear a matter and referred to the case of: **Ministry of Works V. Tomas (Nig.) Ltd. (2002)2 NWLR (Pt. 752) p.740 at p.788, para H – A:**

He submitted that the claim of the Claimants as can be gleaned from their sole question submitted for determination and the subsequent reliefs claimed by the claimants which are more particularly captured in paragraph 10 of the Claimants affidavit in support, amounts to an assault on the competence and consequently the jurisdiction of the court, as the claimants are requesting this Court to make pronouncement on an issue that borders on speculation. He said that there are no facts or evidence to support the allegation that the Defendant has shared and/or distributed things and/or positions into six and intends to increase the number of ruling Houses to six contrary to ***Exhibit "A" – Traditional Rulers and Chiefs Edict, 1979.***

He posited that where the jurisdiction of a Court is challenged in a case, the relevant materials to be considered in the determination of the issue are the processes as filed by the Claimant as at the time the suit was instituted. For this view, he relied on the cases of: ***Unitrust Insurance Co. Ltd. V. Ambico Sendirian Nig. Ltd.(2012) LPELR – 15417;*** and ***Musaconi v. Aspinali(2013)14 NWLR (Pt. 1375) 435 at p.460 paras B – D, E – F.***

Counsel reiterated that the Claimants are requesting this Court to make a pronouncement on the alleged "intention" and "threat" of the Defendant to impose six ruling houses in Okpella. According to him, the claims of the claimants are premature and speculative.

He referred the Court to the case of: ***Plateau State V. A.G. Federation (2006)3 NWLR (pt. 968)345***, where the Court expounded on a speculative suit thus:-

> "**A suit is speculative if is not supported by facts or very low on facts but very high in guesses. As courts of law are not established to adjudicate on guesses but on facts, such actions are struck out."**

He also relied on the case of: **Fawehinmi V NBA(1989)2 NWLR (Pt. 105) p.550, para A.**

In a nutshell, learned counsel submitted that going through the entire evidence adduced by the Claimants, they failed to prove how the Defendant has taken steps to impose six ruling houses in Okpella.

He submitted that he who asserts must prove his assertion and relied on Sections 131 and 132 of the Evidence Act, 2011 and the case of: **A.C.B. Plc. V. Emostrade Ltd (2002) & NWLR** (**Pt.770) 501 at 515**.

He submitted that the burden on the party alleging is so strong that the courts have held that such a party cannot even rely on the weakness of the case of the Defendant to discharge this burden. He relied on the decision of the court in the case of: **Network Security Ltd. V Dahiru (2007) 26 WRN 83 at 107 – 108, line 35-10, ratio 7.**

Counsel posited that from the plethora of both statutory as well as judicial authorities cited, it is clear that the burden is on the Claimants to prove the allegation that the **Defendant being the traditional ruler of Okpella is taking steps to enlarge and/or abridge the ruling Houses in Okpella.**

Counsel maintained that in the absence of any credible evidence to prove their claim ,he urged the Court to discountenance same as they amount to conjectures or speculations, which the court in the case of: **PDP & Anor V. INEC & ORS (20012) ;[E;R – 9225 (CA)** denounced **, per Mshelia, JCA, at p 19, para C – D,** where His Lordship held:-

"**A Court of law cannot conjecture or speculate, it is dangerous to do so in the absence of evidence. See Olufeagba Vs. Abdu Raheem(20110) All FWLR (pg.12) 1022 at 1074 para C."**

He therefore urged the Court to resolve this issue in favour of the Defendant and decline jurisdiction to entertain the Claimants' suit and strike out same as any pronouncement made in respect of same will amount to a nullity.

ISSUE TWO

Whether the Claimants'/Respondents' suit disclose any reasonable cause of action against the Defendant/Applicant, and same is not liable to be struck out or dismissed.

ARGUMENT ON ISSUE TWO

Learned counsel submitted that the suit as instituted by the Claimants, discloses no reasonable cause of action against the Defendant.

He posited that ***Cause of action*** has been defined in a plethora of cases as an entire set of circumstances giving rise to a legally enforceable claim. He said it is any act or conduct of a defendant giving rise to a justifiable claim. See the following decided cases: **Sodipo V. Lemminkainem (1992)8 NWLR (Pt. 258); Amope V Gambari (2013) LPELR – 22096 (CA**); and **Akinsete & ors V. Kiladeji (2013) LPELR – 20215 (CA), R PP.17 – 18 PARAS D – B.**

Learned counsel submitted that it is the process as filed by the Claimant that the court will look at to determine if there is a cause of action. He maintained that a look at the processes filed by the claimants will reveal clearly that there is no reasonable cause of action disclosed against the Defendant because of their inability to prove the assertion that the Defendant has created additional Ruling Houses in Okpella, or abridged them.

Counsel posited that there is no iota of evidence to prove the allegations, except for Exhibit "A", which clearly showed the number of ruling Houses in Okpella, which the Defendant has never doubted. He insisted that this cannot amount to a fact expected to prove the allegation that the Defendant threatens and intends to impose his claim that there are six ruling Houses in Okpella.

He submitted that the claimants are expected to back up their claims with credible proof showing that the Defendant has indeed altered the present position as it is presently contained in Exhibit "A", to something different and distinct from the present arrangement. He said the claimants should show that aside Ogute and Oteku Ruling Houses, the Defendant has created any other Ruling Houses, or has reduced or abridged the two ruling houses to one, by removing either Ogute or Oteku. But he said nothing of the sort took place. He maintained that this case is just a fishing expedition crying to be fed with relevant credible facts and he cited in support, the case of: **Lateju Vs Lubcon Nig. Ltd (2014) LPELR-22536(CA**).

He submitted that the claimants having failed to disclose any reasonable cause of action against the Defendant, this Honourable Court should strike out or dismiss the suit in its entirely.

ISSUE THREE

Learned Counsel submitted that, from the adversarial and contentious nature of the facts surrounding this suit, as copiously adduced by the Defendant in his affidavit in support of this application, it cannot be resolved strictly on affidavit evidence as in an Originating Summons.

He submitted that it has been held in a plethora of cases that an Originating Summons can only be used where the facts are not contentious in nature. See: ***Order 3 Rules 7 & 8 of the Edo State High Court (Civil Procedure) Rules 2012***.

Again, he submitted that the Courts have in a plethora of cases made pronouncement on the very purpose and nature of an Originating Summons. In support, he referred the Court to the following decided cases: **Asor v. INEC & ORS (2013) LPELR-20695(CA), AT PP. 54-55, PARAS A-F;** and **Ossai v. Wakwah & Ors (2006) LPELR -2813(SC).**

He submitted that from the facts contained in the Claimants affidavit in support of their Originating Summons vis-à-vis those of the Defendant; they are highly contentious and adversarial, such as cannot be entertained by way of originating Summons.

For examples of the conflict he referred to paragraph 7, 8, 9 and 10 of the Claimants Affidavit in Support of Originating Summons where they stated thus:

"7. That the Defendant at all material times claim that there are six ruling houses in Okpella.

8. That the Defendant actualizes his claim by using the said ruling houses to share and/or distribute things and positions into six places in accordance with his claim of six ruling houses in Okpella.

9. That the Defendant states that the Government has amended and/or altered the declaration of customary law regulating succession to the Traditional Ruler Title of Okpella.

10. That unless restrained by this Honourable Court, the Defendant threatens and intends to continue to impose on his claim that there are six ruling Houses in Okpella."

He maintained that the above facts which are contentious were vehemently denied by the Defendant in his counter affidavit.

To further buttress the point, he referred to the case of: ***Nigerian Reinsurance Corp. V. Cudjoe (2008) All FWLR Pt. 414 1455 at 1556, paras F-H,*** where it was held, *per* ***Mohammed, JCA***, on the inapplicability of Originating Summons to contentious issue, thus:

> "**When it is obvious or evident from the state of the affidavit evidence that there would be an air of friction in the proceedings, then an Originating Summons is no longer appropriate. An Originating Summons is only applicable in such circumstances as where there is no dispute. In the instant case, the issue of validity of the lease agreement was contentious between the parties, therefore the originating Summons used by the Plaintiffs in instituting the proceedings was inapplicable. See NBN Ltd. V. Alakija(1978) 9-10 SC 59, PDP v. Abubakar (2007) 3 AWLR (Pt. 1022) 515".**

Counsel concluded that from the facts in the affidavit in the Originating Summons, the counter affidavit and the copious facts in the affidavit in support of this Preliminary Objection, the parties are in serious dispute over some irreconcilable facts, wherein evidence *viva voce*, rather than mere affidavit evidence is required.

He therefore urged the Court to resolve this issue in favour of the Defendant.

The learned Senior Advocate for the Claimants, Chief Charles Adogah filed a Written Address in opposition to the Preliminary Objection. In his address, the learned counsel contended that this Court cannot grant the prayers in the preliminary objection praying for striking out of this suit at this stage on the ground that it was improperly initiated by way of originating summons, although he did not concede that fact.

He maintained that if the court holds that the case was not properly initiated by way of originating summons, the only option open to the court is to order Pleadings. He cited the following decisions in support:

(i) Ukpaka v Toronto Hospital Nig. Ltd. (2010) All FWLR (Pt. 532) 1709 at 1730 paras B – G;

(ii) Akinyanyu v University of Ilorin (2011)All FWLR (Pt.569) 1080 at 1108 paras D-G; and

(iii) Udo v Essien (2014) All FWLR (Pt. 749) 1184 at 1201 paras F-G, page 1202 paras D.

Again Counsel referred the Court to the case of: **Garuba v Omokhodion (2011) All FWLR (Part 596) 537 at page 554 paras E to G** where the Court of Appeal at p. 554 advised thus:

> "**It is a well defined principle that when a preliminary objection is filed against an originating summons and every issue canvassed in both originating summons and the evidence for and against the processes, then the Court should proceed to adopt a once and for all approach to decide both the preliminary objection and the summons in the single decision: Nzeribe v Senate President**".

Learned Counsel adopted the three Issues for Determination as formulated by the Defendant and replied them seriatim.

ISSUE ONE

Learned Counsel submitted that Issue One is presumptuous to the extent that it suggests that the claim borders on the realm of speculation.
He contended that the issue of whether the claim is speculative can only be drawn from the facts taken in total as either manifesting the cause or grievances of the claimants and not by the defendant twisting of same.

He conceded the fact that it is the Claimants claim that determines the jurisdiction of the court as decided in the case of: ***MUSACONI V. ASPINALI (Supra)*** cited by the Defendant's counsel. He also relied on the decision of the Supreme Court in the cases of: ***ADEYEMI V. OPEYORI (1976)9 & 10 S.C. page 31 at 51***; and ***AREMO II V. ADEKANYE (2004) 12 NWLR (PT.891) AT 590.***

He argued that the pronouncement in the ***AREMO II case*** above therefore puts to question the Defendant's affidavit and the avalanche of documents attached to the affidavit in support of his Preliminary Objection as a basis for his argument in his preliminary objection. He posited that the Defendant cannot at the stage of the preliminary objection introduce new facts as the Defendant has done herein with his affidavit and documents. Rather, he maintained that the Defendant must necessarily subsume his objection within the confines and ambit of the Claimants' case as contained in the affidavit in support of the Originating Summons and reply to Counter Affidavit. For this view, he relied on the case of*:* ***ADAKA V. IKOT ABASI T.R.C. (1991) 6 NWLR (PT 198) 480 AT 488 TO 409 PARAS g-a per NASIR J.C.A.*** thus:

> "**There is nothing wrong with Preliminary objection on point of law at a very early stage of the case. Whether it is application brought as proceedings on demurrer or proceedings in lieu of demurer the Applicant is taken for that purpose to have accepted the pleadings of the other party (claimant) as correct".**

Counsel submitted that in raising his preliminary objection, the Defendant is deemed to have accepted all the pleadings of the Claimants as true and correct but that notwithstanding, the Court still lacks jurisdiction.

He contended that a cursory look at the affidavit in support of the Claimants originating summons – which is the claim or statement of claim here – shows that the Claimants have real grounds for complaint before this Court or grievance which cannot be wished away.

Learned Counsel questioned whether the fact that the Defendant who is the Traditional Ruler with the knowledge that there are two ruling houses now threatens and intends to continue to impose on his clan that there are six ruling houses in Okpella does not raise a cause of action or form the basis for grievance by the Plaintiffs who believe that the Defendant's "threat" and "intention" to continue with his imposition of six Ruling Houses constitutes a problem to the people of Okpella. He posited that the Defendant's contention as to available evidence or satisfactory evidence on joined issue goes to no issue as it is only the evidence of the Claimants contained in their Affidavit in support of the originating summons and not that of the Defendants that can be considered now in deciding the preliminary objection.

He submitted that there is nothing speculative about the Claimants' claim as contained in their affidavit in support of the originating summons and he urged the Court to so hold.

ISSUE 2

Counsel described a cause of action as the entire set of circumstances giving rise to an enforceable claim. He said that it is the fact or combination of facts which gives rise to a right to sue and it consists of two elements viz the wrongful act of the Defendant which gives the Plaintiff his cause of complaint and the consequent damage. He cited the case of: ***ADESOKAN vs. ADEGOROLU (1977) 3 NWLR (Pt.493) 261*** on the above stated position of the Law.

The learned Senior Advocate contended that going by the foregoing proposition of the law, a cause of action can be said to be the wrongful act or action of the Defendant which gives rise to a right to sue him. He posited that the

question that arises here is what is the wrongful action of the Defendant in this suit that has given the Claimants the cause of complain.

Answering, he submitted that in considering the above question, the fact of the Defendant who knows that the law recognizes two ruling Houses but imposes and threatens to impose six ruling houses on the Claimants is a justifiable reason to approach the Court for redress as the alleged action or threat is contrary to and in breach of the Law as stated in Exhibit "A" attached o the originating summons.

He submitted therefore that it is not correct as the Defendant earlier asserted that Exhibit "A" does not prove anything. He argued that the combination of the information in Exhibit "A" with the fact of the Defendant's acts and threats to enlarge the ruling houses to six provides the reasonable cause for the Claimants or their grievance.

He therefore urged the Court to hold that the Claimants' case discloses a cause of action notwithstanding the Defendant's unfounded contentions.

ISSUE THREE

Here, learned Counsel submitted that this issue is not only a non starter but it lies against itself. He maintained that this issue cannot arise in a preliminary objection.

Counsel argued that the question of conflict cannot arise because it is only the Claimants evidence as contained in his Statement of Claim or Affidavit in support of the originating summons that form the basis for the jurisdiction of the Court.

Again, he argued that this issue is a gross misconception by the Defendants as it can only arise where the affidavit in support and the counter affidavit have been filed in relation to the hearing of the originating summons and not a ground to be canvassed at this stage when the affidavit in support of the Originating summons is the only document that can be looked at.

He therefore urged the Court to discountenance this issue and dismiss same. Counsel reiterated that where the Court finds out that the case is not properly initiated by way of originating summons, the only option open to the court is to order Pleadings. He relied on the following decisions on the point:-

i. ***Ukpaka v Toronto Hospital Nig. Ld (2010) All FWLR (PT. 532) 1709 at 1730 paras B – G;***
ii. ***Akinyanyu v University of Ilorin (2011) All FWLR (Pt. 569) 1080 at 1108 paras D – G;***
iii. ***Udo v Essien (2014)All FWLR (Pt. 749) 1184 at 1201 paras F – G,page 1202 parasD.***

Finally, Counsel submitted that the Defendant cannot be heard at all at this stage of the proceedings to raise a preliminary objection to the originating summons. He anchored this on the fact that the Defendant has already taken steps in this case. He maintained that it is settled law that a Defendant who takes steps in the conduct of a case in Court cannot raise a preliminary objection in the same case. He said that the only option left to him is to proceed to defend the case.

He maintained that in the instant case, the Defendant has filed a Memorandum of **Appearance, a Counter affidavit and a written address in opposition to the** originating summons. He referred to the decision of the Supreme Court in the case of ***OBI OBEMBE v WEMABOD ESTATES LTD. (1977) 5 SC 115 at 132*** while considering a similar issue stated as follows:-

> **A party who makes an application whatsoever to the court, even though it is merely an application for extension of time, takes steps in the proceeding. Delivering a statement of defence is also a step in the proceedings. (Underlining, his)**

He therefore urged the Court to strike out the preliminary objection and proceed to determine the originating summons.

I have carefully considered all the processes filed in respect of the Preliminary Objection together with the arguments of learned counsel on the three Issues formulated. The essence of a preliminary objection is to terminate at infancy, or to nip in the bud, without dissipating unnecessary energies in considering an unworthy or fruitless matter in a court's proceedings.

In other words, it forecloses hearing of the matter in order to save time. See: ***Efet vs.I.N.E.C. (2011) 7 NWLR (Pt.1247) 423; and A.P.C. vs. I.N.E.C. (2015) 8 NWLR (Pt.1462) 531 at 541.***

Furthermore, where there is a preliminary objection, that objection should be determined first before going into the substantive matter. See: ***A.P.C. vs. I.N.E.C. (2015) 8 NWLR (Pt.1462) 531 at 541.***

The learned counsel for the parties argued three Issues for Determination in respect of the preliminary objection. I will first of all address Issue Three which is on the mode of commencing this action by Originating Summons.

It is settled law that originating summons should only be applicable in circumstances where there is no dispute on questions of fact or even the likelihood of such dispute. See: ***National Bank of Nigeria vs. Alakija and Anor.(1978) 2 L.R.N. 78.***

Normally, originating summons is used to commence an action where the issue involved is one of the construction of a written law or of any instrument made under a written law, or of any deed, contract or other document or some other question of law or where there is unlikely to be any substantial dispute of fact. See: ***Order 3 Rule 7 Edo State High Court (Civil Procedure) Rules, 2012; and Keyamo vs. House of Assembly, Lagos State (2000) 15 NWLR (Pt.689) 1 at 17.***

Where the facts are controversial or contentious and cannot be ascertained without evidence being adduced, originating summons should not be appropriately used; and if used it should be discountenanced. See: ***Doherty vs. Doherty (1964) N.M.L.R 144; and Unilag vs. Aigoro (1991) 3 NWLR (Pt.179) 3676***.

Coming to the instant suit, the main grouse against the use of originating summons is on the alleged dispute of facts. The Defendant's counsel has drawn the attention of the Court to some material disputes of facts arising from the affidavit and the counter affidavit in the substantive proceedings. He identified some salient paragraphs of the supporting affidavit as follows:

> **"7. That the Defendant at all material times claim that there are six ruling houses in Okpella.**

8. That the Defendant actualizes his claim by using the said ruling houses to share and/or distribute things and positions into six places in accordance with his claim of six ruling houses in Okpella.

9. That the Defendant states that the Government has amended and/or altered the declaration of customary law regulating succession to the Traditional Ruler Title of Okpella.

10. That unless restrained by this Honourable Court, the Defendant threatens and intends to continue to impose on his claim that there are six ruling Houses in Okpella."

The learned counsel contended that the above paragraphs were contradicted by the counter affidavit of the Defendant.

Going through the said counter affidavit, I actually observed that there are some conflicts *vide* ***paragraphs: 6, 7, 15, 16, 19, 20 and 21*** of same. The aforesaid paragraphs are as follows:

"6. That the assertions contained in paragraphs 7 and 8 of the Claim are patently false and unfounded.

7. That in specific answer to paragraph 8, I state that the issue of distribution or share of benefits, things and positions in Okpella Kindgom has nothing to do with the provisions of Exhibit A.

15. That paragraph 9 of the Claim is manifestly false and if anything it is a figment of the imagination of the claimants.

16. That as a Justice of Peace of over three (3) decades, and a holder of the National Honour of Officer of the Order of the Niger, I uphold and respect the rule of law and know as of fact that the process of amendment

of any registered Chieftaincy Declaration is regulated by law and that this process does not admit of any secrecy or subterfuge as alleged.

19. That paragraph 10 of the deponent's affidavit is false and baseless in that the deponent as a member of the Okpella Traditional Council wholeheartedly participates in the decisions making process of that august body and has never dissented in any of its deliberations whose decisions are usually reached by consensus after robust debates and clash of ideas.

20. That at no time therefore have I imposed my will or ideas on the Okpella people either directly or through the Okpella Traditional Council.

21. That I am informed by my counsel, as above stated and I verily believe him that the Claim is baseless and constitutes an abuse of the court's process."

If we juxtapose the contents of ***paragraphs 7, 8, 9 and 10 of the affidavit in support*** of the originating summons with ***paragraphs 6, 7, 15, 16, 19, 20 and 21of the counter affidavit*** it is evident that what we have are ***hostile proceedings***. While the Claimants are alleging that the Defendant is claiming that there are six ruling houses in Okpella, with the Defendant threatening to impose his claim on them, the Defendant has vehemently denied these allegations and asserted otherwise.

In the case of: ***Doherty vs. Doherty (1967) All NLR 260 at 265, Ademola CJN*** reiterated that:

"It is generally inadvisable, however, to employ an originating summons for hostile proceedings".

In the instant case, the proceedings are quite hostile in nature as there is indeed some substantial dispute of facts raised, having regard to the conflicting assertions of the parties.. It was wrong for the claimants to have adopted an unsuitable procedure for a hostile attack. In the event, ***I resolve Issue three in favour of the Defendant***.

Having resolved this Issue in favour of the Defendant, I do not see the need to consider Issues 1 and 2 on the same Preliminary Objection. The issue now is: ***what then is the fate of the suit at this stage?***

I am tempted to conclude my judgment at this stage by either striking out the suit or to order the parties to file pleadings. However, in case I am wrong, to be on the safe side, I will proceed beyond the preliminary objection to determine the suit on its merits.

Addressing the Court in the substantive suit, the learned Senior Advocate representing the Claimants adopted his Written Address as his arguments in this suit. In his further oral arguments, he urged the court to declare that Exhibit "A" talks of only two ruling houses and not six. He maintained that it is an error in law to equate branches with ruling houses.

In his Written Address, the learned silk formulated a sole Issue for Determination as follows:

> ***Whether the Defendant has power under the Constitution of the Federal Republic of Nigeria, 1999 and/or any other law to enlarge and/or abridge the Traditional Chieftaincy Ruling Houses in Okpella.***

Opening his arguments on the sole Issue for Determination, learned counsel posited that while the Claimants are accredited members of ***Oteku Ruling House*** Okpella and belong to the ***Komunio branch*** of the said Ruling House, the Defendant is the incumbent traditional ruler of Okpella and belongs to the ***Imiegeli branch*** of ***Ogute Ruling House***.

He maintained that the Defendant taking advantage of his exalted position always announces to the Okpella Traditional Council that Okpella has six ruling houses. He said that as at date, the consensus is that Okpella has six ruling houses. He said that efforts made by the claimants to the effect that the Defendant's declaration is not in consonance with the law has fallen on deaf ears.

Counsel is therefore urging the Court to pronounce on the issue once and for all to avoid a situation where what appears to be a simple matter will throw the entire Okpella community into an unwarranted chaos. In doing this, he urged the court to take a calm look at Exhibit "A" which is the declaration of the custom regulating succession to the title of Okuokpellagbe of Okpella.

He referred the Court to paragraph 1 of the Declaration which provides as follows:

> "***There are two ruling Houses in Okpella known as Ogute comprising Ogute-Oke, Awuyemi, Imiekuri and Imiegeli branches and Oteku comprising Komunio and Iddo branches***."

Counsel submitted that the above declaration is clear in its meaning and intendment and he urged the Court to use the ordinary meaning of the words to interpret same. He relied on the decision of the Supreme Court in the case of: ***OGBUNYIYA & ORS V. OKUDO & ORS(1979) 6-9 SC at 48*** where the Court exposited as follows:-

> "***The rule is that in construing all written instruments the grammatical and ordinary sense of the words should be adhered to unless that would lead to some absurdity or some repugnancy or inconsistency with the rest of the instrument. the instrument has to be construed according to its literal import unless again there is something else in the context which shows that such a course would tend to derogate from the exact meaning of the words."***

He submitted that the first phrase of paragraph (1) aforementioned is very direct and clear. He said it is to the effect that there are ***TWO RULING HOUSES IN OKPELLA*** identified as ***OGUTE*** and ***OTEKU***. He maintained that the branches cannot by any stretch of imagination be converted to independent ruling houses because a branch remains part of the whole and no more. He stated that a branch can never constitute another whole. He referred the Court to the decision of the Supreme Court in the case of: ***OGUNMADE V FADAYIRO (1972) 8/9 S.C. 1 at 15 where*** they warned against reference to extraneous matters or supposed tendencies ad follows:-

> "***A court of law must refuse to be let into construing legislation clear in its own words and language by reference to extraneous matters of inference or supposed tendencies."***

Furthermore, he referred to the decision of the apex court in the case of: ***IFEZUE v MBADUGHA & 1 or. (1984) 5 SC 79 at 160*** where they stated thus:

> "***The object of all interpretation is to discover the intention of the law makers which is deducible from the language used. Once the meaning is clear, the courts are to give effect to it. The courts are not to defeat the plain meaning of an enactment by an introduction of their own words into the enactment."***

Learned Counsel submitted that it follows therefore that TWO RULING HOUSES can mean nothing more than two and not six as contemplated by the defendant because a Branch can never be construed as a whole.

He therefore urged the Court to accede to the prayers of the Claimants and grant the reliefs sought.

Responding, the learned Senior Advocate representing the Defendant. Chief Ozekhome SAN adopted his Written Address and made some further oral submissions. In his Written Address, the learned silk formulated a sole Issue for Determination as follows:

> ***Whether by the extant provisions of "Exhibit A" (Traditional Rulers and Chiefs Edict, 1979)(sic) which regulates succession to the clan headship in Okpella Kingdom also regulates the distribution or share of benefits, things, and/or positions in Okpella Kingdom, as well as the administrative matters on how to distribute community wealth to the various components of the ruling houses already recognized by the said law, and whether the Claimants by their Originating Summons disclosed a cause of action against the Defendant with respect to their perceived grievances with regards to the provisions of the Traditional Rulers and Chief Edit, 1979.***

Arguing the sole Issue for Determination, the learned silk submitted that it is trite that the Traditional Rulers and Chiefs Edict, 1979 (sic) is a declaration of customary law regulating succession to traditional rulers title. He said that the

Defendant has never at any time denied or impugned this provision of the law as he has at all material times recognized and respected this provision of the law.

However, he submitted that the provisions of the said law which recognizes two ruling houses in Okpella has not in any way obliterated or relegated the various component parts of the said ruling houses already recognized by the said law. He contended that the components of the Ruling Houses are made up of constituent villages, kindred and family units on the basis of equality all recognized by the said law. He stated that the assertion by the Claimants to the effect that the Defendant in exercise of his administrative function as the clan head of Okpella in ensuring equity and fairness with regards to the constituent villages, does not amount to making such constituent villages independent ruling houses.

He submitted that the creation and recognition of these villages in Okpella Kingdom was not done *suo motu* by the Defendant, but by a collective effort of all members of Okpella Community, including the Claimants herein.

Furthermore, he maintained that the distribution of benefits, things and/or positions amongst Okpella people has always been done by the active participation of the generality of the Okpella people ably represented by the Okpella Traditional Council, to which the claimants are an integral part thereof.

He contended that the issue of distribution or share of benefits, things and positions in Okpella Kingdom is not regulated by the provisions of the Traditional Rulers and Chiefs Edict, 1979 and that the assertion of the Claimants in this regard is highly misconceived, and a deliberate attempt to mislead the Court. He therefore urged the court to discountenance their assertion in this regard.

Counsel submitted that the Claimants have not placed any material before this Court in proof of their assertion that the Defendant has created six (6) ruling houses in Okpella kingdom as opposed to the two (2) ruling houses contemplated by the extant law. He posited that the action of the Claimants is therefore merely speculative and amounts to hypothetical and academic questions which this court cannot deal with. He submitted that Courts of law are not established to deal with hypothetical and academic questions; rather, they are established to deal with matters in difference between the parties. He referred the Court to the case of: ***OKOTIE-OBOH V. MANAGER (2004) 11-12 S.C. 174.***

Furthermore, he pointed out that the Claimants in their Originating Summons have urged this Court for declaratory reliefs to the effect that the

Defendant has enlarged, and/or abridged the ruling houses in Okpella kingdom to 6(six), as against the 2 (two) provided for by the extant law without placing any concrete evidence before the court.

He submitted that It is not the duty of a court to do cloistered justice by making an enquiry into the case outside court even if such inquiry is limited to examination of documents which were in evidence, when the documents had not been examined in court and their examination out of court disclosed matters that had not been brought out and exposed to test in court and were not such matters that, at least, must have been noticed in court. For this proposition, Counsel referred to the case of: ***ONIBUDO V AKIBU (1982)7 SC 60; (1982 7 SC (Reprint) 29***

He submitted that the Claimants have not discharged the burden placed on them by law in order to get the Declaratory Reliefs sought in this suit. According to him, the law is well settled that the Claimants must plead and prove their claim for Declaratory Reliefs based on the evidence before the court. He stated that the burden of proof on the Claimants in establishing Declaratory Reliefs to the satisfaction of the court is quite heavy in the sense that such Declaratory Reliefs are not granted even on admission by the Defendant where the Claimant fails to establish his entitlement to the declaration by his own evidence. On this point, he referred the Court to the case of: ***DUMEZ NIG. LTD. V. NWAKHOBA & 3 ORS (2008) 12 SC (Pt. III) 142***.

Counsel submitted that the Court is not expected to embark on a fact finding investigation, as it is the duty of the Claimants to place all documents before the court, and to lead credible evidence in proof of same. He anchored this submission on the case of: ***W.A. BREWERIES LTD V. SAVANNAH VENTURE (2002)5 S.C. (Pt. II) 84.***

Learned Counsel urged the Court to hold that the Claimants have failed to show the nexus between the extant provisions of the Traditional Rulers and Chiefs Edict as it relates to the local administrative functions of the Defendant, who at all material times has performed his role in an all embracing and all encompassing manner.

Moreover, he contended that the Claimants have not adduced any evidence to show any alleged infraction of the law by the Defendant. Rather he maintained that the Claimants have in their affidavits raised contentious issues, argument and

legal conclusions, all in their depositions simpliciter, which would ordinarily require further evidence in proof of same.

He reiterated that the Claimants action before this Honourable Court as disclosed by their Originating Summons and affidavit in support is largely speculative and relied on the cases of: ***ABUBAKAR V BEBEJI OIL & ALLIED PRODUCTS LTD & 2 ORS (2007) 2 S.C. 48; ODUNTAN V AKIBU (2000) 7. S. C. (Pt. II) 21.***

He accordingly urged the Court to dismiss this claim in its entirety as same is baseless and constitutes a gross abuse of the court's process. He said that it is trite law that a court is not competent to pick depositions in affidavit which violates section 87 of the Evidence Act and referred to the case of: **BUHARI V INEC & 4 ORS (2008) 12 SC (Pt. I) 1.**

He submitted that affidavit evidence is not sacrosanct and like oral evidence, a court of law is entitled to evaluate affidavit evidence in order to ensure its veracity and/ or, authenticity.

He maintained that while uncontradicted affidavit evidence should be used by the court, there are instances when such affidavit evidence clearly tell a lie and the courts cannot be blind to such a lie. For this view, he relied on the case of: ***OKOYE & ANOR V. CENTRE POINT MERCHANT BANK LTD. (2008) 7-12 S.C. 1.***

On the whole, he urged the Court to dismiss this suit with substantial punitive costs, as same is baseless, unmeritorious, an abuse of the process of court and a waste of the precious judicial time of this Honourable Court.

Elucidating further in his oral submissions, he urged the court to dismiss this case wantonly with heavy costs for disclosing no reasonable cause of action. He maintained that contrary to the arguments of the learned Claimants' counsel, Exhibit A is not for interpretation in these proceedings. He maintained that they are on a voyage of speculation and discovery.

He contended that the reliefs sought by the Claimants are speculative because the Defendant has not done anything to enlarge or amend Exhibit "A".

He posited that the Claimants are suing for a threatened action. He urged the court to dismiss the suit because it is not predicated on any factual situation.

As I earlier stated in this judgment aside from the Written Addresses filed by the parties as already considered above, they also filed some further addresses which they classified as: ***Reply on Points of Law to the "Written Address in***

support of the Defendant's Counter Affidavit dated and filed on the 22nd of September, 2015" filed by the Claimants and a ***Reply on Points of Law to the Claimants' Written Address dated 22/04/16, filed on 25/04/16*** by the Defendant.

I have gone through these additional addresses and I am of the view that apart from raising some technical objections to some of the processes filed, the issues canvassed therein are not quite germane to the determination of this suit. With due respect, in their further addresses, the learned counsel for the parties appear to have lost sight of the main issue raised by the originating summons (which is the alleged attempt by the Defendant to amend Exhibit A) and delved into the issue of distribution of amenities in Okpella community. I will concentrate on the focal issues and will not be dragged into ancillary issues.

Furthermore the issue of proper nomenclature for particular court processes is neither here nor there. That is a matter of technicality. These days, courts are more concerned with doing substantial justice. See: ***Ojah vs. Ogboni (1996) 6 NWLR (Pt.454) 272 at 292.***

I have carefully considered all the relevant court processes filed in this suit together with the submissions of the learned counsel for the parties. We are now concerned with the determination of the suit on the merits.

I have carefully studied the sole Issue for Determination formulated by each party. Upon a careful examination of the two issues formulated, I think that of the Claimants is more germane in the determination of this suit and I accordingly adopt it. The said Issue is as follows:

> ***Whether the Defendant has power under the Constitution of the Federal Republic of Nigeria, 1999 and/or any other law to enlarge and/or abridge the Traditional Chieftaincy Ruling Houses in Okpella.***

Going through the entire gamut of the evidence and the submissions of both counsel in this matter, I was quite amazed to observe that both parties are ***ad idem*** (in agreement) on the point that the Defendant does not have the power ***suo motu*** under the relevant legislations to enlarge or abridge the ruling houses in Okpella.There appears to be no dispute whatsoever on this point.

The question therefore is: ***What then is the dispute between the parties?*** Or putting it in legal parlance: ***What is the Claimants' cause of action against the Defendant?***

For the purpose of litigation, a cause of action entails the fact or combination of facts which gives rise to a right to sue and it consists of two elements:

a) **The wrongful act of the defendant which gives the plaintiff his cause of complaint; and**
b) **The resultant/consequent damage.**

It is thus constituted by the aggregate or bundle of facts which the law will recognize as giving the plaintiff a substantive right to make a claim for remedy or relief against the defendant. The existence of a cause of action is an indispensable prerequisite. See: ***Onuekwusi vs.R.T.C.M.Z.C. (2011) 6 NWLR (Pt.1243) 341;*** and ***Esuwoye vs. Bosere (2017) 1NWLR (Pt.1546) 256 at 269***.

Again in the case of: ***Diamond Petroleum International Ltd. vs.Governor, Central Bank of Nigeria (2015) 14 NWLR (Pt.1478) 179 at 186***, the Court of Appeal (Lagos Division) held that:

> ***"It must be clearly seen in the plaintiff's pleadings the wrongful act of the defendant which in effect gives the plaintiff his cause of complaint and the resultant damage from the defendant's wrongful act".***

In the instant suit, the Defendant has vehemently maintained that the Claimants have no cause of action against him. According to him, the reliefs sought by the Claimants are speculative because the Defendant has not done anything to enlarge or amend Exhibit "A". He posited that the Claimants are suing for a threatened action which is not predicated on any factual situation.

The Claimants made some spirited attempts to convince the Court that the Defendant was taking advantage of his exalted position to always announce to the Okpella Traditional Council that Okpella has six ruling houses.

The Defendant has consistently maintained that the Claimants suit is based on mere speculations not borne out by any evidence.

Going through the entire evidence adduced by the Claimants the crucial question to be answered is: ***What is the wrongful act of the defendant which gives the Claimants their cause of complaint; and what is the resultant/consequent damage?***

I must confess that the alleged attempt to change Exhibit A is not borne out of the evidence adduced in this suit. There is no evidence to show any concrete

steps taken by the Defendant to alter the Declaration. The Defendant's alleged "threat" and "intention" to continue with his imposition of six Ruling Houses is not sufficient to ground a cause of action. All we have are based on speculations arising from the fact that in the sharing of amenities in the kingdom, the Defendant follows the arrangement of branches rather than Ruling Houses**.**

In the case of: ***Rebold Industries Ltd. vs. Magreola (2015) 8 NWLR (Pt.1461) 210 at 217***, the Supreme Court while commenting on the importance of a cause of action in a suit, exposited thus:

> ***"Before a party files a matter in court, he must possess what is called a cause of action which usually is against some person, persons or institutions. That is to say, a plaintiff must show by his pleadings that he has a cause of action maintaining in a court of law against the defendant. He cannot sue just anybody. It must be someone who has wronged him one way or the other."***(Underlining, mine).

I am in agreement with the learned counsel for the Defendant that Exhibit A relates to succession to the stool of ***Okuokpelagbe of Okpella*** and not the sharing of amenities in Okpella.

In the Originating Summons, the Claimants are seeking the Court"s answer to the question:

> ***"Whether the Defendant has power under the Constitution of the Federal Republic of Nigeria, 1999 and/or any other law to amend the Declaration of Custom regulating Succession to Traditional Title of Okuokpellagbe of Okpella by increasing the Ruling Houses from Two to Six."***

They are also claiming two declaratory reliefs and one injunctive relief as follows:

1. ***A Declaration that there are two Ruling Houses in Okpella known as Ogute comprising Ogute-Oke, Awuyemi, Imiekuri and Imiegeli branches and Oteku comprising Komunio and Iddo branches.***
2. ***A Declaration that the Defendant has no power in any form whatsoever to enlarge and/or abridge the said ruling house by amending same to the effect that there are six ruling houses in Okpella.***

3. ***An injunction restraining the Defendant whether by himself, his servants and/or agents howsoever from enlarging and/or abridging the said ruling house by amending same to the effect that there are six ruling houses in Okpella.***

As I have earlier observed in this judgment, there is actually no dispute between the parties in respect of Relief 1.The Defendant has consistently maintained the position as enshrined in the Declaration which is Exhibit A in these proceedings.

Consequently, the answer to the original question posed above appears quite obvious. It must be answered in the negative. But that does not automatically entitle the Claimants to their claims. They must establish their claims based on the preponderance of evidence.

I will consider the Claims seriatim. I will start with the first claim.

In a declaratory action, where the plaintiff does not allege that any of his rights has been infringed, it would be contrary to principle for the Court to make a declaration ***in vacuo.***See***: Olawoyin vs. Attorney General of Northern Nigeria (1961) 1 All NLR (Pt.2) 269 at 271 & 276***.

Furthermore, in the case of: ***Aboud vs. Regional Tax Board (1966) 1 ALL NLR 45***, the Court held thus:

> ***"…the authorities establish beyond doubt that the court will not entertain an action for a declaration where it is clear that no useful purpose would be served by the court's decision."***

The Latin maxim is: ***"De minimis non curat lex"*** (the Law does not concern itself with trifles)

Again, it would be observed that what the Claimants are seeking in Relief 1 is merely to request the Court to restate what is already stated in the Chieftaincy Declaration (Exhibit A).It must be noted that Exhibit A is a subsidiary legislation made pursuant to the ***Traditional Rulers and Chiefs Law of 1979.***It is settled law that proceedings for a declaration of what a statute has already declared are

incompetent. In the case of: ***Quo Vadis Hotels vs. Commissioner (1973) 6 S.C.71***, the Supreme Court explained the position thus:

> "…***The present proceedings were instituted by the Commissioner of Lands for the declarations sought by it – declarations to re-declare what the statute itself has already so declared – and we are clearly of the view that the Commissioner of Lands was incompetent to institute such proceedings for such claims. We are ourselves not aware of the illogicality of an argument which supports the institution of declaratory proceedings in respect of matters already so declared by statute and we cannot but disagree with the argument on the grounds both of principle and common sense."***
>
> Consequently, Relief 1 will be refused.

Coming to Relief 2, again there is really no dispute here. Even the Defendant himself has consistently maintained that he has no power to enlarge or abridge the ruling houses as enshrined in Exhibit A. The evidence adduced by the claimants to sustain Relief 2 is not concrete enough. I agree with the learned counsel for the Defendant that there is no scintilla of evidence to show any attempt by any authority or person to alter the provisions of Exhibit A. The most potent evidence adduced in this regard is that of alleged ***intents*** and ***threats*** by the Defendant. This is captured in paragraph 10 of the affidavit in support of the originating summons thus:

> ***"10. That unless restrained by this Honourable Court, the Defendant threatens and intends to continue to impose on his claim that there are six ruling houses in Okpella."***

The other available piece of evidence relate to the allegation of distributing things using six places as captured in paragraph 8 thus:

> "***8. That the Defendant actualizes his claim by using the said ruling houses to share and/or distribute things and/or positions into six places in accordance with his claim of six ruling houses in Okpella."***

As earlier stated, Exhibit A relates to succession to the stool of ***Okuokpellagbe of Okpella*** and not the sharing of amenities in Okpella.

It is settled law that where a party seeks a declaratory relief, the onus is on that party to succeed on the strength of his case and not on the weakness of the defendant's case. See: ***Bello vs. Eweka (1981) 1 S.C.101; and Olowoake vs. Salawu (2000) 11 NWLR (Pt.677) 127 at 147***.

In the ***Bello vs. Eweka*** case (supra), ***Obaseki JSC*** posited thus:

> ***"…where the court is called upon to make a declaration of right, it is incumbent on the party claiming to be entitled to the declaration to satisfy the court by evidence, not by admission in the pleadings of the defendant, that he is entitled."***

The evidence adduced by the Claimants is palpably weak. It cannot sustain the grant of a declaration. I agree entirely with the submissions of the learned counsel for the Defendant that the Claimants have not discharged the burden of proof to obtain the declaratory reliefs in Reliefs 1 and 2.

Coming to the injunctive Relief, it is settled law that an injunction is an equitable remedy to be granted or refused at the discretion of the Court acting judicially and judiciously. Being a judicial discretion, it is a very wide one, only to be limited by the Court itself taking cognizance of the surrounding circumstances. See: ***Nsirim vs.Nsirim (1995) 9 NWLR (Pt.418) 144 at 174-175.***

Furthermore, it is a fundamental rule that a court will only grant an injunction to support a legal right. Where the plaintiff has no legal right recognized by the court, there is no power to grant an injunction. The plaintiff seeking an injunction must prove that his legal right has been infringed. See: ***Morohunfola vs.Kwara Tech. (1990) 4 NWLR (Pt.145) 506 at 527-528.***

Again, I am of the view that the evidence adduced by the Claimants is mainly speculative. It is neither weighty nor cogent enough to establish any legal rights of the Claimants which the defendant has infringed.

Whatever the fears entertained by the Claimants, the evidence adduced does not substantiate their fears. The substratum of the entire suit is ***Exhibit A***; the ***Declaration of Customary Law Regulating Succession to the Traditional Ruler***

Title of Okuokpellagbe of Okpella.The Declaration was made pursuant to the provisions of the ***Traditional Rulers and Chiefs Edict (now Law) of 1979***.

It is pertinent to note that the procedure for altering Exhibit A is clearly stipulated in the ***Traditional Rulers and Chiefs Law of 1979.*** Under the 1979 Law, the power to amend the Declaration is not at the whims and caprices of the incumbent traditional ruler (that is the Defendant).

The relevant provision of the Law is: ***Section 7. (1***) ***and (2)*** of the ***Traditional Rulers and Chiefs Law of 1979***. It provides as follows:

> ***"S.7 (1) Where the Executive Council is satisfied that a registered declaration-***
> ***(a) Does not contain a true or sufficiently clear statement of the customary law which regulates the selection of a person to be the holder of a traditional ruler title; or***
> ***(b) Does not contain a sufficient description of the method of succession to such a title; or***
> ***(c) Contains any error whether as to its form or substance; or***
> ***(d) Is otherwise defective, faulty or objectionable, having regard to the provisions of this Law,***
> ***The Executive Council may require the traditional council to amend such declaration in any respect that it may specify, or to make a new declaration according as it may consider necessary or desirable in each case notwithstanding that such a declaration may have been approved by the Executive Council or registered under section 6 of this Law.***
> ***(2) The Executive Council may approve or refuse to approve a registered declaration amended or a new declaration made by a traditional council under sub-section (1) of this section.***

From the foregoing, it is evident that the process for the amendment of the Declaration is actually under the supervision of the State Executive Council. Even when the Declaration is amended, it is subject to the approval of the Executive Council.

Clearly, from all the evidence adduced by the Claimants, I do not see the basis for this suit which is mainly predicated on the amendment of the

Declaration. The Claimants appear to be crying wolves when there are no wolves in sight.

Consequently, I cannot grant any injunction against the Defendant on the state of the evidence adduced by the Claimants.

On the whole, I hold that the Claimants have failed to prove their Claims against the Defendant. In the event, the Claims are dismissed with N20, 000.00 (twenty thousand naira costs) in favour of the Defendant.

P.A.AKHIHIERO
JUDGE
22/05/17

COUNSEL:

CHIEF CHARLES ADOGAH SAN.....CLAIMANTS.

CHIEF MIKE OZEKHOME SAN…….……DEFENDANT.