

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE AGENEBODE JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON TUESDAY THE
10TH DAY OF JULY, 2018.

BETWEEN:

SUIT NO: HAG/07/15

HIS ROYAL MAJESTY -----CLAIMANT
DR. GEORGE OSHIAPI EGABOR, J.P, OON
Omoaze 1, the Okumagbe of Weppa-Wanno Kingdom

And

1. CHIEF SYLVESTER .A. EGIEBADE
2. THE OWAI FAMILY KINDRED
of Otaokwi Ruling House } -----DEFENDANTS

JUDGMENT

The Claimant instituted this suit *vide* a Writ of Summons and Statement of Claim dated 5th April, 2015 and filed on the 31st of August, 2015.

With the leave of Court, on the 24th day of April 2017 the Claimant amended his Statement of Claim wherein he claimed against the Defendants jointly and severally as follows:

1. An Order of Court restraining the 1st Defendant from proclaiming, fixing and or announcing the date of Ukpe Festival until the 1st Defendant complied with the decision of the Okumagbe ó in ó Council;
2. An Order of perpetual injunction restraining the 1st Defendant from parading himself and/or holding out himself as the Owai, Chief Priest of Weppa ó Wanno Kingdom;
3. An Order that the Okumagbe ó in ó Council should continue with the duties and responsibilities of the Chief Priest pending when the 2nd Defendant select another Owai Chief Priest for Weppa ó Wanno Kingdom;
4. The sum of ₦5 million being for general damages; and
5. An Order of perpetual injunction restraining the 1st Defendant to continue to confer Chieftaincy title on any person or persons solely meant for the Okumagbe of Weppa-Wanno kingdom.

The 1st & 2nd Defendants on the 15th day of December 2015 filed a 15 Paragraph Statement of Defence and an 82 Paragraph Counter óClaim wherein they counter-claimed against the Claimant as follows:

- a. A Declaration that the claimant is not the person customarily recognized to proclaim, fix and announce the dates of Ukpe festival or any Weppa-Wanno traditional festival;
- b. A Declaration that Weppa-Wanno is a clan and not a kingdom;
- c. A Declaration that the Claimant and his Okumagbe-in-council are not customarily and traditionally empowered and endowed to perform any of the customary and traditional function of the Owai (chief priest) and the Owai family/kindred;
- d. A Declaration that the purported deposition of the 1st defendant as the Owai (chief priest) of Weppa-Wanno is uncustomary to Weppa ó Wanno custom, tradition and culture;

- e. An order setting aside the purported deposition of the 1st defendant as the Owai (chief priest) of Weppa óWanno clan as contained in the letter authorized by the claimant dated 10/10/2011;
- f. An order of injunction restraining the Claimant from holding himself, parading himself or allowing himself to be called His Royal Majesty, the Okumagbe of Weppa-Wanno kingdom instead of His Royal Highness, the Okumagbe of Weppa-Wanno clan;
- g. An order of injunction restraining the claimant, his servants ,agents, privies and those claiming through him from or to function on the customary and traditional duties of the defendants;
- h. An order directing and compelling the claimant to limit his traditional and administrative functions to the governance of Weppa-Wanno without interfering with the traditional functions of the Defendants;
- i. Exemplary damages in the sum five(5)billon naira;
- j. Aggravated damages in the sum of four (4)billion naira;
- k. Punitive damages in the sum of three (3) billion naira; and
- l. A formal retraction of the offending letter deposing the 1st Defendant and a written apology to the Defendants.

In response, the Claimant filed his defence to the Defendantsø Counter Claim on the 9/5/2016 along with the Claimantø further statement on oath.

In proof of his case the Claimant testified and called the following three witnesses: Chief Peter Emodue (CW1), Chief Joseph Emokhor (CW2) and Chief Otseuno Ikhake (CW3).

In defence of their case and in proof of their Counter-Claim the Defendants/Counter ó Claimants called the following three witnesses: Chief Abikpi Ezekhome (DW1), Chief Micheal Okuwoega Eshekhai (DW2) and Chief Bello Alimhasunya (DW3). The 1st Defendant also testified for the Defendants.

From the evidence adduced at the trial, the Claimantø case is that he is the Okumagbe of Weppa-Wanno Kingdom in Etsako East Local government Area in

Edo State and the custodian of the custom and tradition of the people of Weppa-Wanno.

That the 1st Defendant is the Chief Priest of the Ikhuthe Shrine in Owai Family of the Otaokwi Ruling House of Weppa-Wanno and by virtue of the Edo State of Nigeria Gazette No. 37 of 12th September, 2005; he occupies the 7th position in the traditional hierarchy in Weppa-Wanno.

The Owai Family Kindred is the kindred assigned with the responsibility of the Ikhuthe Shrine. The Chief Priest is neither an Ukpi Drummer nor a member of the Okumagbe-in-Council. Unlike other kindred, the members of the Owai family kindred are excluded from aspiring to the position of the Okumagbe of Weppa-Wanno.

By the custom of the Weppa-Wanno people, the Chief Priest of the Ikhuthe Shrine performs certain customary functions in conjunction with the Okumagbe-in-Council and he is expected to reside in Weppa Wanno in order to carry out his functions at the shrine.

In the performance of his functions, he is expected to take instructions from the Okumagbe-in-Council through the Okumagbe. The functions of the Chief Priest include: fixing the date for the Ukpe Festival and the traditional cleansing of the land.

According to the Claimant, the functions of the Chief Priest do not include the conferment of chieftaincy title on any person in Weppa-Wanno clan. That is the sole prerogative of the Okumagbe who is the prescribed authority in accordance with the Traditional Rulers and Chiefs Law. He maintained that no Chief Priest has ever conferred any chieftaincy title on any person in the history of Weppa-Wanno. In the fixing of the Ukpe Festival and its celebration, the Chief Priest does not take any unilateral action without consulting the Okumagbe-in-Council.

The Claimant alleged that by a letter, dated 27/08/2011, the 1st Defendant informed him of his intention to confer chieftaincy titles on some sons of the Owai family of Weppa-Wanno. Thereafter, the 1st Defendant went ahead to confer the chieftaincy titles on five sons of Owai family in Weppa Wanno without the permission or consent of the Claimant. By a second letter dated 30/08/2011, he informed the Claimant of the recipients of the chieftaincy titles. The two letters were admitted in evidence as Exhibits 5 and 6 respectively.

Upon receipt of the aforesaid letters, the Claimant wrote a letter to the 1st Defendant dated 3/09/2011, requesting him to retract his previous letters and apologise in writing to the people of Weppa Wanno before the 10th of September, 2011 or face the consequences of his actions. The said letter was admitted as Exhibit öCö.

The 1st Defendant refused to make the retraction and the Claimant made a formal complaint to the Governor of Edo State *vide* a letter dated 3/09/2011 admitted as Exhibit öGö.

In a meeting held on the 17/09/2011, the Okumagbe-in-Council deliberated on the actions of the 1st Defendant and the Council took a decision to depose the 1st Defendant from the office of Chief Priest of Weppa-Wanno.

The reasons for his deposition were *inter alia*: the conferment of chieftaincy on five sons of Weppa Wanno without the permission or consent of the Claimant and his failure to permanently reside in Weppa Wanno which they alleged is contrary to the custom and tradition of the land. The proceedings and decision of the Council was admitted in evidence as Exhibit öDö.

Upon his deposition, the 1st Defendant was stripped of all his functions and duties as the Chief Priest of Weppa-Wanno and his functions are now being performed by the Okumagbe-in-Council pending when the 1st Defendant complies with the findings of the council or the 2nd Defendant select another candidate to take the office of Chief Priest.

Under cross examination, the Claimant and some of his witnesses admitted that in the history of Weppa Wanno, there is no record of any Chief Priest who has ever been removed from office.

On the part of the Defendants/Counter Claimants, their case is that the 1st Defendant is the Chief Priest of Weppa-Wanno Clan which is made up of two sub-clans to wit: the Weppa sub-clan and the Uwanno sub-clan.

The 1st Defendant is from the Owai Family Kindred which is made up of five sub-families as follows: Apene, Egiebade, Ilie, Omogbai and Omomian. It is these five sub-families that can produce the Owai (Chief Priest) of Weppa-Wanno Clan.

They maintain that Weppa-Wanno is a Clan and not a Kingdom ruled by a King or Queen from a Royal Family, but a group of families and Kindred who are related to each other and connected to a common father or ancestor named Eppa.

That Weppa-Wanno has seven ruling houses which are as follows: ***Otaokwi; Aviukha; Egori; Iviokpisa; Agiere; Avao-Iviamadi; and Agiode.***

That succession to the stool of the Okumagbe of Weppa-Wanno Clan rotates around the seven ruling houses in the following order: ***Otaokwi; Aviukha; Agiere; Egori; Iviokpisa; Avao-Iviamadi;*** and ***Agiode*** ruling houses.

They maintained that when the Weppa-Wanno people migrated from Benin, they brought five ***Ukpis*** with them into their new found land. The five Ukpis were as follows:

- i. Ukpi Arih of Otaokwi;***
- ii. Ukpi Ekeka of Agiere;***
- iii. Ukpi Omoaze of Aviukhai;***
- iv. Ukpi Osemokhale of Egori; and***
- v. Ukpi Owai of the Owai Kindred.***

That an Ukpi is represented by a Drum and the holder of an Ukpi is called an Ukpi Drummer. That there are two types of the holders of UKPIS: - the Senior Ukpi Drummers and the Minor Ukpi Drummers.

That the seven Ruling Houses of Weppa-Wanno each has an Ukpi (Drum). That apart from the Ukpi (Drum) of the Seven Houses there exists: ***Ukpi-Okumagbe*** (Okumagbe's Ukpi) and ***Ukpi – Owai*** (Owai Family/Kindred's Ukpi). So altogether, there are nine Ukpi Drums in Weppa ó Wanno Clan and of all the nine, it is only the Ukpi ó Owai that is permanently held by the descendants of the Owai family in Otaokwi Ruling House.

The other seven Ukpis of the seven Ruling Houses rotate among the kindred within a Ruling House and the Ukpi-Okumagbe rotates from one Ruling House to another in the order aforementioned.

According to the Defendants, under Weppa-Wanno custom and tradition, an Ukpi holder cannot be dismissed from his post. He can only be disciplined.

That in the Otoakwi Ruling House, the Owai Kindred are customarily disqualified from presenting themselves for the position of Okumagbe because it is their sacred duty to crown a new Clan Head. They maintained that nobody is customarily empowered to crown an Owai descendant. That it is only a member of the Owai kindred that can crown other persons as well as members of the Owai family.

That Owai is the Spiritual custodian of the Weppa-Wanno clan whose existence is from time immemorial unlike the Okumagbe that is just 55 years old and the Owai is paramount to the Okumagbe's Ukpi traditionally.

They enumerated the functions of Owai as follows:

- i. He is a member of the Kingmakers;
- ii. He presents the Okumagbe with the Ukpí ó Okumagbe on the appointed day of his installation as Okumagbe of Weppa-Wanno;
- iii. He puts a Crown on the Okumagbe on the day of his installation;
- iv. He announces the Ukpe (Traditional New Year Festival); Otsa Festival and all Festivals in Weppa ó Wanno Clan;
- v. He produces the Ethameh (Father of Age Group) in Weppa-Wanno Clan;
- vi. He is the custodian of the Ikhuthe Shrine; and
- vii. He performs the traditional cleansing in Weppa ó Wanno Clan.

That the above functions of the Owai are the exclusive preserve of the Owai and not the Okumagbe, Okumagbe-In-Council or any person who is not from the Owai Kindred.

That from the time of the first Okumagbe of Weppa-Wanno, Chief Ogbaki till the era of the Claimant's predecessor-in-title (Chief Obozuwa), all these traditional functions have been performed by the Chief Priest.

That soon after the Claimant ascended the stool of Okumagbe of Weppa-Wanno, he started to alter and erode the organic custom of Weppa-Wanno by making himself an overlord called: “*His Royal Majesty*” and he designated Weppa-Wanno a “*Kingdom*” instead of a “*Clan*”.

That in the pursuit of the Claimant’s paramount ruler ship and overlord status, he started interfering with the traditional functions and duties of the Chief Priest including fixing and announcing dates for festivals.

They maintained that the Claimant is not the sole custodian of the custom and tradition of the people of Weppa-Wanno. That other custodians include: the OBOTSU; UKPI DRUMERS in the Seven Ruling Houses; the CHIEF PRIEST (the Owai); the IWAWE; the IBENO; the IKOS; and the INUCHI OBO NOJO IGA (Deputy Chief Priest) .

That the Chief Priest of Weppa-Wanno Clan is the overall spiritual father of the Clan and he does not perform any of his customary functions in conjunction with the Okumagbe and/or the Okumagbe-In-Council, but in conjunction with other priests in the Owai kindred. The dates of the traditional festivals are fixed by the Chief Priest in consultation with the Owai kindred and other individual kindred Heads.

They explained that although the custom requires the Chief Priest to reside in Weppa-Wanno, it is not compulsory that he must always be present at the shrine. He attends the Shrines of Weppa-Wanno as occasion demands and when he is unavailable, he has a Deputy Chief Priest (Obonojo Iga) and many supporting assistants from the Owai kindred who can officiate on his behalf.

They stated that the functions of the Chief Priest include conferring traditional Chieftaincy titles on Owai family descendants to help the family to determine the

order of seniority in order to ascertain the hierarchy of succession to priestly positions such as assistant Chief Priest, Deputy Chief Priest and Chief Priest.

The Owai Chieftaincy conferment is the exclusive preserve of the Owai kindred and descendants and not of any of the Seven Ruling Houses or that of the Claimant or the claimant's Okumagbe-In-Council. No Okumagbe of Weppa-Wanno from Chief J. M. Ogbaiki till the Claimant ever conferred any Chieftaincy title on any member of the Owai kindred.

According to them, sometime in 1981, one Chief Priest Sule Irie conferred Owai traditional chieftaincy titles on the following Owai kindred: the 1st Defendant; Chief Pius Apene; Chief Philip Omoudu; and Chief Philip Omomian all in the presence of the erstwhile Okumagbe of Weppa-Wanno His Royal Highness Chief Francis Omoh and Chief Erwat, the Iyase of Weppa-Wanno.

That in 1997 Chief Priest, Chief Momoh Ajakwe conferred Owai traditional Chieftaincy title on one Chief Dennis Apene and in 2002, he crowned the Claimant as Okumagbe of Weppa-Wanno.

The Chief Priest and the Owai Family do not need the authorization, consent, approval and consultation of the Okumagbe of Weppa-Wanno before conferring Owai Traditional titles on Owai sons. The invitation to the Okumagbe to this conferment of chieftaincy on Owai sons is simply as a mark of honour. The Okumagbe may choose to attend or decline. If he chooses to attend, he attends as a guest and performs no function. It is the Owai (Chief Priest) that does the decoration and other traditional functions and rites.

They stated that the Claimant and the Okumagbe-In-Council cannot depose a Chief Priest. That in the history of Weppa-Wanno, no Chief Priest has been deposed by any Okumagbe in person or In-council. That it is a sacrilege under

Weppa-Wanno custom to depose a Chief Priest and only death can remove a Chief Priest from office.

That on the 17th day of September 2011 the Claimant and his Okumagbe-In-Council held a meeting at the Claimant's palace to discuss the deposition of the 1st Defendant. During the meeting, Chief Iwegbe Obemeat from the Otaokwi Ruling House and Chief Abikpi Ezekhume the oldest of all Ukpi Drummers in Weppa-Wanno Clan, and the Head/Senior Ukpi Drummer of Agiere Ruling House opposed the Claimant's move to depose the 1st Defendant from his position as the Chief Priest of Weppa Wanno. But the Claimant did not heed their counsel and went ahead to unilaterally depose him.

The 1st Defendant stated that by the action of the Claimant, he suffered injury to his credit, character, reputation and traditional offices and has been brought into hatred, odium, ridicule and contempt. That he has also suffered emotional upset, shock, psychological trauma and embarrassment as a result of the acts of the Claimant.

Under cross-examination, the 1st Defendant/Counter Claimant stated that during the reign of Francis Omo, the Chief Priest conferred Chieftaincy title on members of Owai kindred. That the conferment of chieftaincy titles commenced under HRH Francis Omo.

He admitted signing an M.O.U. which was admitted in evidence as **Exhibit "B"**. He also admitted writing Exhibits **"E"** and **"F"** to the Claimant.

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

In his Written Address, the learned counsel for the Defendants/Counter Claimants, F.G.Oikerhe Esq. formulated five Issues for Determination as follows:

1. *(A) Whether under the Weppa – Wannu Customary Law, Native Law and Custom if the 1st Defendant can be restrained by the Defendant, the Okumagbe – in – Council or/and a Court of law from parading, holding out himself as the Owai (Chief Priest) of Weppa – Wannu and performing the Traditional and Customary functions and duties of the Owai (Chief Priest) which are purely customary and Organic way of life of the people of Weppa – Wannu?*
(B) If the answer to (A) above is in the negative, what is the appropriate Order to be made by the Court?
2. *(A) Whether the Claimant or/and the Okumagbe – in-Council can perform the traditional and Customary functions of the Owai as (Chief Priest) of Weppa – Wannu and/or the functions of Iviebude family, or any of the functions of the Defendants as contained in Edo State Legal Notice (E.S.L.N) 4 of 2012 relating to the Declaration of Customary Law Regulating succession to Traditional Title of Clan Head (Okumagbe) of Weppa – Wannu?*
(B) If the Answer to (2A) above is in the negative, what is the appropriate Order to be made by Court?
3. *Whether an Owai (Chief Priest) of Weppa – Wannu having been appointed and while alive can be deposed by anybody whatsoever?*
4. *Whether Weppa-Wannu is a Clan or Kingdom as paraded and being paraded by the Claimant?*
5. *Whether the 1st & 2nd Defendants/Counter – Claimants on the totality of evidence and state of pleadings are entitled to succeed in this Suit and to be granted the Reliefs they sought at paragraph 82 of their Joint Counter – Claim?*

Arguing the issues, learned counsel argued Issues 1, 2 and 3 together and Issues 4 and 5 separately.

ISSUES 1, 2, AND 3:

Arguing Issues 1,2 and 3, learned counsel submitted that in paragraphs 5 & 8 of the Defendants Joint Statement of Defence and paragraphs 26, 27, 28, 58, 67, & 69 of the Defendants Joint Counter ó Claim, the Defendants pleaded the customary and organic functions of the 1st Defendant as Chief Priest of Weppa ó Wanno to include: *presenting the Okumagbe with the Ukpi – Okumagbe of Weppa – Wanno; putting a crown on the Okumagbe on the day of his installation; announcing the Ukpe (traditional new year festival), announcing Otsa festival and all festivals in Weppa – Wanno Clan; producing the Ethameh (father of age group) in Weppa – Wanno Clan; being the custodian of the Ikhuthe Shrine and performing traditional cleansing in Weppa – Wanno Clan.*

He submitted that the 1st Defendant led evidence in his written deposition filed on 25th January, 2016 to establish the aforesaid customary functions. He said that the Claimant tried to deny the aforesaid facts but the denial crumbled when the CW1 (Chief Peter Emouede) under cross ó examination admitted the said facts.

Again, he submitted that the CW2 (Chief Joseph Emokhor) under cross ó examination also admitted that the 1st Defendant is in charge of the òIkhute Shrineö and the 1st Defendant performs the traditional cleansing when the land is desecrated; that the Okumagbe and his Council cannot perform spiritual cleansing.

Learned counsel referred to the evidence of the other claimant witnesses and the Claimant himself who confirmed the functions of the Chief Priest in the community.

Counsel referred the Court to the Edo State Legal Notice (E.S.L.N) 4 of 2012 published in Edo State of Nigeria Extraordinary Gazette Number 14 Volume

22 of 10th April 2012, which is the Declaration of Customary Law regulating succession to the Stool of Clan Head of Weppa-Wanno, admitted as Exhibit 5A. He quoted paragraph 6 thereof which stipulates that:

“On the appointed day of installation, anyone of IVIEBUDE or the OWA shall install the Okumagbe in the presence of the Chiefs and general public and present him with Ukpi Okumagbe of Weppa – Wanno and put a crown on him. From that day, the Okumagbe of Weppa – Wanno is installed as Clan Head and Traditional Ruler of Weppa – Wanno land”.

He submitted that from the totality of the evidence before the Court the Claimant is the fifth Okumagbe of Weppa ó Wanno and the 2nd Defendant’s kindred (the Owai family) are the persons qualified to crown an Okumagbe. That the Okumagbe ó in ó Council cannot perform the functions of the Chief Priest.

Learned counsel submitted that the Claimant admitted that the Okumagbe ó in ó Council have no power of divination and cannot perform the functions of the Chief Priest. He referred to the evidence of CW3 (Chief Otseuno Ikhake) under cross ó examination when he also admitted that there is no native doctor among the Okumagbe ó in ó Council. He posited that salient questions that need to be answered are:

- (I). ***If the Chief Priest is restrained as canvassed by the Claimant, who will perform his functions at the installation of a new Okumagbe in the event of the demise of the incumbent Okumagbe?***
- (II) ***If the 1st Defendant is stripped of all duties and rights with effect from 17th September 2011 as contained in a letter dated 10th October 2011 till date, who performs the functions of the Chief Priest such as fixing of festivals, spiritual cleansing of individuals and the community?***

Learned counsel submitted that the claim for an order of perpetual injunction to restrain the 1st Defendant from parading himself and/or holding out himself as

the Chief Priest of Weppa ó Wanno and the order that the Okumagbe ó in ó Council should continue with the duties and responsibilities of the Chief Priest pending when the 2nd Defendant selects another Chief priest cannot be granted since the Claimant has admitted that the Okumagbe ó in ó Council cannot perform the functions of the Chief Priest. He maintained that a person cannot perform functions which *ab initio* he admitted that he cannot perform.

ISSUE 4:

WHETHER WEPPA – WANNO IS A CLAN OR KINGDOM AS PARADED AND BEING PARADED BY THE CLAIMANT?

Learned counsel submitted that Weppa-Wanno is a clan and not a kingdom ruled by a King or Queen of a royal family, but a group of families and kindredø who are related to each other and connected to a common father or ancestor named Eppa.

He posited that the Claimant at paragraph 61 and 63 of his defence to the Defendants Counter-Claim averred that the prefix: ***“His Royal Majesty the Okumagbe of Weppa-Wanno kingdom”*** as used by the Claimant is quite personal to the Claimant and has no bearing on the custom or tradition of the people.

He pointed out that under Cross-examination; the Claimant admitted that Weppa-Wanno is a Clan and not a Kingdom. He reiterated that what is admitted need no further proof.

Counsel submitted that the Claimant cannot use the prefix øHis Royal Majestyö and refer to Weppa-Wanno as a Kingdom instead of a Clan because the powers exercised by the Claimant as the Okumagbe were conferred on him by Exhibit A3 which is: ***The Declaration of Customary Law Regulating Succession to Traditional Rulers Title of Clan Head (Okumagbe) of Weppa-Wanno contained in the Edo State Legal Notice (E.S.L.N) 4 of 2012 published on the 10th of April 2012 in Edo State of Nigeria gazette No 14 Volume 22.***

Counsel referred the Court to: page B8, No.6 of the said Exhibit 5A, which stipulates as follows:

“On the appointed day of installation, any one of IVIEBUDE or the OWAI shall install the Okumagbe in the presence of the Chiefs and general public and present him with the Ukpi Okumagbe of Weppa-Wanno and put a crown on him. From that day, the Okumagbe of Weppa-Wanno is installed as Clan Head and Traditional Ruler of Weppa – Wanno Land”.

Counsel submitted that sequel to the foregoing, the Claimant cannot use any prefix other than the one stated in Exhibit 5A. He posited that the only valid prefix under Exhibit A is: ***“the Clan Head of Weppa-Wanno”.***

He maintained that Exhibit 5A is a valid Chieftaincy Declaration made pursuant to the Chiefs Law. He cited the case of: ***AYOADE VS. MILITARY GOVERNMENT, OGUN STATE (1993) & N.W.L.R (Pt. 309) 111.***

He submitted that once a declaration is validly made, any custom, tradition or usage that is alleged to have existed but is not found in the registered declaration is generally presumed to have been disregarded or excluded and cited in support, the case of: ***EDEWOR VS. UWEGBA (1987) 1 N.W.L.R (pt 50) 313.***

Learned counsel therefore urged the Court to resolve Issue 4 in favour of the Defendants/Counter Claimants and grant an injunction restraining the Claimant from holding himself out, parading himself or allow himself to be called His Royal Majesty the Okumagbe of Weppa ó Wanno Kingdom.

ISSUE 5:

Whether the 1st and 2nd defendants /counter – claimant on the totality of evidence and the state of pleading are entitled to success in this suit and to be granted the reliefs sought in paragraph 82 of their joint-counter-claim.

Before arguing this Issue, the learned counsel for the Defendants/Counter-Claimants listed out all the reliefs which they seek in paragraph 82 of their Joint Counter ó Claim and submitted that if Issues 1 to 4 are resolved in their favour, the Court ought to grant all the reliefs contained therein.

He submitted that the Court has a duty to grant a proper remedy to a party whose rights have been infringed and quoted the maxim: *ubi jus ibi remedium* (where there is a right, there is a remedy)

He maintained that it is trite law that if a right has been infringed, whether it is a fundamental or statutory right, the aggrieved party will not be given complete relief if the Court merely declares the existence of those rights without ordering a proper remedy. See the case of: *NAWA VS ATTORNEY – GENERAL OF CROSS – RIVERS STATE (2008) ALL F.W.L.R. pt 831*

Counsel submitted that a Counter-Claim is an independent action and need not relate to the main claim or arise out of the same transaction. See the following decisions on the point: *1.EFFIONG VS. IRONBAR (2001) FWLR (p 53) 237; (2000) 1 NWLR (pt. 678) 341; and 2.MICHEAL SUNDAY ROJA & 4 OTHERS VS. EBENEZER ILO ADENIYI & 3 OTHERS (2017) All FWLR (pt 883) 1433 @ 1448 Paras E – H & 1449 Paras A – B.*

He submitted that the Defendants/Counter ó Claimants led evidence to entitle them to the reliefs in paragraph 82 of their Counter ó Claim.

He submitted that at paragraphs 8, 9, 11, 13, 14, 15 of the Defendants Joint Statement of Defence, the Defendants/Counter Claimants raised new issues relating to the functions of the Chief Priest and the non ó deposition of any Chief Priest from the reign of the 1st Okumagbe Chief Ogbaiki till the 4th Okumagbe HRH I. J. Obozuwa. He pointed out that the Claimant did not file any Reply to these new issues raised.

He submitted that although a Reply is not necessary if its purpose is to deny the allegations in the Statement of Defence, where the Statement of Defence raises new issues of fact not arising from the Statement of Claim, the Claimant has a duty

to deal with the new issues of facts in his reply; otherwise, the facts on the new issues raised in the Statement of Defence will be deemed admitted by the Claimant. For this view, he relied on the case of: ***PHILIPS VS EBA ODAN COMMERCIAL & INDUSTRIAL COMPANY LTD (2013) WRN Pg. 20 lines 5 – 20 (Per Ngwuta, JSC).***

He therefore urged the Court to hold that the facts raised in paragraph 8, 9, 11, 13, 14 & 15 of the Defendants Joint Statement of Defence to which no Reply was filed are deemed admitted by the Claimant.

Counsel submitted that the purpose of cross examination of a witness is to discredit the witness and to demolish the case of opposing party. He maintained that it is also designed to put across the case of the party cross examining the witness. See the case of: ***AKANIYE VS. ETIM (2013) 4 WRN pg 169 lines 40 – 45 (per Ndukwe – Anyanwu, JCA).***

He contended that under cross examination by the Defence, the case of the Claimant was demolished. That the Claimant and his witnesses admitted that they are not from the Defendants family/kindred and do not know the workings of the Defendants family as to the assumption of the office of Chief Priest. That they do not know where the 1st Defendant allegedly resides in Lagos. They also admitted that there are two sets of course of conduct – one for the Claimant who can travel out of Weppa – Wannu and the other for the 1st Defendant who is forbidden from travelling out of Weppa Wannu.

Counsel observed that with the leave of Court, the Claimant amended his Statement of Claim without amending his Witnesses Written Statements on Oath. He maintained that upon adoption, the written Statements on Oath of the Claimant and his Witnesses became their evidence – in – chief and it is trite law that averments must tally with the evidence. He cited the case of: ***AKANDE VS. JIMOH ADISA & OTHERS (2012) Monthly Report of Supreme Court Judgment (MRSCJ) Vol V. Pg. 15 paras F – H.***

He contended that from the totality of evidence and the state of the pleadings of the Claimants, no evidence was adduced to prove the averments in paragraphs 2, 5(b), 7, 24 (b), 27 & 40 of the Claimants Amended Statement of Claim. He submitted that they are deemed abandoned and urged the Court to so hold.

He also submitted that paragraph 39 of the Claimant's Amended Statement of Claim for the sum of five million naira general damages is also unsupported by evidence.

He submitted that general damages are presumed by law as the direct natural consequences of the acts as complained by the Claimant against the Defendant but the quantum of damages will depend on the evidence of what the Claimant has suffered from the acts of the 1st & 2nd Defendants. He said that going through the entire gamut of the Claimant's evidence, there is no evidence of anything he suffered from the action of the Defendants/Counter ó Claimant and as such, the Claimant is not entitled to the sum claimed in paragraph 39 of the Amended Statement of Claim.

Submitting further, he posited that the 1st Defendant deposed to facts of what he suffered from the acts of the Claimant and the harm and injury the Claimant had caused him. That he seriously injured his credit, character, reputation and the traditional office has been brought into hatred, odium, ridicule and contempt. That he suffered emotional upset, shock, psychological trauma and embarrassment; passed through mental anguish, his feelings were lacerated; he was put to shame; his confidence was shaken and his spirit degraded.

He said that the 1st Defendant/Counter ó Claimant at paragraph 80 of his deposition also stated that the action of the Claimant towards him was reckless, oppressive and wicked.

He posited that at paragraph 73 of his defence to the Counter ó Claim, the Claimant barely denied the averments in paragraphs 75, 76, 77, 78, 79, 80 & 81 of the Counter ó Claim without more. The same bare denial is contained in paragraph 73 of the Claimant's further Statement on Oath dated 9th day of May

2016. He maintained that the Claimant's Counsel never cross examined the 1st Defendant/Counter Claimant on these paragraphs.

Counsel submitted that the Defendants/Counter - Claimants are asking for exemplary; aggravated and punitive damages. He submitted that it is trite law that Exemplary Damages is usually awarded where the statute prescribes and in the following two categories, namely:

- i. *Oppressive, arbitrary or unconstitutional actions of servants of the government; and*
- ii. *Where the respondent's tortious act has been outrageous or scandalous and was done with guilty knowledge.*

See the following decisions:

1. ***CHIEF F.R.A WILLIAMS VS DAILY TIMES OF NIGERIA (1990) 1 NWLR (pt124) of Pg1@ page 9 ratio 16***
2. ***CHIEF CHINEDU EZE & ANOTHER VS INSPECTOR- GENERAL OF POLICE & OTHERS (2007) CHR (cases on human right) page 43 @ 56.***

Counsel submitted that aggravated damages are awarded as a result malevolence or spite by the tortfeasor which injures the proper feeling of dignity and pride of the victim and is thus awarded to compensate the Claimant for any aggravated harm to his feelings.

See the following cases on the point:

1. ***CHIEF F.R.A WILLIAMS VS DAILY TIMES OF NIGERIA (supra) @ page 9 Ratio 17***
2. ***CHIEF CHINEDU EZE VS IGP (supra) @ pg43 Ratio5***

Counsel submitted that any trespass to the person, however slight; gives a right of action for recovery of any nominal damages even where there has been no physical injury. He said that substantial damages maybe awarded for the injury to the man's dignity or for his discomfort or inconvenience though he did not suffer any financial damages or claim any specific amount of damages. ***SEE: CHIEF CHINEDU VS IGP (supra) @ pg 67 paras A-B.***

According to him, disregard for the rule of law, some measure of arbitrariness, unprofessional and oppressive behavior by the Respondent entitles

the Applicant to the award of exemplary and aggravated damages. ***SEE: CHIEF CHINEDU VS IGP (supra) @ Ratio5***

Counsel submitted that by the averments of the Claimant as contained in all the paragraphs of the amended Statement of Claim and with particular reference to paragraphs 30, 31, 32, 33, 34 & 35 of the amended Statement of Claim, there is nothing therein suggesting why any order of Court should be made against the Defendants particularly the 1st Defendant to restrain him from performing the functions of the Chief Priest.

He submitted that an injunction is not granted as a matter of cause but as an equitable remedy. It is granted when a Claimant has established a right or interest in the subject ó matter, and that there is a breach or a threatened breach of his legal or equitable right.

He maintained that in the entire gamut of the pleadings of the Claimant, the Claimant did not show any proprietary right or interest in the subject ó matter; neither did he establish any breach or threatened breach of a legal or equitable right. He said that the Claimant and all his witnesses admitted that they are not from the Owai family or kindred (2nd Defendant/Counter ó Claimantø kindred).

He submitted that the Owai family or kindred of whom the 1st Defendant holds the Chief Priest in trust is the family or kindred who have proprietary right and interest in the position of Chief Priest of Weppa ó Wanno and the 2nd Defendantø family are the ones to complain if there is a breach or threatened breach of their rights. He said that the Claimant cannot cry more than the bereaved or become more Catholic than the Pope.

Counsel submitted that the Defendants/Counter ó Claimants have established their proprietary rights and interests in the subject ó matter of the Chief Priesthood to obtain an order of injunction to restrain the Claimant, his servants, agents, privies and those claiming through him from carrying out the customary and traditional functions and duties of the Defendants, and an injunction

directing and compelling the Claimant to limit his traditional administrative functions to the governance of Weppa ó Wanno without interfering with the traditional functions of the Defendants.

In conclusion, learned counsel submitted that the Defendants/Counter ó Claimants have discharged the onus on them to warrant the success of their Counter ó Claim and dismissal of the Claimant's claim.

He therefore urged the Court to grant the Defendants Counter ó Claimants the Reliefs sought in Paragraph 82 of their Joint Counter ó Claim and dismiss the Claimant's claim.

In his final address, the learned counsel for the Claimant, T.O. Oaikhenan Esq. adopted the Issues as formulated by the Defendants, argued Issues 1 to 4 together, Issues 5 & 6 separately and urged the Court to grant the claim and dismiss the counter-claim of the Defendants.

AGUMENT ON ISSUES 1-4:

On Proof Of Customary Law:-

On the proof of customary law, learned counsel submitted that customary law must be established by evidence. That it must be proved in every particular case unless it has become so notorious that judicial notice ought to be taken of it.

He stated that the evidence of the custom in other communities where a chieftaincy matter is in issue is not necessarily evidence of custom in a particular community. He maintained that the fact that a particular custom has been proved and accepted in a particular community does not make it acceptable to another locality.

He submitted that the onus of proving a particular customary law rests on the person claiming its existence. He maintained that the cogent evidence of one witness is sufficient to prove a custom once the court has accepted the evidence.

On Meaning Of Custom And Nature Of Customary Law:-

Learned counsel defined a custom as a rule which in a particular district has from long usage obtained the force of law. See: *Oyewunmi v. Ogunesan (1990) 3*

NWLR (Pt. 137) 182 at 207; Okonkwo v. Okagbue (1994) 9 NWLR (Pt. 368) 334 referred to] (pp. 228-229, paras, G – A).

On Whether Legislation Can Change Customary Law:-

He submitted that an existing custom may be altered or entirely abrogated by a valid legislation which is in conflict with it and in the present case, if there was any customary law governing succession to the stool, it had been modified or abrogated by legislation to wit: Exhibit A.

He submitted that the position of Chief Priest does not enjoy any immunity from being restrained by a Court of competent jurisdiction, whether under customary law or otherwise, particularly where the chief priest has desecrated the custom and tradition of the people.

He maintained that the Claimant is vested with powers to discipline the Chief Priest where his conduct is detrimental or sacrilegious to the customary wellbeing of Weppa-Wanno Kingdom. He urged the Court to take judicial notice of the fact that the people of Weppa-Wanno kingdom migrated from Bini Kingdom under section 122 of the Evidence Act. He informed the Court that the Isekhure of Bini Kingdom was suspended by the Oba of Benin, Oba Ewuare II. We refer your lordship to Exhibit ðAö Edo State Legal Notice No. 14 dated 10th April, 2012.

Counsel contended that the Okumagbe-in-Council is the custodian of all the customs and traditions of Weppa-Wanno Kingdom, the highest traditional judicial authority and the highest reference authority for the oral tradition and history of Weppa-Wanno kingdom. He posited that the Okumagbe of Weppa-Wanno kingdom is the head of the Okumagbe-in-Council as stated in Exhibit ðAö.

He posited that the statement on oath of the claimant and his witnesses under cross-examination stood unchallenged and uncontroverted. He referred the Court to the cases of: **OMOREGBE V. LAWANI (1980) 3-4 5C 108 NZERIBE V. DAVE ENGINEERING LTD (1994) 8 NWLR (Pt. 361) 124** and submitted that where the evidence of a witness is admissible in law and is uncontradicted and unchallenged, a court of law can act on it and accept it as a true version of the case it seeks to support.

He submitted that the custom heavily relied upon by the Defendants to the extent that the claimant cannot relieve the Owai Chief priest of his duties even in glaring cases of desecration of native law and custom of Weppa-Wanno Kingdom is repugnant to natural justice, equity, good conscience and contrary to public to policy. See: **EDET VS. ESSIEN (1932) II NLR 47. OKONKWO V. OKAGBUE (1004) AT NWLR (PT 368) 301.**

He contended that one cannot imagine a situation in which the Isekhure of Benin Kingdom would invite the Oba of Benin to witness a chieftaincy ceremony by the Isekhure, nor a situation where the chief Imams, who occupy corresponding positions in different kingdom in Auchi, Uzairue, Okpella etc. would invite their kings to such occasions. He submitted that the conduct of the Defendants in sidetracking the Claimant in conferring the chieftaincy titles on some subjects of Weppa-Wanno Kingdom was contrary to section 20 (6)(c) of the Traditional Rulers and Chiefs Edict, 1979.

Counsel referred the Court to Section 18 (sic) of the Evidence Act, which states as follows:

“Customary law includes any declaration of local customary law made and approved under the provisions of section 74 of the Local Government Law of the provisions of part II of the Chiefs Law”

Again he referred to the case of: ***PRINCESS BILEWU OYEWUNMI (2) OBA LADUNNI OYEWUNMI AJAGUNGBADA III vs AMOS OWOADE OGUNESAN (1990) 3 NWLR (part 137)183*** where Obaseki JSC, on the nature of customary law observed as follows:-

“Customary law is the organic or living law of the indigenous people of Nigeria regulating their lives and transaction. It is organic in that it is not static. It is regulatory in that it controls the lives and transactions of the culture of the people. I would say that customary law goes further and imports justice in the lives of all those subject to it”

On the onus of proof of customary law, learned counsel relied on ***Section 14(sic) of the Evidence Act, 2011.***

He submitted that from the totality of the evidence adduced by the Claimant and his witnesses, the customary law of Weppa-Wanno Kingdom which gives the Claimant the sole prerogative to discipline an erring subject is not contrary to the principles of natural justice equity and good conscience. Rather, he maintained that it is the conduct of the Defendant that was in violation of the customs and traditions of Weppa-Wanno Kingdom.

He submitted that the witnesses to the Defendants/Counter Claimants were unanimous in their evidence under cross-examination that under the ***Traditional Rulers and Chiefs Law 1979 of Bendel State (now applicable in Edo State)***, only

the claimant has the undoubted authority to confer chieftaincy title on any deserving subject in Weppa-Wanno Kingdom. He said that this position is in tandem with the evidence of the Claimant and some documentary evidence tendered in the proceedings.

He referred to the following cases: *OYEWUNMI vs. OGUNESAN GIWA vs ERINMILOKUN (1961) ALL NLR at 297-298; NOSIRU JEGEDE & ORS vs EYINOOGUN & 2 ORS (1959) 4 FSC 270, (1959) SC NLR 670; LATUNDE vs LAJINFIN (1989) 3 NWKR (pt 108)177 SC.*

He submitted that from the above cases, it is clear that the defendants woefully failed to establish the custom and tradition of Weppa-Wanno Kingdom and there is no indication that the custom has been acted upon by any court of law in Nigeria.

He submitted that the contention of Defendants counsel at page 5 of their final written address gave equal prominence to relevant and irrelevant issues. He said that there is nowhere in the evidence of CW1 (Chief Peter Emouede) that any major festivals of Otaikwi Ruling House, Inibizi Festival of Ovaio-Iviamadi Ruling House, Ise Festival of Agiese Ruling House, Otsa Festival of Ivikpisa Ruling House, Adoobi Festival of Egor Ruling House, Afsegbenamhor of Agiode Ruling House, Atsegbenamhor of Agiode Ruling House can be announced by the Chief Priest without recourse to the Claimant.

Furthermore, he submitted that whatever cleansing the Chief Priest is to carryout, must be under the instructions of the Claimant, contrary to the submission of the Defendants' counsel which cannot take the place of evidence. This can also be clearly gleaned in page 10 that nobody has ever deposed an Owai. No evidence of such nature was ever elicited from CW2 as nature itself abhors a vacuum. He maintained that the Heavens did not fall when the Isekhure of Benin Kingdom was relieved of his customary duties by the Oba of Benin.

He urged the Court to discountenance Issue 5 since it is hypothetical and academic. He said the Defendants' interests cannot be affected in any way if the Claimant continues to bear the title: "*His Royal Majesty*".

Counsel referred the Court to the military dispensation when General Ibrahim Babangida chose to be addressed as "**PRESIDENT**" instead of "**HEAD OF STATE**". He said that this did not in any way affect the interests of Nigerians.

ON ISSUES 6:

On this Issue, learned counsel submitted that the reliefs sought by the Defendants are infested with what he called *debilitating procedural virus*. He

maintained that the claim for a whooping sum of N12 Billion was not assessed or paid for at the Registry of this Court. Therefore he maintained that the Claim is illegal and should be discountenanced.

He urged the Court to disregard and reject, the written deposition of Chief Abikpi Ezekhume as same is not dated or signed by the Commissioner for Oaths. He said that Chief Michael Esheka also did not sign his Statement on Oath.

He finally urged the Court to dismiss the Counter Claim.

I have carefully considered all the processes filed in this suit, together with the evidence led, the exhibits admitted in the course of the hearing and the addresses of the respective Counsel to the parties.

In the course of writing this judgment, I observed that in their Written Addresses, both counsel made some references to the provisions of the Traditional Rulers and Chiefs Law, 1979 in respect of the power of the 1st Defendant to appoint chiefs in Weppa Wanno. However, I observed that in relation to the removal of the 1st Defendant by the Claimant the references to the Law were quite glib. They did not address the Court on specific provisions of the statute on the deposition of a chief which is quite germane to this suit. Going through the statute I came across some specific provisions which I considered quite relevant to the just determination of this suit. However, it is settled law that the Court cannot raise such a salient point *suo motu* without hearing from the counsel to the parties.

Consequently, I invited both counsel to proffer further oral arguments on the application of the provisions of the Traditional Rulers and Chiefs Law, 1979 to this suit.

On the 4th day of July, 2018 both counsel appeared before me and made their submissions on the application of the provisions of the said Law.

Before commencing his address, the learned counsel for the Defendants/Counterclaimants, F.G.Oikerhe Esq. informed the Court that in respect

of the objection on the inadequate payment of filing fees earlier raised, that he conceded the fact that they did not pay the correct fees in respect of his counter-claim for N12 billion naira. He said that the under-assessment was caused by the Court registrar. He said that he has however paid the balance sum of N8, 600.00 (eight thousand six hundred naira) and he tendered the receipt of payment which was admitted in evidence without any objection from opposing counsel as ***Exhibit “H”***.

Thereafter, learned counsel addressed the Court on the application of the Traditional Rulers and Chiefs Law, 1979 to the instant case.

Opening his further address, the learned counsel for the Defendants, urged the Court to take judicial notice of the ***Traditional Rulers and Chiefs Law of 1979 of Edo State***. He submitted that ***Section 28*** of the said Law provides for the powers for the withdrawal of appointment, suspension or deposition of any traditional ruler, regent, traditional Chief or an honorary Chief by the Executive Council.

Counsel referred the Court to ***Exhibit “D”***, the proceedings and decision at the meeting of the Weppa-Wanno Okumagbe in Council. He said that at page 4 of ***Exhibit “D”*** under Nos. 111, IV and V, the 1st Defendant was removed from office as Chief Priest. He also referred to page 5 of Exhibit 5Dö.

He contended that Exhibit 5Dö is *ultra vires* of Section 28 of the Traditional Rulers and Chiefs Law, 1979 as the Okumagbe in Council is not the Executive Council which is recognized under the Law. He referred the Court to Section 2 of the Law which defines the “Executive Council” as “the executive council of the State”.

He referred the Court to **Exhibit “A”** at page B18, where the Ikhuthe Owa of Weppa-Wanno is recognized as one of the Traditional Chiefs of Weppa-Wanno clan. He stated that on the 9th of October, 2017, the Claimant under cross examination admitted that the Chief Priest of Weppa-Wanno is also called the Ikhuthe Owa of Weppa-Wanno.

He posited that it is trite law that where the Law prescribes a method by which an act can be validly done, and such method is not followed, it means that the act cannot be accomplished. See the case of: *Rt. Hon. Rotimi Amaechi Vs. INEC & 2 Ors. (2008) Vol. 1 SCM P. 26 at 39 – 40, ratio 12, P. 85 – 86.*

He submitted that since the Claimant did not comply with Section 28 of the Traditional Rulers and Chiefs Law, 1979 the removal of the 1st Defendant from office is invalid. That the act of the Claimant with reference to the removal of the 1st Defendant with reference to **Exhibit “D”** is a nullity and a non-act. See the case of: *Ayasi Vs. Akanji (1995) 7 NWLR (Pt.406) 129 at 131 – 132 ratio 2.*

He maintained that once an act is declared to be nullity, it is null and void and it is as if the act never took place. See: *MACFOY V UAC (1962) A.C. 152.* He said that **Exhibit “D”** is put on nothing and it cannot stand.

Finally he submitted that non compliance with Section 28 of the Traditional Rulers and Chiefs Law in the removal of the 1st Defendant from office as the Chief Priest of Weppa-Wanno as contained in **Exhibit “D”** renders the act or conduct devoid of legal effect of which there are no legal consequences.

In his response, the learned counsel for the Claimant, T.E. Oaikhena Esq. submitted that of all the sections under the Traditional Rulers and Chiefs Law, 1979, Section 28 is particularly germane to the just determination of this Suit. He referred the Court to *Section 28(4)* of the Law and submitted that by **Exhibit “A2”**

the Claimant was appointed as the Clan Head of Weppa-Wanno Kingdom. That in the said **Exhibit “A2”**, the Executive Council of Edo State of Nigeria approved the Claimant as the prescribed authority in exercising the powers conferred on the Executive Council by Section 19(1) of the Traditional Rulers and Chiefs Law, 1979.

Counsel maintained that by virtue of the delegation to the Claimant through Exhibit A2, the Claimant is empowered to suspend or depose an honorary traditional Chief as stated in Section 28(1) of the Law. He emphasised that by Section 24 of the Traditional Rulers and Chiefs Law, the Claimant as the prescribed authority is eminently entitled to exercise the powers contained in Section 28 of the Law, see: **Exhibit A2**.

He submitted that by *Section 122 of the Evidence Act*, this Court is enjoined to take judicial notice of all Laws, enactments and subsidiary legislations made under them having the force of Law.

He contended that the Claimant followed the procedure prescribed by the Traditional Rulers and Chiefs Law, 1979 and the cases cited by the Defendant’s counsel are diametrically inapplicable to this case. That they have put something on something and they expect it to stay there.

Replying on point of law, the learned counsel for the Defendants/Counterclaimants submitted that the prescribed authority is provided for in *Section 21 of the Traditional Rulers and Chiefs Law*. That **Exhibit “A2”** is not predicated on *Section 21* but on *Section 19(1)*.

He urged the Court to take judicial notice of the *Delegation of powers to a prescribed authority area of application amendment Order 1991 Of Edo State*.

That the delegation of powers by Section 28(4) of the Law referred to by the Claimant's Counsel cannot stand in Law.

Before I resolve the Issues in this suit, it will be expedient for me to consider some of the salient objections raised by the learned counsel for the Claimant at the latter part of his Written Address. To wit: The failure of the Counter Claimant to pay filing fees for the total sum of N12 Billion which they claimed as damages; the written deposition of Chief Abikpi Ezekhume which he alleged was not dated or signed by the Commissioner for Oaths; and that of: Chief Michael Esheka which he alleged was not signed by the deponent.

As regards, the written deposition of Chief Abikpi Ezekhume, I have examined the copy in the Court's file and observed that it was dated and signed by the Commissioner for Oaths. Also, the deposition of Chief Michael Esheka was signed by the deponent. For the avoidance of doubt, the Court's copies are the authentic copies.

Coming to the issue of payment of filing fee for the sum of N12 Billion which they claimed as damages, I observed that there are some fees endorsed on the Court processes accompanying the Counter Claim. However, it is settled law that the onus of proof of non-payment of filing fees is on the person asserting that there was a default in payment. See the case of: *Alhaji Sule & Ors. vs. Mr. Orisajinmi (2006) All FWR (Pt.343) 1686 at 1712.*

Also, in the case of *Johnpal Ltd. vs. Afribank (Nig.) Ltd. (2003) 8 NWLR (Pt.822) 290*, the Court opined thus:

“It is the appellant who asserted that the respondent did not pay the appropriate fees. It has remained his burden to prove what the appropriate fees are and to what extent the payment of ninety-nine naira by the respondent had fallen short of the appropriate mark.”

In the same case, the Court went further to state that:

“Even if such inadequacy had been shown to exist, the usual remedy has always been for the lower court, and here we would have invoked section 16 of the Act, to ask the respondent to pay the appropriate fees of the shortfall”. See: *ACB vs. Henshaw (1990) 1 NWLR (Pt.129) 646 at 650; and Eke vs. Eluwa (2000) 14 NWLR (Pt.688) 560 at 568.*

Again in the case of: *Chukwuma Oggwe & Anor. Vs Inspector General of Police (2015) ELC 1360*, The Supreme Court observed as follows:

“It should be further reiterated that payment of inadequate filing fees cannot rob a court of jurisdiction to entertain a suit or appeal as herein.

This is so, as it is an irregularity that can be remedied by an order for the payment of the short fall.”

Also on the duty on the court not to punish a Litigant for the sins of the Court staff, the Court stated thus:

“It is not in dispute that the appellants herein paid the sum of N3, 100.00 as assessed by the official of the trial High Court Registry. It is basic that where an intending appellant has done all that is required of him in law to activate his appeal, he cannot be held responsible for any failure attributable to official inaction or negligence.”

However, on the above authorities I think the matter has been laid to rest by the payment of the balance sum of the balance sum of N8, 600.00 (eight thousand six hundred naira) as evidenced in the payment receipt admitted as ***Exhibit “H”***. On the authorities earlier referred to, the underpayment was a mere irregularity which has been remedied by the payment of the short fall.

I have carefully considered the Issues for Determination adopted by the parties. They appear quite germane to the determination of this suit but they appear a bit prolix and verbose. I will therefore adopt them with some modifications as follows:

- 1. Whether under Weppa – Wanno Customary Law, the Claimant and/or the Okumagbe – in – Council can remove the 1st Defendant from the position of Owai or Chief Priest of Weppa – Wanno?;***
- 2. Whether the Claimant and/or the Okumagbe – in-Council can perform the traditional and Customary functions of the Owai as (Chief Priest) of Weppa – Wanno and/or the functions of Iviebude family, or any of the functions of the Defendants as contained in Edo State Legal Notice (E.S.L.N) 4 of 2012 relating to the Declaration of Customary Law Regulating succession to Traditional Title of Clan Head (Okumagbe) of Weppa – Wanno?;***
- 3. Whether Weppa-Wanno is a Clan or Kingdom as paraded and being paraded by the Claimant?;***

4. ***Whether the 1st & 2nd Defendants/Counter – Claimants are entitled to succeed in this Suit and to be granted the Reliefs in paragraph 82 of their Joint Counter – Claim?***

Having formulated the foregoing Issues for Determination, I will proceed to resolve them *seriatim*.

ISSUE 1:

Whether under Weppa – Wanno Customary Law, the Claimant and/or the Okumagbe – in – Council can remove the 1st Defendant from the position of Owai or Chief Priest of Weppa – Wanno?

It is settled law that in civil actions, the burden of proof is on the party who asserts a fact, to prove same. The standard of proof required is on the preponderance of evidence and the balance of probabilities. See the cases of: ***Longe vs. F.B.N. Plc. (2006) 3 NWLR (Pt.967) 228; and Udo vs. Essien (2015) 5 NWLR (Pt.1451) 83 at 87.***

The Claimant is asserting that he is the Okumagbe of Weppa-Wanno, the head of the Okumagbe-in-Council and the custodian of the custom and tradition of the people of Weppa-Wanno. That by virtue of his position as the paramount ruler in Weppa-Wanno, he is vested with powers to discipline the Chief Priest where his conduct is detrimental or sacrilegious to the customs of WeppaWanno. That the customary law of Weppa-Wanno which gives the Claimant the sole prerogative to discipline an erring subject is not contrary to the principles of natural justice equity and good conscience.

He led evidence of traditional history to try to prove his paramount status in the community. It is settled law that traditional evidence is admissible in chieftaincy matters. See: ***Ihenacho vs. Chigere (2004) 17 NWLR (Pt.901) 130; Arowolo vs. Chigere (2011) 18 NWLR (Pt.1278) 280; and Akpagher vs. Gbungu (2015) 1 NWLR (Pt.1440) 209 at 214.***

However, the Defendants seriously disputed the power of the Claimant to remove the 1st Defendant from his position as Chief Priest. They consistently maintained that the 1st Defendant can only vacate the office by reason of death. They pointed out that in the history of Weppa Wanno clan; no Chief Priest has ever been removed from office by any Okumagbe. It is worthy of note that two of the

Claimant's witnesses, C.W.1 and C.W.2 confirmed the fact that no Chief Priest has ever been removed from office by any Okumagbe.

Thus, on the crucial question of: Whether the Claimant and/or the Okumagbe in Council can remove the 1st Defendant from the position of Chief Priest of Weppa Wanno, the evidence of the parties are in conflict.

However, both counsel are *ad idem* that the removal of a Traditional Ruler or Chief is regulated by the provisions of *section 28 of the Traditional Rulers and Chiefs Law, 1979*.

For ease of reference *section 28 of the Traditional Rulers and Chiefs Law, 1979* provide as follows:

“S.28 (1) The Executive Council may withdraw the approval of the appointment of, or suspend or depose, any traditional ruler, regent, traditional chief or an honorary chief whether appointed before or after the commencement of this Law, 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.

(2) Where a traditional ruler or regent, traditional chief or an honorary chief is suspended under sub-section (1) of this section, the Executive Council shall specify the powers and duties under customary Law or under any written Law that shall not be exercised or discharged by such a traditional ruler, regent, or traditional chief and may make such provisions for the temporary exercise and discharge of such powers and duties by any other person or number of persons as it may think fit.

(3) Where the approval of the appointment of a traditional ruler or of a traditional chief is withdrawn or where a traditional ruler or a

traditional chief is deposed under sub-section (1) of this section, the traditional ruler title or chieftaincy title, as the case may be, shall be deemed to be vacant from the date of the withdrawal or deposition, as the case may be, and shall be filled in accordance with the provisions of the Law.

(4) The Executive Council may by notice in the State Gazette delegate to a prescribed authority or a traditional council the powers conferred by sub-sections (1) and (2) of this section with respect to traditional chiefs or honorary chiefs whose chieftaincy titles are associated with a community in the area for which the prescribed authority or traditional council is appointed.

(5) Any delegation made under sub-section (4) of this section shall be revocable by the Executive Council and no delegation shall prevent the exercise by the Executive Council of any power under this Law.

Going through the provisions of the *Traditional Rulers and Chiefs Law, 1979*, it is worthy to note that the office of *Ikhuthe Owa of Weppa Wannu* is one of the Chieftaincy titles cognizable under the Law. It is listed in the Schedule to the Law at page B18. See: *Traditional Rulers and Chiefs Law, 1979(Amendment) Order 2004* admitted as *Exhibit A* in these proceedings.

It is worthy of note that under cross-examination, the Claimant himself admitted that the Chief Priest of Weppa Wannu is also referred to as the *Ikhuthe Owa of Weppa Wannu*.

Upon a careful examination of *section 28 of the Law*, it is evident that the Law made comprehensive provisions on the procedure for the deposition or removal of a recognized chief like the 1st Defendant.

By virtue of *section 28(1)* of the Law, the power to remove such a chief is vested in the *Executive Council*. In *section 2* of the Law, the term “*Executive Council*” means “*the Executive Council of the State*”. In effect, it is the *Edo Executive Council* that is vested with the power.

In his further address, the learned counsel for the Claimant tried to justify the Claimant’s action by relying on *section 28(4)* of the Law which provides thus:

“Section 28(4) The Executive Council may by notice in the State Gazette delegate to a prescribed authority or a traditional council the powers conferred by sub-sections (1) and (2) of this section with respect to traditional chiefs or honorary chiefs whose chieftaincy titles are associated with a community in the area for which the prescribed authority or traditional council is appointed.”

Relying on that sub-section, counsel contended that the Claimant is the prescribed authority in Weppa-Wanno to whom the State Executive Council delegated the powers conferred on them by section 28(1) & (2) of the Law. He referred to *Exhibit “A2”* as the Gazette containing the delegation.

Incidentally, *Exhibit “A2”* is the Gazette containing the Legal Notice of the appointment of the Claimant as the Clan Head of Weppa-Wanno. It is the *Legal instrument of appointment*. It states as follows:

“It is hereby notified for general information that in exercise of the powers conferred upon it by Section 19(1) of the Traditional Rulers and Chiefs Edict, 1979 and by virtue of all other laws enabling it in that behalf, the Executive Council of Edo State of Nigeria has approved the appointment of Chief (Dr.) George Oshapi Egabor as the

Clan Head (Okumamagbe) of Weppa Wanno in Etsako East Local Government Area with effect from 26th August, 2002.

The resolution of this issue relates to the interpretation of this Legal Instrument of appointment. In the old case of: ***Ogbuiyiya & Ors. vs. Obi Okudo & Ors.(1979) All NLR 105 at 107***, while interpreting the Legal Instrument appointing Justice Nnaemeka-Agu as a Justice of the Court of Appeal, the Supreme Court held thus:

“As regards the Government Notice No.1258 in the October Gazette (referred to as Exhibit SC (1), specifying Mr. Justice Philip Nnaemeka-Agu’s appointment as a justice of the Federal Court of Appeal, ‘with effect from 15th day of June, 1977’, 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” (Underlining, mine).

Applying the aforesaid authority to the instant case, it will be observed that the Gazette, ***Exhibit “A2”***, was issued by the Edo State Executive Council ***in exercise of the powers conferred upon it by Section 19(1) of the Traditional Rulers and Chiefs Edict, 1979*** (underlining mine) and not pursuant to ***Section 28(4) of the Law***. For the avoidance of doubt, ***Section 19(1)*** of the Law simply deals with the ***approval of appointment of Traditional Rulers***. It has nothing to do with the ***removal of any Traditional Ruler or Chief***. The removal of Traditional Rulers or Chiefs is covered by ***Section 28 of the Law***. Thus, upon construing ***Exhibit “A2”***, the grammatical and ordinary meaning is that ***Exhibit “A2”*** is simply a ***Legal instrument of appointment*** it cannot by any stretch of imagination be construed as ***a legal instrument delegating power to the Claimant to exercise***

the powers of removal vested in the Executive Council under Section 28 of the Law.

I am in complete agreement with the learned counsel for the Defendants/Counter-Claimants that *Exhibit “A2”*, did not delegate any power to the Claimant or the Okumagbe in Council to remove the 1st Defendant from the position of Chief Priest of Weppa-Wanno.

Thus, in the absence of any delegation, it is evident that it is the State Executive Council that can exercise the power to remove the 1st Defendant 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.”* See: *Section 28(1) of the Law*.

During the trial, the Claimant testified that when the 1st Defendant conferred chieftaincy titles on some members of the Owai kindred, he made a formal complaint to the Governor of Edo State *vide* a letter dated 3/09/2011 admitted as *Exhibit “G”*. However there is no evidence of any response to that letter or of any steps taken by the *Governor* or *the State Executive Council* on the matter.

Rather, the evidence disclosed that subsequently, in a meeting held on the 17/09/2011, the *Okumagbe-in-Council* deliberated on the actions of the 1st Defendant and the Council took a decision to depose the 1st Defendant from the office of Chief Priest of Weppa-Wanno. The natural question therefore is: *Quo Warranto?* (By what authority?). *Can the Okumagbe-in-Council exercise the powers of the State Executive Council under section 28(1) of the Traditional Rulers and Chiefs Law, 1979? I think not!*

The Supreme Court shed some light on this type of situation in the case of: *State vs. Okechukwu (1994) 9 NWLR (Pt.368) 273 at 288 to 289*, where *Ogundare JSC* observed as follows:

“The Ihiala community on the other hand can only recommend to the governor that the Oluoha be deposed if he has fallen foul of any of the circumstances listed in paragraph 12.2 of Exhibit E. The power of the Governor is obviously wider than that of the community. Until he has exercised his power to withdraw recognition, the Oluoha is not deposed, notwithstanding the feeling of the community on the subject. Exhibit E does not give the community the power to depose: it only states the circumstances

under which an Oluoha could be deposed...Once a Chief is presented by a community and recognized by the government, the power to depose him is taken away from the community. If for any reason a Chief or traditional ruler is in breach of the Constitution and code of conduct of his selection or appointment, the community has to petition the Governor. An administrative board of inquiry would be set up to look into the complaint and if the Governor is satisfied that a case of misconduct or breach has been established, suspend or withdraw the recognition of the Chief or traditional ruler.” (Underlining, mine).

Applying the above authority, I am of the view that insofar as the 1st Defendant has been recognized by the government (*vide* the Gazette admitted as **Exhibit “A”** at page B18 thereof); the power to depose him is taken away from the Claimant and is vested in the Government.

Again in the case of: *Chief Joseph Odetoye Oyeyemi vs. Commissioner for Local Govt., Kwara State & Ors ELC (1992) 1906*, the Supreme Court held thus:

“By section 6 of the Chiefs (Appointment and Deposition) Law, Cap 20 of the Laws of Northern Nigeria, then in force in Kwara State, before a chief is deposed the Governor of the State is required, amongst other things, to hold an inquiry.”

From the foregoing authorities, it is evident that the removal of the 1st Defendant from the office of Chief Priest of Weppa Wanno was clearly *ultra vires* the powers of the Claimant and/or the Okumagbe ó in ó Council. The Okumagbe ó in ó Council should have referred the matter to the State Executive Council for the proper procedure to be followed. By their failure to follow the due process of law, the purported removal was therefore unlawful.

Consequently, Issue 1 is resolved in favour of the Defendants.

ISSUE 2:

Whether the Claimant and/or the Okumagbe – in-Council can perform the traditional and Customary functions of the Owai as (Chief Priest) of Weppa – Wanno and/or the functions of Iviebude family, or any of the functions of the

Defendants as contained in Edo State Legal Notice (E.S.L.N) 4 of 2012 relating to the Declaration of Customary Law Regulating succession to Traditional Title of Clan Head (Okumagbe) of Weppa – Wanno?

Having decided that the removal of the 1st Defendant was unlawful, the implication is that the 1st Defendant is still the Chief Priest. Thus, this Issue of whether the Claimant and/or the Okumagbe ó in-Council can perform the traditional and customary functions of the Chief Priest of Weppa ó Wanno and/or the functions of Iviebude family appears to be rather academic at this stage.

In the case of: *Plateau State vs. Attorney General of the federation (2006) 3 NWLR (Pt.967) 346 at 419, Niki Tobi JSC* stated thus: “*A suit is academic where it is merely theoretical, makes empty sound, and of no practical utilitarian value to the plaintiff even if judgment is given in his favour.*”. This definition was also followed in the case of: *Odedo vs Oguebego (2015) 13 NWLR (Pt.1476) 229 at 251.*

In the event I hold that Issue 2 has been overtaken by events.

ISSUE 3:

Whether Weppa-Wanno is a Clan or Kingdom as paraded and being paraded by the Claimant?

At the trial, the Defendants seriously contended that the Claimant was parading himself as His Royal Majesty, the Okumagbe of Weppa-Wanno Kingdom instead of His Royal Highness; the Okumagbe of Weppa-Wanno Clan. They referred to some official gazettes to show that Weppa Wanno is a Clan and not a Kingdom.

Under cross examination, the Claimant asserted that Weppa Wanno is no more a clan. That it is now a kingdom. When he was confronted with the Instrument of his appointment, to wit: the Edo State of Nigeria Gazette No. 4 of 20th January 20, admitted as **Exhibit “A2** he admitted that he was appointed as the clan head of Weppa Wanno. However, he stated that there is no official gazette which elevated Weppa Wanno from a Clan to a Kingdom.

In his final Written Address, the learned counsel for the Claimant tried to dismiss this Issue as being merely academic because the Defendants' interests cannot be affected in any way if the Claimant continues to bear the title: "**His Royal Majesty**". He used the analogy of the military Head of State, General Ibrahim Babangida who chose to be addressed as "**PRESIDENT**" instead of "**HEAD OF STATE**". He said that this did not in any way affect the interests of Nigerians.

From the totality of the evidence adduced at the trial, I am of the view that the preponderance of the evidence shows quite clearly that Weppa Wanno is a Clan and not a Kingdom as alleged by the Claimant. The following official documentary evidence categorically classified Weppa Wanno as a Clan: *The Traditional Rulers and Chief's, 1979 (Amendment) Order, 2004 contained in Edo State of Nigeria Gazette No. 37 of 12th September, 2005, admitted as Exhibit "A". The Declaration of Customary Law Regulating Succession to Traditional Rulers Title of Clan Head (Okumagbe) of Weppa-Wanno contained in the Edo State Legal Notice (E.S.L.N) 4 of 2012 published on the 10th of April 2012 in Edo State of Nigeria gazette No 14 Volume 22, admitted as Exhibit A1; and The Instrument of the Claimant's appointment, to wit: the Edo State of Nigeria Gazette No. 4 of 20th January 20, admitted as Exhibit "A2.*

I agree with the submission of the learned counsel for the Defendants that the Claimant cannot use the prefix: "**His Royal Majesty**" and refer to Weppa-Wanno as a Kingdom instead of a Clan because the powers exercised by the Claimant as the Okumagbe were conferred on him by Exhibit A3 which is: *The Declaration of Customary Law Regulating Succession to Traditional Rulers Title of Clan Head (Okumagbe) of Weppa-Wanno contained in the Edo State Legal Notice (E.S.L.N) 4 of 2012 published on the 10th of April 2012 in Edo State of Nigeria gazette No 14 Volume 22.*

I am not persuaded by the reference to the erstwhile self styled military President of Nigeria. I take judicial notice of the notorious fact that the General

Babangida Presidency was a kind of *diarchy*, a hybrid political contraption. It had a military head of state, a civilian National Assembly and civilian Governors with civilian Houses of Assemblies. It has no historical parallel in Nigeria. That was clearly an aberration. It is a bad analogy. All such aberrations should be abhorred and not emulated.

I hold that the Claimant cannot transform Weppa Wanno Clan into a Kingdom by a royal *fiat* without following the due process of law. Weppa Wanno is a Clan and not a Kingdom. The proper designation of the Claimant is *His Royal Highness, the Okumagbe of Weppa-Wanno Clan* and not His Royal Majesty, the Okumagbe of Weppa-Wanno Kingdom. I therefore resolve Issue 3 in favour of the Defendants.

ISSUE 4:

Whether the 1st & 2nd Defendants/Counter – Claimants are entitled to succeed in this Suit and to be granted the Reliefs sought at paragraph 82 of their Joint Counter – Claim?

It has been settled by several decided cases that a counter-claim is to all intents and purposes a separate action. Like the Claimant; the Counter-Claimant must prove his case against the Claimant before obtaining judgment on the Counter-Claim. See the cases of: *Raphael vs. Ezi (2015) 12 NWLR (Pt.1472) 39 at 45; and Ogbona vs. A.G. Imo State (1992) 1 NWLR (Pt.220) 647 at 675.*

Furthermore, the burden of proof in a Counter-Claim rests on the Defendant. See: *Akpang vs. Amiye (2015) 18 NWLR (Pt.1490) 148 at 152.*

A Defendant's counter-claim is regarded as a cross action in which the defendant is the Claimant and the Claimant is the defendant thereto. See: *N.P.A. Vs. G.G.F.C. (1974) 12 SC 81; U.B.A v. Sambam Petroleum Ltd (2002) 16 NWLR (Pt 793) 361; Emaphil Ltd vs. Odili (1987) 4 NWLR (pt 67) 915.*

The Defendants' Counter-Claims as contained in paragraph 82 of their Joint Counter ó Claim are as follows:

- a. *A Declaration that the claimant is not the person customarily recognized to proclaim, fix and announce the dates of Ukpe festival or any Weppa- Wanno traditional festival;*
- b. *A Declaration that Weppa-Wanno is a clan and not a kingdom;*
- c. *A Declaration that the Claimant and his Okumagbe-in-council are not customarily and traditional empowered and endowed to perform any of the customary and traditional function of the Owai (chief priest) and the Owai family/kindred;*
- d. *A Declaration that the purported deposition of the 1st defendant as the Owai (chief priest) of Weppa-Wanno is uncustomary to Weppa – Wanno custom, tradition and culture;*
- e. *An order setting aside the purported deposition of the 1st defendant as the Owai (chief priest) of Weppa –Wanno clan as contained in the letter authorized by the claimant dated 10/10/2011;*
- f. *An order of injunction restraining the Claimant from holding himself, parading himself or allowing himself to be called His Royal Majesty, the Okumagbe of Weppa-Wanno kingdom instead of His Royal Highness, the Okumagbe of Weppa-Wanno clan;*
- g. *An order of injunction restraining the claimant, his servants ,agents, privies and those claiming through him from or to function on the customary and traditional duties of the defendants;*
- h. *An order directing and compelling the claimant to limit his traditional and administrative functions to the governance of Weppa-Wanno without interfering with the traditional functions of the Defendants;*
- i. *Exemplary damages in the sum five(5)billon naira;*
- j. *Aggravated damages in the sum of four (4)billion naira;*
- k. *Punitive damages in the sum of three (3) billion naira; and*
- l. *A formal retraction of the offending letter deposing the 1st Defendant and a written apology to the Defendants.*

In the course of resolving Issues 1 to 3, I made some findings which invariably touch on some of the reliefs in the counter-claims. Specifically, in view of my finding that the 1st Defendant's removal was unlawful, I am of the view that the Defendants are entitled to Reliefs (b), (d), (e) and (l).

I will proceed to consider the remaining reliefs in the Counter-Claim.

Relief (a) is a Declaration that the Claimant is not the person customarily recognized to proclaim, fix and announce the dates of Ukpe festival or any Weppa-Wanno traditional festival.

It is settled law that customary law is a matter of evidence on the facts presented before the court and must therefore be proved in any particular case unless they are of such notoriety that the court can take judicial notice of them. See the following decisions on the point: *Giwa vs. Erimilokun (1961) 1 All NLR (Pt.2) 294 at 295; and Richard Ezeanye & Ors. vs. Gabriel Okeke & Ors. (1995) 4 NWLR (Pt.388) 142 at 147.*

The onus of proof of a particular custom rests on the person who asserts the existence of that custom. See: *section 16(2) of the Evidence Act, 2011*; and the case of: *Temile vs. Awani (2001) FWLR (Pt.62) 1937*. The Evidence Act does not appear to require corroboration of the evidence of a witness as to a particular custom. Thus, where the evidence is credible, cogent and reliable, the evidence of one witness can suffice to prove custom. A custom is not proved by the number of witnesses called. See: *Adigun vs. A.G. Oyo State (1987) 1 NWLR (Pt.53) 678; (1987) All NLR 111 at 200-201; and Ojemen & Ors vs. Momodu 11 & Ors. (1983) NSCC 135.*

At the trial, the Defendants/Counter Claimants pleaded relevant facts and led evidence to establish the functions of the 1st Defendant as Chief Priest of Weppa ó Wanno to include: *presenting the Okumagbe with the Ukpi – Okumagbe of Weppa – Wanno; putting a crown on the Okumagbe on the day of his installation; announcing the Ukpe (traditional new year festival), announcing Otsa festival and all festivals in Weppa – Wanno Clan; producing the Ethameh (father of age group) in Weppa – Wanno Clan; being the custodian of the Ikhuthe Shrine and performing traditional cleansing in Weppa – Wanno Clan.*

Although the Claimant denied some of these facts, it is worthy to note that under cross examination some of his witnesses admitted some of these facts. For example, the CW1 (Chief Peter Emouede) admitted the fact it is the function of the

Chief Priest to announce the Ukpe Festival after taking instructions from the Claimant.

Again the CW2 (Chief Joseph Emokhor) under cross examination also admitted that the Chief Priest announces the commencement of the Ukpe festival after liaising with the Claimant to fix a date. In his own evidence, the Claimant himself stated that the 1st Defendant schedules the Ukpe festival (new yam festival and traditional end of year festival) consulting him, but that they are in Court now because the 1st Defendant has been acting independently.

When the evidence of the Claimant is juxtaposed with that of the Counter Claimants, I am of the view that there is preponderance of evidence to show that it is the duty of the 1st Defendant to proclaim, fix and announce the dates of the Ukpe festival and some Weppa- Wanno traditional festivals, howbeit in consultation with the Claimant. The Claimant is not the person customarily recognized to proclaim, fix and announce the dates of the Ukpe festival and some other traditional festivals in Weppa- Wanno. Thus relief (a) succeeds partially.

Relief (c) is a Declaration that the Claimant and his Okumagbe-in-council are not customarily and traditionally empowered and endowed to perform any of the customary and traditional functions of the Owai (chief priest) and the Owai family/kinred.

Here again, the 1st Defendant led comprehensive evidence to show that from time immemorial, the functions of the Chief Priest are the exclusive preserve of the Chief Priest and not that of the Okumagbe, Okumagbe-In-Council or any person who is not from the Owai Kindred. That from the time of the first Okumagbe of Weppa Wanno till the era of the Claimant's predecessor-in-title (Chief Obozuwa), all these traditional functions have been performed by the Chief Priest.

Under cross examination, some of the Claimant's witnesses admitted that these functions cannot be performed by the Claimant. The C.W.2 (Joseph

Emokhor) admitted that the Okumagbe in council cannot do any cleansing in the community, that only the Chief Priest can do it.

The Claimant himself stated that he is not a member of the Owai family, that he is not the Chief Priest of Weppa Wanno, and that he does not know about the internal customary working of the Owai family. He also admitted that he does not have the powers of divination; hence the Chief Priest is his consultant. He maintained that it is not possible for fifty members of the council to perform the function of the Chief Priest in relation to Ukpe festival.

In the light of the foregoing evidence, I am in agreement with the learned counsel for the Counter Claimants that the Claimant and the Okumagbe-in-council are not customarily and traditionally empowered and endowed to perform any of the customary and traditional function of the Owai (chief priest) and the Owai family/kindred.

Reliefs (f), (g) and (h) of the Counter-Claim are essentially injunctive reliefs. It is settled law that the Court is empowered to grant an injunction in all cases where it appears to it to be just or convenient to do so. In an appropriate case an injunction may be granted in addition to an award of damages. See: *Eholor vs. Idahosa (1992) 2 NWLR (Pt.223) 323 at 338*.

Having granted the declarations that the Claimant is not entitled to announce the dates of some festivals, or any Weppa- Wanno traditional festival; that the Claimant and his Okumagbe-in-council cannot perform any of the functions of the Chief priest; and that the purported deposition of the 1st defendant is contrary to the customary law of Weppa-Wanno, I am of the view that it is just and convenient to grant the injunctive orders in Reliefs (f), (g) and (h) of the Counter-Claim.

Finally relief (i), (j) and (k) are for Exemplary, Aggravated and Punitive damages. On the issue of damages, the Counter Claimants are claiming:

- (i) Exemplary damages in the sum five (5) billion naira;
- (j) Aggravated damages in the sum of four (4) billion naira;
- (k) Punitive damages in the sum of three (3) billion naira.

The fundamental objective for the award of damages is to compensate the Claimant for the harm and injury caused by the Defendant. See: ***Chevron (Nig.) Ltd. vs. Omoregha (2015) 16 NWLR (Pt.1485) 336 at 340.***

Thus, it is the duty of the Court to assess damages; taking into consideration the surrounding circumstances and the conduct of the parties. See: ***Olatunde Laja vs. Alhaji Isiba & Anor. (1979) 7 CA.***

In the old English case of: ***Rooks vs. Barnard (1964) 1 All E.R. 367***, the Court explained the principle of exemplary damages thus:

“The fact that the injury to the plaintiff has been aggravated by the malice or by the manner of doing the injury, that is the insolence or arrogance by which it is accompanied, is no justification for an award of exemplary damages: aggravated damages can do in this type of case what otherwise could be done by exemplary damages.”

The Nigerian Supreme Court followed that view in the case of ***Bakare vs. Olumide (1969) All N.L.R 755 at 764 to 765.***

Also, in the case of: ***K. F. INVESTMENT NIGERIA LTD vs. NIGERIA TELECOMMUNICATIONS PLC. (2009) Vol.39 NSCQR p.426 at 459, I.F. Ogbuagu, JSC*** explained thus:

“Exemplary, punitive, vindictive or aggravated damages where claimed, are usually awarded, whenever the defendant or defendants' conduct, is sufficiently, outrageous to merit punishment as where for instance, it discloses malice, fraud, cruelty, insolence, or flagrant disregard of the law and the like.”

Again in the case of: ***Zenith Bank Plc. Vs. Business Gold Ltd. (2017) 17 NWLR (Pt.1595) 489 at 492***, the Court held thus: ***“Exemplary, punitive, vindictive or aggravated damages are awarded, wherever the defendants' conduct, is sufficiently, outrageous to merit punishment.”***

Taking all the circumstances into consideration, it is not difficult to appreciate the trauma and pain which the 1st Defendant must have been passing through since the Claimant unlawfully deposed him in flagrant disregard to the due process of law. I am of the view that the Claimant's conduct is sufficiently

outrageous to warrant punishment by the imposition of exemplary, punitive, vindictive or aggravated damages.

However, the quantum of damages will depend on the evidence of what the Counter Claimants have suffered from the acts of the Claimant. In the course of the trial, the 1st Defendant led evidence of his travails arising from the conduct of the Claimant. He stated *inter alia* that he has been seriously injured in his credit, character, reputation and traditional offices and has been brought into hatred, odium, ridicule and contempt. That he has also suffered emotional upset, shock, psychological trauma and embarrassment as a result of the acts and conduct of the Claimant and that he received phone calls and visits from well-meaning people and concerned Weppa-Wanno citizens from far and near when they heard of the purported deposition.

Incidentally, the Counter-Claimants split their claims for damages into three heads as follows: ***Exemplary damages in the sum five billion naira; Aggravated damages in the sum of four billion naira; and Punitive damages in the sum of three billion naira.*** The normal practice is to consolidate the three into one single head of ***Exemplary, punitive, vindictive or aggravated damages.***

The approach adopted by the Counter-Claimants amounts to double compensation. The courts have been admonished to avoid double compensation. See: ***ACB Plc. vs. Victor Ndoma-Egba (2001) FWLR (Pt.40) 1780 at 1797.*** The court will not allow double compensation with claims under different heads for the same loss suffered. See: ***Akwa Rubber Estates Ltd. vs. Iju Industries Ltd. (2001) FWLR (Pt.71) 1760 at 1779; and Union Bank Plc. & Anor. vs. Alhaji A.Ishola (2001) FWLR (Pt.81) 1868 at 1898.***

Applying the foregoing principles to the instant case I think the lump sum of N3, 000,000.00 (three million naira) will be adequate compensation for the 1st Defendant as exemplary, punitive, and aggravated damages.

On the part of the 2nd Defendant, there is no clear evidence of the injury which they suffered from the act of the Claimant. The general rule however is *ubi jus, ibi remedium* (where there is a right there must be a remedy).

Ordinarily, general damages would have been an appropriate remedy for the 2nd Defendant. However, there is no specific claim for general damages. The rule is that general damages must be pleaded and should be shown to have been suffered although the quantification of the measure is at the discretion of the Court. See: *Yahaya vs. Chukwura (2002) FWLR (Pt.87) 732 at 749*. In the absence of a specific claim for general damages, I think the 2nd Defendant is entitled to the award of nominal damages.

In the case of: *Samuel Obere vs. The Board Of Management Eku Baptist Hospital NSCQR (1978) page 596*, the court explained the rationale for the award of nominal damages thus:

“At common law, nominal damages is a technical phrase. It means that the plaintiff had negatived anything like real damage. It means that he (the plaintiff) is affirming that by his nominal damages there is an infraction of a legal right which, though it gives him no right to any real damages at all, yet gives him a right to the verdict or judgment because his legal right had been infringed. (See: The Mediana (1900) AC 113 at p.116).”

Also, in the case of: *Ganiyu Badmus Appellants & Dantata Transport Limited vs. Abegunde (1999) 11 NWLR (Pt.627) 493*, the court expounded thus:

"Damages are not necessarily nominal because they are small in amount. The term nominal damages is a technical one which negatives any real damage, and means nothing more than that a legal right has been infringed in respect of which a man is entitled to judgment."

Applying the foregoing principles to the instant case I think the sum of N500,000.00 (five hundred thousand naira) will be adequate compensation for the 2nd Defendant as nominal damages.

On the whole, I hold that the Claimant has failed to prove his Claims against the Defendants and the Claims are accordingly dismissed.

On the other hand the Counter-Claims of the Defendants succeed and they are granted as follows:

- a. A Declaration that the claimant is not the person customarily recognized to proclaim, fix and announce the dates of Ukpe festival or any Weppa- Wanno traditional festival;***
- b. A Declaration that Weppa-Wanno is a clan and not a kingdom;***
- c. A Declaration that the Claimant and his Okumagbe-in-council are not customarily and traditional empowered and endowed to perform any of the customary and traditional function of the Owai (chief priest) and the Owai family/kindred;***
- d. A Declaration that the purported deposition of the 1st defendant as the Owai (chief priest) of Weppa-Wanno is uncustomary to Weppa – Wanno custom, tradition and culture;***
- e. An order setting aside the purported deposition of the 1st defendant as the Owai (chief priest) of Weppa –Wanno clan as contained in the letter authorized by the claimant dated 10/10/2011;***
- f. An order of injunction restraining the Claimant from holding himself, parading himself or allowing himself to be called His Royal Majesty, the Okumagbe of Weppa-Wanno kingdom instead of His Royal Highness, the Okumagbe of Weppa-Wanno clan;***
- g. An order of injunction restraining the claimant, his servants ,agents, privies and those claiming through him from or to function on the customary and traditional duties of the defendants;***
- h. An order directing and compelling the claimant to limit his traditional and administrative functions to the governance of Weppa-Wanno without interfering with the traditional functions of the Defendants;***

- i. Exemplary, Aggravated and Punitive damages in favour of the 1st Defendant in the sum of N3, 000,000.00(three million naira);*
- j. Nominal Damages in favour of the 2nd Defendant in the sum of N500,000.00 (five hundred thousand naira); and*
- k. A formal retraction of the offending letter deposing the 1st Defendant and a written apology to the Defendants.*

Costs is assessed at N20, 000.00 in favour of all the Defendants/Counter-Claimants.

P.A.AKHIHIERO
JUDGE
10/07/18

COUNSEL:

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- 2. F.G. OIKERHE ESQDEFENDANTS/COUNTER-CLAIMANTS**

