

**IN THE COURT OF APPEAL**  
**EKITI JUDICIAL DIVISION**  
**HOLDEN AT ADO-EKITI**

**ON TUESDAY THE 15<sup>TH</sup> DAY OF MARCH, 2022**

**BEFORE THEIR LORDSHIP.**

HON. JUSTICE T.N. ORJI-ABADUA...(Presiding) JUSTICE COURT OF APPEAL

HON. JUSTICE T. O. AWOTOYE ..... JUSTICE COURT OF APPEAL

HON. JUSTICE ABDUL-AZEEZ WAZIRI..... JUSTICE COURT OF APPEAL

**APPEAL NO. CA/EK/81/2021**

**BETWEEN:**

**RETIRED SERGEANT ADU FASUNLADE**

(for himself and on behalf of members of the  
Agunsoye Ruling House of Imesi-Ekiti)

..... **APPELLANT**

**AND**

**1. HIGH CHIEF DR. OLUWADARE ADEYEMO**

(The Balogun of Imesi-Ekiti for and on behalf  
Of one other Imesi-Ekiti Kingmakers except the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants)

**2. HIGH CHIEF SOLOMON BABATUNDE ADEGITE**

(The Emila of Imesi-Ekiti)

**3. HIGH CHIEF JOSEPH ADEMILUYI ADEMUAGUN**

(The Ofoji of Imesi-Ekiti)

**RESPONDENTS**

## **JUDGMENT**

**(DELIVERED BY HON. JUSTICE TUNDE O. AWOTOYE, (JCA)**

This is the judgment in respect of the appeal filed by the Claimant/Respondent against the Ruling of Ekiti High Court of Justice Ado Ekiti decided on **21/01/2021**.

It is in respect of the application of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Applicants seeking for an order striking out the suit No: HAD/60/2019 for lack of jurisdiction.

The grounds of the application are:

- a. The Claimant/Respondent vide his amended writ of summons filed on 4<sup>th</sup> February, 2020 sought some reliefs before this Honourable Court which pertain to and/or border on the selection process, inter alia, for filling the vacant stool of Onimesi of Imesi-Ekiti.
- b. The res in this matter which is the vacancy of the stool of Onimesi of Imesi-Ekiti has been overtaken by events and no longer exist as the said vacant stool is now being occupied by Oba Festus Olaunji Olatunde.
- c. Consequently this suit has become an academic exercise as the judgement of this Honourable Court made in respect of the aforesaid matter will be held nugatory and an exercise in futility.

- d. The subject matter of the substantive suit has become redundant and no longer alive for a useful consideration or adjudication which the Honourable Court cannot validly engage in.
- e. This matter in view of the foregoing has become non justifiable and cannot be properly disposed of or determined by this Honourable Court.
- f. This Honourable Court lacks the jurisdiction to entertain the suit as presently constituted.
- g. The interest of justice will not be served if this application is not granted.

After hearing the parties, the learned trial Judge held as follows:

"In my humble opinion, selection or appointment of warrant chiefs in respect of Onimesi Chieftaincy stool is no more a live issue when a substantive Onimesi of Imesi Ekiti has been selected, appointed and installed. The law is settled that Courts in Nigeria follow a load principle that they exercise their jurisdiction with respect to only live issues and would not dabble into matters that are academic, fanciful or hypothetical. **See Odom & Ors v. PDP & Ors (2013) LPELR 21195 (CA).** it is my humble opinion that no useful purpose will be attained by hearing this came on its

merit other than its mere academic interest in view of the affidavit evidence before the Court and I so hold."

Miffed by the above ruling the appellant filed a Notice Of Appeal containing two grounds of appeal.

#### AMENDED GROUNDS OF APPEAL

##### GROUND 1

The learned Trial Judge erred in law when he held that the Appellant's suit has become academic and as declined jurisdiction to entertain the matter. And this has occasioned a miscarriage of justice.

##### GROUND 2

The judgment of the learned Trial Judge is against the weight of evidence. Other grounds of appeal will be filed later upon the receipt of the record or appeal.

Parties subsequently filed and exchanged briefs of argument after transmission of record of appeal to the Court.

#### BRIEF OF ARGUMENT

The appellant's brief of argument was settled by TAIWO MARTINS OGUNMOROTI his counsel. The brief was filed on 11/11/2021 but deemed filed on 12/11/2021.

Learned counsel for the appellant formulated three issues for determination in his brief.

Learned counsel for 2<sup>nd</sup> and 3<sup>rd</sup> Respondent's Brief of Argument, S.A LONGE filed the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent's brief of argument on 9-12-2021. Learned counsel proposed two issues for determination to wit:

- a. Whether by the facts of the case and the circumstances of the appellants claim, is the trial court not right in holding that the case no longer have live and as such it is unnecessary as it has become an academic exercise hence the court lacks jurisdiction to entertain same.
- b. Whether the trial court fully considered the entire claim of the claimant as shown in the amended writ of summons and amended statement of claim before declining jurisdiction to entertain the suit.

#### SUBMISSIONS OF COUNSEL

The submissions of counsel are contained in their respective briefs of argument.

#### RESOLUTION OF ISSUES

I have carefully considered the issues proposed by learned counsel on all sides.

I shall adopt the issues as formulated by learned counsel for the appellant he being the counsel for the aggrieved in this appeal, I shall therefore adopt the issues formulated in his brief.

#### ISSUSE ONE

Whether the learned trial judge properly declined jurisdiction or appropriately, correctly or rightly held that the Appellant's suit has become an academic exercise.

### ISSUE ONE

Whether the learned trial Judge properly declined jurisdiction or appropriately, correctly or rightly held that the Appellant's suit has become an academic exercise?

### ISSUE TWO

Whether the heavy reliance on Exhibit A the purported instrument of appointment by the learned trial Judge has not occasioned a miscarriage of Justice.

### ISSUE THREE

Whether the default, neglect, refusal, omission and failure of the learned trial Judge to consider reliefs "a" "b" and "c" of Appellant being independent reliefs did not occasion a miscarriage of justice?

L.O OGUNDELE on behalf of 1<sup>st</sup> Respondent prepared first Respondent's brief of argument which was filed on 12-1-2022 but deemed on 17/2/2022.

Learned counsel for the 1<sup>st</sup> Respondent identified three issues for determination as follows:

- i. Whether the lower court rightly declined jurisdiction to entertain the Appellant's suit namely suit No: HAD/60/2019
- ii. Whether the lower court was right in relying on Exhibit A (the Instrument of Appointment)
- iii. Whether the lower court was right in refusing to consider reliefs (a) (b) and (c) being sought in the Appellants Amended Originating Processes.

The claim of the appellant/claimant as per paragraph 14 of his statement of Claim read as follows:

- a. "A declaration that the claimant is a member and head of the Agunsoye Ruling House of Imesi-Ekiti
- b. A declaration that the Defendant and three others namely:
  - (i)High Chief Solomon Babatunde Adegite (the Emila)
  - (ii)High Chief Joseph Ademulyu Ademuagun and
  - (iii)High Chief Noah Ademilehin Ajayi (the Oore) are the subsisting kingmakers into the Onimesi Chieftaincy stool.
- c. A declaration that by native law and custom of Imesi Ekiti on the Onimesi Chieftaincy Stool. It is the duty of the Kingmakers into the Onimesi Chieftaincy Stool to select from the list of candidates forwarded to them by the Claimant who is head of the Agunsoye Ruling House.
- d. A declaration that any selection or appointment of warrants Chief in the Onimesi Chieftaincy Stool is not necessary nor warranted since the 4 subsisting kingmakers are already a quorum.
- e. An order on the Defendant to select the next Onimesi from list of four candidates availed or sent to him by the Claimant.
- f. An order of perpetual or permanent injunction restraining the Defendant his agents, prices, servants, assigns or representatives from working with any warrant Chiefs concerning or appertaining to the Onimesi Chieftaincy Stool now and forthwith".

It is the contention of the appellant that there are two ruling houses in Imesi-Ekiti namely OMILODI and AGUNSOYE. The Onimesi Chieftaincy title is presently vacant. The Secretary of Gboyin Local Government had directed the AGUNSOYE Ruling House to produce the next Onimesi'.

The appellant forwarded four names of qualified candidates to the Kingmakers but the Kingmakers were bent on going ahead to choose a candidate contrary to custom. The Kingmakers wanted to make use of warrant chiefs when the living chiefs and subsisting ones were adequate. He therefore sought the aforestated reliefs.

When this action was instituted, the stool of Onimesi of Imesi Ekiti was vacant. However the vacant stool has now been filled by Oba Festus Olatunji Olatunde. Exhibit A is the Instrument of Appointment (attached to the affidavit in support of motion to strike out the suit). Based on this, the applicants at the Lower Court urged the Court to strike the claim out for want of jurisdiction it being merely academic. This lower court did hence this appeal.

When is a suit considered academic? Once a suit no longer has live issues for determination. Such a suit is said to be academic. See OYENEYE v. ODUGBESAN (1972)4SC. P.244; BAKARE v. ACB LTD (1986)JNWLR (pt26)p.37, NKWOCHA v. GOVERNOR OF ANAMBRA STATE (1984)1SCNLR p. 634.

Tobi JSC in ADEOGUN & ORS v. FASOGBON & ORS (2008)17 NWLR PART 1115 p.149 explains the meaning of an academic or hypothetical issue in another way thus:

"Academic and hypothetical issues or question do not help in the determination of the live issues in a matter. They are merely an a frolic or they are frolic-same; not touching or

affecting the very tangible and material aspects of the adjudicatory process.....they do not relate to any relief".

The appellant at the lower Court sought for declaratory relief....a judicial interpretation of a given set of circumstances. Issues were joined on the declaratory reliefs. Ex facie this is what a court should do to deliver and interpret the law. See *EPEROKUN & ORS v. UNILAG* (1986)4 NWLR PART 34 p.162.

However the reliefs sought by the appellant impact upon the Onimesi Chieftaincy stool which has just been filled. There is no relief challenging the appointment or installation of the new Onimesi in any way. It is regarded in my view as a *FAIT ACCOMPLI*. It follows therefore that reliefs (a-d) of the claim though are declarations they are inseparably connected with the installation of the new Onimesi----a completed act.

It seems to me that nothing useful can be achieved by this action since it does not challenge the appointment and installation of the new Onimesi in any way. The action makes empty sound. It has no utilitarian value for the appellant. It is merely academic. A court of law does not have jurisdiction to determine such a matter. According to *Muntaka-Commassie JSC. In DREXEL ENERGY & NATURAL RESOURCES LTD & ORS v. TRANS INTERNATIONAL BANK LTD & ORS* (2008)18 NWLR PART 1119 page388:

'It is trite that when an issue becomes academic or hypothetical in nature a Court of law will have no jurisdiction to hear or determine it. See *ZENITH BANK LTD v. SAMATECH LTD* (2007)16NWLR (pt 1060)315 at314, *LAWANI ALLI & ANOR v. GBADAMOSI ALESINLOYE* (2000)4SC (pt 1)111, (2000)4SCNJ 264 at 267 per IGUH JSC.'

I therefore resolve this issue against the Appellant in the circumstance.

I SHALL TAKE ISSUES 2 AND 3 TOGETHER

Having resolved issue 1 and issue 1 being so closely intertwined with issues 2 and 3, I consider it unnecessary to dwell on the remaining issue 2 and 3. The substance of issues 2 and 3 has been treated under issue 1.

The whole gravamen of the whole action centres on the installation of a new Onimesi. Unfortunately during the pendency of the action, a new Onimesi was installed and his installation and appointment is not being challenged in this action. I resolve issues 2 and 3 also in favour of the Respondents but against the Appellant.

When a seat is vacant and there are contenders for the seat, each contender struggles and races to get to the seat. In the course of doing this sorts of methods are employed. But as soon as the seat or throne is filled another era starts. The time for reconciliation, the time to make peace, the time to plan and work for the betterment of the concerns society commences.

Every good contender should know when one era comes to an end and another starts. He needs to know what is expected of him in the new era. This is in the interest of the society at large. It is necessary for progress. It is necessary for peace.


The truth of the matter in the instant appeal is that the stool of **ONIMESI OF IMESI-EKITI** is no longer vacant. All the parties in this appeal should accept this fact and let peace reign.

This action is now devoid of any practical utilitarian value.

The lower Court ceases to have jurisdiction in the circumstance.

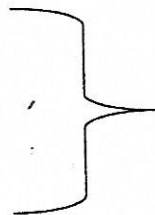
I hereby affirm the Ruling of the lower Court delivered on **21/1/2021**.

This appeal lacks merit. It is accordingly dismissed with ₦500,000 costs awarded in favour of the Respondents but against the Appellant.

  
**TUNDE O. AWOTOYE**  
**JUSTICE, COURT OF APPEAL**

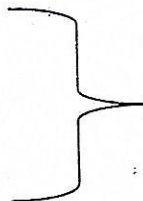
**APPEARANCES**

**Taiwo Ogunmoroti Esq. with  
Ayantunde Adeleke Esq.  
Olumide Olowolafe Esq.**



**Appellant**

**L.O Ogundele Esq. with  
Idowu Owoeye Esq.  
A.O. Akinwande Esq.**



**1<sup>st</sup> Respondent**

**S.A. Longe Esq.**

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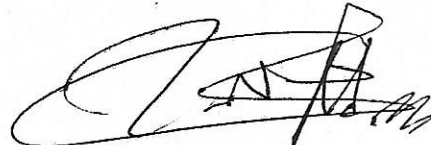
**2<sup>nd</sup> & 3<sup>rd</sup> Respondent**

**CA/EK/81/2021**

**CONTRIBUTION**

**THERESA NGOLIKA ORJI-ABADUA, PJCA.**

**I agree.**

A handwritten signature in black ink, appearing to be 'T. Orji-Abadua', written over a horizontal line.

**Theresa Ngolika Orji-Abadua,  
Presiding Justice, Court of Appeal.**

**CA/EK/81/2021**

**ABDUL-AZEEZ WAZIRI, JCA.**

I read in draft the lead judgment delivered by my learned brother **T.O. Awotoye, JCA**, and I agree with his reasoning and conclusion that the appeal was just a hypothetical academic exercise, an exercise which does not engage the attention of courts since they are not the proper Fora for its ventilation. See the cases of ***IMEGWU VS. OKOLOCHA (2013) 9 NWLR (PT. 1359) 347 ABE VS. UNILORIN (2013) 16 NWLR (PT. 1379) 183.*** As it is well known the Appeal has no utilitarian value.

In all, therefore, I hereby enter an order dismissing the appeal as lacking in merit.

I abide by the order as to costs contained in the lead judgment against the Appellant and in favour of the Respondents.

  
**ABDUL-AZEEZ WAZIRI**  
**JUSTICE, COURT OF APPEAL.**