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

ON WEDNESDAY THE 5TH DAY OF DECEMBER, 2012
BEFORE THEIR LORDSHIPS:

JIMI OLUKAYODE BADA	- -	**JUSTICE, COURT OF APPEAL**
EJEMBI EKO	- -	**JUSTICE, COURT OF APPEAL**
MODUPE FASANMI	- -	**JUSTICE, COURT OF APPEAL**

CA/AE/69/2010

BETWEEN:

1. **OBA ADEYEYE OLADIMEJI**
   (The Onimesi of Imesi Ekiti)
2. **CHIEF SOLOMON BABATUNDE ADEGITE**
   (The Emila)

} **APPELLANTS**

AND

CHIEF NOAH A. AJAYI - - - - - **RESPONDENT**
(The Oore of Imesi Ekiti)

JUDGMENT
(DELIVERED BY JIMI OLUKAYODE BADA, J.C.A)

This is an appeal against the Judgment of High Court of Justice, Omuo Judicial Division in Ekiti State, in Suit No: **HCL/51/2000** – **CHIEF NOAH A. AJAYI VS. OBA ADEYEYE OLADIMEJI** & 1 Other, delivered on 21st day of April, 2009.

Briefly, the facts of the case are that the 1st Appellant is the Traditional Ruler of Imesi-Ekiti and the prescribed authority of the town. The second appellant is the Emila of Imesi-Ekiti.

The Respondent, the Oore of Imesi-Ekiti instituted the action at the lower court against the Appellants and claimed as follows:

> *"(a) A declaration that by the history, native law and custom of Imesi-Ekiti, the plaintiff is a High Chief, a Kingmaker, one of the Iwarefas in Imesi-Ekiti, fifth in rank to the Oba and head of Oke-Ode Quarters of Imesi-Ekiti.*
>
> *(b) A perpetual injunctive order restraining the first defendant, his agents, servants and privies from denying plaintiff, in any manner, at any time and in any place whatsoever, and of the benefits, honour or perquisites appertaining to the plaintiff's title by the history, native law and custom of the title.*
>
> *(c) An order on the first defendant to de-recognize second defendant as an Iwarefa Chief and head of Oke-Ode Quarters, Imesi-Ekiti but to restore him to his*

traditional position of an ordinary chief under plaintiff.

(d) An order restraining second defendant from parading, styling and calling himself an Iwarefa or head of Oke-Ode Quarters, Imesi-Ekiti and taking any benefit appertaining thereto but to confine himself to his minor title under plaintiff".

At the conclusion of hearing, the learned trial Judge in his judgment granted the plaintiff's claims. It is against this judgment that this appeal was lodged.

The learned counsel for the Appellants formulated five issues for determination of the appeal. The issues are set out as follows:

*(i) Whether it was proper for the learned trial Judge to have **suo motu** struck out Exhibits A23, A24, A25 and letter dated 9/11/99 attached to A34, and A36 on the ground that the said Exhibits did not contain illiterates jurats.*

(ii) Whether the lower court was not wrong for its failure or refusal to attach probative value to 1933 Weir Intelligence Report admitted as Exhibit A19 or A48 before the lower court.

(iii) Whether from the totality of pleadings and evidence on record, it can rightly be said that the respondent is an Iwarefa, and 5th in Rank to the 1st Appellant.

(iv) Whether it was right for the lower court to have de-recognized the 2nd appellant as an Iwarefa and head of Oke-Ode Quarters in view of the convincing evidence both oral and documentary placed before the lower court by the parties.

(v) Whether the trial court exercised its judicial discretion properly when it granted all the declaratory and injunctive reliefs sought by the Respondent."

The learned counsel for the Respondent in his own case formulated three issues for the determination of the appeal. The issues are set out as follows:

"(1) Whether the learned trial Judge rightly struck out Exhibits A23, A24, A25 and the letter dated 9/11/99 attached to Exhibits A34 for being inadmissible in law.

(b) Whether the learned trial Judge was right not to have attached probative value to

The

Exhibits A19 or A48 the 1933 Weir Intelligence Report.

(c) *Whether the Respondent proved his case as to entitle him to the reliefs granted him by the learned trial Judge.*

At the hearing of this appeal the learned counsel for the Appellants wrote a letter for adjournment.

The learned counsel for the Respondent opposed the application

The application for adjournment was refused by this court on the ground that learned counsel for the Appellants (Bamidele Omotoso & Co.) explained the reasons for his absence from court but did not explain the reasons for the absence from court of other Counsel working in his chambers.

See: **ADEKA VS VATIA (1987) 1 NWLR PART 48 PAGE 134.**

The appeal then proceeded for hearing.

Learned counsel for the Respondent referred to the Respondent's brief of argument filed on 31/10/2012. He adopted the said brief as his argument in the appeal and urged that the appeal be dismissed.

Pursuant to Order 9, Rule 4 of the Court of Appeal Rules 2011, the appeal was treated as being duly heard since all briefs have been filed.

I have carefully examined the issues formulated for determination on behalf of the parties in this appeal and it is my view that the issues formulated on behalf of the Respondent encapsulate the issues formulated on behalf of the Appellants.

In the circumstance, I hereby adopt the issues formulated for the determination of this appeal on behalf of the Respondent.

ISSUE A:

Whether the learned trial Judge rightly struck out Exhibits A23, A24, A25 and the letter dated 9/11/99 attached to Exhibits A34 and A36 for being inadmissible in law.

The learned counsel for the Appellants in his submission stated that the lower court struck out Exhibits A23, A24, A25 and the letter dated 9/11/99 attached to Exhibits A34 and A36 on the ground that the said Exhibits did not contain Illiterates jurat.

He argued that none of the parties in this appeal raised objection against the authenticity of the contents of the said exhibits. He went further that the said Exhibits were tendered by the Respondent.

He submitted that the issue of illiteracy is a question of fact to be decided objectively on the evidence presented to the court. He

relied on the case of – **FRANCIS ANAEZE VS ANYASO (1993) 5 NWLR PART 291 PAGE 1** at **22.**

He went further in his submission that striking out of the said Exhibits particularly Exhibit A24 authored and tendered by the Respondent has occasioned a miscarriage of Justice. He stated that if the lower court had attached probative value to Exhibit A24 it would have arrived at a different conclusion.

He relied on the case of **FRANCIS ANAEZE VS UDE ANYASO (SUPRA).**

He finally urged this court to resolve this issue in favour of the Appellants.

The learned counsel for the Respondent referred to Section 3 of the Illiterates Protection Law of Ondo State as applicable to Ekiti State. He submitted that it is mandatory that the Exhibits under consideration ought to have contained Illiterates Jurats, the absence of which made them inadmissible.

He relied on the following cases:

- **ITAUMA VS IME (2000) 7 SCNJ PAGE 40** at **57.**
- **EZEIGWE VS AWUDU (2008) 11 NWLR PART (1097) PAGE 158** at **178B.**
- **ITA VS EKPEYONG (2001) 1 NWLR PART 695 PAGE 587 at 613 D – E.**

He went further in his submission that the lower court rightly struck out the Exhibits having found them inadmissible notwithstanding that they were originally admitted.

Learned counsel for the Respondent submitted further that the striking out of Exhibit A24 by the lower court has not in any way occasioned any miscarriage of justice since same would not have affected the decision of the learned trial Judge in any way.

He urged that the issue be resolved in favour of the Respondent.

It was contended on behalf of the Appellants that the learned trial Judge wrongly struck out Exhibits A23, A24, A25 and the letter dated 9/11/99 attached to Exhibits A34 and A36 on the ground that the said Exhibits did not contain Illiterates Jurats.

On the other hand the learned counsel for the Respondent submitted that the learned trial Judge rightly struck out the said Exhibits for being inadmissible.

It is in evidence that Exhibit A23 is the Onimesi-in-Council's letter dated 22/8/88 addressed to the then Ondo State Government of which the subject matter is the inclusion of the Respondent as an Iwarefa in Imesi-Ekiti.

Exhibit A24 dated 7/8/80 is about conferment of Osigun Chieftaincy title on members of Asemo, Ojumu, Aribo and Owaponri families of Imesi-Ekiti.

Exhibit A25 is a letter of warning dated 27/9/97.

The issue under consideration is whether the learned trial Judge rightly struck out Exhibits A23, A24, A25 and the letter dated 9/11/99 attached to Exhibits A34 and A36 for being inadmissible in law.

Section 3 of the Illiterates Protection law of Ondo State as applicable to Ekiti State provides as follows: -

> *"Any person who shall write any letter or document at the request, on behalf or in the name of any illiterate shall also write on such letter or other document his own name as the writer thereof and his address, and his so doing shall be equivalent to a statement.*
>
> *(a) That he was instructed to write such letter or document by the person for whom it purports to have been written and that the letter or document fully and correctly represents his instructions; and*
>
> *(b) If the letter or document purports to be signed with the signature or mark of the illiterate person, that prior to its being so signed. It was read over and explained to the illiterate person and that the signature or mark was made by such person."*

The position of the law is that non-compliance with the requirement of the law i.e. Illiterate Protection Law does not render a

document void but only voidable at the instance of the illiterate person. In other words, the absence of a jurat in a document signed by an illiterate does not render the document null and void.

See: **WILSON VS OSHIN (2000) 6 S.C PART III PAGE 1.**

A careful perusal of the Record of Appeal would reveal that none of the parties or authors of the said Exhibits raised any objection against the authenticity of the contents of the said Exhibits which were tendered through the Respondent.

Also the Respondent who testified in English Language did not deny the fact that he signed any of the Exhibits.

It is my view that it is only an illiterate person that can raise objection against the authenticity of any document purportedly signed by him and no other person. Furthermore, the Illiterate Protection Law is designed to protect illiterates from exploitation by being made to sign or acknowledge a writing or document which does not bear out their real intention.

See: **ANAEZE VS ANYASO** (Supra).

Furthermore, the said Exhibit under consideration should have been read as a whole, if it was not struck out the lower court would have arrived at a different decision. This is because the consideration of the said Exhibits along with the other Exhibits would have given the trial court a broad perspective of the whole situation under consideration.

In view of the foregoing the learned trial Judge was therefore wrong in striking out the said Exhibits A23, A24, A25 and the letter attached to Exhibits A34 and A36 for being inadmissible in law.

This Issue A is therefore resolved in favour of the Appellants against the Respondent.

ISSUE B:

Whether the learned trial Judge was right not to have attached probative value to Exhibit A19, or A48 the 1933 Weir Intelligence Report.

The learned counsel for the Appellants stated that both parties in this appeal tendered in evidence Certified True Copies of the 1933 Intelligence Report at the lower court. Appellants tendered the report and it was admitted and marked as Exhibit A48, while the Respondent tendered the same report in evidence and it was admitted as Exhibit A19.

He submitted that the Intelligence Report is relevant in that it is a public document. He relied on the following cases: -

- **NTEOGWUILE VS OTUO (2001) 16 NWLR PART 738 PAGE 58** at **91 PARAGRAPH C – F.**
- **OYENUGA VS I.C.L (1991) 1 NWLR PART 168 PAGE 415** at **422.**

The learned counsel for the Appellants stated that the Respondent is not an illiterate. He referred to page 73 of the Record of Appeal where he (the Respondent) gave evidence in English.

It was submitted further on behalf of the Appellants that the lower court was wrong when it relied on the evidence of the Respondent to vary the said Intelligence Report.

Learned counsel for the Appellants finally submitted that if the trial Judge had attached probative value to the Intelligence Report, he would have arrived at a different conclusion.

He then urged this court to resolve this issue in favour of the Appellants.

The learned counsel for the Respondent submitted that the learned trial Judge was right for not placing much reliance on Exhibits A19 or A48. He went further that the evidence proffered by the Appellants is contradictory.

He relied on the following cases:

- **ONISADU VS ELEWUJU (2006) 13 NWLR PART 998 PAGE 517 at 529 – 532 PARAGRAPHS G – C.**
- **ODI VS IYALA (2004) 8 NWLR PART 876 PAGE 213 at 308 PARAGRAPH E – F.**

Learned counsel for the Respondent submitted that Appellants' evidence is contrary to the Intelligence Report.

He submitted further that once a document or previous document is found to be inconsistent with the evidence at the trial the

correct approach is that the court should not merely be directed that the evidence given at the trial be regarded as unreliable but should also be directed that the previous statement whether sworn or unsworn, does not constitute previous evidence on which the court can act.

He relied on the following cases:

- **BAKARE VS BELLO (2003) 17 NWLR PART 848 PAGE 154 at 170 - 171 PARAGRAPHS G – A.**
- **MADUGBUM VS NWOSU (2010) 13 NWLR PART 1212 PAGE 625 at 648.**
- **ODEJIDE VS FAGBO (2004) 8 NWLR PART 37 PAGE 547.**
- **NWANKWO VS ABAZIE (2003) 13 NWLR PART 834 PAGE 381 at 422 PARAGRAPH A – H.**

He finally urged that this issue be resolved in favour of the Respondent.

In this appeal, both parties, that is, the Appellants and the Respondent tendered the 1933 Weir Intelligence Report as Exhibits A48 and A19 respectively. Therefore, the said report is important to both parties.

The said Exhibits A48 or A19 is a public document under **SECTION 102 OF THE EVIDENCE ACT 2011.**

The above mentioned Exhibits were authored by a Public Officer as far back as 1933. It showed the hierarchy of Chiefs in Imesi-Ekiti. It recognized the 2nd Appellant as the head of Oke-Ode Quarters and

as an Iwarefa and placed him as the 4th in rank among the Iwarefas or High Chiefs and 5th in rank to the 1st Appellant.

In the case of **NTEOGWUILE VS OTUO (SUPRA)**, the Supreme Court held among others that: -

> *"An Intelligence Report is a public document made by a Public Officer and is presumed to contain a true information and is admissible in evidence. In the case of* **THE IRISH SOCIETY VS THE BISHOP OF DERRY 12 CI & F 641** at **668 (See: 8 E.R 1561 at P.15731) MR. BAROH PARKE,** *said:*
>
> > "In public documents made for the information of the crown or all the King's subjects who may require the information they contain, the entry by a Public Officer is presumed to be true when it is made, and it is for that reason receivable in all cases whether the Officer or his successor may be concerned in such case or not."
>
> "An Intelligence Report is a public document under Section 109 of the Evidence Act and is receivable in evidence in appropriate circumstances and given due consideration by the court."

Apart from the 1933 Weir Report i.e. Exhibits A48 or A19, there is also Exhibit A24 prepared several years ago to which the Respondent was a signatory. In the said Exhibit A24, the 2nd Appellant was acknowledged as an Iwarefa while the Respondent was referred to as Olojua.

It is trite law that a document signed without compulsion implies that the person who subscribes his signature thereto intends his signature to authenticate its contents and in the absence of misinterpretation, the person who signed is bound by the legal effect thereof.

See the following cases: -

- **MRS FARI VS FEDERAL MORTGAGE FINANCE LTD (2004) ALL FWLR PART 235 PAGE 27** at **55.**

- **ALHAJI ZEIN VS. ALHAJI GEIDEM (2004) ALL FWLR PART 237 PAGE 457** at **481.**

Part of Exhibit A24 reads thus:

> *"Whereas Osigun Chieftaincy is sixth in rank to the Oba (Onimesi of Imesi Ekiti) and one of the Iwarefa (High) Chiefs of Imesi-Ekiti. The order of importance of these Iwarefa Chiefs is as follows:*
>
> *(i) KOLAYE*
>
> *(ii) ODOFIN IDOGUN*
>
> *(iii) BALOGBO*

(iv) EMILA

(v) OSIGUN

(vi) OFOJI AND OORE AS OLOJUA"

A careful consideration of Exhibit A48 or A19 as the case may be on one hand and Exhibit A24 on the other hand would reveal that the contention of the Respondent that the 2nd Appellant EMILA was slotted or smuggled into the intelligence report in 1933 cannot be correct because the Respondent went ahead and appended his signature to Exhibit A24 many years after Exhibit A48 or A19 was prepared.

It would be recalled that the Respondent tendered in evidence the two documents i.e. Exhibits A19 and A24.

A close examination of the Respondents' pleading along with Exhibits A19 and A24 would reveal that the said Exhibits are contrary to or at variance with the pleadings. In the circumstance, the evidence proffered by the Respondent goes to no issue and ought to be discountenanced. See the case of: **OLANUDA VS TEMIYE (2002) 2 NWLR PART 750 PAGE 21 AT 34 PARAGRAPHS G-H**

Furthermore, it is trite that documentary evidence is the best evidence and extrinsic evidence cannot be admitted to contradict add, or vary the provisions contained in a document.

See:- **SECTION 128 (I) OF THE EVIDENCE ACT 2011**

In the instant appeal under consideration, the evidence of the Respondent that he, the ***EMILA*** was slotted or smuggled in the

Intelligence Report in 1933 cannot alter, add to or vary the content of the intelligence Report. The learned trial Judge was therefore wrong to have relied on the evidence of the respondent to vary or alter the Intelligence Report.

It is therefore my view that the failure of the Learned trial Judge to attach probative value to the Intelligence Report has occasioned a miscarriage of Justice. If the Intelligence Report had been accorded the status it deserved, the Respondent's case would have been dismissed.

This issue No. B is resolved in favour of the Appellants.

ISSUE C:

Whether the Respondent has proved his case as to enable him to the reliefs granted him by the Learned trial Judge.

The learned Counsel for the Appellants relied on his submission on Issue B. And in addition he submitted that a Party seeking declaratory reliefs like the Respondent must satisfy the court that he is fully entitled to the exercise of Court's discretion in his favour by adducing cogent, positive evidence in proof of his claim.

He relied on the case of: - **AJAGUNGBADE III VS ADEYELU II (2001) IT NWLR PART 738 PAGE 126 AT 191-192 PARAGRAPH G - C.**

He submitted further that the Respondent failed to discharge the burden of proof on him. He referred to Exhibits A4, A23, A24 and A42 all of which he said were tendered against the interest of the Respondent in that they did not support the Respondent's claim.

He relied on the case of:-

- **ONWUDINJO VS DIMOBI (2006) 1 NWLR PART 961 PAGE 337 – 338**
- **ATTORNEY GENERAL ENUGU STATE VS AVOP PLC (1995) 6 NWLR PART 399 PAGE 90 AT 120-121**

It was submitted further on behalf of the Appellants that oral evidence cannot alter, vary, subtract from or add to the contents of a written document.

He stated that the intelligence Report recognized the Second Appellant, as an Iwarefa and head of Oke-Ode Quarters, Imesi-Ekiti fourth in rank among the High Chiefs and fifth in rank to the 1st Appellant.

He went further in his submissions that the pleadings and evidence of the respondent are contradictory. And a claimant for a declaration will fail where the evidence adduced is contrary to his pleadings.

He relied on the following cases:-

- **NWARATA VS EGBOKA (2005) 10 NWLR PART 933 PAGE 241 AT 273 PARAGRAPHS A-C.**

- **ALAO VS AKANO (2005) 11 NWLR PART 935 PAGE 160 AT 178 PARAGRAPHS C-D.**

Learned Counsel for the Appellants finally urged this court to resolve this issue in favour of the Appellants.

The Learned Counsel for the Respondent in his own submission adopted his submissions on issues 1 & 2 and further submitted the Appellants conceded and admitted that the Respondent is a kingmaker. He submitted that what is admitted needs no further proof. He relied on: - **NIGERCHIN IND. LTD VS OLADEHIN (2006) 13 NWLR PART 998 PAGE 536 AT 552 PARAGRAPH A.**

He stated that the counsel for the Appellants argued that the Respondent is not an Iwarefa and relied on Exhibits A4, A23, A24 and A42 A19 or A48 in proof of the same.

The Learned Counsel for the Respondent relied on Exhibits A4, A22, A3, A6, A7, A8 A9, A10 A11, A12, A19, A24, A26, A28, A33, A37, A39, A46 all of which he said confirmed the Respondent as an Iwarefa in Imesi-Ekiti. He went further in his argument that as a result of the available evidence, the learned trial judge found in favour of the Appellant. He also referred to the evidence of PW1, Exhibit A1 which he said places the Respondent far and above 2nd Appellant.

He stated that in view of the evidence and Exhibits referred to above, that the learned trial Judge's findings were based on concrete

and definite evidence. He urged this court not to disturb the findings of the lower court.

He relied on the following cases:-

- **NWANKWO VS FRN (2003) 4 NWLR PART 809 PAGE 1 AT 30-31 PARAGRAPHS A-G.**

- **ADEJOLA VS BOLARINWA (2011) 12 NWLR PART 1261 PAGE 380 AT 398 – 399 PARAGRAPHS G-C.**

He also referred to 1933 Weir Intelligence Report which the Appellants made heavy whether about was subject of attack in 2nd further amended statement of Defence. It was contended that the report contained anomalies. He argued that in view of the anomalies no court will attach any probative value to such a report.

He urged this court to hold that the trial Judge was right, not to have attached probative value to the Intelligence Report.

It was also contended on behalf of the Respondent that:-

(i) Appellants admitted that Respondent is a kingmaker

(ii) Appellants admitted and confirmed that the Respondent is an Iwarefa. He referred to Exhibits A1, A2, A3 and A4.

(iii) DW4 Chief Adesoye Ajayi also admitted that the Respondent is an Iwarefa.

Learned Counsel for the Respondent submitted that the above facts are admission against interest which are fatal to the Appellants as they supported the case of the Respondent.

He finally urged this Court to hold that:-

(i) No injustice was done to the Appellants

(ii) The discretion was rightly exercised by the Learned trial Judge

(iii) That the Learned trial Judge rightly accepted and acted upon oral and reliable evidence available to it in arriving at his decision.

In view of the foregoing he urged this court to dismiss the appeal.

I have earlier in this judgment referred to the claims of the Respondent at the lower Count. The claims are for declaratory and injunctive reliefs against the Appellants. It is trite law that a party seeking a declaratory relief must satisfy the court that he is entitled to the exercise of the court's discretion in his favour by adducing cogent and positive evidence in proof of his claim. He must rely on the strength of his case and not on the weakness of the defence. See **AJAGUNGBADE III VS ADEYELU II (SUPRA).**

In this appeal under consideration it is necessary to consider the following facts in order to arrive at a just conclusion:

(1) *The Respondents statement of claim paragraph 2 has it that his predecessor-in–office was demoted to 7th position to the 1st appellant.*

(2) *The Respondent testified that he was number 6 in rank then in 1933.*

(3) *Under cross examination he admitted that he was restored as No. 6 in the Intelligence Report. He also testified that his father died 20 years after he was demoted to the 7th rank by the 1st Appellant's predecessor in office.*

(4) *He admitted on page 94 of the Record that the 2nd Appellant is an Iwarefa.*

(5) *As I stated earlier under Issue B, the order of importance of the Iwarefa Chiefs is as follows:-*

(i) KOLAYE
(ii) ODOFIN IDOGUN
(iii) BALOGBO
(iv) EMILA
(v) OSIGUN
(vi) OFOJI and OORE as OLOJUA

(6) *The Respondent was a signatory to Exhibit A24, a document made several years prior to the institution of the Respondent's suit.*

It is in evidence that the Respondent tendered Exhibits A4, A22, A23, A24 and A42.

Exhibit A4 was a letter written by Oke-Ode family of Imesi-Ekiti to the 1st Appellant, Paragraph 2 read thus:-

> *"This is an issue which was brought to your knowledge about 2½ years ago and since then nothing positive has been said by you on the issue. As a follow up the Representatives of Oke-Ode family met you on the same issue on 22/4/83. That meeting with you afforded us the opportunity to know your stand among others that:*
>
> *(1) Iwarefa cannot be seven.*
>
> *(2) That Oke-Ode quarter cannot have two Iwarefas.*
>
> *(3) That Oore chieftaincy title is a special class by itself."*

A full reading of the said Exhibit A4 would reveal that *EMILA* the 2nd Appellant has always been an Iwarefa, and head of Oke-Ode quarters of Imesi-Ekiti.

Exhibit A22 was a letter written by the 1st Appellant to the Ministry of Local Government and Chieftaincy Affairs on 10/3/88 tendered in evidence by the Respondent showed that Chief Oore is the Olojua for all Imesi chiefs, he has always been a member of Imesi Kingmakers but not a member of the Iwarefas.

Exhibit A23 was a letter written by the Onimesi-in-Council on 22/8/88.

The said letter showed that the six high Chiefs i.e. Iwarefa of Imesi are:-

(1) Kolaye
(2) Odofin
(3) Balogbo
(4) Emila
(5) Osigun
(6) Ofoji

The Oore was not described as an Iwarefa but plays the role of chief servant to the chiefs in their meetings.

Exhibit A24, to which the Respondent is a signatory, is in agreement with Exhibit A23.

All the Exhibits referred to above were tendered in evidence by the Respondent but they did not support the Respondent's Claims. In fact they are all against his interest. The position of the law is that a party such as the Respondent who has tendered documents which were admitted as Exhibits would at the conclusion of trial sail joyfully with it in a boat of victory or sink sorrowfully with it in a boat of defeat. He cannot be a beneficiary of both at the same time. See the following cases:-

- **ONWUDINJO VS DIMOBI (SUPRA)**

ATTORNEY GENERAL, ENUGU STATE VS VOP PLC (SUPRA)

There is also the evidence that the Respondent's Predecessors in office was demoted by the 1st Appellant's predecessor in office. The position was the same when 1st Appellant installed the Respondent as Oore in 1975. He did not protest then. He consented to the injury. Also the Respondent's predecessor in title did not complain but the Learned trial Judge substituted his opinion, for evidence when he held on page 195 of the Record that:-

> *"It may be said that his father who was demoted from the 4th Rank in Iwarefa to 7th position did not object or we can go to the extreme that he probably did not challenge the demotion in Court. But clearly in those years, litigations were almost alien to Ekiti or where there were some, they were far apart. It seems to one those were not the years that a person would have the temerity to challenge the decision of an Oba."*

I agree with the submission of Learned Counsel for the Appellants that a Court cannot substitute its opinion for evidence. It is my view that the trial Court resorted to speculation as against evidence on record. A Court should refrain from indulging in speculation as it is not part of judicial exercise, but mere guesswork.

See:- **ACB PLC VS EMOSTRADE LTD (2002) 8 NWLR PART 770 PAGE 501 AT 517 PARAGRAPH D-E**

Consequent upon the foregoing, it is my view that the Respondent failed to lead evidence at the trial in proof of what was averred in the statement of claim. See:- **ALAO VS AKANO (SUPRA)**

This issue (c) is also resolved in favour of the Appellants against the Respondent.

With the Resolution of all the three issues in this appeal in favour of the Appellants and against the Respondent the Appeal therefore succeeds and it is allowed.

In the result, the Judgment of the lower court delivered on 21/4/2009 is hereby set aside and in its place the Plaintiff/Respondent's claim is hereby dismissed.

Each party shall bear his own cost in order to promote reconciliation between the parties.

JIMI OLUKAYODE BADA
JUSTICE, COURT OF APPEAL

COUNSEL:

No legal representation for the Appellants.

Taiwo Ogunmoroti for the Respondent.

A. ARIWO
7/12/2012

CA/AE//69/2010

EJEMBI EKO, JCA

My learned brother, J.O. BADA, JCA had availed me, before now, the judgment just delivered in its draft form. I completely agree with his analyses of and conclusions on all the issues in the appeal in the said judgment.

Let me, by way of complement; add that the learned trial judge was in error to have struck down, uninvited , Exhibits A23, A24, A25 and the letter dated 9th November, 1999 attached to Exhibits A34 and A36. He did this *ex gratia* on the ground that these documents contain no illiterate Jurat. None of the parties objected to the admissibility of these documents in evidence. None of them also challenged the authenticity of the said documents. The admissibility of any piece of evidence is determined by its relevancy.

It is no business of the court to take over the role or function of the counsel for one of or all the parties in litigation before it. The court at all times must maintain a studied impartiality to all parties and in all matters before it in litigation.

A party against whom a piece of evidence, that is so damaging to his cause is being tendered in evidence, has a duty, by himself or through his

counsel, to object timeously to the admissibility of that piece of evidence. See OLALEKAN V. THE STATE (2001) 18 NWLR (PT. 746) 793 at pp 809 and 823. If he fails to protest or object to such evidence at the trial, he cannot be heard to complain about its admissibility at the appeal court. See ALARAPE V. THE STATE (2001) 5 NWLR (PT. 705) 79 at P. 100. In every litigation the litigant is the best judge of his interest, and not the trial judge. The judge, enjoined to always remain impartial, cannot perform this role without offending the principle of impartiality.

The Illiterate Protection Law is intended to protect the interest of the illiterate person. The right under that statute is personal to the illiterate person. He can waive it, as it is a private right. See ARIORI V. ELEMO (1983) 1 SCNLR 1 .

The Respondent tendered Exhibits A19 (which also is Exhibit A48) and Exhibit A24. Exhibit A23 corroborates Exhibit A24. The documents are hostile to the Respondent's case. They do not, in their contents, prove the case of the Respondent. On the contrary, they prove the case of the Appellants. The learned trial Judge should have, on the strength of the overwhelming evidence, including these documents, ruled against the Respondent. The documents, no doubt, constitute admission against the

interest of the Respondent who produced them. The learned trial Judge, nonetheless, ruled perversely in favour of the Respondent against the Appellants. That decision cannot stand. The judgment of the trial court in the Suit No. HCL/51/2000 delivered on 21st April, 2009 is hereby set aside.

I had earlier indicated my agreement with the judgment of my learned brother, J.O. BADA, JCA, in this appeal. The said judgment, including all the consequential orders made therein, is hereby adopted by me.

EJEMBI EKO, JCA
JUSTICE, COURT OF APPEAL

CA/AE/69/2010

MODUPE FASANMI, J.C.A.

I have read in draft the judgment just delivered by my Lord, J. O. Bada, J.C.A.

I agree entirely with his reasoning and conclusion that the appeal succeeds. It is also allowed by me. I abide by the consequential orders contained therein inclusive of costs.

MODUPE FASANMI
JUSTICE, COURT OF APPEAL

Certified true copy
7/12/2012

A. Aziza
7/12/2012