

# IN THE SUPREME COURT OF NIGERIA

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Suit No: SC261/2001

**Petitioner:** Moses Bunge & Ors

And

**Respondent:** The Governor of Rivers State , The Attorney General of Rivers State Chief Major Job Umah  
Chief Ogu Ukwu Moses Richard Ukwu Aselem Victor Ukwu (For themselves and on behalf of  
Agana family of Omalem in Abua in the Abua Local Govt. Area of Rivers State)

Date Delivered: 2006-06-09

**Judge(s):** Salihu Modibbo Alfa Belgore , Umaru Atu Kalgo , George Adesola Oguntade , Mahmud Mohammed , Ikechi Francis

## Judgment Delivered

This was a chieftaincy dispute, which would appear to have first reared its head several years ago. It became the subject of litigation on 31-3-80 when the appellants for and on behalf of Otari village community of Abua, Rivers State commenced by writ of summons, a suit against the respondents as the Defendants. The 3rd to 6th Defendants were sued as the representatives of Agana family of Omalem, Abua, Rivers State. The Plaintiffs claimed for the following:

- '1. A declaration that sections 18 and 19 of Edict No.5 of 1978 are void, ultra vires and contrary to the Constitution of the Federal Republic of Nigeria 1979.
2. A declaration that in Abua Clan, which was historically and traditionally a monarchy, the highest chieftaincy title by Abua Customary Law and tradition is the Oda-Abuan.
3. A declaration that the findings of Tamuno Committee is not recognising Oda-Abuan as the highest Chieftaincy title by Abua Customary Law and tradition is null and void.
4. A declaration that the title of the Oda-Abua or the highest Chieftaincy title in Abua Clan is a monarchy and hereditary.
5. A declaration that the only family that can present the Oda-Abua or highest Chieftaincy title in Abua is the Agba family of Otari.
6. A declaration that Otari Village is the Traditional Headquarters of Abua clan.
7. An Injunction restraining the 3rd and 4th Defendants from parading themselves as and performing or containing (sic) to perform any of the functions of the Oda-Abuan and that of his Prime Minister.'

The parties filed and exchanged pleadings after which the suit was tried by Okor J. The parties tendered several documents in order to show that the history of the chieftaincy in dispute favoured one and not the other. It is fair to say that the suit was fought largely on documentary evidence. In a judgment spanning 88 foolscap pages, the trial Judge dismissed the Plaintiffs' claims in their entirety. The Plaintiffs were dissatisfied and brought an appeal against the judgment of the trial Court before the Court of Appeal, Port-Harcourt Division (i.e. the Court below). The Court below, on 30-4-2001, in a unanimous judgment, dismissed the Plaintiffs' appeal. Still aggrieved, the Plaintiffs have come before this Court on a final appeal. In their appellants' brief, the Plaintiffs identified the issues for determination in the appeal as these:

- '1. Having agreed to the crucial issue of fact that Obunge or Obunga of appellant was at a time the king or head Chief of Abua contrary to the finding of the trial Judge, coupled with the admission of the original 3rd respondent that he is a priest together with the content of exhibit 'E', was the Court of Appeal right to have dismissed appellants' appeal'

2. Did the lower Court consider all the issues raised in the appeal to the Court'
3. How relevant were the contradictions of PW1 and PW2 to the central issues for determination having regard to the finding of the lower Court as well as the admissions made by the respondents during the trial'
4. Was there any basis to compare the case put forward by appellants as 'it's like a tale told by an idiot full of sound and fury but signifying nothing' when from the finding that Obunge of appellants was at a time king of Abua, appellants made a good case'

The 1st and 2nd respondents raised one issue for determination, which reads:

'Whether the lower Court in affirming the judgment of the trial Court, correctly evaluated the evidence contained in the documentary exhibits received at the trial and whether it arrived at a just decision on the burning issues in contest between the parties.'

The 3rd to 6th respondents formulated for determination one issue, which in substance, is similar to the issue raised by 1st and 2nd respondents above.

Before a consideration of the issues, it is helpful to have an understanding of the facts pleaded by the parties in their pleadings. In their further amended statement of claim, the Plaintiffs pleaded that they were from Otari village of the Abua clan, and that the said Abua clan had 'from time immemorial, been governed by a king or head chief known as and called Oda Abuan who had his seat at Otari village. It was pleaded that succession to the title had always been hereditary and restricted to the Plaintiffs' Agba family. Obunge, from Plaintiffs' Agba family who, reigned till 18/3/27 had on 2/12/1896, signed a treaty with the British Crown. Each village in the Abua clan is administered by a village head known as Uwema. The Uwema is assisted by a juju priest. The Uwemas and their juju priests carried out the orders of the king or Oda Abuan. The Oda-Abuan had a prime minister who hailed from Otari village. The office of the prime minister is also hereditary. The British crown paid annual subsidy to king Obunge till he died and even after his death, his children got such subsidy. By the Abua tradition, the Oda-Abuan had a juju priest who performed all sacrificial rites as directed by the Oda Abuan. Neither the prime minister nor the juju priest to the Oda Abuan could become the Oda Abuan. During the reign of king Obunge, Chief Amiofori was his prime minister while Ogida was his juju priest. Ukwu, 3rd defendant's grandfather was the son of Ogida. He became a member of the native Court and like his father before him became a juju priest and married one of the daughters of king Obunge, the Oda Abuan. Under Abua tradition, no juju priest could become Uwema or village head.

The 3rd defendant was the grandson of Ogida, a juju priest to Oda Abuan. About 1930, the 3rd defendant falsely represented to the then District Officer, Mr. Talbot that he was a priest king. King Obunge died in 1927 and was succeeded by his son King Oyaghiri Obunge who died on 11/5/31 having reigned for 3 years. On 19-3-77, Chief Kale Obunge became the Oda Abuan. The 4th defendant was never a chief in the Abuan clan. It is not in accord with Abua custom and tradition for someone who was not previously, a chief to be appointed the Uwema of Ogo-Abua. The 3rd and 4th Defendants were the descendants of Ogida who had been a juju priest. The Tamuno committee, which was set up by the 1st defendant to grade chieftaincies erroneously accorded recognition to the title of Uwema Abua. Between 1931 and 1977, the 3rd defendant manipulated the colonial administration into accepting that the 3rd defendant's family was the source of the kingship. The Plaintiffs therefore claimed as earlier set out in this judgment.

The facts pleaded by the 1st and 2nd Defendants in their Further Amended Statement of Defence may be paraphrased as stated hereunder:

1. The 3rd defendant is the clan head of the Abua clan recognised by the 1st and 2nd Defendants whilst the 4th defendant is a 3rd class Chief within the Abua clan.
2. The traditional title of the king of Abua clan is and was known as Uwema of Abua and the kingship stool of the clan was hereditary.

3. The 1st and 2nd Defendants recognised the 3rd defendant because of his hereditary lineage from Ukwu Ogida who ruled from 1880 - 1939 and who was from- Agana Royal Family.
4. The members of the 3rd defendant's community in 1977 applied to the 1st defendant to accord official recognition to the 3rd defendant as the Uwema of Abua.
5. Only members of the Agana Royal Family could be the head of the Abua clan.
6. The dispute between the Obunge and Ukwu families as to which of them was entitled to be king is spelt out in a document dated 1/11/32 and numbered 146/26/
7. The British colonial Government in 1921 recognised the claim of the 3rd defendant's family.

The 3rd and 4th Defendants in their 3rd Further Amended Statement of Defence pleaded the following facts:

- '1. The 3rd and 4th Defendants belonged to the royal Agana Family. The name and title of the head chief of Abua clan is Uwema Abua and not Oda Abuan.
2. Otari village has never been the seat of the king but the 3rd defendant's Omalem village.
3. The king or paramount ruler of Abua clan has always been from the 3rd defendant's Agana Royal Family and members of the said family had been Uwema Abua in succession.
4. Succession to the kingship or Uwema Abua by tradition is hereditary.
5. The Plaintiffs' Obunge family was a part of the Agba family, which hailed from Agba Idole in Ikwerre District and being later settlers could not qualify to be Uwema Abuan.
6. As regards the 1896 treaty pleaded by the Plaintiffs, Obunge was not the rightful king of Abua.
7. King Obunge was paid '40 annually by British colonial administration but on 14/5/24, the same administration wrote to say that the 3rd defendant's family member Ukwu was the king and that Obunge had been erroneously recognised.
8. Obunge was a juju priest under Chief Ukwu.
9. The said Chief Ukwu I succeeded his father Ogida and Obunge occupied a subordinate position.
10. Chief Ukwu took a wife from Chief Obunge's family and this influenced Chief Ukwu in appointing Obunge as his juju priest.
11. The 3rd defendant Chief Richard Ukwu II became the king by inheritance.
12. The Defendants denied the Plaintiffs' assertion that a juju priest could not become an Uwema of a village or town.'

It was on this state of pleadings that the suit was heard. When the pleadings of the parties are compared and contrasted, it would appear that all the parties were agreed as to the following fact:

1. That succession to the chieftaincy in dispute was hereditary.

They however disagreed on the following:

(a) Whereas it was Plaintiffs' contention that their family, the Agba Family of Otari was entitled to produce the chief perpetually, the Defendants contended that it was their Agana Royal Family that was entitled to produce perpetually the head chief.

(b) Whereas it was Plaintiffs' case that the head Chief for Abua clan was called Oda Abuan the Defendants contended that the head chief was called Uwema Abuan.

(c) Whereas it was Plaintiffs' case that the seat of the head chief of Abua clan was Otari village, the Defendants contended that the seat was Omalem village.

(d) Whereas the Plaintiffs' contended that the Agana family of the Defendants only produced the juju priest, the Defendants asserted the opposite that it was Plaintiffs' family that produced the juju priest.

It is to be said that the 3rd and 4th Defendants however agreed that a member of the Plaintiffs' family King Obunge was king in 1896 when a treaty was signed with the British colonial administration, but contended that he was not the rightful king. They also agreed that King Obunge was paid '40 annually but that on 14/5/24, the British colonial administration wrote to say that King Obunge was erroneously recognised.

The four issues for determination formulated by the Plaintiffs could be conveniently taken together. It is important to say here that the pleadings of parties had clearly defined the issues in dispute between them. The main complaint of the Plaintiffs in the appeal before us is that the Court below having found that the Plaintiffs' Obunge was once the king or head chief of Abua, and the 3rd defendant having admitted that he was a juju priest, the Court below could not have been right in dismissing the Plaintiffs' appeal.

At pages 618-619 of the record of proceedings, the Court below said:

'The Appellants' father who testified in the lower Court had stated how sometime in the past King Obunge who was of Appellants' family reported the then juju priest the ancestor of the 3rd ' 6th Respondents to the colonial Administrator for attempting to usurp his powers as the King. His complaint was that Ukwu presented his juju drum to the colonial Resident who not knowing or not versed in the custom of the people accepted the drum believing it to be the symbol of Kingship and wrongfully and erroneously accorded him Kingship title. Unfortunately, according to him, Exh. 'A', a document by which the Royal Niger Company recognised the Bunge man as King and Exh. 'B', which represented a settlement in respect of the land dispute between Abua people and the Kalabari were not made available to the Resident at that time to enable him understand and figure out who really was the king, when in actual fact Chief Ukwu was no more than a mere juju priest who by tradition was under a King. These 2 documents were tendered in the Court below to show that in either case the King who took part or was signatory to the documents was from Otari family bearing the Otari name of Bunge. One of the ways to get to the root of the problem is to ascertain which of the principal parties in this case produces the King and which one produces the juju priest. The Appellants insist that the 3rd Respondent Victor Ukwu or Uku by describing himself as Uwema-Abua, a non-existent title in Abua used this false title to apply for recognition as a first class Chief. To this the 3rd and 4th Respondents said that the Appellants are twisting history because it was Chief Obunge who was acclaimed a priest under the Kingship of Chief Ukwu. I believe that once it is resolved which family produces the King or has been producing the King, then, it may be easy to determine which family produces the juju priest.'

Having said the above, the Court below at page 627 of the record of proceedings proceeded to acknowledge that Obunge from Plaintiffs' family was at one time King of Otari and Head Chief of Abua. The Court below said:

'There is no doubt that following from the plethora of documents tendered by the parties that Obunge or Obuge or Obuga was at one time a King of Otari and Head Chief of Abua but it cannot be doubted that the Uku family Agana had produced Head Chiefs who the Government in power had recognised not as a priest but as a Head Chief of Abua. The inference on the surface at least is that the Agba family does, not have monopoly of producing Kings or Head Chiefs and that the family of Agana can equally and infact did and have consistently for more than 80 years been producing

Head Chiefs in Abua going by the documents laid before this Court.

In his evidence, the 3rd Respondent recited the names of his ancestors who had been Kings of Abua. It is worthy of note he did not mention for once Obuga. In one of the documents, Exh. 'K' or 'T', Aniofori was said not to be the son of Obunge. It was also the same in Exh. 'U'. Infact it was found out that Aniofori was not King at all. I will come to this later. Although Obunge was paid a stipend, I believe it was based on the fact that he was once regarded as a King.'

The Court below finally said at pages 630 - 631:

'I have carefully waded through and read most of the important Exhibits and I am at a loss as to the complaint of the Appellants that the Court below did not put the case on an imaginary scale. An imaginary scale as the Court normally states, in appraising the evidence led in a case is not just an abstract concept, but based on empirical facts and principles, which must have its foundation on the reality of a case, in consideration. The Appellants cited prolifically 7UP Bottling Co. Ltd. v. Abiola (1995) 4 NWLR (Pt. 389) 287; Kwaghshir v. The State (1995) 3 NWLR (Pt. 386) 651; Awaogbo v. Etim (1995) 1 NWLR (Pt. 372) 393; Asuguo v. Etim (1995) 7 NWLR (Pt. 405) p. 104 and Umesie v. Onuaguluchi (1995) 9 NWLR (Pt. 421) p. 551, to show lack of balance. The case of the parties is built largely on documentary evidence. The Court below meticulously examined the issues canvassed. The findings made accord in my view, to a proper consideration of the case.'

Was the Court below right in its views reproduced above' I think not. I think the Court below fell into error by proceeding to accept the earlier findings of fact made by the trial Court, which said findings had been made without reference to the case made by the parties on their pleadings. In paragraphs 9, 10, 11, 12, 13 of their Further Amended Statement of Claim, the Plaintiffs pleaded:

'9. With the advent of the British Government in 1890 King Obuge was on the throne at Otari village.

10. The late king Obuge who reigned and died up to the 18th of March 1927 signed a peace treaty with the Royal Niger Company, the representatives of Queen Victoria on the 2nd of December 1896 thereby allowing his Kingdom to come under the British Govern'ment protection over the length and breath of Abua also known as Abua-Kingdom. A copy of that treaty will be founded upon at the trial.

11. From time immemorial, the Government of the people of Abua Clan or Kingdom has been as follows: -

(a) Each village in Abua Clan or Kingdom was administered and is still administered by a village head or Chief known as the Uwema of that village and he had under him a Village juju priest whom he ordered to perform all sacrificial rites relating to the juju worshipped by the Abua people.

(b) Every village head or Chief otherwise called Uwema and his juju priest are both respon'sible to carry out the orders of the King of the Kingdom otherwise known as the 'Oda-Abuan' and he the Oda-Abuan had unlimited powers over the life and the death of defaulting citizens in Abua Clan or Kingdom.

(c) Elders of families in every village assemble in the house of the village head or Chief otherwise known as the Uwema to adjudicate over matters arising from that village and in case of inter-village disputes, several neighbouring villages assemble in the house of one of the village heads or Chief to settle such matters.

(d) More serious matters and particularly matters that would require a death penalty are referred to the King or Oda-Abuan for final disposition.

(e) Every head of a village collects 49 Manilas now equivalent to 60k from the bride price of every married woman in every village in Abua Clan or Kingdom and such village head has a bounding duty to pay all such moneys to the King or Oda-Abuan.

(f) The Prime Minister of the King or Oda-Abuan hails from Otari village and the title of Prime Minister to the

Oda-Abuan is a hereditary one arising from members of a particular family of Otari village.

12. The title of village head or Chief of every village in Abua Clan is also hereditary one arising from the children of a previous village head.

13. From the time the British Government entered into the treaty mentioned in paragraph 8 above, the British Government continued to pay annual subsidy to King Obuge of Abua up till the time of his death and even after his death, his sons applied for and were paid the annual subsidy payable to King Obuge.

The 1st and 2nd Defendants in paragraph 6 of their Further Amended Statement of Defence, in their reaction to the averments reproduced above from Plaintiffs' Statement of claim pleaded thus:

'The Defendants deny the averments as contained in paragraphs 11, 12, 13, 14, 15,16,17 and 18 of the Statement of Claim but will contend at the trial that:

(a) The 3rd Defendant was recognised as the traditional ruler of the Abua Clan as a result of his hereditary lineage from the line of Ukwu Ogida who ruled from 1880 - 1939 who himself was from the Agana Royal family.

(i) The 3rd Defendant was given a Certificate of Recognition by the 1st Defendant. The said Certificate of Recognition is hereby pleaded.

(ii) That before the said recognition, members of the 3rd Defendant's community in 1977 applied to the 1st Defendant to accord official recognition to the 3rd Defendant as Uwema of Abua.

(iii) That thereafter, the 3rd Defendant has remained the Uwema of Abua undisturbed.

(b) The hereditary right to the traditional Clan Head of Abua circulates within the Agana Royal family. It does not extend to other family in the Abua Clan.'

The 3rd and 4th Defendants in paragraphs 5, 6, 7, 10, 12, 13, 15 and 22 of their 3rd Further Amended Statement of Defence pleaded thus

'5. Paragraph 6 of the Amended Statement of Claim is admitted only to the extent that the Traditional Kingship of Abua Clan is hereditary. The rest is denied. In further answer thereto, the 3rd and 4th Defendants state that the King or paramount Ruler -Uwema Abuan has always been produced by the Agana Royal Family.

6. Paragraphs 7, 8, 9 and 10 of the Amended Statement of Claim are denied. In answer thereto, the 3rd and 4th Defendants state as follows: -

i. Members of the 3rd Defendant's Agana Royal Family have also reigned and been recognised as the Uwema Abua from time beyond human memory. People who have been crowned as Uwema Abua from the Agana Royal Family in their order-of succession are as follows: -

Abua, Agana, Obegh, Ilka, Akari, Afilotu, Ebe, Ajuaye, Ohia, Egigoro, Oghu, Ibagidi, Ogida, Ukwu Ogida I, Richard A. Ukwu II and Victor O. Ukwu III the present incumbent. Relevant record to the effect will be relied on at the hearing.

ii. The original ancestor of the Agba Family of Otari (which family includes the Plaintiff's Obuge) came from Agba Idole in Ikwerre District and settled with Igima family Otari. Being later settlers, the Obuge group cannot qualify to Uwema Abuan as opposed to the original settlers - Igima family.

iii. The 3rd and 4th Defendants strongly deny the purport of the alleged 1896 treaty. Obuge was not the rightful King of Abua, Amifiori therein mentioned was not the son of Obuge. The 3rd and 4th Defendants will rely on a memorandum dated 3/9/23 written by District Officer Ahoada to Resident Owerri province, Owerri, explaining the treaty as also page 2

of another memorandum dated 8/9/23 sent by Resident Owerri Province to the Secretary Southern Provinces Lagos to prove that fact.

7. Paragraph 11(a) of the Amended Statement of Claim is admitted to the effect that each village is headed by an Uwema who is assisted by priest in the worship of jujus.

10. Paragraphs 13 and 14 of the Amended Statement of Claim is denied. In answer to paragraph 13 thereof, the 3rd and 4th Defendants admit that Obuge was sometime before his death paid an annual allowance of forty pounds ('40) (now N80.00) by the British Colonial Administration. The 3rd and 4th Defendants however state further that the letter of the Acting Chief Secretary to the Government Mr. S. M. Gaier, dated 14/5/24 which he addressed to Secretary Southern Provinces, Lagos which letter introduced the payment of the annual allowances made it clear: -

(i) That after careful enquiry, the Governor satisfied himself that Uku is the proper Head Chief of the Abuas and ordered Oku's recognition.

(ii) That the payment to Obuge was an act of grace and personal to him because the Government had at times made the mistake of recognising Obuge erroneously and incorrectly as the Head Chief of Abua.

(iii) That the allowance being an act of grace and personal to Obuge would cease, and infact did cease, at Obuge's death. The 3rd and 4th Defendants will rely on the said letter dated 14/5/24 during the trial.

12. In further answer to paragraph 15 of the Amended Statement of Claim, which had already been denied, the 3rd and 4th Defendants state that no chieftaincy title in Abua is known by the name Oda-Abuan.

13. The 3rd and 4th Defendants deny paragraphs 16, 17 and 18 of the amended statement of claim. In further answer to paragraph 16, the 3rd and 4th Defendants state that Chief Qbuge was a juju priest under Chief Uku and was particularly assigned to conduct sacrifices to abate the floods. The Abua Clan report on the Abua Clan about Chief Obuge's religious assignments under Chief Uku dated 1/11/32 will be relied upon (particularly at page 12 during the hearing of this suit. The 3rd and 4th Defendants shall also rely on a letter dated 11th October 1920 signed H. Webber, Ag. District Officer and addressed to the Resident Owerri Province in proof of the fact that Obuge was a juju priest under Uku.

15. The 3rd and 4th Defendants further aver that Chief Ukwu I, the previous Uwema of Abua, whose original ancestor was Abua who was the first man to settle at Abua and after whose name the entire Abua Clan is named, married from Chief Obuge's family and that influenced the conferment by Chief Ukwu on Obuge the right of offering sacrifices to appease the god of floods.

22. The 3rd and 4th Defendants deny that juju priest cannot be an Uwema either of a village or of the whole town.'

(Underlining mine)

It is seen in the paragraphs reproduced above from the parties' pleading that whilst the Plaintiffs pleaded that King Obuge from Otari village of the Plaintiffs was King of Abua in 1896 when the British crown signed a treaty with the Abuas, the 1st and 2nd Defendants remained silent and did not specifically join issue with Plaintiffs on the point. The 3rd and 4th Defendants for their part, started by demonstrating a measure of ambivalence. In paragraph 6(i) reproduced above, they pleaded that members of their Agana Royal Family had also reigned and been recognised as Uwema Abua from 'time beyond human memory.' The implication of this averment is that whilst the 3rd and 4th Defendants were conceding that the Plaintiffs' family had been the head chief of Abua that honour had sometimes also belonged to the Agana Royal family of the 3rd and 4th Defendants. In clearer terms however, the 3rd and 4th Defendants in paragraph 6(iv) of the pleading conceded that Obuge was King but not the rightful one. In paragraph 10, they made it clear that Obuge was king but that he was so recognised by the colonial government under a mistake. They also agreed that Obuge was paid annual allowance.

Let me say straightaway here that it was not the case of the Defendants that it was the colonial government that had the power and authority to recognise local chiefs and that any chiefs not recognised would cease to be a chief by such non-recognition. The implication of the admission of the 3rd and 4th Defendants that Obuge had been king of the Abua clan was to remove the burden or onus of proof of the fact that Obuge was king of the Abua clan from the Plaintiffs. The onus then shifted to the Defendants to show that Obuge who had been king of Abua clan was not the rightful king or that he was a (an) usurper. The Defendants needed to prove by evidence the assertion in paragraph 10(i) and 10(ii) of their pleadings that:

- (a) after a careful enquiry, the Governor satisfied himself that Uku is the proper head chief of the Abuas and not Obuge; and
- (b) a mistake was made earlier by the colonial administrator and that Obuge was erroneously and incorrectly recognised.

It is not open to the 3rd and 4th Defendants to rely on correspondences as tendered vide exhibits Y, K, U, Z and Z14 in proof of the fact that Obuge was erroneously recognised as king. The Defendants needed to produce evidence before the trial Court as to the basis of the assertions that Obuge was not the rightful king.

This case brings to the fore, the importance of averments in civil disputes fought on the basis of pleadings.

In *George & Ors. v. Dominion Flour Mills Ltd.* [1965] 1 All NLR 71 at 77, this Court said:

'The fairness of a trial can be tested by the maxim *audi altarem partem*. Either party must be given an opportunity of being heard; but a party cannot be expected to prepare for the unknown; and the aim of pleadings is to give notice of the case to be met; which enables either party to prepare his evidence and arguments upon issues raised by the pleadings, and saves either side from being taken by surprise. Incidentally, it makes for economy. The Plaintiff will and indeed must confine his evidence to those issues: but the cardinal-point is the avoidance of surprise.'

See *Aniemeka Emegokwu v. James Okadegbo* [1973] 4 S. C. 113.

It is of cardinal importance in civil litigations to bear in mind that when parties have in their pleadings agreed on some facts, there is no issue in dispute between them on such agreed matters. In *Chief Okparaeke & Ors. v. Obidike Egbuonu & Ors.* [1941] 7 WACA 53 at 55. The West African Court of Appeal made the point in these words:

'The identity was one of the agreed facts in this case; it was relied upon by both parties in their pleadings, and since one of the objects of pleadings is to shorten proceedings by ascertaining what facts are agreed so that evidence need not be given to prove them, the Court should have accepted this agreed fact as established without proof.'

In *Pioneer Plastic Containers Ltd. v. Commissioner of Customs and Excise* [1967] 1 Ch. 597 at 602, the Court made the same point thus:

'In these circumstances, it seems to me that this is not a case in which, on the pleadings as they stand, any evidence ought properly to be admitted. The matter should be heard and determined on the pleadings and on the admissions contained in the pleadings. Consequently, I think the Defendants are right in their submission that the Plaintiffs ought not to be permitted to put in affidavit evidence or indeed to seek to adduce oral evidence. Accordingly, I shall direct that no evidence be admitted and that the case should be heard on the pleadings as they stand.'

In *Olufosoye & Ors. v. Olorunfemi* [1989] 1 NWLR (Pt. 95) 26, this Court held that an admitted fact is not a fact in issue. See also *Ehimare v. Emhonyon* [1985] 1 NWLR (Pt. 2) 177. It is often the case that parties assume that when a suit is filed in Court and parties have exchanged pleadings, further progress in the matter must at all events be determined by evidence to be called. The correct position is that whether or not it is necessary to call evidence must be dependent on the state of the pleadings. Where a Plaintiff has pleaded facts upon which his right in dispute in the suit hinges and the defendant admits those facts, it is not in such a case necessary for any evidence to be called and the Court would be

entitled to give judgment on the pleadings. When a fact is pleaded by the Plaintiff and admitted by the defendant, evidence on the admitted fact is irrelevant and unnecessary. There is no dispute on a fact, which is admitted.

A practical demonstration of this aspect of the principle of pleading was shown in *George Onobruhere & Anor. v. Ivwromoebo Esegine & Anor.* [1986] 2 S.C. 385. The relevant facts as stated at pages 398- 400 of the report read:

'The Plaintiffs pleaded in their paragraph 6 'that the land in dispute is the exclusive property of the Omovwodo family by right of first settlement but that Emunotor pledged a portion of it verged yellow to Idiarhevwe. In customary law, the pledger retains the radical title. It is not extin'guished by the pledge. The pledger has the right of redemption, and it does not matter for how long the land had been pledged: See *Ikeanyi v. Adighogu* (1957) 2 E.N.L.R. 38 at p. 39; *Leragun v. Funlayo* (1955-56) W.R.N.L.R. 167; *Ago Kofi v. AddoKofi* (1933) 1 W.A.C.A. 284; *Orisharinu v. Mefue* (1937) 13N.L.R. 181. The Plaintiffs thus alleged in paragraphs 5, 6 and 7 of their statement of claim that their ancestor was the original founder and owner of the land in dispute and that they are still owners thereof notwithstanding the pledge. What was the Defendants' pleading'

By paragraph 6 of their statement of defence, the Defendants averred: -

'6. In further answer to paragraph 5 of the statement of claim, Defendants aver that the land in dispute was never pledged to the Defendants' ancestors but it was an outright customary sale to her by members of the 2nd Plaintiff's family (Omovwodo family).'

Definitely the Omovwodo family cannot sell the land in dispute to the Defendants' ancestors unless they had the radical title. It is therefore common ground that radical title once resided in the Plaintiffs. The Plaintiffs say they (the Omovwodo family) pledged the land to the Defendants but still retained their radical title. The Defendants say it was an outright sale, which extinguished the radical title.

The Defendants having thus admitted that at one time the radical title was in the Plaintiffs, the onus is on them (the Defendants) to prove that that radical title had been extinguished by the alleged sale pleaded by them in paragraphs 6, 10, 11, 12, 13, 14 and 22 of the statement of defence.'

This Court expressed the view that it is not always the case that a Plaintiff must first give evidence in a civil suit conducted through pleadings. The Court must closely scrutinize the pleadings filed to determine who bears the onus to lead first evidence. At page 397, this Court per Oputa J.S.C. stated the emerging procedure in such setting thus:

'An onus of proof does not exist in vacuo. The onus or burden of proof is merely on (an) onus to prove or establish an issue. There cannot be any burden of proof where there are no issues in dispute between the parties. For example, if the Plaintiff's claim is admitted, that will be the end of the story. Similarly if a particular averment of the Plaintiff is admitted, there will no longer be an onus to prove what has been admitted by the opposite party. Therefore to discover where the onus lies in any given case, the Court has to look critically at the pleadings: Where for instance the Plaintiff pleads possession of the land in dispute as his root of title and the defendant admits that possession but adds that the land was given to the Plaintiff on pledge, then the onus shifts onto the defendant to prove that the Plaintiff is not the owner of the land, his possession of which has been admitted.

Once the defendant admits the Plaintiff's possession of the land in dispute in his statement of defence, then and there, the Plaintiff has on the pleadings, discharged the onus of proof cast on him and section 145 of the Evidence Act Cap 62 of 1958 will impose a burden on the defendant to prove the negative - namely that the Plaintiff is not the owner. See *Lawrence Onyekaonwu & Ors. v. Ekwubiri* (1966) 1 All NLR 32 at p. 35. In such a case, it is the defendant who will begin and if at the close of his case, he fails to prove that the Plaintiff is not the owner, the Plaintiff's claim succeeds without even the Plaintiff giving any further evidence.'

In the instant case the trial Court and the Court below erroneously put the burden of proof of the fact that King Obuge from Agba family had been the head chief of the Abua Clan of the Plaintiffs. On the pleadings as they stood, this fact had been admitted and the onus ought to have been placed oh the Defendants who pleaded that Obuge was not the

rightful king to establish by evidence the basis of their assertion.

The trial Court at pages 423 - 424 of its judgment took it upon itself to make the case for the Defendants that the Plaintiffs did not prove that Obuge was king. In the process, the trial Court stood the case on its head and ended up determining the issue on facts not pleaded. The Court said:

'Is it not possible that Obunge was only king of Otari hence Amiofori the most powerful chief in Otari signed as King's son even though he was the son of Obunge (sic) as already observed' Credence can be given to this observation having regard to para'graph 5 of Exhibit 'U' where Obunge was described as king of Otari. I cannot see any reason why he should be so described if actually he was king of Abua. It must be observed that Mr. Yellow who was the inter'preter at the time Exhibit 'A' was signed did not say that Obunge was king of Abua, rather a juju priest at the time Exhibit 'A' was signed. It must also be observed that the Treaty was not between the Queen of Great Britain and Ireland on one hand and Obunge on the other hand but rather, between the Queen of Great Britain and Ireland, Empress of India and the Chiefs of Abua. Throughout the whole 10 Articles of Exhibit 'A', there is nowhere (where) (is) the name of Obunge (is) mentioned either as a king of Abua or in any capacity. His name did not appear at all in Exhibit 'A', rather chiefs of Abua mentioned throughout the document. I do not see why such importance should be attached to Exhibit 'A' as a document portraying Obunge as king of Abua. The only importance, which one can attach to it is that by the said Exhibit, the chiefs and people of Abua were placed under the protectorate of the British Government. It is the cardinal principle of interpretation of statutes that where the wordings of a statute are clear and unambiguous, the Court should not import any other meaning not intended by the Legislators or the makers of the document, in this case, the Treaty. In my humble view the Court cannot place any reliance or weight on Exhibit 'A' to reprove that Obunge was king of Abua in the circumstances.

Exhibit 'A' cannot therefore be taken as conclusive evidence that Plaintiff's family produces the king of Abua.'

It is astonishing that the trial Court did not see itself bound by the pleadings filed, for how else could one justify the inference made by the trial Judge that Obuge might have been king of Otari only and not the Abua Clan' Nobody had pleaded such fact. Clearly, the trial Court had misapprehended and misconceived the case of the Plaintiffs. Regrettably, the Court below fell into the same error by reliance on exhibits K, U, Y, Z and Z14 and reproducing in full length some of these documents.

Having admitted that Obuge was king of the Abua clan in 1896 when exhibit 'A' was signed, the next question that must follow is: Did the Defendants show that a member of their Agana Royal Family had been the king or head chief or Uwema Abua before 1896' This question becomes necessary in view of the admission made by the Defendants on the pleading that succession to the kingship of the Abua clan was hereditary. If, as pleaded by the parties, the Plaintiffs and the 3rd and 4th Defendants did not belong to the same family, it follows that the kingship of Obuge in 1896 could not have been hereditarily derived from the Defendants' Agana Royal family. Further, the 1st and 2nd Defendants had pleaded in paragraph 6(a) of their statement of defence that the 3rd and 4th Defendants Agana Royal family had been the head chief of the Abua clan from 1880 to 1939. Where was the evidence in support of this assertion'

At the trial, the Defendants called evidence. D.W.I who testified for 1st and 2nd Defendants only said that recognition was granted to the 3rd defendant by the 1st and 2nd Defendants because the Abua community so applied. He did not testify as the 1st and 2nd Defendants pleaded that the Agana Royal family had produced kings from 1880. Rather at page 202 of the record of proceedings, D.W. 1 testified:

'I see Exh. 'B', the 2nd paragraph. It is a document dated 14/10/1902. At the 2nd paragraph is mentioned King Obunge of Abua. There is no ancient document in our office where the 3rd defendant's family was described as a king or Uwema of Abua.'

None of the witnesses called by the Defendants gave evidence explaining why King Obunge was not the rightful person to be the head chief of the Abuas. Rather, the Defendants relied on exhibits K, U, Y, Z and Z14. In exhibit U written on 8/9/23, the writer had concluded thus:

'From para. 8 supra and discussions I have had with D. O. Ahoada, I am (of the) opinion (sic) that Obunge never attempted to prove lineal descent in the KINGSHIP line because he knew he could not do so but hoped to win by backing himself against the youth of the legal heir at the time that the Treaty was made.'

In exhibit K written on 3/9/23, there is a passage, which reads:

2. An exhaustive Inquiry was held by Cap. Webber in 1920, you are probably in possession of a copy of this - if not, I could forward you a copy, which seems to me to be quite convincing. Mr. A. R. Whiteman in his Handing-Over Notes in 1916 states 'Chief Obunge of Otari is note worthy, having set up in opposition to Chief Oku, and claiming, the headship of the whole of Abua. I dismissed the claim in the Provincial Court, whereon he took action in the Supreme Court.'

'Mr. Gordon Grant in 1918 states 'The most outstanding chief is Amiofori, but the real King of Otari is Obunge.'

'Mr. Cochrane, in undated Handing-Over Notes (probably 1918) states 'Chief Obunge is the Head Chief of the Abua Tribe'

3. I had a talk with Mr. Yellow, who was the Interpreter when the 1896 Treaty was signed, and he informed me that Obunge was the Juju Priest at the time and correspondingly powerful. That Uku was a young man, who was not then in a position to assume the responsibilities of his office. There may be some truth in this.

4. I have visited both Amalem and Otari. They are both large towns. At the former, I saw the big Abua Juju.

5. In the Provincial Court case referred to in my paragraph 3, Obunge, who was the Plaintiff and was claiming twenty pounds ('20) damages from UKU for usurping the 'Kingship', in support of his claim states that he was in possession of a Flag given him by a District Commissioner in (probably) 1908, also a piece of paper tho\ (though) (sic) what was on the paper is not stated. He refers to Chief Uku as 'Chief of the Juju and leader of the Ceremonies'. He also states that he was 'Crowned' King forty-six (46) years ago (in 1916). He also mentions Ogida as being 'King of the Juju'. He cannot trace his claim back to any of his ancestors and says that Uku's drum was beaten for War and that Mr. Syer sent to Uku to collect all the Guns.

Uku on the other hand traces his descent back through a long line of his great-grand father Ogandabua and apparently produced a drum in Court, which had been handed down for generations. Ogida (his father) he says, was brought to Oboagidi who was 'King' before him.

Uku described Obunge as a doctor.

In this case Amiofori of Otari - who signed the Treaty for Obunge as his son (He is not his son at all really) gave evidence on behalf of Uku.

It seems to me that Obunge based his claim on having supplied the Abuans with food and as Uku states, that if this was allowed, many others who had done the same thing should be 'Kings' also.

6. If there was a Supreme Court case, I do not know, as I can find no records.

7. The irony of the whole thing is that at the time Uku possessed a wife, the daughter of Obunge.

8. I have not discussed this matter with any of the Chiefs as I think that if Obunge had an inkling that anything was afoot, the whole trouble might start afresh,'

In Exhibit 'Y', there is this passage:

'I agree with Tomlinson that Obunge's name on the various treaties was more probable due to the fact that he was in close touch with the New Calabar Chiefs and (a) considerably older man than Oku than to any real hereditary right. The

statement in Para. 37 of the Report that while Oku's ancestry can be traced back several generations, the name of Obuge's grandfather was practically unknown, seems to me, significant.'

In exhibit Z, there is this passage:

'..... I am directed to inform you that a reply should be sent to Obuga informing him that after careful enquiry the Governor satisfied himself that Oku is the proper Head of the Abuas and gave Orders for his recognition accordingly. In view however of the fact that the Government has at times recognised Obuga as Head Chief of Abuas, it is proposed to grant him a personal allowance at the rate of '40 a year .....

The allowance is granted as an act of grace and will cease on Obuga's death .....

And finally in exhibit Z14, where this passage occurs:

'I am to say that His Honour, the Acting Lieutenant-Governor has nothing to add to the decision in the matter which was arrived at by his Honour the Lieutenant-Governor and His Excellency, the Governor and which was conveyed to Chief Obuge through the Honorable, the Senior Resident Owerri last year, namely that Oku was the proper Head Chief of the Abuas and must be recognised accordingly.'

When the passages reproduced above from the documents are considered singly or together, one gets the impression that the colonial administration had accepted that the 3rd defendant's family and not the Plaintiffs' family was entitled to produce the Head Chief of the Abua clan. It was stated that King Obunge was wrongly recognised and that the King had in 1916, unsuccessfully challenged in Court his non-recognition by the colonial administration. The Defendants would appear to have based their case solely on the fact that since the colonial administration had recognised their Agana Royal Family and not the Plaintiffs' Agba family as the family entitled to produce the head Chief of Abua, they were entitled to be declared the Uwema Abua. This approach, in my humble view, overlooked the fact that the 3rd and 4th Defendants had conceded on their pleading that Obuge from Plaintiffs' family was king albeit the unrightful one. Having done so, they needed to produce evidence as to why king Obunge was not the rightful king. It was never the case of the parties that it was the colonial administration who had the authority to enthrone or depose head chiefs. The ease was founded on the native law and custom of the Abuas. Native law and custom and the Chieftaincy in dispute had existed before the British came. It is therefore untenable to say that it was the colonial administration which decided who was the rightful king. The Defendants did not show how the title, which they claimed to have held from time immemorial, suddenly came to have been taken over by King Obunge around 1896. This is the more intriguing because the Defendants had pleaded that succession was hereditary.

With respect to the two Courts below, it is my view, that exhibits K, Y, Z and Z14 taken together or singly did not show why King Obunge was held not to be entitled to be the head chief of the Abuas. There was no judgment tendered as to a 1916 litigation where an action brought by King Obunge was dismissed. I am satisfied that on the pleadings of the parties and evidence led, that the Plaintiffs satisfactorily established that their Agba family had produced King Obunge as head chief up to 1927 when he died. I am also satisfied that the said King Obunge rightfully and in accordance with native law and custom was the head chief of the Abuas.

I have earlier in this judgment stated that all the parties agreed that succession to the chieftaincy in dispute was hereditary. Further, all the parties also agreed that apart from the head chief, there was a priest in each of the villages who handled traditional rites and sacrifices. The Plaintiffs and the Defendants agreed that that chieftaincy was also hereditary. The Plaintiffs pleaded and led evidence that it was the said chieftaincy that the Defendants' family had, and which was used as a springboard to lay a false claim to the head chieftaincy. The Defendants similarly pleaded that the Plaintiffs' family had produced such chiefs from time immemorial. In a part of paragraph 22 of their pleadings, the 3rd and 4th Defendants pleaded:

'22. The 3rd and 4th Defendants deny that juju priest cannot be an Uwema either of a village or of the whole town.'

Remarkably however, the 3rd defendant at page 251 under cross-examination testified thus:

'I know that the clan head of Abua is hereditary but I do not know if juju priest is hereditary. I now say that juju priest is here'ditary. Juju priest is very important in Abua. The post of the headship of Abua and juju priest had been in existence before the advent of the colonial Government.

It has not happened in my family where one person can occupy the post of clan head and juju priest. I agree that juju priest is inferior to the clan head. The clan head can never bear the title of a juju priest.

I remember a man called Mr. Talbot. Mr. Talbot in the 1990s met with Chief Uku. He had a discussion with Chief Uku. Mr. Talbot wrote a Book, which, I am relying on in these proceedings. I had read the Book. In the Book, Uku described himself as 'priest King'. The Book is exhibit 'E'. Uku was not a juju priest. It is true to say that Uku was a priest, but he was a 'priest kin'. The Plaintiff is from the juju priest family.'

(Underlining mine)

And at page 254 of the record of proceedings, the 3rd defendant testified thus:

'I am not struggling for the title of Oda-Abuan. I know the Plaintiffs are not saying that they should be called Uwema of Abua. I am not a juju priest but priest King. I have the right to the highest Chief'taincy title in Abua.'

(Underlining mine)

What could one make out of the evidence of the 3rd defendant who after testifying that one person could not at the same time be king and priest later went to say that his father Uku, who was also his supposed predecessor as Uwema-Abua, was a priest and later a 'priest king' He also described himself as priest king. The piece of evidence was clearly not in harmony with the case pleaded by 3rd and 4th Defendants. This strange expression 'priest king' came into the proceedings for the first time when the 3rd defendant testified. Contrary to the position of the 3rd and 4th Defendants, the Plaintiffs in their pleadings and evidence consistently maintained that the Defendants' ancestor Ogida was the juju priest at the time of King Obunge.

The conclusion is inevitable that it was the Agba family of the Plaintiffs from which King Obunge hailed that had been the clan head of the Abuas and that the Defendants' family, the Agana royal family, had from time immemorial produced only the juju priest of the Abua clan. It is also incontestable that the headship of the Abua clan is hereditary.

The Plaintiffs made the case that the name by which the clan head was known was Oda Abuan and not Uwema Abua as pleaded by the Defendants. The difference in description is relevant here because the Plaintiffs had not contested the fact that the 3rd defendant or the defendant's Agana Family are entitled to the title Uwema Abua under native law and custom. Their position is that the title is meant only for the juju priest of Abua and not for the head chief of Abua. I think that with the resolution of the issue as to who was the head chief or the juju priest of the Abuas, it becomes easy to react to the claims of the Plaintiffs as framed.

The Defendants in this appeal have argued stoutly that the two Courts below have as they should, given meticulous attention to the evaluation of the documentary evidence before them. My reaction to this submission is that the Defendants' Counsel themselves had not paid due attention to the principles of pleadings relevant to this case. If they had, they would have seen that it was impermissible for the two Courts below to take the case outside the pleadings of parties and engage in the evaluation of evidence, which would have otherwise been irrelevant and unhelpful.

Generally speaking, an appellate Court does not interfere with the findings of fact made by a trial Court. In *Lawal v. Dawodu* [1972] 8-9 SC. 83 at 114 -115, this Court per Coker JSC observed:

'In the evaluation of evidence, we think it firmly established in our jurisprudence that a Court of appeal ought not, except in exceptional circumstances interfere with what must be considered the outcome of a dispassionate consideration of the evidence by a Judge who saw and heard the witnesses give evidence. The ascription of probative values to

evidence comes at a later stage of the whole process and it is established that this is a matter for the Judge who saw and heard those witnesses give evidence. Nevertheless, the area is one in which the Court of Appeal is at least qualified and competent and indeed is often required to exercise jurisdiction in certain, albeit exceptional circumstances. A trial Judge however learned may draw mistaken conclusions from indisputable primary facts and may indeed wrongly arrange or present the facts on which the foundations of the case rest. In those circumstances, it would be completely invidious to suggest that a Court of Appeal should not intervene and do what justice requires but should abdicate its own responsibility and rubber-stamp an error however glaring.'

In *Gwawoh v. Commissioner of Police* [1974] 11 SC. 234, this Court relied on the views of Lord Reid in *Benmax v. Austin Motor Co. Ltd.* [1955] Q.C. 370 at 376 where he said:

'But in a case where there is no question of the credibility of any witness and in cases where the point in dispute is the proper inference from proven facts, an appeal Court is generally in as good a position to evaluate the evidence as (as) the trial Judge and ought not to shrink from that task, though it ought, of course, to give weight to his opinion.'

The problem with the evaluation of the evidence by the two Courts below is that it was based on the misconception of the pleadings such that left the two Courts engaged in a consideration of irrelevant matters which when viewed against the admission made on the pleadings by the 3rd and 4th Defendants, was unnecessary. The need did not arise to consider the import of several of the documents tendered by parties. What remained to be done was to consider the circumstances, which the Defendants alleged made King Obuge not the rightful king. The documents tendered which sought to show that the Agana Royal Family of the Defendants was the one entitled to produce the king and not the Plaintiffs' Agba family, failed woefully to explain what contrived circumstances had made Obuge King in 1896 when exhibit 'A' was signed. When this is related to the fact that the chieftaincy in dispute was mutually admitted as being hereditary, it becomes manifest that only the successors of Obuge could be made the head chief. The position would have been different if the Defendants had satisfactorily shown that members of their Agana Royal Family had been king before 1896 when exhibit 'A' was signed.

If the case which the Defendants sought to make before the trial Court was that the inability of the Agba family of the Plaintiffs to be the head chief of the Abua stemmed from the fact that the colonial administration had recognised the Defendants Agana family in preference over and above the Plaintiffs Agba family, it would have been necessary for them to plead that under the Native law and custom of the Abuas, it was the British Crown and not the people, who had the exclusive right to appoint and recognise the head chief of the Abuas. Rather than do this, the Defendants pleaded and testified that their right to be the Uwema Abua was derived from under the native law and custom of the Abuas. D.W.3 in his evidence under cross-examination said:

'The post of the headship of Abua and juju priest had been in existence before the advent of the colonial Government.'

It seems to me that the attempt of the Defendants to hinge the authenticity of their claim to the headship of Abua on the role played by the colonial government was in the circumstances, untenable.

It was implied in the arguments of Defendants' Counsel that the Plaintiffs had conceded that they were not claiming the title or position held by the 3rd defendant. It seems to me that it is easy to understand that standpoint of the Plaintiffs. Their case was that the Uwema Abua is inferior to the Oda Abuan. The Plaintiffs wanted to be acknowledged as the family that should produce the head chief.

The Plaintiffs in their appellants' brief have made a distinct issue of the description given by the Court below to the worthlessness of their case. The Court below in the lead judgment had said concerning the Plaintiffs' case:

'Indeed, I can only describe the case of the appellants in this Shakespeare's language ' It's like a tale told by an idiot, full of sound and fury signifying nothing.'

The remark complained of in my view is another euphemism for saying that the Plaintiffs' case lacked merit. I do not think it is necessary for me to dwell further on the statement. It suffices to say that the conclusions of this Court on the

evidence and the judgment in Plaintiffs' favour are a manifestation of the incorrectness of the statement made by the Court below.

It is my firm view that the Plaintiffs' case should have succeeded in the two Courts below. The judgments of the two Courts below are set aside. There will be judgment in Plaintiffs' favour as per their claims. The Plaintiffs are entitled to costs in the two Courts below, which I fix at N5, 000.00 and N7, 000.00 respectively. For appearance in this Court there will be N10, 000.00 costs in favour of the Plaintiffs/appellants.

Judgment delivered by

Saliyu Modibbo Alfa Belgore, J.S.C.

I agree with the judgment of my learned brother, Oguntade J.S.C. that this appeal deserves merit. For the reasons advanced therein which I also adopt entirely as mine I allow this appeal with the same orders as to costs.

Judgment delivered by

Umaru Atu Kalgo, J.S.C.

I have had a preview of the judgment just delivered by my learned brother Oguntade, J.S.C. in this appeal. He has fully and extensively in my respectful view dealt with the issues arising therein and I agree with the conclusions reached therein. I have nothing useful to add. I therefore allow the appeal and set aside the decision of the trial Court and the Court of Appeal and enter judgment for the Plaintiffs/Appellants. I abide by the order of costs made in the leading judgment.

Judgement delivered by

Mahmud Mohammed, J.S.C.

I have had the opportunity before today of reading in draft, the judgment of my learned brother, Oguntade, J.S.C., which has just been delivered.

I agree with him that having regard to the pleadings of the parties and the evidence adduced at the trial Court by the witnesses called by them and the documents tendered and received in evidence, the appellants appeal deserves to succeed.

The main issue in contention in this appeal between the parties to me is fairly straightforward. It is whether the Court below in its judgment delivered on 30-4-2001 dismissing the appellants' appeal against the judgment of the trial Court and affirming the decision of the trial Court, correctly evaluated the evidence on record, the bulk of which being, documentary. From the pleadings and evidence on record, it is quite clear that the parties in this chieftaincy dispute have all agreed that the titles of the King of Abua and that of the Juju Priest are separate and distinct. The parties have also agreed that the two titles are hereditary within the same family. A very careful scrutiny of the evidence on record particularly the Peace Treaty signed in 1896 between the British Colonial Administration and King Obunge of Abua who was represented by his son-in-law who signed the Treaty on behalf of the King, the Chiefs and people of Abua, the evidence leaves no one in doubt that the title of the Kingship of Abua lies with the Abunge family of the appellants.

Although the Court below in its judgment at pages 618-619 of the record in reviewing the evidence agreed that: -

'one of the ways to get to the root of the problem is to ascertain which of the principal parties in this case produces the king and which one produces the Juju Priest.'

That Court failed to be properly guided in correctly evaluating the evidence to arrive at the right decision. This is particularly so when the Court below fell into the same error committed by the trial Court in failing to give Exhibit 'A', the Peace Treaty signed in 1896 by the then King Obunge of Abua of the appellants' family, its proper place as a piece of evidence. This action on the part of the Court below in my view resulted in causing a miscarriage of justice in the determination of the appellants' appeal before it, thereby justifying the intervention by this Court to correct the situation. The need to ensure that justice is not miscarried should always dominate the attitude and thinking of Appellate Courts when dealing with appeals arising from question of fact. See *Akinloye v. Eyiola* (1968) NMLR 92 at 95 (SC); *Obisanya v. Nwoko* (1974) 6 SC. 69 at 80; *Lawal v. Dawodu* (1972) 1 All NLR (Part 2) 270 at 286; *Kakarah v. Imonikhe* (1974) 4 SC. 153; *Mogaji v. Odofin* (1978) 4 SC. 91 and *Woluchem & Ors v. Gudi & Ors* (1981) 5 SC. 319 at 326. It is therefore in line with these decisions of this Court that I see the need of ensuring that justice is not miscarried in deciding to intervene in setting aside the concurrent decisions of the two lower Courts in this appeal.

Of course I am not unaware of the stringent requirements of the law when this Court will interfere with concurrent findings of fact by two lower Courts on appeal before it. The law in this respect is trite and it is that where concurrent findings of two Courts below are not perverse and have not occasioned a miscarriage of justice, this Court cannot interfere. See *Abdullahi v. State* (1985 1 NWLR (pt 3) 523; *Okonkwo v. Adigwu* (1985) 1 NWLR (pt 4) 694; *Nwachukwu v. State* (1986) 2 NWLR (pt 25) 765; *Onyekwe v. State* (1988) 1 NWLR (pt 72) 565 and *Adimora v. Ajuto* (1988) 3 NWLR (pt 80) 1. It is clear from the totality of the evidence on record before the trial Court which was further reviewed and evaluated by the Court below that the concurrent findings of both Courts are not only preserve but also occasioned a miscarriage of justice justifying the interference of this Court in the determination of this appeal.

In all these circumstances, I completely agree with my learned brother Oguntade, J.S.C. that the justice in this case lies in allowing this appeal, which I hereby allow. Accordingly, the judgments of the trial High Court and the Court of Appeal are set aside. In place of those judgments, I hereby enter judgment for the Plaintiffs/appellants against the Defendants/Respondents and endorse all the orders made in the lead judgment including the order on costs.

Judgment delivered by  
Ikechi Francis Ogbuagu, J.S.C.

I have had the advantage of reading before now, the lead judgment of my learned brother, Oguntade, J.S.C., just delivered by him. The case of the parties as stated by the Court below at page 631 of the Records, is 'built largely, on documentary evidence' and I will add that this appeal, will be determined both by oral and documentary evidence. Without repeating the facts as thoroughly done/dealt with in the said lead judgment, but for purposes of completeness, I wish to state as appear hereunder.

1. It is the case of the Plaintiffs/Appellants that Abua Clan is a Kingdom ruled by a Monarch or Oda-Abua, which according to them, is the highest Chieftaincy stool in Abua. That it is hereditary and the King I otherwise known as Oda-Abua, has/had from time immemorial, exclusively been produced by the Agba family of Otari village which had from time immemorial, (been) the Headquarters and seat of the King or Oda-Abua.

2. It is their case that the family of the 3rd defendant -Uku/Ukwu, always produced the Juju Priest in Abua which post/position, they maintain, is also hereditary. That by custom and tradition, no member of the family, which produce the Juju Priest, can become a King or Oda-Abua. That similarly, no member of the Royal family can occupy the post/position of a Juju Priest.

3. The Appellants maintain that traditionally, there is no chieftaincy title in Abua, known as Uwema Abua. Rather,

that traditionally, the head of each village in Abua, is known as the Uwema and who they say, is accountable to the King or Oda-Abua. Therefore, the said Uwema cannot be and is not superior to the Oda-Abua.

4. The Appellants assert, that the title of Uwema-Abua and Uwema-Ogbo-Abua, traditionally, were non-existent in Abua. That they were, in their own words, artificial stools created by Prof. Tamuno's Committee which was set up by the 1st Defendant/Respondent in 1975 to look into the classification of chieftaincy stools and identification of class in the Rivers State. That after the publication of the said Committee's Report, the 3rd and 4th Defendants/Respondents put themselves up for the said artificial stools so created and were thereafter appointed and recognized by the 1st Defendant/Respondent. This, the Appellants say, is/was against the custom and tradition of the Abua people.

In support of the foregoing, the Appellants, called three (3) witnesses. PW1, is Chief Kenneth Imiate Okagua of Okobo village in Abua and a retired Chief Health Superintendent. (See pages 52 - 95 of the Records). Edum Woodman - retired Custom's Officer - See pages 95 - 103 of the Records. P.W. 3 is Keleh Obunge who claims/claimed to be the Oda-Abua of Abua (See pages 164 - 168 of the Records).

I note that when the hearing of the case had reached defence stage, as the Plaintiffs/Appellants had closed their case on 9th November 1989, the 3rd Defendant/Respondent filed a motion seeking an order for stay of further proceedings on the ground, that he had filed an appeal at the Court of Appeal. That motion was dismissed on the ground that it was an abuse of the process of the Court in that there was no evidence of any appeal having been filed or entered in the said Court of Appeal. See page 194 of the Records where the trial Judge stated thus:

'Court: I seem to agree with the observations of learned Counsel for the Plaintiff/Respondent. I do not see how a Counsel who has been in the case for so long can now bring a motion for stay of proceedings to enable him appeal against the ruling of the Court delivered since 10/7/81 over 9 (nine) years ago when he had taken dates already to open his defence. One can see no other reason behind the application other than to frustrate the proceedings'.

[the underlining mine]

The defence opened on 30th May 1991. They called four (4) witnesses. DW1 is Basoeme Abbey Harry - a Civil Servant. (See pages 195 - 200 of the Records). DW2 is H.R.H. Chief Victor Ukwu III who was the 3rd Defendant (See pages 204 - 232 and pages 248 - 254 of the Records where he was cross-examined). DW3 is Nelson Wariboko Ubagana - a farmer. (See pages 255 - 257 and 258 - 259 of the Records where he was cross-examined). DW4 is Major Job Umah who is now the 3rd Respondent and who claimed/claims to be a recognized traditional Ruler and a businessman. He testified that he is the Uwema Ogbo Abua. He was an ex-police man with Shell Company (see pages 277 - 280 of the Records).

[A] I will now refer to the exhibits, which the learned trial Judge also referred to. In my respectful view, Exhibit A is the 'Arrow Head' so to speak. It is a very important and a crucial document. It is the 'pith' of this case. It was signed on 2nd November 1896. As noted by the learned trial Judge, it is a Treaty between the chiefs of Abua and Her Majesty the Queen of Great Britain and Ireland. It contains ten (10) Articles. At page 358 of the Records, His Lordship reproduced Article 1 of Exhibit A. For the avoidance of doubt, I will also reproduce it. It reads,

'Her Majesty, The Queen of Great Britain and Ireland Empress of India in compliance with the request of the Chiefs and people of Abua hereby undertakes to extend to them and to the territory under their authority and jurisdiction, Her gracious favour and protection.'

I note that the learned trial Judge thereafter, stated that 'throughout the 10 articles in the treaty, reference is made not to the King of Abua but to the 'Chiefs of Abua', but I also note that at page 359 of the Records, he stated inter alia, thus,

'However, it was signed by Amiofori referred to as 'King's son Amiofori' who put his Xmark for the King Obuge. Others apart from Amiofure also put their Xmarks'

The learned trial Judge thereafter stated that 'apart from Amiofure (it is the same as Amiofori but differently spelt) signing as King's son for King Obunga (sic), the treaty did not specifically state that the British Government recognized King Obunga (Obunge) as the King of Abua'.

I wish to state here with the greatest respect, that I suppose that the King was not expected to be physically present at such event of the signing of the Treaty having regard to his status. Exhibit 'B' supports my view. But the important thing in my respectful view was/is that nobody, was/is talking about recognition by the British Government. Afterwards, His Lordship called him King Obunga (Obunge) and stated that apart from Amiofori or Amiofori signing as King's son for King Obunga', in any case, Exhibit 'A' speaks for itself. The law is settled as a rule of law that in the interpretation of a document, oral or parol evidence will not be admissible among other things, to contradict or alter it where the document is clear and unambiguous. There are too many decided authorities in this regard. But see Royal Exchange Assurance Nig. Ltd. & 4 Ors. v. Aswani Textiles Industries Ltd. (1991) 2 NWLR (Pt. 176) 639 C.A. and Olanlege v. Afro Continental Nigeria Ltd. (1996) 7 SCNJ. 145 @ 155 just to mention but a few.

(B) Exhibit B is dated 14th October 1902. It is the settlement of a land dispute between the New Calabar Chiefs and Abua Chiefs by one K. Campbell - the then Acting District Commissioner Calabar, at Degema. Therein, Obuga, was referred to as King Obuga of Abua. The learned trial Judge at page 359 of the Records acknowledged or recognized this fact. He stated thus:

'In the last paragraph before the 'conclusion' Mr. K. Campbell stated:

'King Obuge of Abua showed me the ivory on his hands as the (white) substance of elephant tusk killed by his people and gave him as the King'.

(the underlining mine)

The Court below, at page 620, reproduced part of Exhibit 'B' thus:

'In the course of my inquiry, I was told that on (in) December (1896), the Government of the Niger Coast Protectorate succeeded in getting King Obuge of Abua to sign a treaty in which he agreed to allow his Kingdom to come under the protection of her Majesty's government and the terms of that treaty was not violated. King Obuge of Abua showed me the Ivory on his hands as the while (sic) substance of elephant tusk killed by his people and gave to him as the King'.

[The underlining mine]

[C] As regards Exhibit 'G', the learned trial Judge at pages 361 and 362, of the Records, inter alia, had this to say:

'Exhibit 'G' dated 13th July 1923 dealt with the petition of Chief Bunge as to why Uku was recognized instead of Bunge as King. In Exhibit 'G', it is stated inter alia that if Bunge is the same person as the King Bunge on whose behalf the Treaty was signed in 1896, then Mr. Brook's finding of November 192 ('') is wrong and unjust because at the time, a copy of the Treaty could not be found. If the copy of the treaty had been before Mr. Brook, he would in all probability have found in favour of Obunge'.

[The underlining mine]

His Lordship went on at page 362, inter alia, as follows:

'Mr. G.F. Tomlinson who signed Exhibit 'G' on behalf of the Ag. Chief Secretary to the Government called for more facts so as to resolve the issue relating to the tussle between Uku and Obunge.

In essence Exhibit 'G' is saying that Obunge is the King of Abua if he was the same person of whom the Treaty of 1896 was signed'.

[the underlining mine]

I say, of course, he was the same person. The underlined words by me, is a finding of fact by the learned trial Judge. Even in paragraph 2 of Exhibit 'U', the following appear: -

'2. Bunge (or Obunge) is the same person as King Obunge on whose behalf, the 1896 Treaty was signed'.

[D] Now, Exhibit 'H' is dated 28th June 1921. At the same page 362, the learned trial Judge stated inter alia, as follows:

'Exhibit 'H' dated 28th June 1921 is a Memorandum from the Resident, Owerri Province to the District Officer Ahoada. Paragraph 2 of the said Memorandum reads: -

'Chief Uku must not adopt the style of a King to which he has no title. I should be glad to know his native title as Head Chief of Abua'.

[The underlining mine]

His Lordship continued thus:

'Part of paragraph 3 of the said Exhibit reads '..... His (meaning Uku) recognition as Head Chief secures only his position as head of the native community which I trust he will use for the good of his people'.

He concluded as follows:

'By Exhibit 'H', Chief Uku was recognized not as a King of Abua but as head Chief of Abua. The Resident of Owerri Province then called for the native title as head chief of Abua. It does appear from Exhibit (sic) 'G' and 'H' that the colonial administrators recognized the existence of King of Abua and the head chief of Abua, the native title of which was called for in Exhibit 'H'.

[The underlining mine]

It is to be borne in mind, that the underlined, are findings of fact by the trial Court.

[E] Exhibit 'J' - still at page 362 through to page 363, the learned trial Judge, stated as follows:

'Exhibit 'J' is the Abua Clan Report dated 1/11/32 from the 'District Officer Ahoada, to the Resident Owerri Province. In the report, the District Officer said his opinion on the organization of Abua Clan as earlier held by him was wrong. That earlier opinion was based on Mr. Tomlinson's Report and notes of evidence. According to him Mr. Tomlinson was wrong in recognizing Uku as a Paramount chief of all Abua. Though by paragraph 5 of the Report, Uwema Uku insisted on his position as paramount chief. The District Officer informed him that his salary would be maintained at the present rate and that dignity of his position as representative of the senior to of the senior Group would be maintained but beyond that they could not go. The approval of this report by the Resident, Owerri Province was then called for'.

[The underlining mine]

It is unfortunate and regrettable to note by me, that in the face of the above documentary evidence and the findings of fact by the learned trial Judge, he, with profound respect, went into the realm of speculation and a lot of misconceptions. His Lordship, I am sorry to say, approbated and reprobated at the same time. He went up and down in the said Judgment for reasons best known to him. He, so to speak, found solace in and eventually anchored his findings and conclusions based on Exhibit 'K'.

Let me highlight some of the misconceptions and speculations. Exhibit 'J' is dated 1st November 1932 while Exhibit 'K' is dated 3rd September 1923. It is in Exhibit 'J', that the said District Officer stated that Mr. Tomlinson was wrong. I had

referred to Exhibit 'J' in my [E] hereinabove reproduced.

[F] As regards Exhibit 'L', the learned trial Judge stated at page 365 of the Records, inter alia, as follows:

'Exhibit 'L' is a Memorandum from the District Officer to the Resident, Owerri Province dated 15th August 1921. Exhibit 'L' speaks for itself and reads: -

'1. 'I held a meeting of the Abua chiefs and they told me that Chief Uku's title was 'UWOAMA'.

2. I believe that Uwoama simply means head chief. Thus there would be an Uwoama of Otari, Amelema etc. Uku's title would be Uwoama of Abua. I have told him that it (sic) must adopt that title'.

It is noted by me that Exhibit 'L', was before Exhibit 'G' and 'J'.

[G] Exhibit Q. At page 366 of the Records, the learned trial Judge stated inter alia, as follows:

'The last Exhibit tendered during Plaintiff's (sic) case is Exhibit 'Q'. It is the British Flag (the Union Jack) which Obunge said was given to him at the time the 1896 Treaty was signed'.

[The underlining mine]

It is noted by me that this evidence as regards Exhibit Q, was not challenged nor controverted by the Respondents at the trial.

[H] Exhibit 'E' - At page 366, the learned trial Judge, stated inter alia, as follows:

'Also tendered is Exhibit '

[The underlining mine]

At the hearing of the appeal on 14th March 2006, Akpomudge (SAN), very forcefully, made this point - i.e. about the two offices or posts/positions being diametrically apart or different. Most remarkably, I see at page 614 (not 620 as stated in the Appellant's Brief at page 8) of the Records, the Court below ' per Pats-Acholonu, JCA, (as he then was and of blessed memory) after stating the cause of action and in summary, the respective cases of the parties, stated inter alia, as follows: -

'.....Both parties are however agreed that according to Abua custom and tradition, these two offices or positions (sic) (meaning positions) to wit, Clan Head or King and Chief Juju Priest are distinct and one cannot assume the position of another.....'.

(The underlining mine)

I dare say that the underlined, is a finding of fact by the Court below.

Now, at page 367 of the Records, the learned trial Judge stated that the Plaintiffs/Appellants relied on Exhibits 'A', 'B', 'C', 'H', 'J', 'K' and 'L' to prove that their family is the royal family which produces the King. Then he stated as follows: -

'It is pertinent to observe that (there is) no where (in) EXHIBIT 'A' is Obunge referred to as King apart from Chief Amiofori of Otari signing as 'King's son'. It was a Treaty made with the Chiefs of Abua and the colonial Government. It is in EXHIBIT 'B' that he is referred to as King Obunge of Abua. EXHIBIT 'B' is the settlement of land dispute between New Kalahari Chiefs and the Chiefs of Abua'.

[the underlining mine]

Surely, as even reproduced by the Court below, Exhibit 'B' made unequivocal reference to Exhibit 'A' and it should and ought to be read together.

In any case, my learned brother, Pats Acholonu, JCA (as he then was and of blessed memory), re-acted at page 619 to page 620 of the Records, to Exhibit 'A', inter alia, as follows: -

'.....I have looked at and carefully examined Exhibit A. Indeed, throughout the length and breath of the document, King Obunge or any King for that matter was not mentioned by name but amongst those whose marks were there, was someone who was described in the following words: King's son Amifure for the King 'Obuga.....'

The learned Jurist then stated thus:

'Who was the King who reigned when the treaty culminating in Exhibit A was made'

His Lordship reproduced the pleading of the Appellants' late father who was the Plaintiff, in his Further Amendment of Claim and thereafter stated, inter alia, as follows:

'Indeed Exhibit 'A' was signed by the Chief of Abua and the 'King's son,' Amofure'.

His Lordship then stated thus: -

'Of what substance is this Exhibit'

He supplied the answer as follows:

'To my mind, it does not prove that which is pleaded. It shows that at that time of the treaty Obuga or Obuge was a King in Abua. Exhibit B, which was referred to also gives me an insight that Mr. K. Campbell, Acting District Commissioner of Niger Coast Protectorate acknowledged the Kingship of Obuge. In Exhibit 'B', the said Campbell made this reference;

In the course of my enquiry, I was told that in December (1896), the Government of the Niger Coast Protectorate succeeded in getting King Obuga of Abua to sign a treaty in which he agreed to allow his Kingdom to come under the protection of her Majesty's government and the terms of that treaty was not violated. King Obuge of the Abua showed me the Ivory on his hands as the white (sic) substance of elephant tusk killed by his people and gave him as the King'.

[The underlining mine]

His Lordship continued as follows:

'In a document tendered and marked 'J' emanating from the Resident, Owerri Province dated 1932 and addressed to the District Office Ahoada, the following appeared at paragraph 2 of that letter:

I forward herewith a report on Abua Clan..... It will be found to differ very materially from what I formerly thought to be the organisation of the Clan, that opinion was based on Mr. Tomlinson's Report and notes of evidence but I was convinced that he was mistaken in regarding Uku as a paramount Chief of all Abua. From a study of his Report, it will be seen that the evidence offered by Oteba, Okpudren and Anugah groups are negligible'.

[The underlining mine]

I note that the above pronouncements or statements by His Lordship are findings of facts and holdings.

Reference was thereafter made to Exhibit 'U' - Memorandum dated Saturday, September 8th 1923, Exhibit 'K' dated September 3rd 1923 and Exhibit 'Y' dated 8th May 1924, all of which were reproduced at pages 621 to 627 of the

Records. I note that much reliance and heavy weight were made in respect of these exhibits by the two lower Courts. I must observe and stress the fact which is important and should and ought to be borne in mind, that the said Exhibits, were made before Exhibit 'J' dated 1st November, 1932 which was made later in time. In other words and in effect, Exhibit 'J' was the most current document. That the other exhibits, were marked after Exhibit 'J', did not in my respectful view, elevate them to coming or being made after Exhibit 'J'. They were so marked as such Exhibits when they were tendered. What is important, are the dates they were made which are relevant in the determination of their importance and reliability.

Now, at page 368 - the last paragraph and ending at page 369 of the Records, the learned trial Judge, stated as follows:

'It is also pertinent to observe that in spite of Exhibits 'G' and 'H' which recognized the existence of King of Abua and Head Chief of Abua, Exhibit 'J' dated 1/11/32 stated that the recognition of Uku as the paramount Chief of Abua was wrong. However the dignity of his position as the Uwema representing the senior town of the senior group (of towns) was maintained as well as his salary. Exhibit 'J' made no reference to any person as King of Abua'.

[The underlining mine]

But in my respectful view, Exhibit J brought to an end and climaxed to the end of the claim or assertion of Uku as the King of Abua. Exhibits 'G' and 'H', remained intact and subsisted.

His Lordship continued as follows:

'Exhibit 'L' dated 15/8/21 recognised Uku as the Uwoama (Uwema) of Abua which is distinct from the Uwema of the various villages. Therefore Uwema Abua means Head Chief of Abua, the recognition of which was to be wrong by Exhibit 'J' and limiting his head chief as Uwema to that of the senior town he represented'.

[The underlining mine]

I say, with respect. Though sayest. So be it!

I note that every word in the above finding and holding is important and weighty. Yet, in spite of these findings and holdings, the learned trial Judge, had this to say:

'The above Exhibits relied upon by the Plaintiff (sic) do not clearly show who is the King of Abua'.

I will exclaim, really' And I or one may ask, which Exhibits' Honestly and frankly speaking, the whole thing looks or appears to me, to be very disgusting to say the least.

I have taken pains to go this far because, I have demonstrated hereinabove that the final decision of the learned trial Judge, is most perverse. Now, with profound humility and respect, the Court below, fell into the same error when it stated at page 627 of the Records as follows:

'There is no doubt that following from the plethora of documents tendered by the parties, the Obunge or Obuge or Obuga was at one time a King of Otari and Head Chief of Abua but it cannot be doubted that the Uku family Agana had produced Head Chiefs who the Government in power had recognised not as a Priest but as a Head Chief of Abua. The inference on the surface at least is that the Agba family (i.e. of the Plaintiffs/Appellants) does not have monopoly of producing Kings or Head Chiefs and that the family of Agana (i.e. of the 3rd Defendant/Respondent) can equally and in fact did have consistently for more than 80 years been producing Head Chiefs in Abua going by the documents laid before this Court'.

(The underlining mine)

With respect, this misconception was confounded, when at the last paragraph of page 627 and first line of page 628, the

Court below stated as follows:

'In his evidence, the 3rd Respondent recited the names of his ancestors who had been Kings of Abua. It is worthy of note he did not mention for once Obuge. In one of the documents Exhibit 'K' or 'J', Amiofori was said not to be the son of Obunge. It was also the same in Exhibit 'U'. In fact it was found out that Amiofori was not King at all. I will come to this later. Although Obunge was paid a stipend, I believe it was based on the fact that he was once regarded as a King. A state of affairs which a British Colonial Officer regarded as erroneous'.

[The underlining mine]

The above can be faulted in many respects. Firstly, the Court below at page 627 as reproduced by me hereinabove, found as a fact that 'from the plethora of documents tendered by the parties', that Obunge or Obuge or Obuga, was at one time a King of Otari and Head Chief of Abua.

With profound humility and respect, it was not justified to make as it were, a U-Turn, by stating later as reproduced by me hereinabove, that 'I believe it was based on the fact that he was once regarded as a King a state of affairs which a British Colonial Officer regarded as 'erroneous'. 'Exhibits 'K' and 'U' were before Exhibit 'J' and Exhibits 'G' and 'H' are existing documents.

Secondly, when it stated that 'it was found out that Amiofori was not a King at all', apart from the fact that such a fact, nowhere appears in the Records, the 3rd Defendant/Respondent, rather stated, inter alia, at page 206 of the Records,

'.....from the papers I collected from the archives it is clearly stated that Amiofori is not the son of Obunge and also Obunga is not a King'.

Thirdly, Exhibit 'T' tendered by the 3rd Defendant/Respondent, is dated September 3rd 1923. This means also, that it was earlier than the subsequent Exhibit 'J' dated 1st November 1932.

Fourthly, as hereinabove reproduced by me, the Court below, had stated,

'The inference on the surface at least is that the Agba family - (i.e. the Appellants' family) does not have monopoly of producing Kings or Head Chiefs.....'.

[The underlining mine]

So, the Appellants' family was producing Kings or Head Chiefs as found as a fact by the Court below.

I note that there is, unfortunately, the grave error, with respect, by the two lower Courts, of mixing up Kingship and Juju Priest, it is sometimes humorously stated that 'fuel or oil and alcohol, do not mix together'. If they mix, the consequence is grave. The driver of the vehicle, invariably, gets involved in a serious motor accident. The Appellants, consistently maintained and as have been shown earlier in this Judgment and as would appear later herein, that a King cannot be and is not the same as a Juju Priest. This also is borne out from the evidence of the same 3rd Defendant/Respondent under cross-examination. He had identified at page 250, Exhibits 'H' and 'L'. At the expense of repetition and as found by the learned trial Judge at page 368 of the Records that in Exhibit 'H', Uku was told 'not to adopt the style of a King to which he has no title'. He was only the head chief of Abua. In paragraph 2 of Exhibit 'L', the following appear:

'2. I believe that Uwusama simply means head chief. Thus there would be an Uwoama of Otari, Omelema etc. Uku's title would be Uwoama of Abua. I have told him that it must adopt that title'.

It is worthy of note that at page 620 of the Records, the Court below, before reproducing part of Exhibit 'B', had this to say,

'.....Exhibit B which was referred to also gives me an insight that Mr. K. Campbell Acting District Commissioner of

Niger Coast Protectorate acknowledged the Kingship of Obuge.....'.

(The underlining mine)

Again, in Exhibit 'U' dated September 8 1923, the following inter alia, appear:

'5. Mr. Gordon Grant, in 1918 wrote: -

'The most outstanding Chief is Amiofori but the real King of Otari is Obunge'

'6. Mr. Cochrane in his handing over notes (probably 1918) states: -

'Chief Obunge is the Head Chief of the Abua Tribe'.

'20. The Aselemi of Omaraka who told Mr. Webber that Obunge was the King is the same Aseelane of Amaraka who signed the Treaty'.

See also the answers to question 'a' and part of '2' in Exhibit 'K' dated September 3rd 1923, which is 'Yes', being word for word as that in paragraph 2 of Exhibit 'U' (supra).

Now, the 3rd Defendant/Respondent as DW2, at page 251, lines 1 to 22 of the Records, on oath, stated as follows:

'I know that the Clan head of Abua is hereditary but I do not know if the juju priest is hereditary. I now say that juju priest is hereditary. Juju Priest is very important in Abua. The post of the headship of Abua and juju priest had been in existence before the advent of the Colonial Government.

It has not happened in my family where one person can occupy the post of Clan head and juju priest.

I remember a man called Mr. Talbot. Mr. Talbot in the 1930's met with Chief Uku. He had a discussion with Chief Uku. Mr. Talbot wrote a Book, which I am relying on in this proceeding. I had read the Book. In the Book, UKU described himself as 'Priest King'- The Book is Exhibit E. Uku was not a juju priest. It is true to say that Uku was a priest, but he was 'Priest King'.

[The underlining mine]

I note that this evidence above was also referred to, by Akpomudje, Esqr. (SAN) during the hearing of this appeal on 14th March 2006. It also appears at page 5 of the Appellants Brief. I had earlier hereinabove in this judgment, referred to Exhibit 'E' - the Book Authority by Mr. Talbot titled 'Tribes of the Niger Delta' by Talbot and also about the great drum called Ake Abua. I note that the 3rd Defendant/Respondent, at page 254 lines 25 - 27, swore as follows:

'I am not struggling for the title of Oda-Abua. I know that the Plaintiffs are not saying that they should be called Uwema of Abua'.

In fact, he had agreed at page 251 of the Records that he leads in the ceremony of worshipping the deity of Ake Abua and inherited the priesthood from his late father. He swore that Ake Abua is 'God's Shrine', that his function in the worshipping is not of a juju priest, that the worship now is Christian worship.

The above evidence of the 3rd Defendant/Respondent together with Exhibits 'A', 'B', 'E' and 'J' in my respectful view, and I add Exhibits 'G' and 'H', support the contention of the Appellants which was proved beyond doubt, that Kingship belongs to the Appellants' family, while Juju Priest or if you like 'Priest King', belongs to the 3rd Defendant/Respondent's family. In other words, I find as a fact and hold that one cannot be a King and at the same time a Juju Priest or Priest King. Although the Court below stated that the 3rd defendant recited the names of his ancestors who had been 'Kings of Abua', in paragraph 8 of the Further Amended Statement of Claim of the Appellants at page 116

of the Records and in the evidence of the PW1, at page 60 of the Records, they also listed or "recited" the names of their own Kings at least up to 1977. The learned SAN stated in his oral submission that they do not care, if the Rivers State Government, recognizes the 3rd to 5th Respondents.

I can go on and on. But before concluding this perhaps, lengthy Contribution/Judgment, note from the Records, that before the Reply by the Appellants', learned Counsel, the learned trial Judge, had decided to make some observations. At page 405, he had in fact made some findings and conclusions, before hearing addresses from Counsel for the parties. Then, he proceeded to again review and evaluate evidence and addresses of Counsel. He again proceeded to record the submissions of the learned Counsel for the defence at page 406. At the last paragraph of page 406, he proceeded to record the address of the learned Counsel for the Plaintiffs/Appellants up to page 419. At page 419, he stopped recording the said submissions and started making comments and observations. Thereafter, he continued to record the said submissions of the learned Counsel for the Plaintiffs/Appellants at paragraph 1 at page 420. At page 423, he stopped the recording of the said Counsel's submissions. He then proceeded and went into the merits of the submissions up to page 426 and then continued with the recording of the learned Counsel's address and at page 429, made some findings up to page 431. Then at page 431, he finally 'landed' so to speak. Any wonder, the said judgment with respect, was going up and down so to say. His Lordship, with respect, as I had observed earlier in this Judgment, was approbating and reprobating at the same time most unsatisfactorily, I dare say.

I am aware that each Judge has his own style of writing a Judgment. I am also aware that there are some Book Authorities about 'Writing of Judgment'.

I will pause here to note or observe that the Rivers State Edict came into existence in 1980. I take Judicial Notice of the fact that in the Rivers State, just like in other States of Nigeria, there is proliferation of Autonomous Communities, Local Governments and the recognition of chiefs of every Grade or Class. There are High Chiefs, Very High Chiefs, Great Chiefs, His Highnesses, His Royal Highnesses, His Royal Majesties, etc. Communities which had one market and the same market day, one Hall, one Stream, worshipped in the same Church, never intermarried and had a common festival on a particular day or season, etc, have been torn apart or asunder as a result of the Creation of Autonomous Communities and Local Governments by various State Governments. By the Chieftaincy Edict No. 9 of 1978 by Section 2, the Chiefs in the Rivers State, have been classified into 1st, 2nd and 3rd Class Chiefs i.e. Uwema Abua - 1st Class, Uwema Ogba Abua - 2nd Class, Uwema Okpedu - 3rd Class etc. (at page 365 of the Records, the rest of the classification, are blurred). The Abua Kingdom (now Abua/Odual) has now been decimated, broken up with His Royal Highnesses recognized by the State Government. The original Appellant and one of the Defendants are said to be dead.

I noted hereinabove that the learned Counsel for the Appellants, say they are not bothered about the recognition of the living human Respondents. The big question that will remain unanswered, is, what next, even if the Appellants succeed in this appeal' But this is certainly not my business in this Judgment.

Before concluding this Contribution/Judgment, it is settled firstly, that if a trial Court fails to properly evaluate the evidence before it (as has happened in this case), an Appeal Court will intervene in order to save the situation. See the cases of Salako v. Dosunmu (1997) 7 SCNJ. 124; U.D.C. Ltd. v. P.A. Hammond (Nig.) Ltd. (1998) 9 NWLR (Pt. 565) 340; Oneh v. Obi (1999) 7 NWLR (Pt. 611) 487; Kwajaffa v. B.O.N. Ltd. (1999) 1 NWLR (Pt. 587) 423 and Ademolafu v. Adanipekun (1999) 1 NWLR (Pt. 587) 440 just to mention but a few.

Secondly, having regard to the nature of this instant case leading to this appeal, there is the weight and relevance of the documentary evidence placed before this Court. That being the case, in my respectful view and this is also settled, this Court is in as good a position as the trial High Court, as well as the Court below, to examine also, the entire documentary evidence placed before the lower Courts, and draw its own inferences and come to its own conclusion. See the case of FSB International Bank v. Imano (Nig.) Ltd. (2000) 11 NWLR (Pt. 679) 620 @ 637; (2000) 7 SCNJ. 65 - per Achike, J.S.C. (of blessed memory).

It is also settled that the importance of documentary evidence is that it could be used to resolve an issue or conflicting evidence. It could be used as a hanger from which to test the veracity of the oral testimonies. See the cases of Fashanu v. Adekoya (1974) 1 ANLR (Pt. 1) 35; (1974) 6 S.C. 83 - per Coker, J.S.C.; Owode v. Owodunni (No.2) (1987) 2 NWLR

In the case of Alhaji Ibrahim v. Galadima S. Barde & 9 ors. (1996) 12 SCNJ. 1, in his Dissenting Judgment at page 52, Ogunbare, J.S.C., (of blessed memory), referred to the case of Adeseye v. Taiwo (1956) 1 FSC 84 as to an admissible relevant Book Authority, and stated that it is not conclusive. He reproduced part of the statement of Nnaemeka-Agu, J.S.C., in the case of Kindey & 11 ors. v. The Military Governor of Gongola State & ors. (1988) NSCC 827 (it is also reported in (1988) 2 NWLR (Pt.77) 445 and (1988) 5 SCNJ. 28 citing Fashanu v. Adekoya (supra) and stated as follows:

'No doubt the legal proposition - that where there is oral as well as documentary evidence, documentary evidence should be a hanger from which to assess oral testimony is a sound one'.

[The underlining mine]

Therefore, with the greatest respect, the concurrent judgment of the two lower Courts must be interfered with by me. I have held hereinabove that the Judgment of trial Court is perverse.

I agree with the learned (SAN) for the Appellants that the said contradictions are minor and not material.

I wish to state or observe as follows:

(1) Amiofori who was referred to and was described in Exhibit 'K' by Mr. Gordon Grant in 1918, as 'The most outstanding Chief and/or was called sometimes as the 'Secular King', called or described himself in Exhibit 'A' as the 'son' of Obunge. Surely, in the traditional setting, he could refer to Obunge as 'his father' and Obunge on the other hand, could call or regard him as 'his son'. Afterwards, both of them came from Otari. Mr. Gordon Grant also stated that the real King of Otari is Obunge. I or one may ask, 'Was the Kingship, limited to Otari' This is because and this must be borne in mind, that Mr. Coohrans in his said undated Handing over Notes stated that, Chief Obunge is the Head Chief of the Abua Tribe'. See page 363 lines 25 to 30 of the Records. If Amiofori gave evidence for Uku as being the King of Abua and he came from Otari with King Obunge, surely and definitely, he then lied. He must have had his reasons for so doing. Surely, such evidence should and ought to be treated with a pinch of salt.

(2). Much heavy weather was made by the two lower Courts as regards Exhibit 'F' signed by the P.W.1. Mr. Oholi in his oral submission stated that by Exhibit 'F', the Appellants, 'shot themselves on the leg'. It is pertinent that he P.W.1 on oath stated that he signed Exhibit 'F' on diplomatic and political reasons' even though according to him, the contents are not true. But this evidence, I note, was neither challenged nor controverted by the Respondents. Yet, this evidence, brought about the wrath of My Lord Pats Acholonu, JCA, (as he then was and of blessed memory) and this was responsible for his stating at page 633 of the Records, inter alia, that,

'.....There was the inconsistent and contradictory evidence of P.W.1 and P.W.2. There was the dogged and steadfastness in clinging to the title of Oda Abua which from the evidence appears unknown in Abua Clan'.

[The underlining mine]

It is rather unfortunate. The underlined by me with respect, is not borne out from the solid and material documentary evidence that I have demonstrated in this Contribution/Judgment. Besides or what is more, I have, at page 14 of this Judgment, reproduced the evidence of the 3rd Defendant/Respondent under cross-examination, where he stated 'I am not struggling for the title of Oda-Abua'. So, this title is known and exists in Abua Clan. His Lordship, as noted by me above, had held that Agba family of the Appellants had no monopoly of producing Kings or Head Chiefs. Oda Abua is the title of the King or Monarch of Abua Clan.

His Lordship, obviously enraged, went on thus,

'There was the time lapse of time from 1927 when Obuge died, and also when a suit instituted by the Appellants' family in this regard failed and they did nothing hereafter and the family of the 3rd Respondent produced all the Kings'.

[The underlining mine]

Again, with respect, this is rather unfortunate. This is because I have hereinabove referred to the pleadings of the Appellants in paragraph 8 of their Further Amended Statement of Claim and the evidence of the P.W.1 who at page 53 lines 19-20 of the Records, stated that he was alive in 1927, when King Obunge died. At page 60 of the Records, he listed or 'recited' the other Kings from his family that reigned after the death of King Obunge up to 1977 when a new King in the person of Chief Kala Obunge, was installed.

(3) Also to be stressed is that the suit, which was either lost by dismissal or striking out in Exhibit 'N' and which is AHC/C/41/76 - i.e. in 1976, was between Chief Mark E. Bunge & Anor. v. Prof. Isaac Dema & 2 Ors. Significantly and remarkably, the learned trial Judge, did not say in his said judgment, what the suit was all about.

Let me again, for purposes of emphasis, state that the said Exhibit 'K' and 'U', were before Exhibit 'J'.

With profound humility and greatest respect, it was/is unfortunate and regrettable and indeed not justified at all, when my learned brother, Pats-Acholonu JCA, (as he then was and of blessed memory), stated as follows:

'..... I only describe the case of the appellants in this Shakespeare's language. 'It's like a tale told by an idiot, full of sound and fury signifying nothing'.

This is because, even during the hearing of this appeal, Oholi, Esqr, - learned Counsel for the 1st and 2nd Respondents, conceded or stated that Exhibit 'A' is crucial as according to him, this was noted by the two lower Courts. But with respect, he was not on a solid ground, when he referred to page 619 and the findings at page 620 of the Records and submitted that there was no positive finding in the Appellants' favour if still, according to him, page 627 is read together with page 628 of the Records. I have already reproduced in this judgment, some portions of pages 619 and 620, which, support my said, view and debunks effectively, the said submission that there was no positive finding in the Appellants' favour. But if it is so or true, it is, with respect, because of the perverse judgment of the trial Court.

Let me add quickly that the submission of Mr. Ofodile at the hearing of this appeal that Issue Estoppel, was the bed-rock of the 3rd Defendants and that the findings, became binding, with respect, is of no moment. In fact, speaking for myself, it is a non-issue. He cited and relied on the cases of Awote v. Owodunni & Anor. (1986) 5 NWLR (Pt. 45) 949 (it is also reported in (1986) 2 NSCC Vol. 17. page 1359) and Timitimi & 6 Ors. v. Chief Amabebe & Anor. (1953) 14 WACA 374. If the case, according to the Court below, and referred to at page 11 of their Brief, 'is marked by many highly unedifying features' and 'there is observable lack of mastery of the facts of the case by way of understanding and appreciating the history of the Kingship of Abua', with respect, these must perforce, be on the part of or attributable to the learned trial Judge as demonstrated by me in this Contribution/Judgment.

However, I agree with Ofodile, Esq., in his paragraph 4.06 of their Brief, that the principal, sole and fundamental and all-embracing issue in contest, is - who produces or is entitled to produce the King of Abua. I also agree with him in his summary/conclusion (b) that 'once the issue of right to the kingship is resolved on the totality of evidence (vide documentary evidence) every other issue falls into insignificance'. I have hereinabove demonstrated and shown conclusively, that by the welter of documentary evidence, vide Exhibits 'A', 'B', 'E' 'G', 'H' and 'J' in particular, and the said evidence of the 3rd Defendant/Respondent as D.W.2 reproduced by me, I am bound or obliged to and in fact, must resolve the issue of Kingship, in favour of the Appellants. I accordingly, do so.

It is from the foregoing and the fuller reasoning and conclusions in the said lead Judgment of my learned brother, Oguntade, J.S.C. that I too, allow this appeal, which I hold, is meritorious. I hereby and accordingly, set aside the said decision of the Court below.

I abide by the consequential orders in respect of costs.