IN THE SUPREME COURT OF NIGERIA

Suit No: SC64/2000

Petitioner: Benneth N. Okere
And
Respondent: Prince O.D. Amadi & Ors

Date Delivered: 2006-05-06

Judge(s): Idris Legbo Kutigi , Aloysius Iyorgyer Katsina Alu , Akintola Olufemi Ejiwunmi , Dahiru Musdapher , Sunday Akintola

Judgment Delivered

The main question that calls for determination in this appeal is, whether the appellant as opposed to the 1st respondent was properly appointed by the 2nd respondent, the Military Administrator of Imo State as the Traditional Ruler of Avu Autonomous Community in Imo State. The proceedings in this matter arose when the 1st respondent applied at the High Court of Imo State for an order of certiorari quashing the recognition accorded to the appellant as the traditional ruler of Avu Autonomous Community in Imo State by the 2nd respondent. Pursuant to the leave granted to the 1st respondent, he filed the application on notice for judicial review of the recognition granted to the appellant by the Military Administrator. In that application, the appellant was joined as respondent with the Military Administrator, the Attorney General of Imo State and the chairman of Owerri Local Government Council. The appellant who was the 3rd respondent filed a motion on notice praying the High Court to dismiss the application for judicial review on the ground that the 1st respondent (applicant) did not commence the proceedings within 21 days of the recognition of the appellant as the Traditional Ruler of Avu Autonomous Community by the 2nd respondent as required by Section 25 of the Traditional Rulers and Autonomous Law of Imo State No. 11 of 1981. The said motion was supported by a five-paragraphed affidavit and annexed thereto as an exhibit, was the certificate of recognition of the appellant made by the 2nd respondent on 9th April, 1996.

The said documents, which are on pages 58, 59 and 60 of the printed record, are copied as follows: -

\"Affidavit in support of the motion

I, Eze Benneth Nwagbarakwe Okeke, traditional ruler, residing at Avu in the Owerri Local Government Area of Imo State, Nigerian citizen, do make oath and state as follows: -

1. That I am the 3rd respondent/applicant.

2. That I am the Eze and traditional ruler of Avu Autonomous Community in Owerri Local Government Area of Imo State duly recognized by the Military Administrator of Imo State.

3. That I was duly recognised as the Eze and traditional ruler of the said Avu Autonomous Community by me said Military Administrator on 9/4/96. Copy of certificate of recognition as Eze of Avu Autonomous Community issued to me by the said Military Administrator is annexed herewith and marked exhibit \'A\'

4. That the applicant commenced this proceeding more than twenty one (21) days after my recognition as Eze and traditional ruler of Avu Autonomous Community.

5. That I swear to this affidavit truly and in accordance with the Oaths Act 1990.\"

\"Imo State government of Imo State of Nigeria (Section 3(1) and (2) of the Traditional Rulers and Autonomous Communities Law, 1981) certificate of recognition as Eze of Autonomous Community. I, Navy Capt., James N.J, Aneke Fss, Psc, Military Administrator of Imo Slate of Nigeria, by virtue of the powers conferred on me by Section 9(1) and (2)

of the Traditional Rulers and Autonomous Communities Law No. 11 of 1981 do hereby certify that you: Eze Kenneth N. Okere, the Duru Ihekaibeya vii of Avu Autonomous Community in the Owerri Local Government Area of Imo State, having been duly selected and presented by the people of the said Autonomous Community in accordance with the tradition and usage of that Autonomous community and the provisions of Section 5, 6, 7, 8, 9 and 10 of the Traditional Rulers and Autonomous Communities Law, 1981 have accordingly been recognized by me on behalf of the Government of Imo State as the Eze and Traditional Ruler of the said Avu Autonomous Community.

Given under my hand at Owerri this 9th day of April, 1996.\"

The 3rd respondent upon being served with the motion and the supporting affidavit of the appellant also filed a counter-affidavit. This ten paragraphed counter-affidavit was sworn to by a Chief Sydney Uju Amadi who described himself as a Company Director, on behalf of the 3rd respondent.

The relevant paragraphs of this counter-affidavit are as follows: -

\"4. That it is not true that the respondent/applicant was recognized on 9th April 1996.

5. That rather the respondent/applicant was recognized by a letter SGI/CH/S20/S.4/1/163 dated 17th April, 1996. That a certified true copy of the said letter is herein exhibited and marked exhibit \'A\'

6. That a certificate of recognition does not precede recognition.

7. That the said letter was to the best of my knowledge delivered to the respondent/applicant on 26/4/94 (sic) and he made it known publicly in Avu Town on the same day through celebration during which the receipt of the certificate was announced.

8. That it was after the Autonomous Community got to know that a person had been recognized that the applicant/respondent commenced his application for judicial review on 2/5/96 which was within 21 days.

9. That the application for dismissal was filed to divert attention from the live issues and delay the proceedings.\"

The letter referred to in paragraph 5 of me counter-affidavit of the 1st respondent reads thus: -

\"Government of Imo State of Nigeria
Office of the Secretary to the State Government
Political Affairs Bureau, Owerri.

17th April, 1996.

SG1/CH/S.20/S.4/1/163

His Highness Eze Benneth N. Okere
Duru-Ihekaibeya VII
Avu Autonomous Community Owerri
Ufs: Chairman Owerri Local Government Owerri.

Recognition of the Eze of Avu

I am directed to inform you that the Military Administrator, Navy Capt. JNJ Aneke fss, psc+, fnse has approved your recognition as the Traditional Ruler of Avu Autonomous Community with the title: Duru-Ihekaibeya VII of Avu Autonomous Community with effect from 9th April, 1996.

2. Please accept the congratulations of the Secretary to the State Government.

Sgd: P.O.C. Okwara

For: Secretary to the State Government.\"

The application was then considered by the learned trial judge on the basis of the facts disclosed by the affidavit and counter-affidavit including the documentary exhibits quoted above.

Following addresses by learned counsel for the parties, the learned trial judge delivered a well considered judgment. In the course of that judgment, the learned trial judge made the following findings and I quote,

\"(1) That the 3rd respondent/applicant was recognized on 9th April, 1996 as contained in the two exhibits referred to supra.

(2) That the application for judicial review having been initiated on 2/5/96 or 13/5/96 exceeded the 21 days provided for by Law No. 11 of 198 1.

(3) The action is therefore time-barred in the sense set out in Savannah Bank v. Pan Atlantic (1987) 1 NWLR (Pt.49) 212 at 259 E-H where Oputa J.S.C said inter alia if a statute allows a certain period of time to bringing litigation or for commencing proceedings, it is known as statute of limitation ... a plaintiff may have a cause of action but he loses the right to enforce that cause of action by judicial process because the period of time laid down by the limitation law for bringing such actions had elapsed.\"

The learned trial judge having regard to the principles of law involved in the resolution of this dispute then came to the conclusion \"that the cause of action cannot be enforced by judicial review under Section 25 (2) of the Traditional Rulers and Autonomous Communities Law 1981 (Law No. 11 of 1981).\"

The learned trial judge accordingly dismissed the application for judicial review sought for by the 3rd respondent. As the 3rd respondent was dissatisfied with that ruling of the learned trial judge, he appealed to the court below. His appeal to that court was successful. In the course of its judgment upholding the appeal, the court below formed the following view of the provisions of Section 25 of the Traditional Rulers and Autonomous Community Law No. 11 of 1981, when it said inter alia, thus: -

\"That Section 25 sets out to give a citizen the time limit within which to appeal. A Nigerian citizen has unlimited right to apply for review of any of the executive acts which adversely affect him and the state cannot seek to abridge these fundamental right without running foul of the law by trying to restrict him as to when he could have the initial access to the court without running foul of the combined provisions of Sections 6 (1) and (2) and (4), and Section 236 of the 1979 Constitution of the Federal Republic of Nigeria.\"

The court below then went on to opine thus: -

\"When a statute makes a provision which on the face of it is incomprehensible because of its vagueness or acquivocative (sic) equivocate language, the court will interpret it in a beneficial way. Difficulties are sometimes encountered in trying to construe certain provisions particularly where there appear to be some inconsistencies. In that case, the court should avail itself of its liberal attitude to give interpretations that would give life and meaning to the provision. In this case before us the only possible meaning that will be in accord with rationality, commonsense and decency is to say that the provision is anarchical and in its attempt to indulge in double tongue and subtleties, it has said nothing, and the right of undeniable access to the court without any limitation is still secured,\"

The appeal of the 1st respondent was therefore for the reasons given, adjudged as meritorious by the court below.

The appellant, aggrieved by the judgment of court below, then appealed to this court. Pursuant thereto, the appellant filed a notice of appeal consisting of two grounds and which will not be set out in this judgment. This is because the

learned counsel for the appellant clearly reflected them in the issues identified for the determination of the appeal in the appellant\'s brief. Before the hearing, the 2nd, 3rd and 4th respondents also filed respondents\" brief upon being served with the appellant\'s brief. The 1st respondent who also filed a cross-appeal has not filed a cross appellant\'s brief, pursuant to his cross-appeal. That cross-appeal is therefore struck out for want of prosecution. Also, it is apparent that learned counsel for the 1st respondent was duly served with the appellant\'s brief but he failed to file any brief for the respondent and also in support of the cross-appeal. The cross-appeal has already been struck out and this appeal will be heard without the brief of the 1st respondent.

At the hearing of this appeal, learned counsel who appeared for the parties adopted and placed reliance on their respective briefs of argument.

For the appellant, the two issues identified for the determination of the appeal are: -

\"1. Whether the Court of Appeal\'s decision which was based on issues not pronounced upon, decided or canvassed at the High Court, and which were not raised by any of the parties before and on which the parties were not heard is cored and can stand.

2. Whether Section 25 of the Traditional Rulers and Autonomous Communities Law of Imo State, 1981 is unconstitutional.\"

The 2nd, 3rd and 4th respondents in the brief filed for them by their learned counsel, C.B. Mbawuike, Senior State Counsel, Imo State Ministry of Justice, adopted quite correctly the 1st issue identified as the first issue in the appellant\'s brief.

Now, the thrust of the argument of learned counsel for the appellant in respect of the first issue is that the judgment of the Court of Appeal departed from the central issue raised before that court. The simple issue before the court was, whether the trial court was right when it held that time began to run from 09/4/96 when the appellant was recognized and consequently the application for judicial review having not been filed within the 21 days allowed by Section 25 of Law No. 11 of 1981 was statute barred. But, it is the contention of learned counsel for the appellant that the court below failed to consider the issue raised before it. Rather than considering the question raised before it, the court below proceeded to consider the constitutionality of Section 25 of Law No. 11 of 1981. And learned counsel further argued that as the court decided the appeal on the basis of this point, and as was taken suo motu, the court should have invited submissions from counsel. The failure to do so is a denial for fair hearing for the appellant. In support of that contention, reference was made to the following cases: Irom v. Okimba (1998) 3 NWLR (Pt.540) 19; Badmus v. Abegunde (1999) 11 NWLR (Pt.627) 493.

The other angle to the argument of learned counsel for the appellant to aid his contention that the court below erred in upholding the appeal of the 1st respondent is that the court below treated the appeal before it as if the appeal was a fresh case before it. It is his submission that an appellate court is not in itself an inception of a new case. An appeal, it is submitted is generally confined to the consideration of the record which comes from the lower court. Learned counsel for the appellant therefore submits that an appeal is an invitation to a higher court to review the decision of the lower court so as to determine whether the lower court arrived at the right decision having regard to the applicable law and the facts placed before it. See: Oredoyin v. Arowolo (1989) 4 NWLR (Pt.114) 172 and C.C.B. Ltd. v. Nwokocha (1998) 9 NWLR (Pt.564) 98. The further point made by learned counsel is that an appellate court is only obliged to consider the grounds of appeal filed against the decision of a lower court. Where an appellate court went out of its way to determine an appeal upon grounds other than the grounds of appeal filed against the decision of a lower court, and then it had acted without jurisdiction. In such a case, the decision of the appellate court would be set aside by a superior court to that court. See: Abiola v. Abacha (l991) 6 NWLR (Pt.509) 413; Obaro v. Dantata & Sawoe Construction (1997) 10 NWLR (Pt.526) 676; Ojimba v. Ojimha (1996) 4 NWLR (Pt.440) 32 at 39 and Okhideme v. Toto (1962) 1 All NLR 309.

I have read the brief of the 2nd, 3rd and 4th respondents in respect of issue 1, which they adopted from the appellant\'s brief. I do not deem it necessary to review their arguments in support of this issue. This is because the points canvassed therein are similar to those canvassed in the appellant\'s brief.

I have earlier in this judgment set down the reasoning of the court below that led to its decision and I am in no doubt that the submission made on behalf of the appellant and the respondents are wholly right. It is indeed not proper for the court below to have embarked on the consideration of issues not raised before it and which were not raised by the parties. What had happened in the court below, and with due respect to the learned justices of the court, is a travesty of justice. To raise issues suo motu, and without inviting the attention of counsel to address it on the points so raised and then proceed to decide the appeal on such issues raised suo motu by the court cannot therefore be right in the circumstances. It is clear that the appeal before the court below had to do with whether the application for the order of certiorari was sustainable having regard to the provisions of Section 25 of the Traditional Rulers and Autonomous Law of Imo State Law, No. 11 of 1981 which states: -

\"Where the Governor has accorded recognition to any person as an Eze, such recognition shall be final provided that where any interested party from within the autonomous community feels that in the exercise of such recognition of an Eze, the rules of natural justice have been contravened, then that party may have within 21 days of the recognition, the right of appeal to the High Court for review of the recognition and the court may make such order as it finds fit for peace, order and good government.\"

In my humble view, the above provisions do not need any esoteric interpretation to understand its provisions. The learned trial judge upon the facts before it, and which have not been faulted, came to the proper conclusion with regard to the provisions of the law. I therefore must with due respect, allow this appeal and set aside the judgment and orders of the court below. What I have said above is enough to uphold this appeal. Suffice it to say that Section 25 of the Traditional Rulers and Autonomous Law of Imo State, No. 11 of 1981 has not in any way infringed the constitutional rights of a citizen. See: Okeahialam v. Nwamara (2003) 12 NWLR (Pt.835) 597. Accordingly, the judgment of the court below is hereby set aside. As the judgment of the trial court is right, it is hereby ordered as the judgment of the court. The appellant is entitled to costs against the 1st respondent in the court below assessed in the sum of N5, 000.00 and N10, 000, 00 in this court. The 2nd 3rd and 4th respondents are also awarded costs in the same amount against the 1st respondent.

Judgment delivered by
Idris Legbo Kutigi J.S.C.

I have had the privilege of reading in advance the judgment just delivered by my learned brother, Ejiwunmi, J.S.C. I agree with his reasoning and conclusions. I accordingly allow the appeal, set aside the judgment of the Court of Appeal and restore that of the trial High Court. I endorse the order for costs.

Judgment delivered by
Aloysius Iyorgyer Katsina-Alu J.S.C.

I have read before now in draft the judgment pf my learned brother Ejiwunmi, J.S.C, just delivered. I entirely agree with it and, I have nothing to add.

Judgment delivered by
Dahiru Musdapher J.S.C.

I have had the honor to read before now the judgment of my Lord Ejiwumni, J.S.C just delivered with which I entirely agree. It is elementary law that needs no citation of any authority that a court is not a Father Christmas. Its jurisdiction is D generally limited to the issues presented to it. The court cannot generally make pronouncements that affect the parties before it without affording the parties the opportunity to address them on it. See for example Oyekanmi v. NEPA (2000)

15 NWLR (Pt.690) 414 S.C. My Lord in the aforesaid judgment has dealt comprehensively and completely all the issues submitted to this court for the determination of the appeal. I respectfully adopt them as mine and I accordingly, allow the appeal, set aside the decision of the Court of Appeal and restore the decision of the trial court. I abide by the order for costs contained in the lead judgment.

Judgment delivered by
Sunday Akinola Akintan J.S.C.

The main question raised in this appeal is whether a law fixing a time limit within which any person aggrieved by the recognition given to a newly appointed Traditional Ruler in Imo State could commence an action challenging the appointment is proper and not in conflict with any of the provisions of the constitution. The appellant was appointed as the traditional ruler of Avu Autonomous Community in Imo State. The appointment was recognized by the Imo State Government and a letter to that effect dated 17th April, 1996, written by the Secretary to the State Government, was sent to the appellant.

Section 25 of the Traditional Rulers and Autonomous Law of Imo State (No. 11 of 1981) provides, inter alia,

\"where the Governor of the state has accorded recognition to any person as an Eze, such recognition shall be final provided that where any interested party from within the autonomous community feels that in the exercise of such recognition of an Eze, the rules of natural justice have been contravened, then that party may have within 21 days of the recognition, the right of appeal to the High Court for review of the recognition....\"

The 1st respondent, as an aggrieved party, filed an application at the State High Court for an order of certiorari to quash the recognition accorded the appellant by the State Governor. His application was however not filed within the 21 days prescribed in the afore-mentioned Law. The appellant moved the High Court for an order quashing the application on the ground that it was incompetent since it was not filed within the time prescribed by the said law. The High Court upheld the application and the matter was struck out.

The 1st respondent appealed to the court below against the order striking out the action. The court below allowed the appeal on the ground that Section 25 of the said Traditional Rulers Autonomous Community Law restricted the people\'s access to court and as such it was in conflict with the provisions of Section 6(1) & (2) & (4) and 236 of the 1979 Constitution.

I have no doubt in holding that the sections of the 1979 Constitution referred to do not proscribe any legislation prescribing the time within which an action could be commenced. It is a notorious fact that chieftaincy tussles in many parts of this country constitute a major cause of unnecessary tensions within the communities, it is therefore quite appropriate for a State Government to enact laws prescribing time limit within which disputes relating to appointment of chiefs within the state could be challenged, as in the instant case. The court below was therefore totally wrong in its decision that the Imo State Law in question in this case was in conflict with any of the provisions of the 1979 Constitution.

In the result and for the reasons I have given above and the fuller reasons given in the leading judgment prepared by my learned brother, Ejiwunmi, J.S.C, the draft of which I have read, I allow the appeal, set aside the judgment of the Court of Appeal and affirm the judgment of the trial High Court delivered in the case. I also abide by the order on costs made in the leading judgment.