IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY, THE 16TH DAY OF MAY, 2025
BEFORE THEIR LORDSHIPS

HELEN MORONKEJI OGUNWUMIJU	**JUSTICE, SUPREME COURT**
TIJJANI ABUBAKAR	**JUSTICE, SUPREME COURT**
CHIDIEBERE NWAOMA UWA	**JUSTICE, SUPREME COURT**
HABEEB ADEWALE O. ABIRU	**JUSTICE, SUPREME COURT**
MOHAMMED BABA IDRIS	**JUSTICE, SUPREME COURT**

SC/CV/796/2021

BETWEEN:

CHIEF SOLOMON OWONIYI — **APPELLANT**

AND

1. **CHIEF HENRY OLUWOLE AIYEWUMI**
2. **CHIEF STEPHEN OJO BELEYI**
   (For himself and on behalf of Ajibohokun Ruling House of Ilajo Ruling family)
3. **RAPHAEL AIYEGUNLE**
   (For himself and on behalf of Mokelu Ruling House of Ilajo Ruling family)
4. **CHIEF OLORUNMOLA OLORUNTOBA**
   (For himself and on behalf of Ajinuhi Ruling House of Ilajo Ruling family)
5. **GOVERNOR, KOGI STATE**
6. **ATTORNEY GENERAL OF KOGI STATE**

— **RESPONDENTS**

JUDGMENT
(DELIVERED BY HELEN MORONKEJI OGUNWUMIJU, JSC)

This is an appeal against the judgment of the Court of Appeal, delivered on 31/3/2021 in Appeal No: CA/C/1116/2019 Coram: A. D. Yahaya, U. Onyemenam and S. J. Adah, JJCA which set aside the Ruling of the High

Court of Kogi State in Suit No: HCL/67/2018 delivered on 10/10/19 by S. O. Otu, J.

The Court below had allowed the appeal of the 1st – 4th Respondents and upturned the decision of the trial Court that the suit of the 1st – 4th Respondents was statute barred. Their Lordships of the Court below also dismissed the cross-appeal of the Appellant brought on an aspect of the preliminary objection resolved against the Appellant and on other grounds of the preliminary objection not ruled upon by the trial Court. Aggrieved by the decisions of the Court below on the main and cross-appeals, the Appellant appealed, *ex debito justitiae* to this Court.

The facts that led to this appeal are as follows:

The Claim at the trial Court by the present 1st – 4th Respondents is set out as follows:

i. **A declaration that the Ilajo Ruling family is the sole ruling family of Kabba to the exclusion of any other houses.**

ii. **A declaration that the 1st Defendant is not entitled to occupy the position of the Obaro of Kabba since he is not from any of the family of the Ilajo Ruling Family.**

iii. **A declaration that it is only the Ilajo Ruling family of Kabba that is entitled to produce the Obaro of Kabba.**

iv. **A declaration that the 1st Claimant is the lawful and traditionally entitled person to the throne of the Obaro of Kabba having been unanimously selected by the**

entire Ilajo Ruling Family as the preferred candidate to occupy the position of the Obaro of Kabba.

v. An order directing the 2nd Defendant to recognize and install the 1st Claimant as the lawful and rightful successor to the throne of the Obaro of Kabba in accordance with the customs and traditions of the Owe land/Kabba of Kogi Sate.

vi. An order of perpetual injunction restraining the 1st Defendant, by himself, family, agents, servants, privies or howsoever called from parading himself or themselves as the Obaro of Kabba or taking any steps, doing any act or otherwise dealing in or with the position of the Obaro of Kabba.

vii. A declaration that the Kogi State Edict (No. 12 of 1995) and any other notices that recognizes any other ruling house/group contrary to the history, custom and tradition of Kabba Owe land on chieftaincy be declared null and void.

viii. An order setting aside the Edict (No. 12 of 1995) which purportedly threw open the appointment to the throne of Obaro of Kabba to clans and villages of environ contrary to the traditional and customary practice of Owe land to the ascension to the throne of Obaro of Kabba.

ix. **An order of perpetual injunction restraining the 2nd and 3rd Defendants from treating and or recognizing the 1st Defendant or any other person not from the Ilajo Ruling Family as a person that has a right to the Chieftaincy to the throne of Obaro of Kabba.**

x. **An order of perpetual injunction restraining the 2nd and the 3rd Defendants from interfering with the customary and traditional practice of the ascension to the throne of Obaro of Kabba.**

The Appellant had filed a Notice of Preliminary Objection on 17/10/18 challenging the jurisdiction of the trial Court to hear and determine the suit on the basis that the suit was statute barred. The learned trial Judge upheld the notice of objection and dismissed the suit on the basis that it was statute barred. The Court below allowed the appeal of the 1st – 4th Respondents and held that the action as constituted was not statute barred. The Court below remitted the case back to the Chief Judge of Kogi State for expeditious hearing. Hence, this appeal.

The Appellant settled the following issues for determination.

1. Whether the lower Court was not wrong in holding that the suit of the 1st to 4th Respondents was not statute barred. - Ground One.

2. Whether the lower Court was not wrong in holding that the 1st to 4th Respondents had complied with Section 6(1)

and (2) of the Kogi State Chiefs (Appointment, Deposition and Establishment of Traditional Councils) Law 2006 before filing their suit and that the suit was not incompetent on the premise thereof. Grounds Two & Three.

3. Whether the lower Court was not wrong and did not occasion a miscarriage of justice to the Appellant in its determination of Ground two of the Appellant's preliminary objection to the suit of the 1st to 4th Respondents - Ground Four.

4. Whether the lower Court was not wrong in holding that the 1st to 4th Respondents had the locus standi to institute the suit that led to the instant appeal. Ground Five.

5. Whether the lower Court was not wrong in holding that the suit of the 1st to 4th Respondents disclosed a cause of action and was competent notwithstanding the failure to join the selectors/kingmakers for the Obaro of Kabba chieftaincy stool. Grounds Six & Seven.

The 1st – 4th Respondents also distilled the following issues for determination:

1. Whether the lower Court was not wrong in holding that the suit of the 1st to 4th Respondents was not statute barred - Ground One.

2. Whether the lower Court was not wrong in holding that the 1st to 4th Respondents had complied with Section 6(1) and (2) of the Kogi State Chiefs (Appointment, Deposition and Establishment of Traditional Councils) Law 2006 before filing their suit and that the suit was not incompetent on the premise thereof. Grounds Two & Three.

3. Whether the lower Court was not wrong and did not occasion a miscarriage of justice to the Appellant in its determination of Ground two of the Appellant's preliminary objection to the suit of the 1st to 4th Respondents. Ground Four.

4. Whether the lower Court was not wrong in holding that the 1st to 4th Respondents had the locus standi to institute the suit that led to the instant appeal. Ground Five.

5. Whether the lower Court was not wrong in holding that the suit of the 1st to 4th Respondents disclosed a cause of action and was competent notwithstanding the failure to join the selectors/kingmakers for the Obaro of Kabba chieftaincy stool. Grounds Six & Seven.

I am of the view that Issues 1, 2 and 4 as crystalized by the Appellant are sufficient to determine this appeal. Issues 3 & 5 are actually a repetition of Issues 1 & 4.

ISSUE ONE

Learned Appellant's Counsel in the brief settled by Dayo Akinlaja, SAN argued that the suit of the 1st - 4th Respondents was filed on 17/9/18. It is not in dispute and it is crystal clear from the reliefs sought in the suit that the action of the 1st - 4th Respondents is a challenge to the Obaro of Kabba (Filling of Chieftaincy Vacancy, Declaration of Indigenes of Kabba/Owe land, Guidelines for the Rotation of Ololu Titles and Other Miscellaneous Provision Edict, 1995 promulgated on 15/12/95 with its commencement date as 15/12/95.

At trial, the case of the 1st – 4th Respondents was that the Edict was null, void and should be set aside on the premise that only their Ilajo Ruling Family is eligible to produce the Obaro of Kabba. Learned Appellant's Counsel submitted that while the law specifically stipulated a commencement date of 15/12/95, the case of the Appellant is that Edict No. 12 of 1995 had been immediately activated on its promulgation in 1995 with the recognition of the appointment of the immediate past Obaro of Kabba under the Edict. It was also the case of the Appellant that the Edict made provisions for the rotation of the Ololu titles of Obajemu and Obadofin among the three Ruling Groups recognized by the Edict and that appointment of the two Ololu titles had taken place in 2006 and 2013 pursuant to the Edict.

Senior Counsel submitted that by holding that the law was in abeyance when the commencement date is expressly put as 15/12/95, the Court below had imported into the law what was not in the law and negated

the intention of the legislature. This is against the grain of statutory interpretation and tantamounts to a usurpation of the statutory powers of the legislature to make laws. Counsel cited **ACTION CONGRESS v. INEC (2007) 12 NWLR Pt. 1048, Pg. 222 at 275-276 para F-B, GARUBA ABIOYE & ORS v. SA'ADU YAKUBU & ORS (1991) 5 NWLR Pt. 190 Pg. 130 at 153, FRN v. UWAGBA (2009) 15 NWLR Pt. 1163 Pg. 91 at 114 para C** to the effect that a Court of law is not to amend, add to or subtract from the provisions of a law.

Learned 1st – 4th Respondents' Counsel in the brief settled by Collins O. Ojay in reply, argued that the law is settled that a cause of action is the combination of facts a Plaintiff must adduce to entitle him to the reliefs sought which must be considered solely from the Statement of Claim of the Plaintiff. Counsel cited **YARE v. NATIONAL SALARIES, WAGES AND INCOME COMISSION (2013) 12 NWLR Pt. 1367 Pg. 173 at 186 para B-C, HASSAN v. ALIYU (2010) 17 NWLR Pt. 1223 Pg. 547 at 619-620 para G-C, JFS INV. LTD v. BRAWAL LINE LTD (2010) 18 NWLR Pt. 1225 Pg. 495 at 537 para F-G.**

Learned Counsel argued that the wrongful act may have arisen in 1995 when Edict No. 12 was promulgated but it became crystalized and the cause of action accrued in 2018 when the 2nd Respondent invoked the provisions of the Edict to fill the vacancy in issue. The cause of action accrued in 2018 when the 1st Respondent was appointed by the 2nd Respondent as the Obaro of Kabba via the letter of appointment dated

19/7/18 which caused the Appellant to institute the present suit in 17/9/18 barely two months after the accrual of the cause of action. Counsel argued that the law in relation to limitation of action is that the Court considers the period the cause of action accrues to calculate the time frame within which a Plaintiff can legally sue. Counsel submitted that the issue submitted before the trial Court related to the validity of Edict No. 12 promulgated in 1995 which only came into question after the recent selection and appointment of the 1st Respondent as the Obaro of Kabba. It is this recent appointment of the Appellant that led to the suit which the 1st – 4th Respondents filed immediately thereafter. The 1st – 4th Respondents only brought the action as the cause of action only accrued when the 2nd Defendant by its letter of 19/7/18 set in motion the provisions of Edict No. 12 of 1995. Counsel cited **LAWAL v. EJIDIKE (1997) 2 NWLR Pt. 487 Pg. 319 at 328 para G, IKENE v. EDJERODE (1996) 2 NWLR Pt. 468 at 476-477 para G-H, EDJEROME v. IKINE (2001) 12 SCNJ 184, ESUWOYE v. BOSERE & ORS (2016) 7 SC 1 66 at 115-116.**

OPINION

Let me recap the facts of this case.

The 1st – 4th Respondents herein were the Claimants while the Appellant with the 5th and 6th Respondents were the Defendants at the trial Court. The appointment of the Appellant herein was approved as the new Obaro of Kabba by the 5th Respondent vide a letter dated 19/7/18 attached to the Originating Process of the 1st – 4th Respondents at the

trial Court. The reliefs sought in the suit as set out in the Writ of Summons have been set out hitherto above. Upon being served with the Originating Processes, the Appellant filed a Statement of Defence wherein notice was given to the 1st – 4th Respondents of the Appellant's intention to contend that the suit did not confer jurisdiction on the trial Court. A Notice of Preliminary Objection was contemporaneously filed with the Statement of Defence. The learned trial Judge duly heard the Preliminary Objection and delivered the Ruling which dismissed the suit of the 1st – 4th Respondents on the ground that it was statute barred. Aggrieved by that decision, the 1st – 4th Respondents appealed to the Court below and the Appellant herein cross-appealed. The Court below in its judgment allowed the main appeal of the 1st – 4th Respondents and dismissed the cross-appeal of the Appellant. Hence, the instant appeal.

My Lords, the crux of this appeal is this first issue of whether or not the 1st – 4th Respondents' action was statute barred. The 1st – 4th Respondents' cause of action is first of all the promulgation of the Kogi State Edict No. 12 of 1995 as it concerns the appointment of the Obaro of Kabba and more particularly and conjoined to make the cause complete, the appointment of the Appellant to that position. To determine whether the 1st – 4th Respondents still has a cause of action, the provisions of Section 18 of the Limitation Law and Section 2(a) of the Public Officers Protection Law of both Kogi State as already interpreted by decision law of this Court would be considered.

In **INEC v. OGBADIBO LOCAL GOVERNMENT & ORS (2016) 3 NWLR Pt. 1498 at Pg. 195 para C-E,** this Court per Onnoghen, JSC (as he then was) held as follows:

> **"It is settled law that a limitation law, such as the provisions of Section 2(a) of the Public Officers Protection Act, takes away the legal right of a litigant to enforce an action leaving him with an empty shell of a cause of action where the action is not instituted within the time frame enacted in the statute of limitation. Where the action is instituted outside the time so allotted by the statute, we say that the action so instituted is statute-barred and cannot be maintained since it robs the court of the jurisdiction to entertain and determine same".**

See also **IBETO CEMENT CO. LTD. v. A-G FEDERATION (2008) 1 NWLR Pt. 1069 Pg. 470, NEPA v. OLAGUNJU (2005) 3 NWLR Pt. 913 Pg. 602, P.N. UDOH TRADING CO. LTD. v. ABERE (2001) 11 NWLR Pt. 723 Pg. 114.**

There is no doubt that the Plaintiff's claim determines the issue of limitation of action. See **OLOBA v. AKEREJA (1988) 7 SC, Pt. 1 Pg. 1 at 14 & 15, MADUKOLU v. NKEMDILIM (1962) 2 NSCC 374 at 379 -380, OKADIGBO v. EMEKA (2012) ALL FWLR Pt. 623 Pg. 1869 at 1877, AGU v. ODOFIN (1992) 3 SCNJ 161 at 168.**

It appears that the cause of action was legislated by Edict No. 12 of 1995 with a commencement date of 15/12/1995. However, I agree with

the Court below and the argument of learned Appellant's Counsel that the said law lay in abeyance until 2018 when the 5th Respondent activated same by appointing the Appellant as Obaro of Kabba by virtue of the said law. When the law was promulgated, there was no cause of action ripe nor was there a defined wrong to the 1st – 4th Respondents' family as the incumbent Oba before and after the law did not foreclose the appointment of Chief Michael Folorunsho Olobayo who was a member of the 1st – 4th Respondents' family.

In other words, as at 1995 when the law was promulgated, there was a cause for complaint but as yet no damage had been done to the family of the 1st – 4th Respondents. It was not until 2018, when the 5th Respondent purportedly appointed the Appellant who was according to the 1st – 4th Respondents, not from the appropriate traditional ruling family as Obaro of Kabba by virtue of the 1995 Law. As far back as **SAVAGE v. UWAECHIA (1972) 1 ALL NLR Pt. 1 Pg. 251 at 211,** this Court had held that a cause of action can only be ripe for litigation when two conditions are met. First, is the fact or the combination of facts which give rise to a right to sue. In this case the promulgation of the law in 1995 which gave the Plaintiff in this case, the 1st – 4th Respondents a cause for complaint. The second is the damage to their right by the appointment of the 5th Respondent in 2018. Thus, until the appointment of the 5th Respondent, the 1st – 4th Respondents had no complete cause of action. I could not have put the position of the law

better myself and I agree with the Court below at pages 340 – 341 of the record when the Court below held as follows:

> ***"Put in another way, I will say as at 1995, every fact which would have been necessary for the Appellants to prove, if traversed in order to support their right to judgment, had not all occurred and so no competent Plaintiff nor Defendant as the Appellants and the Respondents were in existence, for a cause of action to have accrued to the Appellants against the Respondents as at that 1995, for which they could have effectively prosecuted this action. I hold, the events whereby the Appellants cause of action could be complete to accrue a cause of action to the aggrieved Appellants to begin and maintain an action against the Respondents did not accrue to the Appellants upon the promulgation of the Edict No. 12 1995; but in 2018 when the 2nd Respondent appointed the 1st Respondent the Obaro of Kabba.***
>
> ***It is worthy of note that the specific wrong complained of by the Appellants is the appointment of the 1st Respondent. Therefore, while it is clear that Edict No. 12 of 1995 (Kogi State) was promulgated in 1995, no specific or definite damage or wrong was occasioned against the Appellants. Any alleged wrong against the Appellants by Edict No. 12 1995 was non-factual, speculative and***

imaginary before the appointment of the 1st Respondent by the 2nd Respondent as the Obaro of Kabba. Hence, the Appellants could not have commenced any action until the appointment of the 1st Respondent in 2018. Consequently, I hold that the argument of the Respondents on this point lacks merit".

I agree with the argument of the 1st – 4th Respondents that factually speaking, there was no need for an action to challenge Edict No. 12 of 1995 as it related to the native law and custom of Kabba people, and specifically to the stool of Obaro of Kabba since as at the time the Edict was promulgated and up till 2018 when the Obaro of Kabba died, the incumbent Obaro of Kabba was from the Ilajo Ruling house.

It was after the stool of the Obaro of Kabba became vacant in 2018 that Edict No. 12 of 1995 now in contention which relates to the Chieftaincy Declaration of the Obaro of Kabba vis a vis the native law and custom of Kabba people in relation to the stool of the Obaro of Kabba became relevant. That was when the cause of action arose. It is trite that the period of limitation in respect of any claim begins to run when the cause of action arises. See **LAWAL v. EJIDIKE (SUPRA), EDJEROME v. IKINE (SUPRA).** The position of this Court on when the cause of action arises in similar scenario has been crystallized in a plethora of decisions of this Court.

In **EDJEROME v. IKINE (2001) 12 SCNJ Pg. 184, EJIWUNMI JSC** held affirming the judgment of the Court below as follows:

> ***"For that view of the court below, and with which I am in full agreement... While it is clear that the Traditional Rulers and Chiefs Edict of 1979, (Bendel State) was promulgated in 1979, the Plaintiff could not have commenced any action until the appointment of the 1st Appellant in April 1985.***
>
> ***The argument advanced for the Appellants that the Respondents would have commenced the action against the Bendel State Executive Council soon after the promulgation of the Traditional Rulers and Chiefs Edicts of 1979, must be rejected in this regard, it must be borne in mind the settled principle that it is the right of the Plaintiff to institute action against a Defendant who he believes he has a right to a relief. In this instance case, the Respondents cannot be faulted for bringing their action against the Appellants as they have done in this case. And as I am clearly of the view from what I have said above that the action was not statute barred, this issue must be resolved against the appellants. And I so hold."***

In a similar appeal to this Court, in **ESUWOYE v. BOSERE & ORS (2017) 1 NWLR Pt. 1546 Pg. 256 at Pg. 298 – 299** per Onnoghen CJN held as follows:

> ***" I agree with the lower court that the cause of action of the cross respondent did not accrue in 1969/1970 when Exhibit 'J' was promulgated but in 2010 when both the cause of complaint and consequent/resultant damage became crystallized. I agree... that though exhibit 'J' gave the cross respondent a cause for complaint when it was made in 1969/1970, that complaint remained in abeyance until the 'consequent damage which occurred in 2010 when the provisions of exhibit "J' were invoked to fill the vacancy in issue. It has to be noted that there was no need for an action to challenge exhibit 'J' as it relates to the native law and custom of Offa people in relation to the stool of Olofa of Offa as at the time the said exhibit 'J' was made and up till 2010 when the Olofa of Offa died, the incumbent Olofa of Offa was from the Anilelerin ruling house of the 5th cross respondent. I am of the strong view that it was only after the demise of the late Olofa of Offa in 2010 and the need to fill the vacancy thereby created that the procedure to be adopted in the filling of that vacancy became relevant and thereby, the issue as to whether or not exhibit 'J' which is said to be the***

Chieftaincy Declaration in relation to the Olofa of Offa, is a true statement of the native law and custom of Offa people in relation to the stool of the Olofa of Offa."

In my view, the somewhat feeble position taken on this issue by the Appellant against all settled authorities is that the 1st - 4th Respondents had sufficient cause of complaint and resultant damage as well as who to sue as far back as December 1995 (when the law was enacted and took effect and recognition was given to the Ilajo family of the 1st – 4th Respondents as one of three ruling houses as opposed to their alleged previous position of their exclusive right to produce the Obaro) or 2006 (when the first appointment of a kingmaker was made in contravention of what the 1st – 4th Respondents contend is the appropriate native law and custom).

The Appellant's position in his brief relied heavily on the judgment of the trial Court delivered on 10/10/2019 by Otu, J. who propounded a position at page 157 of the record which did not align with established judicial precedents as follows:

"Let me reiterate here that the Ilajo family by Law No. 12 of 1995, was made only a Clan of the six Clans in the Kabba Ruling Group and was therefore no longer the only ruling family for the ascension to the throne. This was the declaration of the customary law by Law No. 12 of 1995.

The ascension of the Balogun of Kabba was also radically changed. The declarations made on the ascension to the throne of Obaro of Kabba was done by Law which fundamentally affected the Ilajo Ruling Family in 1995. With these fundamental changes to their age-long tradition and customs relating to the ascension throne of Obaro of Kabba, I am perplexed that the claimants stood idly by and waited till twenty-four years later. The Law No. 12 of 1995 became the only existing law and declaration of the tradition and custom relating to the selection of an Obaro of Kabba. The entire Ilajo Ruling Family of Kabba became aggrieved or wronged on 15th day of December, 1995, when Law No. 12 of [1995] completely supplanted and introduced three new ruling groups in Oweland for the ascension to the throne of Obaro of Kabba. Not having challenged the "alien custom and tradition" introduced by Law No. 12 of 1995, about 24 years ago, the claimants of the Ilajo Ruling Family should be held to have slept over their rights.... The claimants may have a cause, but their right to challenge that Law cannot be maintained in this court. It is statute barred by virtue not only of S. 2(a) of the Public Officers' (Protection) Law but also by virtue of S.18 of the Limitation Law of Kogi State."

Clearly the trial Court's view that the cause of action completely crystalized in 1995 is not supported by decision law of the superior Courts already published prior to His Lordship's judgment and which the Court was bound to follow by the doctrine of stare decisis.

From the fore going, there is no doubt that the Court below was right in holding that the cause of action of the 1st – 4th Respondents' suit at the trial Court accrued on 19/7/18 when the Appellant was appointed by the 5th Respondent as the Obaro of Kabba via the letter of appointment dated 19/7/18. The 1st – 4th Respondents' basis for claiming that they did not have a ripe action is their reference to the fact that Section 3 of the Edict provides that "*Nothing in the provisions of this Edict or any other enactment shall in any way affect the appointment of Chief Michael Folorunsho Olobayo as Obaro of Kabba*", who was as at that time a member of the Appellants family.

This suit at the trial Court was filed on 17/9/18 whereas the cause of action accrued on 19/7/18, same being filed about two months after the accrual of the cause of action and cannot be said to be statute bared having not violated any of the Limitation Laws of Kogi State. I resolve this issue in favour of the 1st – 4th Respondents.

ISSUE TWO

On this issue, learned Appellant's Counsel submitted that the position is well crystallized through a litany of judicial authorities that a party aggrieved in respect of a chieftaincy matter must exhaust all domestic

remedies provided by the Chiefs Law before going to Court. It is mandatory for the aggrieved party who brings a suit to show that he brought his suit only after he had exhausted the remedies provided. Counsel argued that the instant suit is assailed by the failure of the 1st – 4th Respondents to exhaust the remedy provided by Section 6 (1) and (2) of the Kogi State Chiefs (Appointment, Deposition and Establishment of Traditional Councils) Law, 2006 before instituting the suit. Counsel cited **BAMISILE v. OSASUYI (2007) 9 NWLR Pt. 1042 Pg. 225 at 269H-272A, and 282; AWOYEMI v. FASUAN (2006) 13 NWLR Pt. 996 Pg. 92 at 107-108; OWOSENI v. FALOYE (2005) 14 NWLR Pt. 946 Pg. 719 at 740 and 757; MAGBAGBEOLA & ORS. v. AKINTOLA (2018) 11 NWLR Pt. 1629 Pg. 177 at 194-195 & 198-199; A.G. KWARA STATE v. ADEYEMO (2017) 1 NWLR Pt. 1546 pg. 210 at 251; BUKOYE v. ADEYEMO (2017) 1 NWLR Pt. 1546 Pg. 173 at 195-196.** Counsel argued that all the 1st – 4th Respondents did was to write a letter to the 5th Respondent dated 30/7/2018. Having written that letter, the 1st – 4th Respondents did not wait for the statutory panel of inquiry to be set up and for the Governor (5th Respondent) to act on its recommendations before going to Court.

Counsel insisted that the 1st – 4th Respondents did not give the 5th Respondent enough time to constitute the panel of enquiry before rushing to litigate the matter within a week of sending the notice to the Governor – 5th Respondent. Counsel argued that in practical terms, the

1st – 4th Respondents failed to fulfil the condition precedent before resort to litigation as the pre-action notice was too short for the 5th Respondent to react.

In reply, the 1st – 4th Respondents submitted that as at the time the 1st – 4th Respondents complained to the 5th Respondent, that is on 30/7/18 till when this present suit was filed on 17/9/18 (about two months) there was no response from the 5th Respondent evincing any intention to set up a panel of enquiry neither did the 5th Respondent set up any panel of enquiry for that purpose. Besides, the said law did not state or prescribe any time limit within which the 5th Respondent was expected to respond to the 1st – 4th Respondents' letter which was written close to two months before the institution of the present suit as a party is not expected to wait indefinitely so as not to be caught by the Limitation Law on actions instituted against a public officer. Section 2(a) of the Public Officers (Protection) Law as applicable in Kogi State requires that such an action against a Public Officer – 5th & 6th Respondents must be commenced within three months of the accrual of the cause of action. Counsel cited **INEC v. OGBADIBO LOCAL GOVERNMENT & ORS (2016) 3 NWLR Pt. 1498 Pg. 167 at 195, GOODWIN CO. LTD v. CALABAR CEMENT CO. LTD (2010) ALL FWLR Pt. 544, EBOIGBE v. NNPC (1994) 5 NWLR Pt. 347 Pg. 649.**

Counsel also argued that negotiations or the setting up of a panel of enquiry to do an act as in this case does not prevent the period of limitation from running. Therefore, it is expected that the 1st – 4th Respondents must be vigilant in the prompt agitation of a legitimate claim against the Appellant because equity will not aid them if they continue to wait for the 5th Respondent to set up a panel when their right of action was limited to three months.

OPINION

The two Courts below were ad idem in support of the position of the 1st – 4th Respondents. The learned trial Court at page 142 of the record held as follows:

> ***"In the light of the above, having written a letter of 30th July, 2018, regarding the chieftaincy dispute of the Obaro of Kabba, it is not mandatory on the 2nd Defendant to constitute a panel of inquiry as demanded in the said letter. And having so written, it is immaterial that the first suit was initiated only 6 days after the letter was sent. The fact that the letter was sent and no reply thereto as to whether the Governor will constitute a panel or not, the claimants have acted as required under the section 6 of the Chiefs Law and therefore within their right to come to court to ventilate their grievance".***

The Court below held as follows on pages 352 - 353 of the record:

> ***"In the instant case, by the provisions of Section 6(1) and (2) of the Kogi State Chiefs (Appointment, Deposition and Establishment of Traditional Councils) Law, 2006, a party who is aggrieved by the Act of the Kogi State Chiefs Appointment, Deposition and Establishment of Traditional Councils (Kingmakers) as regards the appointment of chiefs is required to make a complaint to the Governor of Kogi State and the Governor shall set up an enquiry to investigate the complaint.***
>
> ***However, it is worthy of note that the law referred to Kogi State Chiefs law did not state the time limit within which the Governor shall set up the panel of enquiry to investigate the complaint and did not also state the time limit that an aggrieved party must exhaust before approaching the Court....".***

I agree with the two lower Courts that the 1st – 4th Respondents complied with the provisions of Section 6(1) and (2) of the Kogi State Chiefs Law, 2006. The wordings of the law did not mandate any obligation on the 1st – 4th Respondents to give a pre-action notice as a condition precedent to the institution of the suit.

Section 6(1) and (2) of the said law provides thus:

"6(1) In case of any dispute in the appointment of any Chieftaincy Stool, the Governor shall have power to constitute a panel of inquiry into the dispute.

(2) The Governor shall have power to approve the recommendations of the panel of inquiry set up in pursuance of this section."

The Appellant admitted that the said letter was written to the 5th Respondent. It was not the duty of the 1st – 4th Respondents to ensure the said letter got to the 5th Respondent in person having been received and acknowledged by the 6th Respondent who was the Chief Law Officer to the 5th Respondent, neither was it the duty of the 1st – 4th Respondents to force the 5th Respondent to set up a panel of enquiry, especially where such power is only exercisable by the 5th Respondent. Having complied with the provisions of the law to show that a dispute had arisen in the appointment of the Appellant as the Obaro of Kabba, the 1st – 4th Respondents had performed their duty, if one existed at all.

In the peculiar circumstances of this case, the 1st – 4th Respondents' Counsel had to act swiftly to ensure the interests of his Clients were not compromised by exflusion of time. Where an action is not commenced against a public officer within the prescribed period or where such action was commenced after three months, such an action will be caught up for statute bar. Equity aids the vigilant and not the indolent.

Thus, when the period of limitation begins to run, it does not cease to run merely because the parties engaged in discussions, consultations or negotiations. See **GOODWIN CO LTD v. CALABAR CEMENT CO. LTD (2010) All FWLR Pt. 544; EBOIGBE v. NNPC (1994) 5 NWLR Pt. 347 Pg. 649, OLATEJU v. COMMISSIONER FOR LANDS & HOUSING, KWARA STATE & ORS (2024) LPELR-62589(SC), INEC v. ENASITO & ORS (2017) LPELR-47991 SC, BELLO v. YUSUF & ORS (2019) LPELR-47918 SC, OTERI HOLDINGS LTD. v. OLUWA (2021) 4 NWLR Pt. 1766 Pg. 334.**

Clearly my Lords, the law is in support of the concurrent findings of facts and law of the two lower Courts and in the absence of any apparent and substantial error on the face of the records of proceedings upon which they are based, the said findings not perverse and there being no miscarriage of justice or special circumstance to justify their reversal, this Court will uphold the judgment of the two lower Courts. See **LAMAI v. ORBIH (1980) 5-7 SC 20, KALE v. COKER (1982) 12 SC 252, LOKOYI v. OLOJO (1983) 2 SCNLR 127 at 131, NICON v. POWER AND INDUSTRIAL ENGINEERING CO. LTD (1986) 1 NWLR Pt. 14 Pg. 1 at 36, ELOHOR v. OSAYANDE (1992) 6 NWLR Pt. 249 at 524 SC**. In the circumstances, this issue is resolved in favour of the 1st – 4th Respondents.

ISSUE THREE

The complaint of the Appellant on this issue is to the effect that the 1st – 4th Respondents were bound by the unchallenged reports of the Judicial Commissions of Inquiry on the Obaro of Kabba Chieftaincy and the attendant defunct Edict No. 6 of 1989 as well as the extant Edict No. 12 of 1995 declaring the native laws and customs on ascendancy to Obaro of Kabba Chieftaincy and are estopped from asserting any contrary native law and customs as governing the filling of vacancy in Obaro of Kabba Chieftaincy before the Court, in the entire circumstances of this suit. The crux of the contention of the Appellant is that if the 1st – 4th Respondents had been dissatisfied with the reports of the Judicial Commissions of Inquiry on the applicable native law and custom for ascendancy to the Obaro Chieftaincy stool, they ought to have challenged same in Court before or at the point of the issuance of the Government White Papers thereon. Having failed to do that, the 1st – 4th Respondents are bound by the native law and custom as contained in the reports of the Commission of Inquiry and estopped from filing a law suit to reopen the issue. Counsel cited **NWABIA v. ADIRI & 3 ORS. (1958) 3 FSC 112 at 114** and **OLAGUNYI v. OYENIRAN (1996) 6 NWLR Pt. 453 Pg. 127 at 143 para E-F.**

In reply, the 1st – 4th Respondents submitted that the Constitution guarantees an unfettered right of a party to ventilate a legitimate cause in a Court of competent jurisdiction. Thus, since the jurisdiction of the Court is ensured in such circumstances, neither can a commission of

inquiry or a defunct Edict oust the jurisdiction of the Court to entertain this suit. The crux of the 1st – 4th Respondents' suit at trial is challenging Edict No. 6 of 1989 (which of course by the same word of the Appellant is defunct) and Edict No. 12 of 1995 and which only came alive when the 5th Respondent applied it in the appointment of the Appellant as the Obaro of Kabba.

OPINION

In my view, this issue is an indirect rehash of issue one already resolved in favour of the 1st – 4th Respondents. It is important to remember that at the time the White Paper Report which promulgated the current rotation to the ascension of the stool of the Obaro of Kabba was made in 1995 it remained in abeyance until 2016. Not until the death of the Obaro of Kabba and the need to fill the vacancy, did it come to life. Section 3 of the said Edict further confirms its abeyance when it provides that "*Nothing in the provisions of this Edict or any other enactment shall in any way affect the appointment of Chief Michael Folorunsho Olobayo as Obaro of Kabba.*" Thus, no cause of action accrued to the 1st – 4th Respondents until 2018 when the said Edict was activated and crystallized in the appointment of the Appellant as the Obaro of Kabba.

The Constitution is supreme and any law which deprives a citizen access to justice is void. It has been held that the 1st – 4th Respondents challenged Edict No. 12 of 1995 which was a result of the Commission Reports of the White Paper and Edict No. 12 1995, when it had a cause

of action. In the circumstances, this issue is resolved in favour of the 1st – 4th Respondents.

ISSUE FOUR

On this issue, the Appellant challenged the locus standi of the 1st – 4th Respondents to institute this action. The Appellant's argument is that it is not in dispute that at the time of the demise of the immediate past Obaro of Kabba, the native law and customs relating to ascendancy to the Obaro Stool were as contained in Edict No. 12 of 1995. That being so, appointment to the vacant throne must be done in pursuance of the prescribed procedures under the law. Therefore, for anyone or family to have the locus standi to sue, the person or family must be able to show that it was the turn of his or her own ruling group under the law to produce the Obaro and that he or her candidate contested or expressed intention to contest for the chieftaincy under the law. See **ADESANOYE v. ADEWOLE (2006) 14 NWLR (PT. 1000) 242 at 274, 278** and **285-286.** Thus, the 1st – 4th Respondents having not stated in their Statement of Claim that the 1st Respondent or their family evinced to the kingmakers a desire to contest for the chieftaincy because it was their turn to produce the Obaro under the rotation order in Edict No. 12 of 1995, they lack the locus standi to complain in this suit that the Appellant should not have been selected and approved as the Obaro or that the 1st Respondent is the one that should be declared as the rightful Obaro.

The learned 1st – 4th Respondents' Counsel argued to the contrary that the 1st – 4th Respondents and their ruling houses, especially the 1st Respondent's ruling house have been denied the throne and being the person(s) directly affected as a member of the Ilajo Ruling Family possesses the requisite locus to institute this action for which the Court is urged upon to affirm the reasoning of the Court below. Counsel submitted that in order to determine whether the 1st – 4th Respondents have the requisite capacity/locus to sue, recourse must be had to the entire Originating Processes before the Court particularly as this appeal questions the vires of the trial Court to entertain the Suit in the present circumstances and the positive affirmation of the Court below. Clearly, on the face of the Originating Processes the 1st Respondent was described as '*a member of the Ajibohokun Ruling House of Ilajo Royal Family in Kabba, Kogi State, who is entitled to ascend the throne of Obaro of Kabba by a unanimous decision of the entire Family of the Ilajo Ruling Family, Kabba, Kogi State*', while the 2nd – 4th Respondents in this Appeal are described as follows:

> "2. The 2nd Claimant is the representative of the Ajibohokun Ruling House of the Ilajo Ruling Family and also participated with the entire Ajibohokun Ruling House of the Ilajo Ruling Family in the selection of the 1st Claimant to ascend the throne of Obaro of Kabba.

3. The 3rd Claimant is the representative of the Moleku Ruling House of the Ilajo Ruling Family and also participated with the entire Moleku Ruling House of the Ilajo Royal Family in the selection of the 1st Claimant to ascend the throne of Obaro of Kabba.

4. The 4th Claimant is the representative of the Ajinuhi Ruling House of the Ilajo Ruling Family and also participated with the entire Ajinuhi Ruling House of the Ilajo Ruling Family in the selection of the 1st Claimant to ascend the throne of Obaro of Kabba.

Learned Counsel argued that the Originating Processes show clearly the locus and the grievances of all the Respondents on Record.

OPINION

My Lords, in a chieftaincy suit, locus standi is not for all and sundry. See **BAMISILE v. OSASUYI supra at Pg. 279-280 of the NWLR.** That is why it is the legal position that a Claimant therein must demonstrate how his interest arose for him to have locus standi. See **OBALA v. ADESINA (1999) 2 NWLR Pt. 590 Pg. 163 at 184; MOMOH v. OLOTU (1970) 1 ALL NLR 117; BAKARE v. AJOSE-ADEOGUN (2014) 6 NWLR Pt. 1403 Pg. 320 at 357.**

The suit before the trial Court sought to challenge the appointment of the Appellant by the 5th Respondent as the Obaro of Kabba contrary to the customs and traditions of the people of Kabba being that the "*Ilajo*

Ruling Family is the sole ruling family of Kabba to the exclusion of any other houses".

In these circumstances, the 1st – 4th Respondents have locus to institute the action against the Appellant as well as the 5th and 6th Respondents in this appeal as the said appointment directly affects their legal interest, as they claim to be the sole ruling family. The issue is resolved in favour of the 1st – 4th Respondents.

Issue 5 is surplusage and all the arguments brought up there had already been brought up by the Appellant in issues 1 & 3.
In the circumstances, this appeal is wholly without merit and it is dismissed. The determination of this appeal has cleared the preliminary issues brought up by the Appellant as one of the Defendants at trial. It is hereby ordered that this case be sent back to the Chief Judge of Kogi State and the issues in the cause of action tried expeditiously before another judge. No order as to costs.
Appeal Dismissed.

HELEN MORONKEJI OGUNWUMIJU, CFR
JUSTICE, SUPREME COURT.

APPEARANCES

Dayo Akinlaja, SAN., with him Kabiru Fadile, Esq., and Jeremiah Akinlaja, Esq., **for the Appellant.**

R. A. Lawal Rabana, SAN., with him John Fakado, Esq., and Collins Ojay, Esq., **for the 1st – 4th Respondents.**

Mercy M. Tseja (Senior Legal Officer, Kogi State) **for the 5th & 6th Respondents.**