JUDICIAL AND LEGAL INTERVENTION IN CHIEFTAINCY LAW AND ADMINISTRATION IN NIGERIA: IMPLICATION FOR POLICY

T. Kehinde Adekunle
Institute of African Studies,
University of Ibadan,Ibadan.

Abstract

In recent times, chieftaincy disputes constitute a string of common legal phenomenon which is spreading like a wild-fire among the numerous ethnic groups in Nigeria and they form some of the cases now being filed ceaselessly in our courts on daily basis. Actually, besides land disputes, there is hardly any other dispute in some judicial divisions of our court which surpasses chieftaincy wrangling in number. A reason for this trend of event in the different Nigerian localities is probably the prestige and honour that chiefs usually attract in the society. Such honour and prestige even assume a larger-than-life image when a person is installed as an "Emir", "Igwe", "Oba" or "Obi".[1] It appears that this phenomenon cuts across all African countries. It is not peculiar to Nigeria. After all, everybody wants honour, prestige, power and respect.

Another reason for the high spate of litigations in respect of chieftaincy matters is the numerous spoils of office which the holder of chieftaincy title stands to benefit or receive from his subjects from time to time. Such gifts come in various forms and include land, money, food, chattels and even women on some occasions. The booties attach a lot of glamour to the office of a Chief and that, in turn, "inspires" the contenders for chieftaincy titles to struggle endlessly to occupy vacant chieftaincy stools. To be candid, it is a struggle that may never know an end in the African community. For as long as human beings exist, Nigerians and, indeed, Africans will continue to attach a high sense of value to chieftaincy titles.

Introduction

In order to give an in-depth meaning of the word 'chieftaincy', it is perhaps necessary to first understand who exactly a "chief" is. After a breakdown of the meaning of the word "chief", the definition or explanation of chieftaincy will probably be easy to give.

A chief could, therefore, be referred to as a person who is recognised in his community as deserving of honour and dignity and is always accorded respect by the generality of the people in his immediate neighbourhood and the community at large. In fact, a chief is often-times a leader of his locality and an acknowledged man of dignity, fame, honour and prestige. Thus, according to the Supreme Court in the case of *Oladiti Adesola V. Alhaji Abidoye & Anr.*[2], a Chief means a person whose authority and control is recognised by a community. He is an acknowledge leader in his society and among the members of his community, which status carries with it both social prestige and political functions.

From the above definition of the apex Court of the land, it could be easily deduced that a 'Chief' plays many roles at one and the same time in his community. He is a leader who has:

(i) Authority,
(ii) control,
(iii) recognition,
(iv) prestige, and
(v) functions.

These attributes of a Chief carry with it many political or social duties which the incumbent must perform in order to execute the functions of his office or activities expected of him as a chief in his community. It thus stands to reason that it is the combination of the above-stated attributes that sum together or add up to make a 'chief'.

Given the above meaning of a 'chief', therefore, it is submitted that although chieftaincy is a customary or traditional institution, it is obviously a concept by which the holder wields a lot of power, influence, control and authority over the inhabitants of his community.

His authority vests him with the power to issue out directives to the members of the community who also obey and follow such instructions or directives without questioning. The people's obedience and loyalty are usually given to the chief unquestionably because the members of his community freely gave their consent to the appointment of the said chief right from the beginning. The consent of the people to the appointment of their chief could therefore be regarded as the source of a chief's authority to rule or reign in any given community because it signifies the people's acceptance or concurrence to be ruled by the chief.

Definition of Chieftaincy

What then is the definition of 'Chieftaincy'? The first attempt at judicially defining "chieftaincy" was made by the Court in 1908 when it was referred to as "a mere dignity, a position of honour, of primacy among a particular section of the native community."[3] This definition, however, fails to clarify the types of chieftaincy that exist today. So, it is perhaps better to define chieftaincy as the honour or title bestowed on a person by virtue of his birth into a family or descent from a particular ancestor or in recognition of a person's leadership qualities, integrity or contributions to the development of a town, city or community.

It is apparent from the definition that chieftaincy may be viewed from two different dimensions. One is hereditary while the other is honourary. The former has been so called because it passes from father to son with the appointment to the office being made from the same family.[4] Consequently, hereditary chieftaincy will usually revolve or rotate among persons from the same or common ancestor. It is a chieftaincy which is handed down from the ancestral patriarch of a single family lineage and it continues along the same genealogical tree.

Only such a family will be competent or qualified to contest for appointment or selection to occupy such a chieftaincy stool. It is only but a family affair. Those who do not belong to the family are totally excluded. It is an exclusive family hereditary property. Speaking comparatively, it could be likened to the British system of ascent to the throne of the English Crown.

On the other hand, honourary chieftaincy is usually conferred on members of the various Nigerian communities as a way of recognising their contribution to the growth or development of their respective communities. Such contribution might have been made in the course of the person's professional duties or during his social activities in the community. Others are so recognised by virtue of their integrity or the respect which their communities have for them. The recipients of the chieftaincy titles are usually conferred with various honours which often enable them to join the membership of the Chieftaincy Council of their individual communities. They will thus become part of the ruling elites that look after the day-to-day administration of their villages, clans, towns or cities. By thus participating in the ruling or control of the community, they will be afforded the opportunity to contribute their respective efforts, finance,

knowledge, wisdom and natural endowment to the growth and development of their communities.

Moreover, one trend which runs through every form of chieftaincy title, be it hereditary or honourary, is that it is a status which people assume or acquire under the customary law in the traditional African setting. For that reason, a person who is not recognised as a chief under the customary law cannot hold himself out as such. Hence, it was held in the case of *Akanni V. Yakubu*,[5] that the Appellant could not hold himself out as the *Oniyangbo of Ijagbo* since he had not been properly appointed to the post as required by the customary law of the area. This presupposes that chieftaincy is a by-product of the custom, values and ethos of a given people. It has its root in its recognition by the people. It then follows that a person cannot appropriate a chieftaincy title to himself. He must be recognised as such by the people in his community. The Traditional Council established by law to overlook the affairs of the community must also accept the chief as one of its members.

On the other hand, it is pertinent to allude to the attempts which have been made by legal draftsmen to statutorily define "Chief" and/or Chieftaincy. First Section 3 of the Interpretation Act, Cap 192, Laws of the Federation, 1990 defines the term 'Chief' as a person who, in accordance with the law in force in any part of Nigeria, is accorded the dignity of a chief by reference to a community established in that part.[6] By and large, this provision still take us back to the important fact that there is need for the people that make up a community to give their recognition to a person before he could be accorded the dignity or honour of a chief.

Authority of a Chief

At this juncture, one may ask for the source of the authority of a chief.

Of course, this question needs not bother our mind much as its answer could be easily garnered from the explanations given above regarding the meaning of chieftaincy. Moreover, since it has been argued that the status of a chief can only be assumed by virtue of having been recognised and acknowledged by the people under the customary law of a given community, the basic authority of a chief could therefore be sourced from the customary law of the community over which he rules. Customary law is however, derived from the

custom, norm, values, ethos, mores and practices of a given community which have crystallised into an accepted usage to which people have given their consent. Little wonder then that the courts have referred to customary law as a mirror of accepted usage.[6] However, it must be quickly added that on some occasion the customary rules guiding the chieftaincy law of some communities are embodied in declarations which are enacted into legislative documents by the Government. In such instances the source of the chieftaincy law of the people also emanates from statute, that is, the chieftaincy rules and regulations of the people enacted into a written law. Until the declaration of the chieftaincy of a particular area is made, therefore, the customary law remains the sole source of a chief's authority. Even when the declaration is made, the fact remains that it will still contain the customary law of the area in respect of which the declaration has been made.

Nature of Chieftaincy Declaration

Upon the enactment and registration of chieftaincy declaration, it becomes the constitution and embodiment of the entire custom of the town whose chieftaincy declaration is so enacted with respect to chieftaincy matters to the exclusion of any other custom, rule or usage.[7] The processes of nomination, selection, appointment, approval and even installation of candidate to the chieftaincy throne of any town or city whose customary law on chieftaincy has been codified into a registered declaration will henceforth be regulated by the Chieftaincy Declaration[8] which, for all purpose, is akin to the constitution of the affected community in respect of all chieftaincy matters. For, as Agbaje, J.S.C. put it:

> *The Chieftaincy Declaration is no doubt an instrument which has a constitutional status in that it was made under a Law which was duly passed in the manner provided for by the Constitution.*

If the Chieftaincy Declaration is an instrument with constitutional status as pronounced by the Supreme Court, therefore, it is thus clear that is the foundation or source of the chieftaincy rules in any community. It is not only fundamental to the existence of the chieftaincy matter of the affected area, but it also gives life and blood to it. In other words, such a Declaration cannot be done away with

when discussing any matter concerning chieftaincy. It is rudimentary to it and without it no issue on chieftaincy can be sustained. With this background understanding of the meaning, definition, authority and nature of chieftaincy, we can now examine how and in what ways the judiciary has impacted on or intervened in chieftaincy matters in Nigeria.

Judicial Intervention in Chieftaincy Matters

Since appointments to the throne of the traditional ruler of any town or city is usually contested for by many interested persons whenever there is a vacancy thereto, it is not difficult for the king-makers, politicians and other interested stake-holders, who want their favourite candidates to ascend the throne, to hijack the appointment processes.

A similar live scenario of the situation described here is currently playing itself out over the dispute surrounding the stool of *Deji of Akure* in Ondo State of Nigeria where the kingmakers purportedly dethroned the *Deji of Akure* and the Government of Ondo State insisted that the former have no such power. In like manner, the kingmakers of *Ipele* in *Owo* Local Government area of *Ondo* State also purportedly removed the *Olupele of Ipele* from the throne by performing the traditional rites for the monarch's removal, even when the Government did not approve of such activities.[9] In fact, under the provisions of some States' Chiefs Laws, the appointments of chiefs were left to the absolute prerogative of the Governor who is a political office holder and this further subjects such appointments to the vagaries of political juggling and calculations.[10] Politics thus easily creeps into and gets mixed up with chieftaincy matters and, of course, those who feel cheated in the ensuing disputes naturally resort to the court, the proverbial last hope of the common man, for redress. This process has, therefore, often opened the floodgate to chieftaincy litigations, disputes and controversies which have, in turn, afforded the judiciary the opportunity to make pronouncements in different areas of Chieftaincy disputes. Such areas include issues touching on:

i. Nomination, Selection, Approval, Appointment and Installation of Chiefs;
ii. Order of Injunction on Chieftaincy Contestants;
iii. Judicial Review of Chieftaincy Disputes;
iv. Ouster Clauses and Chieftaincy Matters;

v. Prescribed Authority;
vi. Inquiry into Chieftaincy Matters;
vii. Infringement of the Law by Traditional Chiefs;
viii. Withdrawal of Recognition of Chiefs; and
ix. Deposition of Chiefs.

The intervention and pronouncements of the courts in matters affecting these specified areas will now be examined *seriatim*.

Nomination, Selection, Approval, Appointment and Installation of Chiefs

Before there arises the need to nominate, select or appoint a candidate to fill or occupy a chieftaincy stool, a vacancy must have occurred in the chieftaincy stool of a particular village, clan, town, city or community.

Such a stool must, of course, have become vacant by reason of deposition or death of the immediate past incumbent of the stool. A vacancy may equally occur as a result of the abdication or banishment of the last occupier of the stool. One point that must be made here is that: "there cannot be two contestants to a stool where there is an incumbent".[11] Indeed, there cannot be any contestant to an occupied stool since there is no vacancy thereon.

Moreover, the duty of nominating a candidate who will fill the vacant position of a chieftaincy stool belongs primarily to the ruling house whose turn it is to present the next person that will fill a vacant stool. This point is affirmed by the provision of Section 14 (1) of the Chiefs Law, (Cap. 28), Laws of Oyo State[12], 2000 which states that:

"14(1) A person shall, unless he is disqualified, be qualified to be a candidate to fill a vacancy in a recognised chieftaincy if:

(a) he is proposed by the ruling house or the persons having the right to nominate candidate according to customary law; and
(b) (i) he is a person whom the ruling house or persons having the right to nominate candidate are entitled to propose, according to customary law, as a candidate; or
(ii) he is unanimously proposed as a candidate by the members of the ruling house or the persons entitled to nominate candidates.

The exact meaning of the word "nomination" or "nominate" was not given by the Chiefs Law and so the word has been made the subject of judicial explanation in the case of *Adefulu V. Oyesile*[13] where Nnaemeka Agu, JSC explains thus:

> *…it appears to me that nomination within the meaning of the Law of Ogun State, i.e. Chief (Amendment) Edict No. 1 of 1971 and Declaration made thereunder Section 4(1) thereof with respect to the selection of Ilishan-Remo is a selection by members of the ruling house entitled to select a candidate or candidates who command the support of a majority of members of the ruling house for submission by the ruling house through its head of family to the kingmakers.*

From this pronouncement of the Court, it appears that the nomination of a candidate to occupy a vacant chieftaincy stool is nothing short of the art of picking of a person who enjoys the support of the majority of the members[14] of a ruling house whose turn it is to provide a chieftaincy candidate. The use of the word 'selection' used by the learned justice of the Supreme Court in the above-quoted pronouncement appears to be confusing as the duty of selecting a candidate that is nominated by a ruling house is that of the kingmakers who are the persons traditionally vested with the right of choosing an *Oba*.[15] The nomination of a candidate must, however, be rapidly made by a ruling house before his selection by the kingmakers, and subsequent approval by the Governor of the affected State can be regarded by the law as being proper. This position was clarified by the Supreme Court in the case of *Adefulu V. Oyesile.*[16] wherein the Court observed:

> *As a valid nomination by the ruling house is a sine qua non for either valid submission for selection by the kingmakers or its approval by the Governor, it follows that any purported selection by the kingmakers or its approval by the Governor, of a person not nominated by the Ruling House is an exercise in futility.*

Finally, it must be added that a non-member of the ruling house that is next in line to present a candidate cannot be nominated as a candidate for a vacant chieftaincy stool.[17] Similarly, it has been decided that the nomination of more than one person for such a vacant

stool was illegal.[18] In like manner, a selection which was done in total disregard of the provisions of a registered Chieftaincy Declaration was illegal, unconstitutional, null and void. However, an amendment of a Declaration will not affect any right or privilege which a person acquired under the provisions of a Declaration after the amended Declaration has been re-registered. This was the kernel of the decision in the case of *Afolabi V. Govt. of Oyo* State[19] in which it was held that such re-registration would not, by itself alone, affect the validity of any selection or appointment or any other thing whatsoever made, given or done before the amendment. The Chiefs Law equally placed some "disability hurdle" on the path of a person who wishes to become a chief. Thus, Section 14(2) of the Chiefs Law[20] forbids:

i) a person who suffers from serious physical infirmity; or
ii) an adjudged lunatic or person of unsound mind; or
iii) a person sentenced to death or imprisonment for a term exceeding two years; or
iv) a person convicted and sentenced to imprisonment for an offence involving dishonesty from the becoming a chief or an *Oba*.

Order of Injunction on Chieftaincy Contestants

Another area of chieftaincy disputes which has attracted the pronouncements or intervention of the Courts has to do with cases in which litigants in chieftaincy matters have sought injunctive orders of the court to restrain their opponents from doing, performing or executing certain acts or activities. Generally, injunction is a discretionary order which gives a flexible power to the court to either grant or refuse an application for injunction after considering the facts and circumstances of each case. The courts have therefore laid down the principles upon which injunction will be granted. One of the cases that have stated the principles eloquently is Joseph *Adediji 8 Anr. V. J.A. Akintaro & Ors*.[21] which put it thus:

A party applying for an injunction pending the determination of an action must show that:

(a) he has sufficient interest in the relief sought.
(b) there is a serious question to be tried at the hearing of the action.
(c) the balance of convenience is in his favour.

(d) the *res* ought to be preserved pending the determination of the case.

(e) damages will not be an adequate remedy for the injury to be suffered.

(f) the act for which injunction is being sought has not been carried out.

2. Where a party seeks to restrain an act which is still being threatened, he must show that his rights are threatened.

Although the above stated principles usually serve as guide to the court in handling applications for injunction, it appears that there are no crystallised rules yet when the courts are applying the principle to chieftaincy disputes. For while, the courts have granted injunction in some chieftaincy cases, they have refused such application in other similar situations. Thus, in the case of *David Dada & Anr. V. Ifelodun Local Government Chieftaincy Committee & Ors.,*[22] the Respondent had been nominated by the ruling house; selected by the kingmakers and approved by the government leaving only the installation ceremony and official reception of staff of office to be carried out, yet the Court of Appeal granted an injunction and thus prevented the *Oba*-elect from performing the duties of an *Oba*. The Court observed:

> *It is true that if the 'res' sought to be preserved is the vacant stool there is no such thing now since somebody has been installed. But since some necessary steps are still to be taken, to prevent such further steps from being taken and to put a stamp of finality on the installation is, in a way a preservation of the ' res'.*

On the other hand, the same Court of Appeal refused a similar prayer some fifteen years later in the case of *Nwosu V. Nnajuba.*[23] In that case, the Court refused to grant an injunction to restrain a party from presenting himself for recognition or presentation of staff of office because the office of a traditional ruler is not a perishable commodity that must be preserved pending the determination of an appeal.

It is submitted that the kinds of conflicting decisions of the Court often cast some doubt on the credibility of the Court and so there is the need on the part of our judicial officers to always exercise more patient and make conscious efforts the sift the existing precedent

carefully before handing down their decisions on issues which, though appear to be personal will, in the long run, affect the entire society.

In cases where vacant chieftaincy stools have not been filled and appeal is pending in the Supreme Court, that court has been granting orders to injunction to prevent such vacant stools from being filled until the pending appeals are determined. A case in point is *Salami Afolabi & Ors. V. Gov of Oyo State & Ors.*[24] This was a case in respect of *Olobagun of Obaagun* chieftaincy. A candidate has been nominated for the vacant stool but his nomination had not been approved by the Governor when appeal was lodged in the Supreme Court. The Court observed:

> *from the submissions of counsel and the facts presented there is definite need to restrain the taking of any further step to fill the vacancy. The Governor has not approved the nomination and the Olobagun has not been installed. The prospect of making any order dethroning any Olobagun installed in the interim should the appeal succeed is one that must be avoided and hence an order of interim injunction directed to the 1sr and 2nd respondents restraining them from taking any further step must be made. I will accordingly make the order.*

It is submitted that to grant an order of injunction in this kind of situation when the *Oba,* though already nominated, has neither been approved by the Governor nor installed, is in line with commonsensical reasoning, as it could lead to a breach of the peace, the need later arises for the removal of the Oba when the case is finally determined.

On the other hand, the Court has not made it a habit to grant an order of injunction mandating an Oba who has been installed to vacate the stool pending the determination of the case. So, in the case of *Salawu Olagunju Adeyeye & Anr. V. Alhaji Shittu Ajiboye & Ors.*[25] the supreme granted an application for stay of execution[26] of the judgment of the lower court given against an incumbent Oba. The stay of execution was granted to allow peace and order to reign in the affected town. The court felt that:

> *Above all, it is necessary to maintain peace in the area and this can best be done if matters are left as they are until this court decides the issues raised in the appeal.*

This decision was later followed by the Court in the case of *Oyeyemi V. Irewole Local Government.*[27]

Above all, it can be concluded that the court has often used the order of injunction to bring sanity into chieftaincy matters. It has always been used as an instrument of peace, order and harmony as far as chieftaincy disputes are concerned.

Judicial Review of Chieftaincy Disputes

The court has also interfered with chieftaincy matters via the process of judicial review on same occasions. This has usually taken the form of an order of (a) *Mandamus* (b) Prohibition or (c) *Certiorari* an inferior Court or tribunal or a person or persons or body charged with a public duty to carry out its judicial or public duty. This means that when any inferior court, tribunal person or body of persons vested with power to perform a public duty fails or refuses to discharge that duty, an order of *mandamus* shall lie to compel it/him to perform the duty. So, in the case of *The State V. The Hon. Commissioner, Oyo State Ministry of Local Government & Chieftaincy Affairs & Anrs. Ex-Parte Safiu Oloyiwola Oderinde*[28] an order of *mandamus* was granted to the Applicant to enforce and/or compel the 1st Respondent to, as a matter of duty, give effect to the provision of the Chiefs Law, Laws of Oyo State (Cap 21), 1978 to make necessary enquiry into the appointment to the vacant stool of *Baale* of Ajia.

Again, if and when a contestant for a chieftaincy stool feels that an inquiry being conducted by an inferior body into the question of who is the appropriate person to be appointed to occupy a vacant stool is being unfairly handled, he could approach the court with an application for an order of prohibition. The order is designed to stop the inferior tribunal from proceeding with the enquiry or trial.

The Applicant in that *Oderinde's* case who was one of the parties contesting for the chieftaincy stool of *Baale of Ajia* wrote a letter to the Commissioner of Local Government and Chieftaincy Matters urging him to conduct an inquiring into the propriety or otherwise of the families vying for the stool. When the said Commissioner refused to carry out the exercise within a period of two years, the Applicant filed an application for an order of *mandamus* to compel the Commission to so act. The High Court granted the order

without much ado. *Mandamus* is thus a mandatory order which invariably forces the public officer, inferior tribunal or body concerned to act in situations where such failure will affect the right of some other persons to the chieftaincy stool.

Order of Prohibition

This is yet another in the three-member family of prerogative writs and it is aimed at preventing an inferior court or tribunal from completing the hearing or determination of a matter pending before it on the ground that the cause or case or some collateral matters arising there from, does/do not fall within the jurisdiction of the inferior court or tribunal.[29] This order has also been issued by the superior courts (especially the High Court) to prevent inferior courts or tribunals from hearing cases to finality on several occasions.

Order of *Certiorari*

A *Certiorari* order is issued in order to bring the record of proceedings and decision of an inferior tribunal to the High Court for the purpose of being quashed, especially where the inferior tribunal lacks jurisdiction. This point was emphasised by the Court in the case of the *Queen Ex-Parte Laniyan Ojo V. Governor-in-Council Western Region*[30] in which it was canvassed, among other things, that the Governor-in-Council had no jurisdiction to grant approval to the appointment of a contestant for a vacant chieftaincy stool. The Respondent countered that Section 3(1) of the then Western Nigeria Administration of Justice (Crown Proceedings) Laws, 1959 had taken away the jurisdiction of the Court to issue an order of *certiorari* in respect of the matter. The Court, however, leaned on the side of preserving its jurisdiction and it held that:

> *It is settled that despite express words taking away certiorari the court will issue it for manifest defect of jurisdiction in the tribunal which made the order, and the objection may be founded on the character and constitution of inferior court, the nature of the subject matter of the inquiry, or the absence of some preliminary proceeding which was necessary to give jurisdiction to the inferior court …*[31]

It is thus clear that even in the face of direct ouster clauses planted as obstacles in the way of the superior Court in Chieftaincy matters, the Court has not shied away from performing its constitutional duties by invoking its power under the common law principles of prerogative writ otherwise called orders of *certiorari* to check the excesses of inferior tribunals, courts or bodies which chieftaincy disputants or politicians may seek to influence. In fact, this much was reiterated in the case of *The Governor, Western Region Ex-parte Alasan Babatunde Ajaguna II Ikare*.[32] Jibowu, C.J. observed in that case:

> *There can be no doubt that the legislative has signified an intention to keep all disputes about chieftaincy out of the Court. It is the duty of the Court to give effect to enactment of the legislature, but the court will now represent the sovereign in issuing prerogative writs, will not give effects to an enactment which seek to deprive it of its rights to see that justice is administered impartially to all manner of people according to law. The court has always jealously guided against encroachment by the Executive on its powers and right to supervise inferior Courts, including bodies entrusted with the judicial functions, and to see that inferior Courts, and bodies entrusted with the judicial functions, are kept within their bounds and that they discharge their duties according to, and within the law. Hence, in spite of legislative enactment to the contrary, the High Court would still issue prerogative writ in appropriate case.*[33]

With this kind of preannouncement coming from the bench, it is submitted that the Court has always dared the Executive at various times where chieftaincy disputes are concerned.

Moreover, in exercising its supervising powers over the courts, tribunals, judicial or quasi-judicial inferior bodies, the High Court conducts its review from former's standpoint and must not intervene solely on the basis that it would itself have acted differently. The principles being followed by the High Court in applying the prerogative writs of *Mandamus,* Prohibition or *Certiorari* may be summed up as follows:

(a) judicial review is not an appeal;

(b) the court must not substitute its judgment for that of the public body whose decision is being reviewed;
(c) the correct focus is not upon the decision but the manner in which it was reached;
(d) what matters is legality and not correctness of the decision;
(e) the reviewing court is not concerned with the merit of a target activity;
(f) in a judicial review the court must not stray into the realms of appellate jurisdiction for that would involve the court in a wrongful usurpation of power;
(g) what the court is concerned with is the manner by which the decision being impugned was reached. It is its legality, not its wisdom that the court has to look into for the court is not an appellate jurisdiction but rather a supervisory one.[34]

The bottom line of the factors herein enumerated for the operation of the Court's power of judicial review is that it is different and distinct from the appellate jurisdiction of the Court in that the court only concerns itself with the legality of the matter and not with the correctness or otherwise of the decision of the inferior body.

Ouster Clauses and Chieftaincy Matters

By their nature, ouster clauses are legal enactments specially designed to prevent the courts from looking into the prosperity or otherwise of the provisions of certain statutes enacted by the legislature. In most cases, such statutes are those that arose from the bills presented to the Legislative House by the Government. The Government invariably introduces such clauses into statutes so as to protect its own interest. In the case of that of statutes dealing with chieftaincy, therefore, the attitude of the Government has not been different. It has always been to protect its interest in respect of certain vital issues involved in the affected area.

A most notorious clause which has usually caused problem could be found in Section 22(4) of the Chiefs Law (Cap 28) Laws of Oyo State. The provision of that section which has received numerous interpretations from the court provides as follows:

> *24(4) Any person aggrieved by the decision of the prescribed authority in exercise of the powers conferred on the prescribed of this section may, within twenty-one days from the date of the decision of the prescribed authority make representation to the Governor that the decision be set aside and the Governor may, after considering the representations confirm or set aside the decision.*

The word "may" used in the above provision has been consistently held to be mean "shall" which word, whenever used in legal drafting, confers a mandatory duty on the affected person. It thus follows that such a person could not go directly to court to present his case unless he first tables his grievances before the Governor.[35] There is a temptation here to ask the question: why does an issue involving the custom or tradition of a town or city have to be settled by the Governor? Is the Governor a custodian of the traditions of all the villages, towns, or cities in his state? Obviously, all these questions involve issues that ought to be resolved by the Court. Ironically however, the Government felt otherwise.

Infringement of the Law by Traditional Chiefs

Although traditional Chiefs are people of honour and prestige in their respective domains, they are certainly not precluded from obeying the laws of our land. The law presumed that all persons who are morally upright must obey the law and all men of conscience should respect the general will of the people in every given society which is represented by the law. It has thus been held that: "Every moral man is as much bound to obey the civil law of the land as the law of nature."[36] Thus, in the case of *Sule Giwa & Ors V. Alashe*[37] Lagos White capped chief was held to have acted illegally when he wrongfully seized and converted the land of an ordinary person to his own. It was observed that the position of a white-capped Chief:

> *only carries a certain social status and distinction among his fellow but no authority beyond that of any other private person. More especially do I draw attention to this fact in as much as certain pretensions have recently been advanced by persons calling themselves White-Capped Chiefs, to control over land in*

> *the lawful and beneficial occupation of persons owing no rent or service to them.*

The court has even viewed very seriously all attempts by '*Obas*' and Chiefs to bring its order into disrepute by refusing to obey same. This position was affirmed in the case of *His Highness Alhaji S.K. Adetona V. A-G. Ogun State & Ors*[38] where the Court observed:

> *The Plaintiff is also asking that no summons should be issued on him or warrant compelling his attendance at the inquiry. In short, what the Plaintiff is claiming is that the Commission of Injury Law does not apply to him but it does. As previously stated, the Plaintiff is an indigene of Ogun State and an important Natural Ruler of the State. He is in my view subject to all the Laws of that State.*

In similar vein, it should be noted that a chief cannot go scot-free if he commits any criminal offence.[39] Consequent upon the position of the Law enunciated herein, it is strongly opined that in order to retain their honour, prestige and enhanced social status, our revered traditional rulers should not conduct themselves with decency and decorum in all matters but must always endeavour to respect, obey and comply with the law.

Inquiry into Chieftaincy Matters

Strict adherence to the principle of natural justice in the conduct of inquiry into chieftaincy disputes has usually been reiterated by the courts. The court has always concerned itself with the observance of the rule of *audi alterem partem,* that is, hear the other party before condemning him. Even though the persons appointed to carry out inquires are not legally bound to follow or adopt any particular procedure in executing their functions, they must observe certain minimum standards which will ensure their impartiality and fairness. So in the case of *Board of Education V. Rice*[40] it was observed that:

> *They must act in good faith and fairly listen to both sides. But I do not think they are bound to treat such a question as though they were a trial. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the*

> *controversy for correcting or contradicting any relevant statement prejudicial to their view.*

The observance of the rule of natural justice can, therefore, not be sidelined in conducting inquiry into chieftaincy disputes or matters.

Different sections of the Chiefs Law of the States of the Federation make provisions for inquiry to be conducted into chieftaincy matters but for illustration purpose, reference will be made here to Section 25(1) of the Chiefs Law of Oyo State. It provides that:

> *The Governor may cause such inquiries to be held at such times and in such places and by such person or persons as it or he may consider necessary or desirable for the purpose of Parts 2 and 3 of this Law.*

This provision gives the Governor a wide power to set up panels to enquiry into any chieftaincy matter in the State. The Governor must, however, follow the law in appointing members of the panel of inquiry and the customary law of the affected community.

It must be noted that a panel of inquiry can only make findings and recommendation(s) but cannot make a decision. The Governor could, however, base his decision on the findings and recommendation of the panel of inquiry.

Deposition of Chiefs

Deposition of chiefs which may be done either traditionally or statutorily may be referred to as the act of removing a Chief from the throne on the ground that he contravenes certain customary rules or statutory provisions. In the first place, a Chief who engages in conducts that are considered to be unbecoming of a traditional ruler may be removed or deposed by his people. Instances of such conducts include but are not limited to situation in which a traditional ruler:

a) grabs the personal land of his subjects;
b) sells the land of his community authority to do so;
c) seduces the wives of his subjects;
d) defrauds the funds of the community;
e) fails to perform the functions of his office as required by the Custom; or
f) vitiates or contravenes the customary law of his people.

Some of the above stated rules were put to test in the case of *Oba Orioge V. The Governor, Ondo State & Anr*[41]. The plaintiff in that case who was an Oba was alleged by his people to be fond of drinking beer and alcoholic drinks in bars, hotels and other public palces in several occasions. That led to the Plaintiff behaving in a manner which is unbecoming of a traditional ruler. Furthermore, the Plaintiff:

i) was judicially adjudged a debtor and his car was sold in satisfaction of the debt;
ii) was engaging in criminal activities;
iii) was high-handed in ruling his subjects;
iv) was administering his people in a manner which was detrimental to the progress, development and peace of his domain.

For all the above stated allegations, the removal of the plaintiff from the throne was upheld by the court. Similarly, the traditional method of forcing an Oba to abdicate his throne by "drumming out" was upheld with approval in the case of Ademola II & Anr. V. Thomas & Ors.[42] While signifying it approval of the method, the court observed:

> *The evidence upon which contention is based goes to show that, by reason of the disagreement between the 1st Respondent and certain other chiefs the latter decided to take steps equivalent to dismissing him from his chieftaincy by means of "drumming out" it is clear in the first place, that this is a customary method of dealing with a chief who has been guilty of an offence meriting deposition and deprivation of his title.*[43]

Moreover, a traditional ruler may be deposed or removed from the throne in accordance with the provision of Section 26(3) of the Chiefs Law (Cap 28) Laws of Oyo State. The section provides thus:

> *26 (1) The Governor may suspend or depose any chief whether appointed before or after the commencement of this Law, if (sic) is satisfied that suchs suspension or deposition is required according to customary law or is necessary in the interests of peace, or order or good government.*
>
> *26 (3) (a) Where a prescribed authority is appointed in accordance with section 22, the Governor may by notice in the Gazette delegate to that authority the*

> *powers conferred by subsections (1) and (2) of this section with respect to minor chiefs whose chieftaincy titles are associated with a native community in the area for which the prescribed authority is appointed.*
> *(b) ……..*
> *(c) Any chief deposed or suspended by a prescribed authority in exercise of powers delegated under this subsection may within twenty-one days of such deposition or suspension, make representation to the Governor and the Governor may, after considering the representations, confirm or set aside the deposition or suspension.*

Arising from the above provisions is the fact that while the Governor may depose an *Oba* or a High Chief, the same function may be carried out in respect of a minor chief by a prescribed authority. It was in pursuance of a similar provision of the Law that the Late *Olowo of Owo, Oba Olateru Ologbeg*i was deposed in 1968 although he was later reinstated in 1993 by the *Ondo* State Government. Likewise, a number of minor chiefs had been deposed by different prescribed authorities while invoking the provision of this law.

Chieftaincy and Policy

The implication of all this for policy is that the Government should look more critically at chieftaincy matter with a view to making the appointment of chiefs more stable. The idea of deposing a chief years after he has been appointed probably due to his political affiliation does not augur well for a stability of the society. If a king or a chief does not support the government in power he is better left alone. Government comes and goes but the sanctity of the office of *a* chief remains. The government should do its bit and leave the rest. A situation in which the government engages in political vendetta by deposing an uncooperative chief portrays the government as being vindictive.

On the other hand, the position of a chief is a position of honour and anybody occupying such post should know that the position attracts a lots responsibility. He should realise that respect begets respect and

should obey the law of the land in his daily conduct. Should he fail to do this, the law which is an ass will not fail to take its course.

Finally, the contribution of chiefs to the socio-political development of the nation should not be overlooked. They do this by mobilizing and organising the populace during the period of census for enumeration purpose. This enables the government to use the necessary data for planning.

Conclusion

Within their sphere of influence, chiefs are respected people who attract honour and prestige. They are regarded as fathers of all. They should therefore maintain the dignity of their office by their humane and peaceful disposition at all time. They should join the government in developing the society by attracting to their neighbourhood such government projects that are beneficial to the people. When this is done, they will be at peace with the governed and the government will look at them with respect.

Notes and References

These are some of the names given to the paramount or traditional rulers of some towns and cities in the country.

(1999) 4 NWLR (Part 637) 28

This definition was given in the case of Adamji V. Hunvoo (1908) 1 N.L.R. 74

Chief Emmanuel Ogbonna Vs. A.G. (Imo State) (1989) 5 NWLR 312 at 325

(1973) 1 ALL NLR (Part 1) 927.

Provisions similar to this are contained in the Chieftaincy Laws of the various States of the Federation; e.g. S. 2 of the Chiefs Law, (Cap 28) Laws of Oyo State, 2000 defines a 'chief' as a person whose chieftaincy title is associated with a native community and includes a minor chief and a recognised chief.

Owonyin v. Omotosho (1961) NWLR

Chief J.A. Imonike 1 Or. V. The A-G of Bendel State & 3 Ors. (1992) 6 NWLR (Part 248) 396 at 4

Afolabi V. Governor of Oyo State (1985) 2 NWLR (Pt. 9) 734.

Prince Eyinade Ojo & Ors. V. The Governor of Oyo State & Ors.
(1989) NWLR (Pt. 95) 1 at 22.

These events were widely reported in the Punch and the
Nation Newspapers of November 12, 2009. Trees near the palace of the Olupele of Ipele were cut while the main market was relocated to signify the symbol of dethronement of the king in the community.

An example of such Law could be found in Section 4(3) of the Chief (Appointment and Deposition) Law, Cap 20, Laws of Northern Nigeria 1963 which gives power to the Governor as the "sole judge" to perform a quasi-judicial function. Although, this Law was declared unconstitutional in the case of Anoh V. Hirnyam (1997) 2 NWLR (Pt. 846) 177 at 184 some States' Chiefs Laws are still replete with laws making the Chieftaincy Commissioners the sole decision maker in such a crucial judicial matter.

Per Oputa, C.J. (as he then was) in the case of Chief Eze S. B. *Orisalewe V.* Governor of Imo State (1982) 3 NCLR, 743 at 760.

Section 14(1) of the Chiefs Law, Laws of Oyo State of Nigeria, 2000.

(1989) 5 NWLR (Part 1252) 337 at (Cap 28), 421.

It was further affirmed in the case of Adejugbe V. Olagunju (2004) 23WRN 1 at 17 that in the selection of candidates contesting for a chieftaincy post it is important to ensure that democratic value of allowing the will of the majority to prevail should be ensured.

Although Kusomotu contested that kingmakers are vested with the authority to "create" an *Oba* or a traditional chief in his book *Chieftaincy And The Law*, published by Sulek-emik Publishing Co. in 2001 at p. 38, this writer disagrees with that position as *Obas* and Chiefs are human beings who cannot be created by fellow human beings.

Supra.

This point was pronounced upon in the case of *Olarenwaju V. Governor, Oyo State* (1992) 11-12 SCNJ 92.

In the case of *Odeneye V. Efunuga* (1990) 7 NWLR (Part 164) 518 it was held that the nomination of four candidates instead of only one directed by the appropriate Chieftaincy Declaration was wrongful, null and void.

(1985) 9SC 117 at 182

See Section 14(2) of the Chiefs Law, Laws of Oyo State (Cap 28), Laws of Oyo State, 2000.

(1991) 8 NWLR (Part 208) 209

Unreported Appeal No. FCA/I/M.6/82 delivered on 20th May, 1982

Unreported Appeal No. CA/PH/238M/96 delivered on 23/7/1997

(1985) 2 NWLR (Part 9) 734

(1987) 3 NWLR (Part 61) 432

An order of stay of execution has the same effect as an injunctive order, that is, to temporarily stop the successful party from enjoying the fruit of the judgment.

(1993) 1 NWLR (Part 270), 462 at 478

Ibadan High Court Suit No. M/410/2001 delivered on 31st July, 2002

Blackstone Commentary, (1768) 2 B.L. Comm. 111-2.

(1960) I ALL NLR 147

(1959-1960) W.N.L.R. 44

Ibid. at p. 50

See the case of *Military Governor of Imo State & Anr. V. Chief B.A.E. Nwauwa* (1997) 2 NWLR (Part 490) 675 at 682

The "Governor" was only entrenched in the current Chieftaincy Law of Oyo State as it was formerly the "Commissioner" who was designated by the Law to resolve the matter.

Per rooke, J. in *Albert V. Maze* (1801) 1 Boss & Pull, 375

(1891) Lagos Reports of Certain judgments of the Supreme Court Vice Admiralty Court and Court of Appeal (1884-1892)

(1983) 4 NCLR 583 at 594 (Per E.B. Craig, C.J.)

This was the Kernel of the decision in the case of *Oriage V. A.G. Ondo State* (1982) 3NCLR 349.
(1911) AC 179 at 182
(1982) 3 N.C.L.R. 349
(1950) 12 W.A.C.A. 81
Ibid. p. The case of *Oyeyemi V. Commissioner for Local Government* (1992) 11-12 SCNJ. 266 is also illustrative here although the deposition of the affected chief in that case was rejected by the Court on the ground that the chief was not given an opportunity to hear the complaint against him before his purported deposition.