& 2IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.
SUIT NO: CV/1882/2015

BETWEEN:

S.H. ASHARA (Etsu Ashara) Paramount Chief of Ashara suing for himself and as the accredited representative of the Gangana (Abawa) Communities --- PLAINTIFF/RESPONDENT

AND

1. **HON. MINISTER, FCT.** --- DEFENDANTS/RESPONDENTS

2. **ALH. IBRAHIM D. SULEIMAN (Chief of Wako)**

JUDGMENT
DELIVERED ON THE 21ST JUNE, 2021

By an amended Writ of Summons and Statement of Claim, the Plaintiff commenced this action seeking that the Court favours him with the under-listed reliefs:

a) A DECLARATION that the grant, award, appointment, promotion and elevation of the 2nd Defendant to a 3rd class status by the 1st Defendant upon the slot meant for the Ganagana Communities as a dominant ethnic group in Kwali Area Council is an aberration, illegal, null and void, the 2nd Defendant being clearly an **AMMAMA** speaking community leader distinct from the **Ganagana** (**Abawa**) speaking community.

b) A DECLARATION that the Plaintiff who is the accredited leader of the **Ganagana** (**Abawa**) dominant ethnic group aforesaid is one entitled to be granted, awarded, appointed and/or elevated to the status of 3rd class based on the justification of its long historical antecedent and as a leader of the dominant ethnic community of the **Ganagana** (Abawa) in Kwali Area Council of the FCT aforesaid and which was otherwise wrongly vested on the 2nd Defendant.

c) AN ORDER of this Honourable Court directing the 1st Defendant to in earnest confirm and grant to the Plaintiff aforesaid his well-deserved recognition as the Chief of Ashara and paramount Leader of the **Ganagana** speaking community of the Kwali Area Council elevated and so confirmed to the 3rd class status, accordingly, with all the privileges and entitlements fully vested on the Plaintiff aforesaid.

d) The sum of N10, 000, 000.00 (Ten Million Naira) only to be awarded by this Honourable Court to the Plaintiff against the Defendants aforesaid for the embarrassment, inconveniences and other impunities occasioned the Plaintiff and his **Ganagana** (**Abawa**) community in Kwali Area Council, FCT.

e) AN ORDER of perpetual injunction restraining the 2nd Defendant aforesaid from conducting or parading himself as a paramount leader of the **Ganagana** (**Abawa**) Community of Kwali Area Council, FCT other than as leader and chief of **AMMAMA** speaking people of Wako, in Kwali Area Council of the FCT-Abuja.

f) The sum of N500, 000. 00 (Five Hundred Thousand Naira) only as the cost of this suit.

Upon being served with the Plaintiff's Writ of Summons, the 2nd Defendant filed its Statement of Defence. While the 1st defendant filed no defence after the settlement of pleadings, the matter went to full trial. Four witnesses testified for the Plaintiffs while a sole witness testified for the 2nd Defendant. The 1st Defendant called no witness and did not cross-examine any of the witnesses of both the Plaintiff and the 2nd Defendant. At the conclusion of the trial, parties were asked to file written addresses and adopt same. It was only the Plaintiff who filed and eventually adopted his written address.

PLAINTIFF'S CASE:

On the **9th day of May, 2018**, the definite hearing of the instant suit commenced with the Plaintiff calling subpoenaed witness, hereafter henceforth referred to as **PW1 by name UMAR DAUDU MAWGBA** who gave his address of residence as Piri in Kwali Area Council and testified to be 68 years old. He testified to be the Village Head of Piri. He said he knows the Plaintiff as Dagachi of Ashara. He said he knows the history of Ashara for over about 100 years plus. He confirmed that he knows the 2nd Defendant in the suit as the Sariki of Wako. On the 10th day of May, 2021, this particular witness was cross-examined by the 2nd Defendant's Counsel only as the 1st Defendant was neither present in Court nor represented by Counsel on the said date. Under cross-examination, the PW1 conceded that his knowedge of the Ashara history is one transmitted to him by his elders particularly their parents. When asked whether Ashara and Wako are of the same chiefdom, he answered that every one of them have their own chiefdom.

PW2

On the same day, the PW2 was called and affirmed. This witness gave his name as MUSA ABDULLAHI and further introduced himself as the Sariki Kwakwa. He gave his age as 82 years old and address as Kwakwa under Ashara. He confirmed his knowledge of the Plaintiff whom he recognised as his Traditional Ruler. He professes to know about the history of Ashara and mentioned to the Court the names of seven (7) Chiefs who have ruled over Ashara including the present Plaintiff. He stated that **Ganagana** is the tribe of Ashara. When asked to mention some of the villages under Ashara, he mentioned; **KAMADI, TAKURU, FUKA, AKAKPO, FUKAFA, GUMBO** and **DAFA**. When asked whether he knew the tribe of the Chief of Wako, he answered that they (Hausa) call him (the Chief of Wako) **ARAGO**. He stated that **GANAGANA, AMMAMA** AND **ARAGO** are different tribes. Witness was thereafter cross-examined. Witness answered in the negative when asked whether those old traditional tribes were all given stools.

PW3

On the 25th day of June, 2018, the 3rd Witness for the Plaintiff was called and affirmed. Witness gave his name as UMAR SANDA IBRAHIM and professed to be holding the title of the MADAKI OF ASHARA. He said he is resident in Kubwa area of Abuja and a retired civil servant who retired from FCDA in August, 2015 and that he was in Court because he was summoned to come and give evidence. When asked to mention to the Court the number of villages he knew in Ashara Chiefdom, he mentioned; GUMBO,

DAFFA, KAMADI, TAKURU, PIRI, AKAKPO, KUKA, FOGBE, FUKAFA, EKE etc. When asked which of the tribes is the predominant tribe in Ashara, he mentioned **Ganagana**. He confirmed that Ashara Chiefdom is in Kwali Area Council. When asked to list the predominant tribes in Kwali Area Council of the FCT, witness listed the following: **GWARI, GANAGANA, BASSA, AND HAUSA FULANI.** When asked to mention some past Chiefs of Ashara, he mentioned seven (7) of them inclusive of the present Plaintiff. Witnessed stated the difference between Ashara people and Wako people is that Ashara people are **Ganagana** by tribe while Wako People are **AMMAMA** by tribe. Witness told the Court that in 2013, there was a Panel set up to look into the chieftaincy crisis in Kwali Area Council. The Panel was set up by the FCT Minister (the 1st Defendant in this suit) and was headed by Senator Aduda. The purpose of the Panel was to settle the crisis between the major tribes in the Area Council of Kwali. According to the witness, the main reason was that it was only Kwali Area Council that has no graded Chiefs. The witness stated that the terms of reference was to recommend to the authorities those who are to be upgraded. Surprisingly the recommendation of the panel did not list **Ganagana** tribe as one of those to be upgraded simply because the Chief of Ashara while he is **Ganagana** by tribe did not participate in politics. Witness also stated that Wako people are AMUAMUA by tribe while Ashara people are **Ganagana** by tribe. Witness stated that the slot made for **Ganagana** is/was the one given to Wako who were AMUAMUA by tribe.

On the 2nd day of July, 2018, the PW3 was cross-examined. The 1st Defendant was not in Court and was not represented by Counsel despite

the service of hearing notice on him. Under cross-examination, when asked whether Wako, within his knowledge, is a chiefdom, witness answered yes. Witness also confirmed that Wako and Ashara are not the same. Under cross-examination witness confirmed that he was/is not privy to the content of the report of the Panel which the Minister set up and which he (the witness) alluded to in his examination in chief. Witness testified that the FCT Minister upgraded the Chief of Wako and stated that the Chief of Ashara would have been upgraded to third class Chief following the report of the panel he became aware of when it was aired. Witness when asked how to determine which slot was for who, he answered that it was based on the Committee report. When asked whether the recommendation of the Committee is before the Court the witness answered that he would not know. Witness was finally asked to state the current class of the Chief of Ashara to which he answered: "not yet upgraded. No class yet". Witness was referred to a book called 'Historical Material by Shuaibu Naibi" he mentioned in his evidence in chief and was then asked whether the said book is before the Honourable Court to which he answered that he would not know and later said no. There was no re-examination and the witness was discharged.

PW4: THE PLAINTIFF HIMSELF

Witness was affirmed and he told the Court his name as DR. SALIHU HUSSEIN ASHARA. He said he is 61 years old. Through this witness, a book titled CHRONICLE OF ABUJA authored by MALAM HASSAN, Sarkin Ruwa was tendered and admitted in evidence and marked PP1. The witness sought to tender a photocopy of a written request made by the Chief of

Ashara in 1980 for the upgrading of Ashara Chieftaincy stool. The said book was admitted in evidence and marked as PP2. Exhibits PP3, PP4, PP5, PP6 PP7 and PP8 were equally admitted through this witness. The evidence in chief of this witness ended on the 5th day of December, 2018. On the 15th day of April, 2019, the cross-examination of the PW4 by the 2nd Defendant started. Under cross-examination, witness admitted that both Ashara Kingdom and Wako Kingdom are autonomous and distinct kingdoms. Witness affirmed, under cross-examination, that the appointment and or upgrade of any Chief in the FCT are done by the FCT Minister. He equally affirmed that the upgrade of Chief of Wako was done by the FCT Minister. However, he added that such appointment by the Honourable Minister of the FCT is not to be done at the expense of harmonious co-existence. He confirmed that since the appointment of the 2nd Defendant there has never been any issue of violence. This according to him is because he warned his subjects not to take the law into their hands. The witness was not re-examined. The Plaintiff's Counsel informed the Court that that would be the case of the Plaintiff.

THE CASE OF THE DEFENCE:

On the 20th day of February, 2020, the 2nd Defendant's Counsel informed the Court that they have a sole witness for the defence. The witness was affirmed. The witness gave his name as SALIHU USMAN WAKO. He stated that he lives at Wako, Kwali Area Council. He adopted his written statement on oath which he deposed to on the 19th day of October, 2018 and urged the Court to adopt same as his oral evidence in this case. Through this witness, in his evidence in chief, different documents marked as DD1, DD2,

DD3 and DD4 were admitted in evidence. On the 29th day of June, 2020, the Defendant's sole witness was cross-examined. Under cross-examination, witness was shown Exhibits DD2 and DD4 and he confirmed that the names of the addressee therein is "IBRAHIM D. USMAN" which is different from "IBRAHIM D. SULEIMAN" who is the 2nd Defendant herein. Witness also confirmed the same discrepancy on Exhibit DD3 wherein the address thereof is "IBRAHIM D. USMAN" which is different from "DANLADI USMAN". Witness stated that he was born in 1953 in Kwali Area Council. Witness was asked to confirm that that the four major tribes in Kwali Area Council are: Hausa/Fulani, **Gwari**, **Bassa** and **Ganagana**, but he said he did not know. He said he knows his own tribe and that he is the District Head of Wako Chiefdom. Witness admitted that every Chiefdom has a historical background and that as a title holder, he knows to certain extent the history of Wako Chiefdom. He admitted that to the extent of his knowledge **Ganagana** tribal group founded Wako Chiefdom. Witness was referred to the second paragraph, page 86 of Exhibit PP1.

After reading it out, he was asked whether Gade is a Tribal Group to which he answered yes. When asked whether Alhaji Ibrahim D. Usman as 3rd class Chief for Wako is for **Ganagana**, the witness answered no that he is for Wako, **AMMAMA** Kindom. The witness went to state that the Chiefs are not for their tribes but they are Chiefs of their domains where other tribes co-exist. Witness rejected the suggestion that Wako Chiefdom was founded by GADE and not **Ganagana**. Witness described the book (Exhibit PP1) as containing historical errors. He said he did not have any other book to counter it but oral history. When challenged that the oral history he was

relying on were accounts relayed by others to him, witness countered that the book (Exhibit PP1) contains history derived by the author from oral accounts of others too. The witness admitted that he read a recommendation for the upgrading of Ashara Chiefdom to a 3rd class title. Under cross-examination, witness stated that the names "Ibrahim D. Usman" and "Danladi Usman" refer to one person. With this, the 2nd Defendant closed his case.

On the 22nd day of February, 2021, this matter came up for the adoption of written addresses by the respective parties. While the Plaintiff's Counsel adopted the Plaintiff's final written address dated and filed on the 22nd day of September, 2020, both the 1st and 2nd Defendants unfortunately failed to file any written address and were equally absent from Court. In the Final Written Address of the Plaintiff, the Plaintiff at **paragraph 4. 00 thereof** distilled a sole issue for the resolution of this Honourable Court to wit:

> Whether having regard to the claims of the Plaintiff and the evidence adduced in support of the claim, the Plaintiff has proved their case on the preponderance of evidence to be entitled to the judgment of this Court

In arguing this sole issue, Plaintiff made references to Section 134 of the Evidence Act and litany of decided authorities in enunciating the established evidential principle which is that the burden of proof lies on the Plaintiff who stands to lose should no evidence be led on either side and that the burden of proof shall be discharged on the balance of probabilities.

Anchoring on this ancient principle, the Plaintiff submitted that he showed positively by evidence, oral and documentary that Ashara Chiefdom was founded as far back as 1782 and in the 1993 Justice Mamman Nasir Committee Report recommended the upgrading of the Ashara Chiefdom to 3rd class status, same as Pai and Zuba. The Plaintiff called upon the Court to act on the evidence that the dominant tribes in Kwali Area Council are (1) Hausa/Fulani (2) Gbagyi, (3) Ganagana and (4) Bassa.

Regarding the evidence led by the 2nd Defendant at the trial, the Plaintiff urged the Court to expunge from its record all the documents tendered by the 2nd Defendant which are Exhibits DD1, DD2, DD3 and DD4 as, according to the Plaintiff, they were all wrongly admitted. After analyzing the Exhibits DD1, DD2, DD3 and DD4, Plaintiff repeated the arguments he earlier advanced at trial when he opposed the admissibility of Exhibits DD1, DD2, DD3 and DD4 and urged the Honourable Court to expunge all. Counsel devoted about 4 pages (paragraphs 4.10 to 4.21) of the written address to assailing the evidence led by the Defendant and urging this Honourable Court not to countenance same.

Counsel identified the crux of the Plaintiff's case as the "upgrading of the Wako Chieftaincy stool to 3rd class status without recourse to historical antecedent, fairness, need for harmony and peaceful co-existence."

Relying on **MAFIMISEBI & ORS. V. EHUWA & ORS. (2007) 3 SCM 150**, Counsel submitted that though the making of chieftaincy declaration is an administrative act, yet the Court has the competence to interfere where it can be shown that there were manifest errors with the

recommendations of the panel, the chieftaincy declaration did not afford fair hearing and fairness and doesn't accord with established tradition and custom as well as historical fact of the community. To sum up, Counsel submitted that the case of the Plaintiff has been proved upon the balance of probabilities and urged this Honourable Court to hold so.

In their Judgment I had earlier said that neither the 1st Defendant nor the 2nd Defendant filed their final written addresses. This brings to mind the inconveniences the refusal of a party to file final written address may occasion the Court in arriving at the just determination of the case before it as captured by the Supreme Court in **OBODO V. OLOMU (1987) 3 NWLR (Pt. 59) 111** where it was held thus:

> "The hearing of addresses by every Court established by the Constitution of the Federal Republic of Nigeria is recognised by the Constitution. It is to be given before judgment is delivered. See Section 258(1) of the Constitution of the Federal Republic of Nigeria 1979. Its beneficial effect and impact on the mind of the Judge is enormous but unquantifiable. The value is immense and its assistance to the Judge in arriving at a just and proper decision, though dependent on the quality of address, cannot be denied. The absence of an address can tilt the balance of the learned Judge's judgment just as much as the delivery of an address after conclusion of evidence can."

Notwithstanding the above, the Court is entitled to proceed to judgment once it can be shown, as demonstrably shown by records here, that parties

have been given time and ordered to file their final written addresses but they fail to do so, **NWANKUDU VS. IBETO (2011) NWLR (PT. 26) P. 209**. This is so because no party is entitled or have the capacity to hold the adversary or the Court to ransom in administration of justice, **Onyeakarusi V Nwadiogo (2016) LPELR 40932 (CA).**

In **Ayisa v. Akanji (1995) 7 NWLR (Pt. 406) 129**, it was held by the Supreme Court that affording a Plaintiff's Counsel or Defendant's Counsel the right to file final written address is fundamental unless Counsel waives such rights. Where a party fails to utilize that opportunity as offered by the Court, as the Defendants failed to do in this case, the Court is entitled to proceed to deliver its judgment and such a judgment is not vitiated by reason of failure, neglect and or refusal of such a party to file his written address, **LAWAN V. THE STATE (2014) LPELR -23647**.

In line with above outlines and ordained principles, I shall now proceed to deliver my judgment even though without the final written addresses of the Defendants who had the opportunity to file same but neglected, failed and or refused to so do.

Notwithstanding the fact that the both the 1st and 2nd Defendants did not file their final written addresses, that in itself does not relief this Honourable Court of the onerous duty on its shoulder to carefully examine the cases of the parties and evidence led on their individual merit. The reasons are obvious.

Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides as follows:

> "In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other Tribunal established by law and constituted in such manner as to secure its independence and impartiality."

The right protected by the above provision is not limited to a person just being heard. Or what is the essence of being heard if what a party presents before a court is not considered at all before the court reaches its decision? It has been repeatedly held by the Supreme Court that the beauty, elegance and romance of our adjudicatory system is that the court should hear all sides, carefully compare the weight of the evidence given, make a proper appraisal before determining preponderance after such painstaking consideration of all issues addressed upon it. See **ADEBAYO & ORS v. SHOGO (2005) 2-3 SCNJ 60 at 67**. Again, as held by the Supreme court in **WILSON v. OSHIN (2000)9 NWLR (pt. 673) 422 @ 462-463** para., the principle of adjudication that is fundamental to the administration of justice is that the court is bound to consider every material aspect of a party's case validly put before it, particularly where the issue is fundamental to the determination of the case.

After all, the judgment of the Court must demonstrate in full a dispassionate consideration of all the issues properly raised and must reflect on the result of such exercise. It must show a clear resolution of all the issues that arise for decision in the case and end with an ultimate verdict which flows logically from the facts pleaded and found proved.

This was the view of the Supreme Court expressed in **OGUNYADE V OSHUNKEYE (2007) NWLR (PT 1057)** PER MUSDAPHER JSC as follows:

> "It is settled law that a judgment of court must demonstrate in full a dispassionate consideration of all issues properly raised and heard and must reflect on the result of such exercise. In other words it must show a clear resolution of all the issues that arise for decision in the case and end up with an ultimate verdict which flows logically from the facts pleaded and found proved."

There are no exceptions to the rule that the court must treat all the issues presented to it for consideration. This was the view expressed by the Apex Court in **F. C. D. A. V SULE (1994) 3 NWLR (PT 332)** where the apex court per Olatawura JSC held as follows:

> "The general rule is that all issues submitted for the consideration of the court should be treated. Non-consideration of the issue submitted by a party may lead to a miscarriage of justice. To this general rule there are no exceptions."

It is the duty of the judge in arriving at his decision to ensure that he considers, evaluates, analyzes and indeed ascribes the necessary probative value to all pieces of evidence presented to him. A court of law should not review the evidence of one party while leaving out that of the other party. The law imposes on the trial court duty to give proper consideration to the respective cases of the parties before it. This is the duty of the court.

In **ODOFIN & ORS V. MOGAJI & 0RS (1978) NSCC 275 @ 277**, the Supreme Court held that:

> "Before a Judge whom evidence is adduced by the parties in a civil case comes to a decision as to which evidence he believes or accepts and which evidence he rejects, he should first of all put the totality of the evidence adduced by both parties on an imaginary scale; he will put the evidence adduced by the Plaintiff on one side of the scale and that of the defendant on the other side and weigh them together; that he will now see which side is heavier, not by the number of witnesses called by each party, but by the probative value of the testimony of those witnesses; that is what is meant when it is said that a civil case is decided on the balance of probabilities."

Where a trial court or Tribunal fails to review the evidence of a party before it, it means that it has not considered the case of that party. This has been severely deprecated by the Supreme Court in very strong terms as barefaced injustice, galling and utterly invidious. It is further described as an affront to reason, intelligence and as bespeaking of an inordinate desire to see nothing good in the case of the affected party. It is further described as being redolent with highhandedness, judicial rashness and a stint of Machiavellianism.

In **ADEBAYO v. SHOGO (2005) 7 NWLR (Pt. 925) 480 paras F-H, p.482** para A per Oguntade JSC:

> "The Appellants are arguing that the Court of Appeal was substituting its own views on the issues. It cannot be denied that the high court

did not at any time consider the case put forward by the Respondent. Such barefaced injustice masqueraded as adjudication in a democratic society where the rule of law reigns, is galling and utterly invidious. Where lies the justice where the case made by the contending parties are not put in an imaginary scale. Such a judgment is an affront to reason and intelligence and bespeaks of inordinate desire to see nothing good in the Respondent's case."

I shall now proceed to resolve the sole issue formulated by the Plaintiff in disposal of the instant which issue is formed thusly:

> Whether having regard to the claims of the Plaintiff and the evidence adduced in support of the claim, the Plaintiff has proved their case on the preponderance of evidence to be entitled to the judgment of this Court

It is in the light of the declaratory reliefs sought by the Plaintiff that I shall first tackle the main issue for determination in this case as to whether or not having regard to the evidence on record, the Plaintiff has established his claim to be entitled to judgment. It is the law that a Court does not grant declaration on admission of parties, **Woluchem v. Gudi (1981) 5 S.C. 291** because the Court must be satisfied that the Plaintiff on his own evidence, is entitled to the relief claimed, **David Fabunmi v. Abigail Ade Agbe (1985) 1 N.W.L.R. (PT. 2) 299 at 318**; **Kodilinye v. Odu (1935) 2 W.A.C.A. 336**.

In the Supreme Court case of **Ayanru v. MandilasAyanru v. Mandilas Ltd. (2007) 10 NWLR (Pt.1043) 462 (2007) 4 S.C. (Pt III) 58**

(2007) 4 S.C. (Pt III) 58, the Apex Court, per Mohammed, classically exposed this principle thusly:

> The requirement of the law regarding the onus placed on a party claiming a declaratory relief as claimed by the Appellant in the present case is trite. A claim for a relief of declaration, whether of title to land or not, is not established by an admission by the Defendant, because the Plaintiff must satisfy the Court by cogent and credible evidence called by him to prove that as a claimant, he is entitled to the declaratory relief. It is the law that a Court does not grant declaration on admission of parties because the Court must be satisfied that the Plaintiff on his own evidence, is entitled to the relief claimed see David Fabunmi v. Abigail Ade Agbe (1985) 1 N.W.L.R. (PT. 2) 299 at 318; Kodilinye v. Odu (1935) 2 W.A.C.A. 336 and Woluchem v. Gudi (1981) 5 S.C. 291; Ogundairo & Ors. V. Okanolawon & Ors. (1963) 1 ALLN.L.R. 358; Bello v. Eweka (1981) 1 S.C.01; Motunwase v. Sorungbe (1988) 5 N.L.W.R. (PT. 92) 90; Ogunjumo v. Ademola (1995) 4 N.L.W.R. (PT. 387) 254; Kwajaffa v. Bank of the North Ltd (2004) 13 N.W.L.R. (PT. 889) 146 at 172 and Ndayako v. Dantoro (2004) 13 N.W.L.R. (PT. 889) 187 at 214 . In this respect, it is for the Plaintiff to prove his case and not for the Defendant to disprove the Plaintiffs claim. Therefore, where the Plaintiff on his own evidence failed to prove his claim for declaration, his claim must be dismissed. See Agbama v. Owa (2004) 13 N.W.L.R. (PT. 889) 1 at 17.

I had earlier examined the testimonies of the Plaintiff's witnesses. In my view, the beginning point is to find out whether there existed laws (customary or otherwise) providing for how Chiefs are to be upgraded to any of the available classes of Chiefs in the Federal Capital Territory, Abuja among the tribes constituting the FCT Community as a whole binding on all the members of the FCT Community. This is very compelling because to put the declarations sought by the Plaintiff in context, one has to determine, first, what laws (customary and otherwise) which the 1st Defendant may have violated in upgrading the 2nd Defendant to which the Plaintiff's declarations may be tied. To buttress my point, the Plaintiff has asked me (by his relief 1) to declare the conduct of the 1st Defendant in upgrading the 2nd Defendant as "illegal". The **adjective "illegal"** means "**contrary to or forbidden by law**". The question it now turns to is: what law did the 1st Defendant violate in upgrading the 2nd Defendant? Was/is there a law prescribing that the Plaintiff is to be upgraded and not the 2nd Defendant which the 1st Defendant violated? If yes, what law is that? Why did the Plaintiff not state that law? Why was/is he fighting shy of pointing at such a law assuming it was in existence?

All the witnesses who testified on behalf of the Plaintiff did not lead evidence in demonstration of any existing law breached by the 1st Defendant in upgrading the 2nd Defendant as a 3rd class Chief. All their evidence did not tend to the establishment of any custom or tradition wherein it is consecrated that the Ashara Chiefdom is only to benefit from upgrading of Chiefs or should take precedence over Wako in the event such upgrading is to be done by the 1st Defendant. Rather the testimonies of the

Plaintiff's witnesses abundantly establish that it is within the sole province of the 1st Defendant, as the Minister of the FCT, to decide who to elevate or appoint into different classes of Chiefs within the FCT. No evidence was led by any of the Plaintiff's witnesses to contradict this fact.

I note that through the Plaintiff himself (as PW4) Exhibit PP8 was admitted in evidence. **Exhibit PP8** is the **REPORT OF THE MINISTERIAL COMMITTEE ON KWALI CHIEFTAINCY MATTERS**. At page 44 of Exhibit PP8 tendered and relied on by the Plaintiff himself in propelling his case, particularly at paragraph 5.2.3, the following is found:

WAKO CHIEFDOM

> Given the recommendations of previous Administrative Committees Reports which have all recommended the creation of Wako Chiefdom and the upgrading of the Chief of Wako, the rich historical background, the vast geographical land mass and large population as well as the submissions made to this Committee we are of the opinion that Chiefdom should be created for Wako with a Third Class Status.

All along, the contention of the Plaintiff is that the upgrading of the 2nd Defendant is contrary to the recommendation of Ministerial Committee. Part of the **Ministerial Committee Report** relied on by the Plaintiff (and quoted above by me) amply supports the action of the 1st Defendant being complained of as the crux of this suit. Per contra, I find and hold that the action of the 1st Defendant, apart from not violating any known law, also finds support in the **Ministerial Committee Report** (Exhibit PP8) which

the Plaintiff erroneously relied on to impugn the upgrading of the 2nd Defendant by the 1st Defendant.

The above apart, there is a governing law which is **Chiefs (Appointment & Deposition) Federal Capital Territory Act** that encircles the subject matter of the instant suit. Surprisingly, the Plaintiff made no reference to this law, throughout the length and breadth of his final written address, so as to possibly point this Court to the direction of any infraction of same committed by the 1st Defendant in upgrading the 2nd Defendant thereby eventuating in the instant proceedings. No such effort was made by any of the witnesses who appeared and testified for the Plaintiff. There is no shred of evidence led that establishes that the 2nd Defendant "robbed" the Plaintiff of 3rd class Chiefdom other than the *ipse dixit* of the witnesses who all agreed that it is the 1st Defendant who has the prerogative to upgrade Chiefs in the FCT a testimony corroborated in the final written address of the Plaintiff himself who at **paragraph 4.30 thereof** concededly submitted through his Counsel that "…*the making of chieftaincy declaration is an administrative act…*". The Administrator of the FCT happens to be the Honourable Minister of the FCT sued as the 1st Defendant herein.

The case of **MAFIMISEBI & ORS. V. EHUWA & ORS.** Cited by the Plaintiff in support of his case is inapposite and therefore unhelpful in establishment of his case before this Court.

While analyzing the case, the Supreme Court these salient observations

In that case, in the determination of the matter before it, the Court of Appeal per Akpabio JCA (who read the lead judgment which was concurred

by Ogebe and Ubaezonu J.C.A) at page 622 of the printed record of the proceedings stated as follows;-

> "I have carefully considered all the issues formulated by all the parties above and find that the most important question for determination in this appeal is whether the Registered Chieftaincy Declaration of Olugbo, Exhibit "A" correctly represents the Chieftaincy custom or tradition of the Ugbo people, I consider this question most crucial because if at the end we find the chieftaincy declaration, Exhibit "A" did not correctly represent the chieftaincy tradition of the Ugbo people as they exist on the ground, this court will not hesitate to declare it invalid and set it aside, If exhibit "A" is set aside, then clearly all other things done under it, such as the appointment of the 3' respondent as the Olugbo or Olugbo elect must also be set aside as null and void."

In contradistinction to the above scenario, we are not faced in this Court with a scenario where there is in existence Chieftaincy custom and tradition of the FCT people which was not incorporated into any single document purporting to embody such custom and tradition. To this extent, the case cited by the Plaintiff is rather unhelpful. Under cross-examination, evidence (elicited from the PW4) to the effect that Exhibit PP1 is a product of hearsay was not challenged by the Plaintiff. No claim was laid tending to prove that Exhibit PP1 is an embodiment of Chieftaincy Custom and Tradition among Ashara and Wako people or the People of the FCT community generally.

Having not found (from the records) any law, custom or tradition on Chieftaincy in the FCT violated by the 1st Defendant in upgrading the 2nd Defendant, I am at sea as to where to hang the declaration of illegality which the Plaintiff is urging on me to ascribe to the action of the 1st Defendant. The Plaintiff has led no scintilla of evidence to establish anything "forbidden by law" which the 1st Defendant has done in upgrading the 2nd Defendant to 3rd class Chief. That is the truth of the matter. On the foregoing analysis, relief one (1) of the Plaintiff's claims fails in toto. I enter an Order dismissing same. Based on the same analysis, I come to the conclusion that relief two (2) of the Plaintiff is devoid of merit and therefore fails. I enter an Order dismissing same accordingly. The same fate befalls relief three (3). I enter an Order dismissing relief number three (3) of the Plaintiff.

The award of damages claimed by the Plaintiff against the Defendants for *"embarrassment, inconveniences and other impunities occasioned the Plaintiff and his Ganagana (Abawa) community in Kwali Area Council, FCT"* cannot stand, wild and unsubstantiated. No iota of evidence was led by any of the Plaintiff's witnesses in establishing impunity against any of the Defendants and none was alluded to in the written address. No evidence was led that the Plaintiff and "*his Ganagana (Abawa) community in Kwali Area Council, FCT*" suffered any "*embarrassment, inconveniences*" as resulting from the legitimate exercise by the 1st Defendant of his powers which reflected in the upgrading of the 2nd Defendant. As they should, the 5th and 6th reliefs claimed by the Plaintiff must collapse. I hereby enter an Order dismissing them.

Before signing off this judgment, I note that the powers of the 1st Defendant to upgrade Chiefs in the FCT were never questioned nor challenged by the Plaintiff. Different witnesses of the Plaintiff, including the Plaintiff himself, confirmed and re-affirmed this position in their testimonies before me at the trial of this suit. This is salutary on the part of the Plaintiff. He showed graciousness and candour with such concession and admission that could patently work against the props of his claim. I commend him. Under cross-examination, the Plaintiff expressed concern about the harmonious co-existence of different tribes in the FCT in view of the manner the 1st Defendant exercised his undoubted power to upgrade Chiefs. He equally made a case for equitable treatment of the Ashara Community by the 1st Defendant in upgrading of Chiefs especially given the recommendation of the Ministerial Committee Report that made a case favourable to the Ashara Community.

This Court is entitled to take judicial notice of the fact that equal treatment of citizens to promote fairness and peaceful co-existence is part of the ethos promoted by our Constitution to which all public officers are enjoined to pay heed in the exercise of their powers and discharge of their official duties under the Constitution and other laws of the land. It is on this note that I wish to commend the Plaintiff who has shown good effort (from his unchallenged testimony elicited under cross-examination) in maintaining peace within his domain and preventing the circumstances crystallizing in this suit from spreading bad blood or turning into a melee.

In drawing the curtain on this judgment, I note that the exhibits admitted in this proceedings cogently demonstrate that apart from the

recommendation that the 2nd Defendant should be upgraded, the Plaintiff is also to be upgraded, the Chief of Ashara is to be upgraded to 3rd class status. It is in that light that I am minded to make the order that will meet the justice of the case. An Order of this Court is hereby made directing the 1st Defendant to upgrade the Chief of Ashara to 3rd class status.

On the whole, but for the Order mandating the 1st Defendant to upgrade the Chief of Ashara to 3rd class status which I have just entered, the Plaintiff's claims succeed in part. Each of the parties shall bear its cost.

This shall be my judgment which I reserved on the 22nd day of February, 2021.

APPEARANCE

K.N. Jatau Esq. for the plaintiff.
The defendant not in court.

Sign
Hon. Judge
21/06/2021