

THE CHALLENGES OF REGISTERED DECLARATIONS, INJUNCTIVE RELIEFS AND DEPORTATION ORDER UNDER CHIEF'S LAWS OF SOUTH WESTERN NIGERIA

By

Muraina J. Adetunji*

Abstract

Many disputes are associated with the registered Chieftaincy Declaration including applications for the interlocutory injunctions and Deportation Orders of by state government against Obas which often necessitate the intervention of courts. The settlement of such disputes including disputes such as (a) that the chieftaincy declaration is not a correct statement or restatement of the customary law relating to a particular community; (b) that the Chieftaincy Declaration was not made by a committee of competent council; (c) that the Declaration does not contain a true and sufficiently clear statement of the customary law which regulates the selection of a person to be the holder of that title; (d) that the Declaration contains error as to its form or substance; and (e) that the Declaration is otherwise defective, faulty or objectionable having regard to the provision of the law, and so on. Also, interlocutory applications are usually brought to restrain an Oba or any person from occupying the position pending determination of a suit filed, and lastly suits may be filed against a deportation order of a government on an Oba. The position of the law with regards to these matters have been stated and analysed in this article in the light of the decisions of the Supreme Court to meet the needs of legal practitioners who are interested in chieftaincy matters.

Keywords: Baale, Banishment, Chieftaincy, Declaration, Democratic, Deportation, Oba

Introduction –Obaship and Kingship Amongst the Yorubas

The most respected and revered person in any Yoruba community¹ is the Oba or King. The Yoruba race look highly on the Oba as a person sent from heaven to earth by God in order to perform rulership functions and wonders. However, in modern times the Oba occupies the stool through the choice of his supporters in the ruling house, and the kingmakers who under current law send his name for consent or approval by the statutory authority.

From the prescribed authority, the recommendation goes to the minister of chieftaincy affair and eventually to the executive council for eventual approval.

Functions of an Oba

The functions of an Oba include the preservation of peace and the settlement of disputes amidst the citizens and his subjects. He is the custodian of customs and traditions of his community and he assists the local government authorities in ensuring that his subjects pay their taxes and rates as and when due. He presides over meetings of the elders and chiefs in his domain and confers traditional as well as honorary chieftaincy titles on the qualified citizen and non-indigenes. He promotes economic development in his domain.

Because of the pre-eminent status of the Oba, there is often tussle, sometime very acrimonious struggle to the position and succession each time there is a vacancy. In many cases, the confusion and challenges associated with succession to the stool of the Oba are due to unhealthy rivalry amongst members of the ruling houses or ruling families. The various Chieftaincy Declarations applicable in

* Lecturer, Department of Islamic and Customary Law, Crescent University, Abeokuta, Nigeria.

¹ The Yorubas have their ancestral homes and communities in the western part of the Federal Republic of Nigeria, specifically in Ekiti State Lagos State, Ogun State, Ondo State Oshun State and Oyo State. Also, there are Yoruba communities in Kogi State, and Kwara State.

the respective states were designed to cure these problems by instituting a defined succession formula based on the customs and tradition of the respective communities. Qualification, selection process including the composition of the council of kingmakers, ruling houses where applicable, etc are well defined in the Declarations. The Declarations are designed to prevent individuals or persons with group interests from unduly influencing or corrupting the selection process.

Chieftaincy Declarations

The processes of making chieftaincy declarations are of great importance in the studies of the chiefs law of any state, for breach of any process may affect the validity of such a Declaration. the Declaration could be set aside and declared null and void. It is salutary to state that there is no proper definition of the terms “chieftaincy or registered declaration” in the chiefs laws. However, one could define it as a written statement made by the people of a particular community containing the customary law which regulates the election of a person to be the holder of such a registered declaration. It is believed that once a registered Declaration is validly made, such a Declaration represents the applicable customary law relating to the selection and appointment of candidate to a vacant chieftaincy office. It is final, but where there is a breach of any procedure for making the said declaration, it will be declared illegal, null and void and of no consequence as it was done in the case of *Daramola vs. Governor, Osun State*²

Here the executive council proceeded to draft a chieftaincy declaration for the Olotan of Otan Aiyegbaju which it forwarded to Obokun Local Government to direct the chieftaincy committee to produce in quadruplicate, sign and send to the Governor’s office. It was held that this step violates all the procedures laid down in the chief’s law and it was rendered null and void, an exercise in futility, since the Executive Council cannot usurp this power and force a declaration on the community. It was further held that any Chieftaincy declaration made in that manner cannot be valid. that any Chieftaincy declaration made in this manner cannot be valid³.

Contents of Chieftaincy Declaration

A Declaration should contain a statement of the customary law relating to the following matters:

1. The number of ruling houses and the identity of each such ruling house.
2. Where there is more than one ruling house, the order of rotation in which the respective ruling houses are entitled to provide candidates to fill successive vacancies in the chieftaincy.
3. The person who may be proposed as candidates by a ruling house entitled to fill a vacancy in the chieftaincy.
4. The number and identity of king makers
5. The methods of nomination by each ruling house
6. The identity of any other person whose consent is required to an appointment made by the king makers and the usage regulating the granting or withholding of such consent.

The provisions of the chieftaincy declarations are conditions precedent which must be complied with pro tanto. Furthermore, it is clear that any failure to comply with chieftaincy declaration validly made and registered would render any such nomination exercise invalid.

Amendment of Chieftaincy Declaration and Setting aside of Chieftaincy declarations

A chieftaincy declaration can be set aside by the state executive council if it is found that the declaration does not contain a true or sufficiently clear statement of the customary law which regulates the selection of a person to hold a recognized chieftaincy or if:

² (2003) 14NWLR (pt. 839) 190

³ The fuller discussion- see Adebayo M.A.- *Practical approach to Chieftaincy Matters in Nigeria*. See also the judgement (2003) 14NWLR (pt. 839) 199

- i. It does not contain a sufficient description of the method of selection of the holder of such a chieftaincy title, or
- ii. It contains any error whether as to its form or substance, or
- iii. It is otherwise defective, faulty, or objectionable having regard to the provision of the law.

But care must be taken to ensure that the amendment is done in line with the provision of the law. A valid amendment should be done by an authorized party whose amendment must be approved by the State Executive Council, or the Governor in some states, and then gazetted. The amended declaration becomes effective on the date stated therein or soon after it is gazetted or registered.

And if there is specific time within which such a declaration is to be registered this must be done within the time stipulated otherwise the declaration will be rendered null and void⁴

The Courts and Declarations

We have seen that the making of a declaration is the absolute responsibility of the State Executive Council, but the court has powers to set aside and declare invalid any declaration that is not in conformity with the prevailing customary law.

The court will invalidate a registered declaration in a situation where in the process of making the declaration those who ought to be heard were not so heard or where the making of such a declaration is in breach of the right to fair hearing or where it offends any constitutional provision or Act of the National Assembly or Law of a State and so forth. The cases *of Olanrewaju vs. Oyesomi⁵ & ors*, *Obala of Otan-Aiyegbaju vs. Adesina⁶* and *Adigun vs. A.G. Oyo State⁷* are relevant here. In *Adigun vs A. G. Oyo State*, the Court held that:

“A denial of the right to fair hearing being a fundamental constitutional right, nullifies any trial, investigation, or inquiry and any action taken on them is also a nullity. Denial of fair hearing is a denial of justice and it is a prejudice to any man to be denied justice.”

Therefore, once a man shows that there is an infringement of the principle of natural justice against him, the finding that there is an infringement of the principle is sufficient to grant him a remedy by setting the Declaration aside.

The injury if any sought for, in a breach of the right to fair hearing is the deprivation of the right itself It is not quantifiable and so incalculable injury. Hence, the only remedy is to nullify the resulting proceedings.

The importance of the rules to fair hearing has Episcopal origination, for God invoked it in the Garden of Eden before punishing Adam. God did not pass any sentence upon Adam before he was called upon to make a defence.

“Adam” says God “ where art thou? Has thou not eaten of the tree whereof I commended thee that thou should not eat?”

The same attitude was adopted by God in Genesis chapter four verse nine when Cain's offering was rejected by God and he killed his brother Abel whose offering was accepted by God. This killing was brutal and although God was aware of it, yet God complied with the principle of fair hearing before passing judgment on Cain. God asked him Cain

*“Where is Abel thy brother? And Cain answered
“I know not, am I my brother's keeper?”*

⁴ *Imogiemhe vs. Alokwe (1995) 7NWLR (pt. 409) 581*

⁵ *(214) 12SCM (pt2) 539 at page 544*

⁶ *(1999) 2NWLR (pt 590) 163*

⁷ *(1987) 1NWLR (pt. 53) 678*

The God said to Cain that Abel's blood has cried unto Him from the ground. Cain was thereafter punished accordingly in the following words:

“When thou tillest the ground, it shall henceforth not yield unto thee her strength, a fugitive and vagabond shall thou be on earth.”

The right to be heard is also embodied in section 36 of the 1999 Constitution of Nigeria. The twin pillar of this principle is *nemo iudex in causa sua* - that is, that *a person shall not be judge in his own cause*. He cannot be both an accuser and the judge all at the same time for this duplicity of role puts him in danger of being challenged for the possibility of bias and possible interference with the cause of justice.

In the case of *Rex vs. Sussex Justice*⁸ Ex parte Marcarthy, Lord Heward C.J.⁹ said as:

“It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen done. Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice. It is essential that justice should be so administered as to satisfy reasonable persons that the tribunal is impartial and unbiased.”

The case of *Regina vs. Nellworth Licensing Justice, Ex parte Board*¹⁰, it was held that cases on interest and bias may arise either from pecuniary interest or from some interest which any reasonable person would almost inevitably suspect would result in bias. Therefore, any direct pecuniary or proprietary interest in the subject matter of proceeding, however small operated as an automatic disqualification, as permitting only a member of a ruling house to participate in determining the appropriate ruling house, or custom of the area to the exclusion of all other member of a community, and in such a situation the law ascribes bias. Putting it more explicitly, where a determination of hereditary title or declaration meeting was conducted in a manner contrary to the principle of natural justice in that one of the members of the chieftaincy committee whose family was involved took part and sat in the committee deliberation like the cases of *Kanda vs. Government of Malaya*¹¹. Other relevant authorities are *State Civil Service Commission vs. Buzugbe*¹², *Alakija vs. Medical Disciplinary Committee*¹³, *Frome United Dairies vs. Bath Justices*¹⁴, and also, *Garba vs, University of Maiduguri*¹⁵ where the Chairman of an investigation panel which tried the appellant was a Deputy Vice Chancellor of the University who was a victim of the rampage the students were alleged to have committed. It will be imperatively desirable to set aside the decision reached, and such a Declaration for a breach of natural justice.

Majority Rule and Democratic Society

Democracy is usually broadly defined as the Government of the people by the people and for the people. The principle of democracy abhors the imposition of any Oba on the people within the community, since the Nigerian Constitution is anchored on the principle of democracy and social justice, it is easy to conclude and establish that any declaration that is made against the custom and tradition of any community, or one that is forced and imposed on the entire community should be set aside. A declaration that is made in favour of a family alone and against the wishes of an entire community should be set aside in order to have peace, security and a conducive environment for development and the advancement of the community.

⁸ (1924) 1KB 2256 at p. 259

⁹ Lord Heward C.J.

¹⁰ All ER 652

¹¹ (1952) A.C. 322

¹² (1984) 7SC 19

¹³ (1984) 7SC 19

¹⁴ (1926) AC 586

¹⁵ (1986) 1NWLR 650

The security and welfare of the people within the state are the primary purposes of a government and the achievement of this will be quite challenging indeed if the practice of arbitrary, wrongful or unjust imposition of the “Oba” “King” or Baale is tolerated. This proposition has the support of the Supreme Court in several decisions like in *Adefulu vs. Oyesile*¹⁶ and *Adejuigbe vs. Ologunja*¹⁷. Uwais JSC said as follows in the Adefulu case:

“The Agaigi ruling house as a body entitled to nominate candidates for appointment to the stool of Olofin of Ilishan-Remo can in my opinion only act or perform the function through a majority of its members...our society being a democratic society, it cannot be said that a legislation requiring such a body to perform an act is compiled with if a minority of the members of the body performs the act. In a democratic society, it is the intention or will of the majority that prevails.”

In the Adejuigbe case Pats Acholonu, JSC condemned in figurative terms a non-adherence to democratic principle as follows:

“We would be regressing into the past if we should allow ourselves to spurn the beautiful and edifying philosophy an ethos underlying the concept of democratic ideas and principles only to take refuge or shelter in archaic tradition that seeks to emasculate or disenfranchise or discriminate the majority of the right-thinking members of a community or for that matter any society.”

It is therefore our view that if all family compounds of a society apart from one has been opposing a declaration as illegal, offensive, contrary to their customs and tradition and pointing out many breaches of the procedure in making declaration, certainly justice of the case is in setting it aside, as wished by the majority and as is the desire of the generality of the community. As again held in the case of *C.I.I Ltd. vs. Ajaokuta Co. Ltd*¹⁸ where an agreement (document) is illegal or contrary to public policy, such agreement or contract should not be enforced by the court¹⁹.

Declaration and Injunctive Reliefs

Of all legal remedies open to a plaintiff under the Chiefs Law, declaration and injunctive reliefs are often utilized. To begin with one may challenge a Registered Declaration and nomination of a person for the position of a Chief on the following grounds:-

- (i) That the said Chieftaincy Declaration is not a correct statement or restatement of the customary law relating to a particular or named chieftaincy as it was done.
- (ii) That at all material time, the registered Chieftaincy Declaration was (and still is) against the popular age-long tradition of the people of a particular community.
- (iii) That the Chieftaincy Declaration was not made by a committee of competent council.
- (iv) That the purported registered declaration was never registered as required by (section 8) of the Chiefs Law of the State.
- (v) That the Chieftaincy Declaration could not apply because the complainant did not know of its existence because it was never published or because it was made behind the back of the complaint's Ruling House.
- (vi) That the Declaration was wrongfully amended as in *Okafor vs. A.G*²⁰

¹⁶ (1989) 5NWLR (pt. 122) 377

¹⁷ (2004) 6NWLR (pt. 868) 46 at 64

¹⁸ (215) EJS Vol. 2 page 10

¹⁹ See also *Onyeneyin vs (2001) 1NWLR (pt. 693) 40*

²⁰ (1992) 2 SCN (PART 11) 9 Akikugbe

A declarative relief can be made by a court where it is a question of determining the rights of two parties and although the court has discretion in the matter, it must be noted that such discretion must be exercised both judiciously and judicially²¹.

It is noted that a claim for Declaration will not and can never be granted on admission²². This was emphasized in the cases *Kwajaffa vs. B. ON Ltd*²³ and *Ndayako vs. Dantoro*²⁴. It is also noted that the court will not grant a Declaration in favour of an applicant whose behaviour is found by the court to be unreasonable and dishonest²⁵. It must also be noted that a Declaration without asking for any relief is worthless. This was decided in the cases *Nwaogu vs. Atuma*²⁶, *Aderibigbe & ors vs. T. Abidoye*.²⁷ The court has no time for semantics, academic arguments, speculative and hypothetical postulations.²⁸

Lastly, it should be hinted that a Plaintiff²⁹ who intends to have an enforceable legal right from a declaratory judgement or order in his favour must, in addition, seek injunctive order or damages since there will be no relief, if his case is classified a mere academic exercise founded on empty sounds.³⁰ It makes empty sound, and of no practical utilization or value to the plaintiff even if judgement is given in his favour. A suit is academic if it is not related to practical situation of human nature and humanity³¹. Also, a suit is speculative if it is based on speculation. A Suit is speculative if it is not supported by facts or very low on facts but very high on guesses as courts of law are not established to adjudicate on guesses but on facts, such declarations without reliefs are usually struck out. While a suit is hypothetical if it is imaginary and not based in facts. A suit is hypothetical if it looks like a “mirage” to deceive the defendant and the court as to the reality of the courses of action. A suit is hypothetical if it is a semblance of the activity of the cause of action or relief.

Courts should not waste time on academic issues in order not to give hallow victory to the Claimant- A victory with no value whatsoever. A victory that cannot be enforced. Courts should restrict judicial time to determine live issues. A Claimant should ensure that he asks for relief by way of damages or for interlocutory injunction, otherwise his case may be struck out for being merely academic.

Chieftaincy Litigation and Interlocutory Injunction

Injunction is an equitable remedy and it is mostly utilized by parties to an action. The principles for granting interlocutory injunctions are laid down in many cases as follows:

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

- (a) That he has sufficient interest in the relief sought.
- (b) That there is a serious question to be tried at the hearing of the action.
- (c) That the balance of convenience is in his favour.
- (d) That the res sought to be preserved pending the determination of the case will be destroyed.
- (e) That damage will not be an adequate remedy for the injury to be suffered, and
- (f) That the act for which injunction is being sought has not been carried out.

²¹ SEE *Hanson vs. Radacliff* U.DC (1922) 2 Chancery 490

²² See *Okafor vs. INECK & OD.* (2010) 3NWLR (pt. 1180) 1-pp 6-7

²³ (2014) 13 NWLR (pt. 889) 146

²⁴ (2004) 13 NWLR (pt. 889) 169

²⁵ See *Fullbrook vs. Berkshire Magistrate Court Committee* (1970) 69 LGR 9

²⁶ *Nwaogu vs. Atuma* (203) 45cm 82

²⁷ *Aderibigbe & ors vs. T. Abidoye* (2013) 4 SCM

²⁸ See *Salik vs. Idris & Co*²⁸, *AG of Plateau State vs. AG Federation*²⁸, *I Olufeagba vs. Abdul Raheem*²⁸, *Ojukwu vs. Yaradua*²⁸ and *Federal Republic of Nigeria vs. Wabaru*²⁸ over this issue and further pertinent grounds.

²⁹ *Nwaogu vs. Atumala & ors* (2013) 12 (pt. 13) 5Scm 646 *Wabaru*

³⁰ See *Oloruntoba Oju vs. Dolpamu* (2008) 34 NSC QR 176 ratio 13 at page 188

³¹ *Salik vs. Idris* (214) GSCM 140

Thus in chieftaincy cases interlocutory applications must not be made in some cases to:

- (a) Restrain a party from presenting himself for recognition or presentation of staff of office.
- (b) To restrain certain persons or agencies from approving, nominating and appointing somebody to become the traditional ruler or bale of a locality
- (c) To restrain the bodies cited in (b) above from recognizing "a person" or any other person from a community to fill the vacant stool of that community until the determination of the suit.

In other words, the claimants/plaintiffs in such cases should not seek for an order of injunction restraining those bodies/agencies from recognizing or appointing any person whomsoever as a traditional ruler in waiting or designate of that locality pending the determination of a certain suit filed by them. It would appear that such applications are now being held to be invalid because a chieftaincy stool is not a perishable commodity that can be wasted, damaged or frittered away, with the result that if the claimants succeed, the result would be nugatory in that successful part could only reap an empty judgment. Therefore, whenever a court of law finds that the completion of a step sought to be restrained will not render the case, if successful nugatory then there is absolutely no basis for making an order of interlocutory injunction in order to maintain the status quo.

The case of *Sanni vs. Abdulsalam*³² has told us vividly the attitude of the courts nowadays to whether a court of first instance or an appellate court in a chieftaincy matter will grant injunction restraining an "Oba" who has been installed as follows:

*The attitude of the courts in chieftaincy matters these days is that a court will not, in an interlocutory application ask an Oba who has been installed, to vacate his stool pending the determination of a suit. Where the Oba loses the substantive suit at the High Court, an application for a stay of execution ought not to be granted if only to maintain things in status quo until the determination of an appeal filed. An interesting illustration is the case of Adeyeye vs. Ajiboye*³³

In *Adeyeye vs Ajiboye*³⁴ the Supreme Court held that the Oba who lost up to the Court of Appeal should remain in office in the interest of peace until the appeal was determined by the Supreme Court. Anigolu JSC held that 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 (the Supreme Court) decides the issues raised. The wisdom of that decision can be gleaned from that of the case of *Oyeyemi vs. Irewole Local Government*³⁵

"The whole purpose of an order to maintain status quo is to preserve the res in the litigation from being wasted, damaged or filtered away with the result that if the appeal succeeds, the result would be nugatory in that the successful party would reap an empty judgment. Therefore, where a court of law found as in the instant case, that the completion of a step sought to be restrained will not render the appeal, if successful, nugatory, there is no reason why an order to maintain the status quo should be made"

Another key reason why the court does not make a practice of removing an Oba who has been installed is that a chieftaincy stool is not a perishable community³⁶. If the plaintiff ultimately wins, the defeated Oba will vacate the throne. It is therefore desirable for a court to give such an application for injunctive interlocutory relief accelerated hearing instead of an order of interlocutory injunction³⁷.

³² (2009) 22 WRN 77 at p.80

³³ (1987) 7SC NJ1, (1987) 3 NWLR (pt. 61) 432 (1987) 7SCNJ1

³⁴ Ibid

³⁵ (1993) 1 SCNJ 177, (1993) 1 NWLR (pt. 270) 462

³⁶ See *Governor of Imo State vs. Anosike* (187) 4NWLR (pt. 66) 663

³⁷ See *Gever vs. China* (1993) 9NWLR (pt. 315) 97

The essence of these decisions is to inform legal practitioners that an application for interlocutory injunction will not be available to remove an Oba, or candidate, whether in an office or warming up to be in office of an Oba since the res is the stool which does not perish. The message is a warning to parties against making useless or futile applications, but to ensure that they conduct their cases strenuously to finality without dilatory procedure.

Chieftaincy stools are not tomatoes that can perish before the final determination of a case hence the practice of making applications of injunction against an Oba on post or an Oba designate does not stand at all until the final determination of the case. In the case of *Nwosu vs. Nnajwba*³⁸, Kusamotu at page 153 of the book on Chieftaincy and the Law (2001), commented as follows:

“This case has established that an injunction will not be granted 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”

Deposition

By Section 26(1) of the Oyo State Chiefs Law, the Executive Council of the State may suspend or depose any chief whether appointed before or after the commencement of this law, if it is satisfied that such suspension or deposition is required according to customary law or is necessary in the interest of peace, or order or good government. In doing this the normal thing is to follow the Rules of Natural Justice otherwise the deposition if done without fair hearing procedure will be upturned and vacated as a useless and invalid exercise. This was the position in the cases of the *Queen vs. The Governor in Council Ex parte Adebayo*³⁹ and *Steel Bell (Nig) Ltd vs. Government Cross River State*⁴⁰

Similar powers are conferred also in Ogun, Lagos, Delta and Edo States. Section 31 of Deposition Law of Ogun State, while Section 39 of the Obas and Chief's Law of Lagos State used the word “Restriction” to mean Deportation and section 31 of the Traditional Rulers Law of the old Bendel State (Now Edo State and Delta State) the use the word Banishment for Deportation. It is now a valid law that before State Executive Council or Governor can exercise the power of deportation of a chief, he must first hear by way of evidence from the person to be deposed. There must be an allegation and the person involved should be given the opportunity to be heard and to defend himself.

Similarity, the principle of Natural Justice was used to a good advantage by Mr. Justice Kolawole of Ogun State in the case of Oba S.K. Adetona, the Awujale of Ijebuland who was purported to be deposed in 1983 by the Ogun State Government without hearing him.

In his writ of summons Oba Sikiru Adetona admits other reliefs was asking for declaration that the decision or purported decision to depose him as the Awujale of Ijebu Land which was published for public information as Ogun State Legal Notice No. 52 of 19th May 1983 in Gazette No. 20 Volume 8 of the same day is null and void. And that the decision was made in contravention of the fundamental rights, which were guaranteed by section 33 of the Constitution of the Federal Republic of Nigeria 1979.

Apparently the government of Ogun State took that decision after Mr. Justice Sogbetun Commission of inquiry has submitted his reports on certain issues against the Awujale of Ijebu land the applicant.

Mr. Justice Kolawole discovered that the plaintiff was not served personally with the notice of the inquiry to enable him appear before the inquiry; and he was worried whether the inquiry was conducted in line with the principles of Natural Justice to declare its decision and recommendation valid.

³⁸ See CA/P4/238/96 delivered on 23/7/97

³⁹ (1962) WRNLR 93 at 98

⁴⁰ (1996) 3 NWLR (pt. 438) 571

See also *Oyeyemi vs. Commissioner for Local Government*(1992) 11/12 SCNJ266

His Lordship held that putting a copy of a process through a crevice of the door of the room in which the defendant was in London and telling him that it is a copy of a writ is not sufficient to justify personal service as it was decided in *Health vs. White*⁴¹

It is even worse when the statute that established the commission did not provide for service outside Nigeria, as in this case where attempts were made to serve Oba Sikiru Adetona improperly in London without any order of substituted service. Hence the purported Deposition Order was declared null and void since Sogbetan Commission of inquiry over which it was predicated is a nullity. Definitely one cannot put something on nothing and expect it to stand⁴²

Conclusion

This paper has argued that while the making of a Declaration falls within the powers of the Executive arm of government, the Court has a binding duty to set aside any Declaration, that is proved by evidence to be contrary to the custom and tradition of the community for which it is made.

The court will equally set aside such a Registered Declaration, where in the process of making it, those who ought to be heard were not heard or where the making of such a Declaration is in breach of the right of fair hearing or where it offends any provision of the national Constitutional or provisions of an Act of the National Assembly, or Law of a state.

Acknowledgement

I deeply appreciate the input of Professor Ajagbe Toriola Oyewo, former Dean of Law, Bola Ajibola College of Law, Crescent University, Abeokuta, and the comments of the anonymous assessor of this paper. I take full responsibilities for any and all criticisms of aspects of the paper.

⁴¹ (1844) 2 D and L page 40 cited in the Supreme Court Practice Vol 1 at page 1125

⁴² See *Mactoy vs. U.A.C* (1996) 3WLR 1405