

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UBIAJA JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,
ON THURSDAY THE
30TH DAY OF OCTOBER, 2025.

BETWEEN:

SUIT NO. HUB/9/2010

1. JOSEPH IMENYUKHU 2. JOHN EMHONYUA 3. ELDER OKOSODO AIBIAZE 4. LUCKY EHI-DOUGLAS EHIDIAMEN	}	-----CLAIMANTS
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AND

1. EMMANUEL EHICHIOYA IMHADOJIEMU Also referred to as (Lucky Ehichioya Imhadojiemu Ehidiamen) 2. THE EXECUTIVE GOVERNOR OF EDO STATE 3. THE EXECUTIVE COUNCIL OF THE GOVERNMENT OF EDO STATE 4. ATTORNEY GENERAL AND COMMISSIONER FOR JUSTICE, EDO STATE 5. COMMISSIONER FOR LOCAL GOVERNMENT AND CHIEFTAINCY AFFAIRS, EDO STATE	}	----- DEFENDANTS
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JUDGMENT

In this suit, by their Further Amended Statement of Claim No. 2, dated 29th March 2019, the Claimants are claiming against the Defendants as follows:

- 1) *A declaration that the 1st Defendant is not a biological child of Late H.R.H. Peter Imhandojemu Ehidiamen and as such cannot be the Onogie of Okhuesan;*
- 2) *A declaration that the 1st Defendant is not a member of the Royal Family otherwise known as the Ruling House of Okhuesan and as such cannot be the Onogie of Okhuesan;*
- 3) *A declaration that H.R.H. Peter Imhandojemu Ehidiamen did not acknowledge the 1st Defendant as a son in his life time;*
- 4) *A declaration that the 1st Defendant does not have the mental capacity or soundness of mind to assume the position of Onogie of Okhuesan;*
- 5) *Perpetual injunction restraining the 1st Defendant from parading himself or holding himself out as the child of Late H.R.H. Peter Imhandojemu Ehidiamen;*
- 6) *Perpetual injunction restraining 2nd, 4th and 5th Defendants from recognizing the 1st Defendant or treating him as the Onogie of Okhuesan;*
- 7) *Perpetual injunction restraining the 1st Defendant from holding himself out as the Onogie of Okhuesan or performing the functions of the office of the Onogie of Okhuesan;*
- 8) *An order directing the 2nd Defendant to approve the nomination or selection of Lucky Ehi-Douglas Ehidiamen by the Kingmakers of Okhuesan on 26th February 2007 as the Onogie of Okhuesan in accordance with the Okhuesan people's custom codified in Bendel State Legal Notice No. 57 of 1979 and recognize him as the Onogie of Okhuesan;*
- 9) *An order directing the 2nd Defendant to approve the appointment of the 4th Claimant as the Onojie of Okhuesan with effect from 26th February, 2007 when he was installed as Onojie designate.*

In response to this suit, the 1st Defendant filed a Statement of Defence dated the 13th of March 2024 wherein he counter claimed against the Defendants to the Counter-Claim as follows:

- 1) *A DECLARATION that under Esan Native Law and Custom applicable to Okhuesan in Esan South East Local Government Area succession to the throne of the Onogie is by primogeniture;*
- 2) *A DECLARATION that the Counter-Claimant is the first and only son to late H.R.H Peter Imhaduojiemu Ehidiamen and he is the only person entitled to inherit the throne in accordance with the doctrine of primogeniture;*
- 3) *A DECLARATION that the letter appointing the Counter-Claimant as the Traditional Ruler (Onogie) of Okhuesan dated 10th May 2010 is valid, subsisting and binding on all the Defendants to the Counter-Claim;*

- 4) ***A DECLARATION that all the steps and actions taken by the Defendants to the Counter-Claim during the pendency of this suit filed in 2010 amounts to an affront to the rule of law the same being contemptuous acts of self-help;***
- 5) ***AN ORDER setting aside all the letters and documents made by the Defendants during the pendency of this suit the same being a violent infraction of the laws of the Federal Republic of Nigeria and are therefore null and void and of no legal consequence;***
- 6) ***AN ORDER of Mandatory Injunction setting aside all the steps/actions taken by the Defendants to the Counter-Claim during the pendency of this action in suit No HUB/9/2010 including but not limited to the act of appointing the 4th Defendant to the Counter-Claim as the Onojie of Okhuesan in June 2020 when there exist a son of the past Onojie and the presentation of staff of office by Monday E. O. Osaigbovo as an act soaked in illegality and thus of no legal consequence;***
- 7) ***A DECLARATION that Ehi-Douglas Ehidiamen not being the son to H.R.H Peter Imhanduojemu Ehidiamen of blessed memory cannot in law, by nature and custom be the Onojie of Okhuesan Kingdom;***
- 8) ***PERPETUAL INJUNCTION restraining Ehi-Douglas Ehidiamen, the 4th Defendant to the Counter-Claim from parading himself as the Onojie of Okhuesan kingdom, demanding for stipend from the Defendants, attending meetings, partaking in any activities of traditional Rulers or being accorded the right and privileges due to the throne of the Onojie of Okhuesan pursuant to the steps taken during the pendency of suit No. HUB/9/2010 instituted by himself; and***
- 9) ***PERPETUAL INJUNCTION restraining the 5th, 6th, 7th and 8th Defendants from appointing the 4th Defendant as the Onojie of Okhuesan in Esan South East Local Government Area of Edo State.***

At the hearing, in proof of their case, the 2nd and 4th Claimants testified and called six witnesses.

In defence of this suit and in proof of his Counter-Claim, the 1st Defendant called three witnesses and closed his case.

In defence of this suit, the 2nd – 5th Defendants and 5th – 8th Defendants to the Counter-Claim called a sole witness as DW4.

From the evidence adduced at the hearing, the Claimants' case is that they are natives of Okhuesan.

They allege that the 1st and 2nd Claimants are among the kingmakers who are saddled with the responsibility of installing an Onojie in line with the custom of the Okhuesan people.

They allege that the 4th Claimant is the eldest of the surviving brothers of the Late Onojie of Ukhuesan, H.R.H. Peter Imhandojemu Ehidiamen.

They maintain that the 1st Defendant is not a member of the royal family of Okhuesan and cannot be the Onojie of Okhuesan because it is only a member of the royal family of Okhuesan who can become the Onojie of Okhuesan in accordance with Okhuesan custom and the Declaration of Customary Law Regulating Succession to Traditional Ruler Title B.S.L.N. 57 of 1979.

According to the Claimants, the late Onojie of Okhesan, H.R.H. Peter Imhandojemu Ehidiamen was impotent in his lifetime and had no child. They alleged that the late Onojie confided in his sister, Victoria Ehidiamen and some other family members about his impotency.

The Claimants alleged that after the death of H.R.H. Ehidalmen Atalmen, his eldest son, Peter Imhandojemu came home to be enthroned and when the community discovered that he had no wife or children, they arranged to get a wife for him. Later, his wife complained to the Odionwele of Ole-Nokhua that the Onojie was not sleeping with her.

They alleged that in line with their custom, certain rituals were performed to allow his wife to go out to sleep with other men in order to get pregnant to enable the Onojie to have a heir to succeed him. One Elder Iyere Iyeye who performed this ritual, swore to an affidavit on how he performed the said ritual and a copy of the affidavit was tendered and admitted in evidence as Exhibit “B”.

They alleged that the said wife eventually became pregnant and gave birth to a male child but subsequently, the wife and the child died.

They alleged that the late Onojie never had another child through any woman during his lifetime.

According to the Claimants, under the Okhuesan custom, it is mandatory for the Ohen (Chief Priest) of Okhuesan to be informed about the birth of an heir apparent immediately he is born. They said that the Late Onojie did not inform the Chief Priest of Okhuesan that he had a son from any woman.

They maintained that the first son of an Onojie in Esan Land is generally known in the community and particularly to the members of the Royal Family of Okhuesan and the Kingmakers of Olenokhua in Eguare Okhuesan, at the point of birth.

They said that none of the 16 kingmakers of Okhuesan knew or heard about the 1st Defendant when he was born and the traditional rites performed at the birth of an heir apparent to the Okhuesan throne were not performed for the 1st Defendant.

They alleged that apart from one Madam Chrisitiana Ehidiamen no member of the royal family was put on notice when the order to administer the estate of the Late Onojie was applied for in the Esan South East Area Customary Court, Ubiaja.

They said that the Late Onojie, H.R.H. Peter Imhandojemu Ehidiamen had many brothers that survived him and none of these brothers was put on notice when they applied for and obtained an order to administer his estate.

According to them, under Esan Native Law and Customs particularly as it affects Okhuesan, women have no role to play concerning the estate of a deceased person, more so, with respect to the estate of a deceased Onojie in Esan Land in general and in Okhuesan in particular.

They alleged that when it came to the knowledge of the members of the royal family of Okhuesan that an order to administer the estate of the Late Onojie had been fraudulently obtained without their knowledge, two members of the royal family applied to court to set aside the order on grounds of fraud, misrepresentation and deceit. The enrollment of the judgment of 17th April 2018 was admitted as Exhibit “C”.

At the trial, the 4th Claimant alleged that after the death of the Late Onojie of Okhuesan, Madam Christiana Ehidiamen misled him to write a letter on 20th of

January 2007, through the Chairman of Esan South East Local Government AREA to the Commissioner for Local Government & Chieftaincy Affairs, Benin-City, that the Late Onojie of Okhuesan, H.R.H. Petel Imhandojemu Ehidiamen, had a son.

He said that when they discovered the true situation, some members of the royal family wrote another letter dated 6th of February 2007, to state the true position and to retract the first letter. The letter dated 6/2/07 purportedly withdrawing the 4th Claimant's earlier letter and signed by 4th Claimant's siblings was admitted as Exhibit "D". The 4th Claimant also wrote another letter to the Chairman of the Council to retract his earlier letter. This second letter was admitted as Exhibit "E" at the hearing.

The 4th Claimant alleged that sequel to the foregoing, the traditional Kingmakers of Okhuesan duly and properly selected him as the Onojie of Okhuesan designate in accordance with their custom and tradition since he was the next in age to the Late Onojie among the surviving Princes of Okhuesan subject to the confirmation by the Government.

He said that the entire Kingmakers of Okhuesan Community wrote to the Honourable Commissioner, Local Government & Chieftaincy Affairs, to recognize him as the Onojie of Okhuesan. The letter was admitted as Exhibit "F".

He said that thereafter, the Honourable Commissioner for Local Government and Chieftaincy Affairs Edo State raised a Memorandum to the Executive Council of Edo State for his appointment as the Onojie of Okhuesan with effect from 26th of February 2007, when he was installed as Onojie designate. The copy of the said Memo and the clearance by the Ministry of Justice, Edo State were collectively admitted in evidence as Exhibit "G".

The 4th Claimant alleged that the burial ceremonies of the late Onojie were performed by the Royal Family members, led by him as the custom required because the Late Onojie had no child.

According to the Claimants, after the burial ceremonies of the late Onojie, Madam Christiana Ehidiamen embarked on the sale of the Late Onojie's vehicles.

They maintain that the 1st Defendant is not the next of kin of the Late Onojie but is only ascribing to himself all the names recorded by the Late Onojie as his next of kin. They alleged that upon finding the name of next of kin of the Late Onojie, the 1st Defendant fraudulently changed his name to Mr. Lucky Imhandojemu Omishor with the connivance of Madam Christiana Ehidiamen.

At the hearing of this suit, the Claimants tendered the record of service of the Late Onojie of Okhuesan in the Bendel State Public Service and a letter written by the 1st Defendant's Counsel to the Honourable Commissioner, Ministry of Local Government and Chieftaincy Affairs, Benin City dated 7th October, 2008 wherein he stated that the 1st Defendant was born on the 15th day of March, 1989, in proof of the fact that 1st Defendant's claim of being a biological child of Late Onojie is false. The record of service was admitted as Exhibit "J" and the said letter was admitted as Exhibit "J2".

They maintained that the 1st Defendant did not attend or participate in the burial ceremonies of the late Onojie. They tendered some of the pictures of those who attended in evidence.

They maintained that the 1st Defendant was never installed as the Onojie of Okhuesan since he is not the son of the late Onojie.

In defence to this suit and in proof of his Counter-Claim, the 1st Defendant did not testify in person but he called some of his maternal relations who adduced oral and documentary evidence in support of his case.

From the evidence led at the trial, the case of the 1st Defendant is that he is the only surviving son of the late Onojie His Royal Highness, Peter Imhandojemu Ehidiamen. He led evidence that apart from being known as Lucky Emmanuel Ehichoya Ehidiamen, his other name is Omishor.

At the hearing, one Samuel Ayo Amana testified for the 1st Defendant as the D.W. 1. He informed the Court that he and the mother of the 1st Defendant have the same great grandfather. He alleged that the late Onojie married the mother of the 1st Defendant under Igarra native law and custom. He said that he led the five-man

delegation sent by the Otaru of Igarra to attend the installation ceremony of the late Onojie.

He said that the mother of the 1st Defendant died on the 28th of December 2001 after the installation of the late Onojie. He said that he is aware that under Okhuesan custom when an Onojie dies, his eldest son ascends to the throne. He said that presently, the 1st Defendant is living with his aunt in Lagos.

The witness informed the Court that after the demise of the late Onojie, His Royal Highness Oba E. A. Saiki II, the Otaru of Igarra, wrote a letter dated 28th March, 2007 to the Onojie of Ewatto, Esan South East L.G.A. Traditional Council thanking him and others for upholding Esan customary laws and wrote thus **"I hereby inform you that the heir apparent's mother Princess C. Ehidiamen (Nee Otaru) i.e Lucky Imadogiemu Ehidiamen's mother was a full royal blood of Igarra.** This letter was tendered and admitted in evidence as Exhibit "X".

At the hearing, the 1st Defendant led evidence that the name of the 4th Claimant is not Lucky, that all his life he has been known as Ehi-Douglas and Not Lucky. He tendered some court processes in respect of a suit filed by the 4th Claimant in 2016 to wit: ***Suit No. B/607/2016 Between HRH Ehidiamen Ehi Douglas Michael v. Mr. Osahon Idusuyi & 2 Ors*** which is allegedly pending in High Court 7, Benin City. The Certified True Copies of the Court Processes and Record of Proceedings in the said suit were collectively admitted as Exhibit "S".

The 1st Defendant maintained that the 4th Defendant is not the eldest surviving brother of the late Onojie of Okhuesan, that there are some of his brothers who are senior to the 4th Claimant who are still alive.

The 1st Defendant alleged that he performed the required burial ceremonies of his late father that entitled him to ascend the throne.

At the hearing, one Solomon Salami an alleged cousin of the 1st Defendant testified as the D.W.2 and informed the Court that the 1st Defendant attended primary school at Ubiaja and stayed with a relation of his late father (Maria Okpere) and his father was responsible for his upkeep educationally and otherwise. He tendered some

documentary evidence of school fee receipts, school results and others as Exhibit “Y1 to Y5”.

In defence of this suit, the 2nd to the 5th Defendants called one Mr. Osabuohien Michael Horrace (D.W 4), the functioning Director of Chieftaincy Affairs as their witness.

In his evidence, the D.W 4 told the Court that the Ministry of Local Government and Chieftaincy Affairs made efforts to investigate the matter with a view to resolving it but the 1st Defendant and one Princess Christiana did not come for all the scheduled meetings of stakeholders when it was first called.

He said that the Government received a letter dated 28th of February, 2007 from Okhuesan community requesting the recognition of the 4th Claimant as the Onojie of Okhuesan having been installed by their kingmakers.

He said that seven notable elders of Okhuesan community also wrote to the Honourable Chairman of Esan South East Local Government Council and copied the 5th Defendant requesting him to facilitate the Appointment of the 4th Claimant as the Onojie of Okhuesan.

Furthermore, he stated that the 1st Defendant also wrote a letter dated July 10th, 2008 to the 5th Defendant challenging the installation of the 4th Claimant as the Onojie of Okhuesan which made the 5th Defendant to carry out some investigation.

He said that subsequently, the parties concerned, and other stakeholders were again invited for a meeting at the Ministry of Local Government & Chieftaincy Affairs where the 1st Defendant and Princess Christiana were in attendance.

He said that from their findings, they discovered that the 1st Defendant is not fit and suitable to be enthroned as the Onojie of Okhuesan and the Ministry concluded that an Exco Memo should be raised for the recommendation of Prince Lucky Ehi-Douglas Ehidiamen to be appointed as the Onojie of Okhuesan.

He said that the 4th Claimant was cleared by the Edo State Ministry of Justice as suitably qualified for the Appointment vide a letter dated 29/9/2009 and addressed to the 5th Defendant.

The witness informed the Court that from the records available to him, he is aware that the State Executive Council erroneously/ inadvertently issued a letter of Appointment dated 10/5/2010 to one Lucky Ehidiamen instead of Prince Lucky Ehi-

Douglas Ehidiemen who was earlier recommended by the Okhuesan Community vide the letter dated 28/2/07, cleared and presented to the Executive Council for Appointment as the Onojie of Okhuesan.

He said that the error generated a lot of controversies which made the 4th Defendant to undertake an in-dept investigation involving all stakeholders including some Traditional Rulers in Esan land.

He said that the outcome of the said investigation was in favour of the 4th Claimant hence the initial letter of Appointment which was erroneously issued to the 1st Defendant was thereafter revoked vide a letter dated 6/8/2018.

He said that a fresh letter of Appointment as the Onojie of Okhuesan was afterward issued in favour of HRH Lucky Ehi Douglas Ehidiemen whose application was duly processed and cleared after receiving a recommendation from the Okhuesan Community to that effect.

He said that further steps were taken to issue a Staff of Office to the 4th Claimant and same was gazetted vide the Edo State of Nigeria Gazette dated 30/6/2020.

The witness informed the Court that the 1st Defendant did not submit any application or credentials for the Royal stool of Onojie of Okhuesan and has never been recognized by the 2nd, 3rd and 5th Defendants as the Onojie of Okhuesan as no Staff of office has ever been issued to him.

He said that it was discovered during the investigation of the matter that the 1st Defendant is not mentally fit for the position of Onojie of Okhuesan as required by *Section 13(2) of the Traditional Rulers and Chiefs Edict, 1979*.

Upon the conclusion of the evidence adduced by the parties, the learned counsel for the parties filed their written addresses which they adopted as their final arguments in support of their respective cases.

In his final written address, the learned counsel for the 1st Defendant, *Chief D.O. Okoh SAN* formulated a sole issue for determination as follows:

“WHETHER HAVING REGARD TO THE ORAL AND DOCUMENTARY EVIDENCE AND THE GENERAL CIRCUMSTANCES OF THIS CASE WHO AS BETWEEN THE 4TH CLAIMANT AND 1ST DEFENDANT IS QUALIFIED TO ASCEND TO THE TRADITIONAL STOOL OR THRONE OF OKHUESAN IN VIEW OF THE CUSTOMARY LAW AND TRADITIONS OF OKHUESAN.”

Opening his arguments on the sole issue, the learned counsel posited that the following facts are not in issue in this suit:

- a) That the Customs and Traditions as to succession to the throne of Onojie of Okhuesan is codified in Bendel State Legal Notice No. 57 of 1979;*
- b) That succession to the throne of the Onojie of Okhuesan is by primogeniture, subject to certain exceptions when the Onojie dies without a male child;*
- c) That the late Onojie of Okhuesan was a civil servant;*
- d) That late Onojie of Okhuesan worked at Igarra and Irrua; and*
- e) That the 4th Claimant is not his son, but a half-brother who has other brothers senior to him.*

Learned counsel pointed out that the reliefs sought by both the Claimants and the 1st Defendant/Counter Claimant are mainly declaratory in nature.

He said that it is trite law that a Claimant or Counter Claimant bears the onerous burden in an action for declaratory reliefs to adduce cogent, relevant, sufficient, credible and convincing evidence to establish his right to the declaration sought and must succeed on the strength of his own case and not on the weakness of defence (if any), although he may take advantage of the defence where it support his case. He cited the case of *Ayinda v. Badru (2023) 15 NWLR (Pt 1908) 507* and *Section 131 and 132 of the Evidence Act*.

Furthermore, he posited that declaratory reliefs are not granted as a matter of course or even on admission by the defence or in default of defence.

He said that the Claimant or Counter Claimant must satisfy the court on the balance of probability to be entitled to same and he relied on the case of *Obe v. Abubola (2023) 13 NWLR (Pt. 1901) 381*.

He referred the Court to the provisions of stated *Sections 133 (1) and 134 of the Evidence Act* and submitted that in civil cases the onus of proving the existence or otherwise of a fact lies squarely upon the party against whom the decision of the court will be given if no evidence were adduced on the other side.

He maintained that the declaratory reliefs sought by the Claimants and Counter Claimant in this suit are rooted in chieftaincy matter which is patently in a class of its own.

He submitted that the issue qualification to ascend to any traditional stool or throne is subject to the Customary Law and Traditions of the people concerned which is a question of fact to be proved by calling evidence unless frequent proof of same has

made it to attain the legal status of notoriety as to be judicially noticed. He referred the Court to the following decisions on the point: *Olowu v. Olowu* (1985) 3 NWLR (Pt. 13) 372, *Agba v. Olaogbue* (1991) 7 NWLR (Pt. 204) 391, *Olarenwajo v. Oyespmi* (2014) 4 SC (Pt. 111) 47, *Abidou v. Dosumu* (2019) LPELR 4771 CA, *Mafimisebi v. Erhua* (2007) LPELR 3812 SC, *Ogiefo v. Isesele* (2014) LPELR 22333 CA.

Learned counsel submitted that upon a juxtaposition of the case of the 4th Claimant, with the Customs and Traditions of Okhuesan, it is evident that he has not established his right to the throne of Okhuesan for the following reasons:

1. At the earliest opportunity, the 4th Claimant wrote Exhibit "R" dated 20th January 2007, wherein he proclaimed the 1st Defendant as the heir apparent and the burial rites were ongoing, he stated that the heir is Lucky Imhenduojemu Ehidiamen. The 4th Claimant signed the letter as Prince Ehi-Douglas Ehidiamen.
2. The 4th Claimant on his own tendered Exhibits "J1 and O", Mike Agbonhiebele's letter wherein the birth certificate, school testimonial and result sheets bearing the name of Lucky Ehidiamen were attached.
3. The 4th Claimant wrote to the police who in response supplied Exhibit "K" where the next of kin was Lucky Ehidiamen - relationship son.
4. The 4th Claimant tried in vain to add Lucky to his name - Prince Ehi-Douglas Ehidiamen as contained in most of the documents he tendered. He admitted being a teacher in Sacred Heart College, Ubiaja but failed to tender his secondary school or University certificate or his voter identification card or national identification card to demonstrate his real name.
5. That the 4th Claimant admitted under cross examination that he filed Exhibit "S" as Claimant with his actual name as HRH EHIDIAMEN EHI-DOUGLAS MICHAEL in 2016. No Lucky in the name of the 4th Claimant. He deposed to his deposition on oath in Exhibit "S" as HRH EHI-DOUGLAS MICHAEL EHIDIAMEN, same name is in the Deed of Assignment prepared on 20th May 2011 and the official receipt dated 8th December 2015.

6. The 4th Claimant used his actual name Ehidiamen Michael to write a letter dated 1st April 2019 and to which Exhibit “J” was sent as a Reply by the Ministry of Wealth Creation Cooperation and Employment, in the letter. The next of kin was Lucky Ehidiamen - relationship son.
7. The 4th Claimant tried to disinherit the 1st Defendant by saying he was a stranger and not the son of the late Onojie and that the mother, a non-Ishan was dead, but his quest for evidence proved him dead-wrong.
8. The 4th Claimant has failed woefully to prove that the late Onojie had no son and therefore his right pursuant to the proviso in the Legal Notice remains inapplicable.

He submitted that the Claimants have failed to prove that the late Onojie had no son. He said that the evidence of CW1, CW2, CW3, CW4 and CW5 and that of the 3rd and 4th Claimants are of no probative value as they stand unconvincing and ridiculous.

He posited that the 4th Claimant in his deposition of 17th May 2023 in paragraphs 22, 23, 24 and 25 stated that the late Onojie died suddenly and he was instructed to write the letter of 20th January 2007 and that he was deceived.

He submitted that the letter of 20th January 2007 being instantaneous and earlier in time is correct and the belated explanations by the 4th Claimant is an after thought.

He submitted that the 4th Claimant cannot plead undue influence because he was a teacher at Sacred Heart College, Ubiaja, so he cannot claim to be an illiterate. He relied on the cases of *Kotun v. Olasewere (2010) 1 NWLR (Pt. 1175) 411 at 436* and *Ezeugo v. Ohanyare (1978) 11 NSCC P. 450*.

Counsel submitted that Exhibit “R” is a testament to the swift compliance with ***Section 4 of the Traditional Rulers and Chief Laws BSLN 57 of 1979*** which states as follows: ***“Immediately upon the demise of an Onojie, his eldest surviving brother sends for the Oniha who stays in the Palace for seven days. During the seven days, the heir apparent performs the burial rites and ceremonies for the deceased Onojie including Igbevbe and Otolimhin”.***

Counsel submitted that Exhibit “R” is an admission of the fact that the 1st Defendant is the heir apparent and has complied with the Succession Law. He said that the 4th Claimant cannot now retract it and he referred to the decision of the apex Court in the case of *Ali v. Maiduguri (2024) 17 NWLR (Pt. 1967) 273 at 309 – 310*

He maintained that by signing the document, the 4th Claimant is in full agreement with everything that is in Exhibit “R”.

Coming to his Counter-Claim, learned counsel submitted that the 1st Defendant/Counter Claimant has proved his entitlement to the throne of Onojie of Okhuesan from the following:

1. The 1st Defendant/Counter Claimant has proved that he is the heir to the throne of his late father as clearly stated in Exhibit “R”;
2. The late father stated the 1st Defendant/Counter Claimant's name as the next of kin in Exhibit “J” and also stated the relationship to be that of a son;
3. The 1st Defendant/Counter Claimant has proved by Exhibits “Y1 - Y5” and Exhibit “O” that he was the Lucky Ehidiame in primary school, Ubiaja when his father died;
4. That because the 1st Defendant was young, the 4th Claimant was to be a regent as per Exhibit “T1”;
5. The 1st Defendant has proved his date of birth both orally and as per his birth certificate attached to Exhibit “O”;
6. The 1st Defendant/Counter Claimant has proved his maternal root via the letter written by the Otaru of Igarra Exhibit “X”;
7. The 1st Defendant/Counter Claimant called DW1, Pa. Samuel Ayo Amana who witnessed the marriage ceremony of the 1st Defendant/Counter Claimant's parents;
8. DW2 Solomon Salami the son to the 1st Defendant's late father's elder sister demonstrated that the 1st Defendant is the son to the late Onogie and that he lives with him in Lagos; and
9. DW3 Anthony Enechor tendered Exhibits BB1, BB2, BB3, CC1 - CC4. The pictures taken with the Governor and at the council when Exhibit “T” was formally handed over to him.

From the foregoing, learned counsel submitted that the 1st Defendant/Counter Claimant has proved his right to the throne of Okhuesan by mode of primogeniture that is from father to son as codified as far back as 1979.

Submitting on the position of the 2nd – 5th Defendants in this suit, learned counsel posited that they are supposed to be nominal Defendants. He reproduced some salient parts of their Statement of Defence and observed that the Counsel to the 2nd

– 5th Defendants’ cross examined the Claimants’ witnesses, that is 3rd Claimant, CW1, CW2, CW3 and CW4 based on Exhibit “Z”.

He said that the Counsel to the 2nd – 5th Defendants in a most questionable manner made a defence summons and wholly amended their earlier statement of defence based on the facts that during the pendency of this action.

He said that the 3rd – 5th Defendants usurped the functions/powers of the court and declared the 4th Claimant as the Onojie of Okhuesan during the pendency of this suit.

He submitted that the actions taken by the 2nd – 5th Defendants during the pendency of this suit amounts to self-help which has been deprecated by the Superior Courts in the following cases: *Gov. of Lagos State v. Ojukwu (1986) 1 NWLR (Pt 18) 621*, *Governor of Kwara State v. Adeniyi (2021) 12 NWLR (Pt 1790) 305 at 316—317* and *Bass & Matt. Enterprises Ltd v. Keystone Bank Limited (2015) 1 NWLR (PT 1441) 609*.

Counsel submitted that it is settled law that a party must be consistent in the presentation of his case and he relied on the following cases: *Com. General Customs v. ChUssau (2017) 18 NWLR (Pt 1598) 353*; *AG Rivers State v. AG Akwa Ibon (2011) LPELR 633(SC)*; *Ajuwon v. Governor of Oyo State (2021) 16 NWLR (Pt 1803) 485 at 534*; *Sango v. APC (2024) 7 NWLR (Pt 1944) 555*.

Finally, on the failure of the 1st Defendant to testify in defence of this suit, learned counsel submitted that a party is not bound to give evidence in his own case and he relied on the exposition of *Niki Tobi JSC* in the case of *Ezennah v. Atta (2004) 7 NWLR (Pt 873 468 at 475* where he stated thus: *“The Law and the Rules of Court do not foist on a party the duty to give evidence. While it is desirable that he gives evidence, there are situations where from the facts of the case, some other person is in a better position to give evidence because that person participated in the particular matter and did it and saw it”*.

In conclusion, he urged the Court to resolve the sole issue for determination in favour of the 1st Defendant.

In his final written address, the learned counsel for the 2nd to 5th Defendants **Dr. S. Erhaze** formulated two issues for determination as follows:

- 1) WHETHER THE 1ST DEFENDANT/COUNTER-CLAIMANT HAS PROVED HIS CLAIMS IN THIS SUIT TO THE EXPECTED STANDARD;
- 2) WHETHER IN VIEW OF THE CIRCUMSTANCES OF THIS CASE AS IT RELATES TO THE 1ST DEFENDANT/COUNTER-CLAIMANT, THE 3RD

DEFENDANT WAS RIGHT TO HAVE APPOINTED THE 4TH
CLAIMANT AS THE ONOJIE OF OKHUESAN KINGDOM.

Thereafter, the learned counsel argued the two issues seriatim.

Arguing the first issue, the learned counsel submitted that the 1st Defendant/Counter Claimant has failed to prove the claims as expected.

He said that in a fruitless bid to prove that he is the son of the late Onojie and the heir apparent, he said that his name is LUCKY EHIDIAMEN just because it was the name contained in **Exhibit J** which is the late Onojie's Record of Service made as far back as 1978 where the name Lucky Ehidiamen was filled as the next of kin whereas evidence before the court revealed that the 1st Defendant whose name is Emmanuel Ehikioya Imhadjemu was born in 1989. He referred the Court to **the Statement on Oath of DW1, Pa. Samuel Ayo Amana.**

The learned counsel posited that a perusal of **Exhibit J** which is the letter from the Ministry of Wealth Creation, Cooperative and Employment, formerly Ministry of Commerce and Industry, where the late Onojie worked, shows that the late Onojie had two children namely: Lucky Ehidiamen (his purported only son) and Mary Ehidiamen, (his purported only daughter). He said that there is no evidence on record that since that 1978, any change was ever made as to the said next of kin on record to include the 1st Defendant who is Emmanuel Ehikioya Imhadjemu who was born in 1989.

He posited that on the face of **Exhibit 'EE'** which is the Motion on Notice with which the 1st Defendant applied to the Customary Court, Ubiaja, for letter of administration, his name is Emmanuel Ehikioya Imhadjemu and not Lucky Ehidiamen.

He said that there was nowhere in the affidavit which he signed, where he deposed to the fact that he bears Lucky Ehidiamen or any other name at all.

He submitted that there is a difference between Emmanuel Ehikioya Imhadjemu and Lucky Ehidiamen. On this point, he referred the Court to the Supreme Court case of *ESENOWO V. UKPONG (1999) 68 LRCN P. 882 at P. 891* where it was that there is a world of difference between **"J. E. Esenowo"** and **"E. J. Esenowo"**. He urged the Court to hold that there is a difference between Lucky Ehidiamen and Emmanuel Ehikioya Imhadjemu and as such they are not one and the same person.

Furthermore, learned counsel posited that in all the court processes filed by the 1st Defendant in this court, he does not bear the name Lucky Ehidiamen.

He pointed out that neither did he did not present any means of identification, like Voters Card, National Identity Card, School Identity Card or any affidavit of change of name affidavit or Deed of Poll where he bears Lucky Ehidiamen or harmonized the two names or all the names he ascribed to himself in this suit as that of one and the same person.

Again, he posited that in **Exhibit K** which is the bank documents of the late Onojie made by him after 1989 the year of birth of the 1st Defendant, he was not mentioned as the son or next of kin of the deceased.

Counsel contended that the failure of the 1st Defendant to present his birth certificate in this Court fatal. He said that contrary to the claim in the address of the learned counsel for the 1st Defendant, there is no birth certificate bearing the name Lucky Ehidiamen attached to **Exhibit O** or **J1** which is the same document, a letter written by 1st Defendant's counsel to the Commissioner Local Government and Chieftaincy Affairs dated 9/10/2008. He urged the Court to examine **Exhibits O** and **J1** closely.

Furthermore, the learned counsel submitted that the failure of the 1st Defendant/Counter-Claimant to furnish this Honourable Court with DNA result authenticating the paternity of the late Onojie, is fatal to his case. He said that the failure of the 1st Defendant to also appear in court to prove his case or prove his identity is also fatal to his case and he relied on *section 168 of the Evidence Act 2011*).

He urged the Court to hold that the 1st Defendant /Counter-claimant has not proved his case and is not entitled to any of the reliefs sought in the Counter-Claim.

Arguing issue two, learned counsel submitted that the 2nd -5th Defendants acted justly when they appointed the 4th Claimant to the throne of Onojie of Okhuesan in view of the circumstance surrounding the status of the 1st Defendant.

He submitted that ascension to the stool must be in line with the Chieftaincy Declaration and he relied on the case of **MAFIMISEBI vs. EHUWA (2007) 29 NSCQR 410 at Page 456**.

Counsel posited that the relevant Chieftaincy Declaration is the Customs and Traditions for the succession to the throne of Onojie of Okhuesan as codified in the **Bendel State Legal Notice No. 57 of 1979** which provides that the succession to the throne of Onojie of Okhuesan is by primogeniture, but subject to certain exceptions which includes when the Onojie dies without a male child, as in the instant suit.

He said that the law enjoins this Honourable Court to consider this case with its pleaded circumstances in this manner and he referred the Court to the following cases: *MAFIMISEBI vs. EHUWA (Supra) Ratio 9 457; EGUNMWENSE vs. AMAGHUZENWEN (1993) 9 NWLR (Part 315) Page 1 at Page 41; AKU vs. ANEKWU (1991) 8 NWLR (Part 209) 280.*

Counsel posited that the peculiar circumstances of this case is that after a careful investigation, the 2nd-5th Defendants discovered that the 1st Defendant is not of sound mind and good health to occupy the contested stool. He submitted his failure to testify in support of his case, goes to show that he was hiding his true state of health from the court and this supports the fact that the 1st Defendant is of unsound mind and unfit to be installed as the Onojie of Okhuesan as being argued by the Claimants and the 2nd -5th Defendants.

He referred the Court to **Section 13 (2) of the Traditional Rulers and Chiefs Edict, 1979** which provides as follows:

“(2). No person shall be qualified to be a candidate for a traditional ruler title who-

(a) suffers from serious physical infirmity; or

(b) has under any law in force in Nigeria, been found or declared to be a lunatic or adjudged to be of unsound min; or

(c). has-

(i) been sentenced to death or imprisonment for a term exceeding two; or

(ii)been convicted of an offence involving dishonesty and sentenced to imprisonment therefor, and has not been granted a free pardon.

He submitted that there is no evidence to substantiate the Counter-Claim of the 1st Defendant.

He submitted that a Claimant or Counter-claimant who claims a chieftaincy declaration as in this extant case should prove the following:

- i. Plead and lead evidence in support of such facts as the history, native law and custom or tradition and procedure governing appointment to the traditional stool;
- ii. He was validly nominated and appointed to the stool;
- iii. He should receive the blessing of the prescribed authority such as the 2nd Defendant in this case;
- iv. He should receive the blessing of the Local Government Council and the Local Government Traditional Council;
- v. He should plead and establish the year/period of his appointment by the authorizing body.

See: *AKANDE vs. ADISA (2012) 51 NSCQR 76 at Page 100 Per I.T Muhammad.*

Learned counsel submitted that assuming without conceding that the 1st Defendant/Counter-claimant is actually a biological son of the late Onojie, he would still not have been qualified to ascend the throne in view of his manifest and obvious state of health and he relied on the provisions of ***Section 13(2) of the Traditional Rulers and Chiefs Edict, 1979*** disqualifies him.

In conclusion, he urged the Court to resolve the two issues formulated in favour of the 2nd -5th Defendants.

In his final written address, the learned counsel for the Claimants ***K.O. Obamogie SAN***, formulated two issues for determination as follows:

- 1) Whether or not the 1st Defendant is the son of the late Onojie of Okhuesan, HRH Peter Imhadojemu Ehidiemen to qualify him to ascend to the throne of the Onojie of Okhuesan; and***
- 2) Whether if the answer to issue one is in the negative, the 4th Claimant being the oldest surviving younger brother of the late Onojie is not qualified to ascend to the throne of the Onojie of Okhuesan.***

Thereafter, the learned counsel argued the two issues seriatim.

ISSUE 1:

Arguing the first issue, the learned counsel submitted that the 1st Defendant is not the son of the late Onojie.

PROOF OF PATERNITY

Learned counsel referred the Court to the case of ***OKOLONWAMU & ANOR. V. OKOLONWAMU (2014) LPELR-22631 (Pp. 43-44 Paras C-C)***, where the Court of Appeal expounded that proof of paternity of a child under Nigerian Law is as follows:

- 1. Paternity by existing marriage;***
- 2. Paternity by subsequent marriage to the mother; and***
- 3. Paternity by acknowledgement.***

Where there is marriage

He submitted that paternity can be proved by the birth of a child during the subsistence of a marriage between the father of the child and his mother so as to raise the presumption that the child is the child of the marriage.

He said that in the instant case, there was no marriage between the alleged mother of the 1st Defendant and the late Onojie of Okhuesan, HRH Peter Imhadojemu Ehidiemen as no marriage was proved before this Honourable Court.

He maintained that there were no pleadings and evidence of those who witnessed the payment of dowry (bride price) and the handing over of his mother to his alleged father from the family of his mother and that of his alleged father.

He submitted that it is not enough to say that they got married. That the people who witnessed the celebration of the marriage must be stated together with how the dowry was paid. The amount of the dowry paid must be stated, the person that paid it and the one that received it needs to be stated and evidence has to be led in proof of same.

He said that no video or photographs of the marriage was tendered in Court to prove the alleged marriage. He maintained that an heir apparent could not have married without members of his family, photographs and video coverage.

Counsel posited that **Exhibit G** can attest to the fact that there was no marriage between the late Onojie and the alleged mother of the 1st Defendant. He said that in **Exhibit G**, one Princess Orienbhalenkpen whom DW2 said in his evidence is Christiana Orienbhalenkpen and his mother said that no member of the Okhuesan Royal Family was present at the wedding. She also revealed that even she was not present at the wedding. He said that Christiana is the person who alleged that the late Onojie had a son. He said that she herself did not even witness the alleged marriage.

Learned counsel referred to the evidence of the DW2, Solomon Salami who testified that the late Onojie cohabited with the purported wife till 2005 when she died, while the DW1, Pa. Samuel Ayo Amana in his Statement on Oath said the same purported wife died in December 2001. He urged the Court to reject the evidence of these two witnesses. He said that the 4th Claimant in paragraph 3 of his statement on oath dated 14th of August 2023 made it clear that there was no relationship whatsoever between the late Onojie and the 1st Defendant's purported mother, as they never married nor cohabited.

Counsel referred to some paragraphs of the pleadings of the 1st Defendant where they stated that the 1st Defendant took photographs with his father during the installation ceremonies and during his burial, but the alleged photographs were not tendered at the hearing.

Counsel submitted that the 1st Defendant did not participate in the events he referred to in his Statement of Defence and that if the pictures which the 1st Defendant said he would rely on were tendered, they would have been against him hence he withheld them. He relied on **Section 167 (d) of the Evidence Act 2011** and the case of **SALEH**

V. BANK OF THE NORTH LIMITED (2006) 2 F.W.L.R. (Pt 317) P. 3340 at P.3357, Paras. D-E where the apex Court expounded on the effect of withholding documentary evidence.

He urged the Court to hold that there was no marriage between the late Onojie and the alleged mother of 1st Defendant.

Acknowledgement of Paternity:

Counsel submitted that paternity can also be proved by acknowledgment. He said that the late Onojie did not acknowledge the paternity of the 1st Defendant, Emmanuel Ehikioya Imhadjemu when he was alive. He said that the late Onojie named one Lucky Ehidiemen as his son in his records of service and not Emmanuel Ehikioya Imhadjemu.

Counsel posited that the late Onojie having stated in his records that the name of his child is Lucky Ehidiemen without stating other names as part of his name, other names cannot at this stage be read into it.

He submitted that no person can know another person more than the person himself. He said that 1st Defendant having given out his name as Emmanuel Ehikioya Imhadjemu, he ought to have testified to clarify the uncertainty surrounding his name.

He referred the Court to Exhibit “EE” as shown in **Exhibit ‘EE’** which is the Motion on Notice where he applied to the Customary Court, Ubiaja, for letter of administration under the name: Emmanuel Ehikioya Imhadjemu. He said there is a world of difference between Emmanuel Ehikioya Imhadjemu and Lucky Ehidiemen. He relied on the case of ***ESENOWO V. UKPONG (1999) 68 LRCN P. 882 at P. 891*** where the apex Court held that there is a world of difference between “*J. E. Esenowo*” and “*E. J. Esenowo*”.

Counsel posited that to prove acknowledgment of paternity, the 1st Defendant tendered some Documents from Community Nursery and Primary School, Ubiaja. Counsel maintained that these purported documents do not belong to the 1st Defendant and were concocted for the purpose of this case. He said that the 1st Defendant is not Lucky Ehidiemen but Emmanuel Ehikioya Imhadjemu.

Learned counsel observed that the space provided on the dossier attached to **Exhibit O and J1** for the particulars of parents do not contain the name of the late Onojie as the father of whoever owned the documents.

He said that the document was said to be for someone in primary six by the year 2007. He said that the 1st Defendant at that time was 18 years old having been born in 1989 and could not have been in Primary Six at the age of 18 years. He maintained that these documents do not belong to him.

Learned counsel posited that a close perusal of the document marked **Exhibit F5** attached to **Exhibit J1** purported to be the 1st Defendant's Statement of Result for final P.S.L.C. examination is quite revealing. He said that on the document, it is written:

YOUR GRADE POINT AVERAGE IS: PRIMARY 5 YEAR 2006
YOUR OVERALL GRADE IS: 2006/2007 YEAR

He said that these are incoherent and meaningless documents concocted for the purpose of this case and nothing identifies the 1st Defendant with the said documents. Furthermore, he pointed out that on the last paragraph of **Exhibit J1** that there is a Caveat from the Ministry of Education that the identity of the true owner of the document needs to be ascertained.

Furthermore, learned counsel posited that **Exhibit K** which is the bank documents of the late Onojie was made by him after 1989 that the 1st Defendant was born and does not contain, as his son or next of kin, Emmanuel Ehikioya Imhadojemu, or any of the other names and combination of names which the 1st Defendant ascribe to himself in this Court.

He said that although the late Onojie claimed in **Exhibit J**, which is the record of service that he had two children, no member of his family is aware of the whereabouts of the children and none of them is in Court in this case, neither have they been seen by family members before and after his demise on the 2nd of January, 2007 (18 years ago).

He maintained that the 1st Defendant in connivance with Christiana, attempted to ascribe Lucky Ehidiamen to his name but this was unsuccessful. He referred the Court to the case of **PDP V DEGI-EREMIENYO & ORS. (2020) vol. 305 P.1 at Pp.14z** where the apex Court held that: **"It is clearly fraudulent for one person to allegedly bear several names that he uses variously, chameleonicly to suit the changing environment."**

He said that the 1st Defendant did not present any birth certificate in this Court. bearing the name "Lucky Ehidiamen".

PURPORTED LETTER OF ADMINISTRATION

On the purported letter of administration obtained by the 1st Defendant from the Customary Court Ubiaja with the name Emmanuel Ehikioya Imhadjemu, learned counsel maintained that this is further proof that his name is not Lucky Ehidiemen. He submitted that from the circumstances of this suit, the said letter of administration is a worthless document being currently challenged in the same Customary Court Ubiaja in suit **No. UBACC/MISC/15/07**. He said that one Jacob Egbadon-Agbo who acted as verifier for the 1st Defendant in the said suit has been convicted of perjury at the Magistrate Court Ubiaja in suit **No. NUB/2^C/2014**, for misleading the court. He referred the Court to **Exhibit I**, which is a copy of the judgment. Furthermore, he submitted that a letter of administration is not proof of paternity.

1ST DEFENDANT'S WITNESSES

Counsel posited that the 1st Defendant three witnesses DW1 Pa. Samuel Ayo Amana; DW2, Solomon Salami; and DW3, Anthony Eneko are all from Igarra. He said that none of the kingmakers, chiefs and Elders of Okhuesan or members of the Royal Family of Okhuesan, gave evidence for the 1st Defendant because he is not from Okhuesan and not the son of the late Onojie. He said that even the said Christiana, the late Onojie's uterine sister did not come to Court to give evidence for the 1st Defendant, who she claimed is her late brother's only child although she filed a Statement on Oath before this Honourable Court.

He said that the 1st Defendant did not lead evidence to deny the assertion of the 4th Claimant that Christiana Ehidiemen misled him to write a letter that the late Onojie had a son whose name is Lucky Imhadjemu Ehidiemen which letter was promptly withdrawn when it was clear that the late Onojie had no son.

He said that the evidence of the 4th Claimant on why he wrote the letter has not been controverted and remains unchallenged.

Furthermore, counsel pointed out that one Chief John Okpasi, who allegedly along with other members of Okhuesan Community, jointly wrote to the government for the recognition of the 4th Claimant as the Onojie Okhuesan in **EXHIBIT N**, filed a Statement on Oath dated July 10, 2023, but he was not also called to give evidence in support of the 1st Defendant. He said that all these points to the fact that the case of the 1st Defendant is unreliable and worthless.

He said that conversely, nine witnesses gave evidence for the 4th Claimant including kingmakers of Okhuesan, Royal family members and the Chief priest of the kingdom (Ohen) CW3, to the effect that the 4th Claimant is the right person to be installed and

appointed as Onojie of Okhuesan because the 1st Defendant is not the son of the late Onojie.

ISSUE TWO:

Whether if the answer to issue one is in the negative, the 4th Claimant being the oldest surviving younger brother of the late Onojie is not qualified to ascend to the throne of the Onojie of Okhuesan.

Learned counsel submitted that the 4th Claimant has proved that he is the eldest surviving brother of the late Onojie of Okhuesan, HRH Peter Imhadjemu Ehidiemen as stated in **Exhibit P, Exhibit F** and the evidence of all the Claimants and Claimant's witnesses in this suit.

He said that under cross examination, explained that his elder brothers have not been seen for more than 30 years now. He said that they are presumed dead by the provisions of **section 164 of the Evidence Act 2011**.

He said that the Claimants have proved that the late Onojie has no son in existence and that the 1st Defendant is neither the son nor the next of kin of the late Onojie

He said that the 4th Claimant has proved by Exhibit P that he was the one who performed the burial ceremony of the late Onojie and not the 1st Defendant who is not the son of the Onojie.

He urged the Court to resolve issue two in favour of the 4th Claimant.

He posited that the 1st Defendant did not avail the Court the opportunity of assessing his mental capacity in the face of serious contention by the Claimants that aside from the fact that 1st Defendant is not the son of the late Onojie, he does not have the mental capacity to be an Onojie.

He submitted that no person can demonstrate the mental capacity of the 1st Defendant more than the 1st Defendant himself. He said they refused to call the 1st Defendant to testify because he lacks the mental capacity. He referred the Court to the case of **A.G KWARA STATE V. OLAWALE (1993) 12 LRCN P. 658 at 677** where the apex Court expounded thus:

“Although a party to a suit is not obliged to testify on his behalf, where a party's case before a Court of justice is such that he is expected to swear to its truth and the be cross-examined thereon and he fails to submit to these, that is a point that can go against his credit and be a good ground for rejection of his case.”

Finally, he urged the Court to grant the reliefs of the Claimants and dismiss the Counter- Claim.

I have carefully considered the evidence adduced by the parties in this suit, the Issues for Determination adopted by the parties and the arguments of the learned counsel for the parties. The Issues for Determination formulated by the parties appear quite germane to the determination of this suit but since there is a Claim and a Counterclaim, I will condense them into two issues as follows:

- 1. WHETHER THE CLAIMANTS HAVE PROVED THEIR CLAIMS ON THE BALANCE OF PROBABILITY TO ENTITLE THEM TO THE RELIEFS SOUGHT; and**
- 2. WHETHER THE 1ST DEFENDANT/COUNTER-CLAIMANT HAS PROVED HIS COUNTER-CLAIM ON THE BALANCE OF PROBABILITY TO ENTITLE HIM TO THE RELIEFS SOUGHT.**

Having formulated the foregoing Issues for Determination, I will proceed to resolve them *seriatim*.

ISSUE 1:

WHETHER THE CLAIMANTS HAVE PROVED THEIR CLAIMS ON THE BALANCE OF PROBABILITY TO ENTITLE THEM TO THE RELIEFS SOUGHT?

It is settled law that in civil actions, the burden of proof is on the party who asserts a fact, to prove same. The standard of proof required is on the preponderance of evidence and the balance of probabilities. See the cases of: *Longe vs. F.B.N. Plc.* (2006) 3 NWLR (Pt.967) 228; and *Udo vs. Essien* (2015) 5 NWLR (Pt.1451) 83 at 87.

- 1) In this suit, the Claimants are seeking inter-alia, “A *declaration that the 1st Defendant is not a biological child of Late H.R.H. Peter Imhandojemu Ehidiamen and as such cannot be the Onogie of Okhuesan; a declaration that the 1st Defendant is not a member of the Royal Family otherwise known as the Ruling House of Okhuesan and as such cannot be the Onogie of Okhuesan; an order directing the 2nd Defendant to approve the nomination or selection of Lucky Ehi-Douglas Ehidiamen by the Kingmakers of Okhuesan on 26th February 2007 as the Onogie of Okhuesan in accordance with the Okhuesan people's custom codified in Bendel State Legal Notice No. 57 of 1979 and recognize him as the Onogie of Okhuesan; and an order*

directing the 2nd Defendant to approve the appointment of the 4th Claimant as the Onojie of Okhuesan with effect from 26th February, 2007 when he was installed as Onojie designate.”

Thus, it is apparent that the Claimants’ Claims are a hybrid of chieftaincy and paternity.

It is trite law that a Court must consider the proof of the case by the Claimant in a Chieftaincy matter before considering the case of the Defendant and not otherwise. See the following decisions on the point: ***JOKONOLA V MIL.GOV. OYO STATE (1996) 5 NWLR (PT 446) 1 SC; FEDLATTAH V AREWA TEXT LTD (1997) 8 NWLR (PT 518) 546 SC; OTUO V NTEOGWUILE (1996) 4 NWLR (PT.440) 56 CA;and AKANO V. ILORIN EMIRATE COUNCIL & ORS (2000) LPELR-11972(CA) (PP. 49 PARAS. A).***

From the evidence adduced at the trial, the title of the Onojie of Okhuesan is the traditional title of the traditional ruler of Okhuesan in Esan South East Local Government Area of Edo State. The title became vacant following the demise of His Royal Highness, Peter Imhaduojemu Ehidiamen on the 2nd of January, 2007. There is a registered declaration stating the customary Law regulating succession to the title published as ***B.S.L.N No. 57 of 1979.***

It is settled law that where a Registered Declaration exists in relation to a chieftaincy, it constitutes a complete statement of the relevant customs/traditions and/or customary law applicable to the said chieftaincy and the Court and parties are not allowed to go outside it in deciding the applicable customary law except where there is evidence that the said chieftaincy declaration is fundamentally defective or does not contain the real custom/customary law of the people applicable to the stool in question. See ***ADEOSUN V. GOV OF EKITI STATE & ORS (2012) LPELR-7843(SC) (PP. 20 PARAS. E); DARAMOLA V. A.G. ONDO STATE (2000) 7 N.W.L.R. PART 665 PAGE 440 AT 472; AGBETOBA VS. LAGOS STATE EXECUTIVE COUNCIL (1991) 1 N.W.L.R. PART 188 AT 66; and SADIKU V. KASSIM & ORS (2012) LPELR-8669(CA) (PP. 25-26 PARAS. E).***

In the case of ***OHIAERI & ANOR V. OBASI & ANOR (2014) LPELR-23766(CA) (PP. 29-30 PARAS. E)*** the Court of Appeal posited thus: ***"Where there is a registered declaration of the customary law regulating the appointment to fill a vacancy in a Chieftaincy office, the evidence is straight forward and would consist***

in the production of the registered declaration, in which case a single witness would suffice."

In the instant case, the parties pleaded the extant Chieftaincy Declaration and some of their witnesses mentioned it in their evidence but curiously, the Declaration was not tendered by any of the parties in this suit.

However, I am of the view that the failure to tender the Declaration is not fatal to the case of the Claimants or Counter-Claimant.

Where a registered declaration exists, it is my respectful view that the Court can take judicial notice of it pursuant to the provisions of ***section 122(2) (a) of the Evidence Act, 2011 as amended***. See ***OLADELE & ORS V. OBA AROMOLARAN II & ORS (1996) LPELR-2546(SC) (PP. 28 PARAS. B)***.

Consequently, I will take judicial notice of the provisions of the extant Chieftaincy Declaration.

According to the declaration, there is only one Ruling House in Okhuesan known as Okhue-Olenokha. Succession to the title is by primogeniture i.e. from father to the eldest surviving son. However, the declaration also provides that: ***"should an Onojie die without a surviving male issue, succession passes to his eldest surviving brother and his heirs"***.

In the instant case, the Claimants have seriously contended that the late Onojie of Okhesan, H.R.H. Peter Imhandojemu Ehidiamen was impotent in his lifetime and had no child. They alleged that the late Onojie confided in his sister, Victoria Ehidiamen and some other family members about his impotency.

The Claimants alleged that when the community discovered that the late Onojie had no wife or children, they arranged to get a wife for him. They led evidence of their failed attempts to get the Onojie to impregnate his wife and how he eventually died childless.

They alleged that the late Onojie never had another child through any woman during his lifetime.

According to the Claimants, under the Okhuesan custom, it is mandatory for the Ohen (Chief Priest) of Okhuesan to be informed about the birth of an heir apparent immediately he is born. They said that the Late Onojie did not inform the Chief Priest of Okhuesan that he had a son from any woman.

They maintained that the first son of an Onojie in Esan Land is generally known in the community and particularly to the members of the Royal Family of Okhuesan and the Kingmakers of Olenokhua in Eguare Okhuesan, at the point of birth.

However, in this suit, the 1st Defendant has seriously contended that he is the surviving son of the late Onojie and the heir apparent to the stool in line with the extant Chieftaincy Declaration.

In defence of this suit, although he did not testify in person, the 1st Defendant called some of his maternal relations who adduced oral and documentary evidence in a bid to prove that he is the only surviving son of the late Onojie.

At the hearing, one Samuel Ayo Amana (D.W. 1) informed the Court that the late Onojie married the mother of the 1st Defendant who hails from Igarra in Akoko Edo Local Government Area of Edo State. He said that he led the five-man delegation sent by the Otaru of Igarra to attend the installation ceremony of the late Onojie and that the mother of the 1st Defendant died on the 28th of December 2001 after the installation of the late Onojie. The witness informed the Court that after the demise of the late Onojie, His Royal Highness Oba E. A. Saiki II, the Otaru of Igarra, wrote a letter dated 28th March, 2007 to the Onojie of Ewatto, Esan South East L.G.A. Traditional Council thanking him and others for upholding Esan customary laws on succession.

Furthermore, the 1st Defendant maintained that the 4th Defendant is not the eldest surviving brother of the late Onojie of Okhuesan, that there are some of his brothers who are senior to the 4th Claimant who are still alive.

The 1st Defendant alleged that he performed the required burial ceremonies of his late father that entitled him to ascend the throne.

At the hearing, one Solomon Salami an alleged cousin of the 1st Defendant also testified as the D.W.2 and informed the Court that the 1st Defendant attended primary

school at Ubiaja and stayed with a relation of his late father (Maria Okpere) and his father was responsible for his upkeep educationally and otherwise. He tendered some documentary evidence of school fee receipts, school results and others as Exhibit “Y1 to Y5”.

At this stage, the issue of the paternity of the 1st Defendant becomes very relevant.

Essentially, this suit is a paternity suit. At the hearing, the Claimant adduced some evidence in a bid to prove that the 1st Defendant is not the son of the late Onojie. He called some witnesses from Okhuesan to show that the late Onojie was impotent. He even tendered an Affidavit deposed to by one Iyere Iyeye where he stated that he performed a traditional ritual called “Isukhure” to permit the wife of the deceased Onojie to have sexual intercourse with another man because of the impotence of the Onojie. The Affidavit is Exhibit “B” in this proceedings.

The Claimant led evidence to show that the birth of an heir apparent to the throne cannot be a secret, that it must be known to the members of the Royal family.

At this stage, the dispute is whether on the preponderance of evidence, the Claimants have proved that the 1st Defendant is not the son of the late Onojie.

Generally, there are three major ways of proving the paternity of a child under Nigerian law. They are: (1) Paternity by existing marriage: A child born during the pendency of a valid marriage between a couple is automatically presumed to be legitimate; (2) Paternity by subsequent marriage to the mother: This occurs when a child is born at a time when the mother was not married to the father and after whose birth the mother and father entered into a valid marriage; and (3) Paternity by acknowledgement by the father accepting paternity of the child: This includes paying for the hospital bills and upkeep of the child, introducing the child to his family as his child etc.

Apart from the three ways enumerated above, there is also scientific or forensic means of proving paternity. This is through a DNA examination. The DNA test has to do with the use of genetic analysis, scientifically, to determine the paternity of a child, i.e., whose male spermatozoa fertilized the egg of a female. This is usually applicable and relevant where there is dispute as to the paternity of a child, or where there are disputing claims or uncertainty as to the paternity of an individual. See the case of *Olayinka Vs Adeparusi & Anor (2011) LPELR 8691 CA*, where the Court of Appeal, per *Denton West JCA* stated thus:

“... If a party is claiming paternity, it is trite that a Court of law should be allowed to determine same on proof of evidence relating to paternity, which could only be

done by referral for a DNA test of the parties involved. After such test the Court has a duty to declare, the actual father of the child in dispute in consonance with the evidence at its disposal. DNA, that is, "Deoxyribonucleic acid" is a molecule that contains the genetic code of any organism. It is hereditary and has become a euphemism for scientific analysis of genetic constitution, to determine one's roots."

In the instant suit, as it relates to paternity by existing marriage, the evidence of the alleged marriage between the late Onojie and the mother of the 1st Defendant appears scanty. Apart from the maternal relations of the 1st Defendant, no member of the Royal family appears to be aware of any relationship between the deceased and the 1st Defendant and his mother. As the learned counsel for the Claimants rightly posited, there is no oral or documentary evidence of the alleged marriage ceremony to ascertain the essential features of the marriage such as the payment and collection of dowry. In the event, I hold that the proof of paternity by existing marriage is bound to fail.

Sequel to the foregoing, the proof by subsequent marriage to the mother is also non-existent in this case.

So, we are left with proof of paternity by the acknowledgement by the father. From the evidence adduced in this suit, the 1st Defendant alleged that the late Onojie acknowledged paternity through the payment of his school fees. At the hearing, he tendered some school receipts and school register as Exhibits "Y1" to "Y5". I have gone through the said exhibits, and I discovered that apart from the fact that the documents bear the name 'Lucky Ehidiemen', there is nothing to show that the late Onojie paid the fees in question. The mere fact that the 1st Defendant called himself Lucky Ehidiemen is not proof of the fact that he is the son of the late Onojie. Furthermore, there is no evidence that the late Onojie ever acknowledged the paternity of the 1st Defendant in the presence of any member of the Royal family. I hold that the proof by acknowledgment of paternity is not made out in this case.

The last method of proof which is by DNA examination was also not done in this case.

From the foregoing, upon a juxtaposition of the evidence of the Claimants in disproof of the paternity of the Onojie with that of the 1st Defendant in proof of the Onojie's paternity, I hold that on the preponderance of evidence before me, the 1st Defendant is not the son of the late Onojie.

In this suit, the Claimant is also seeking a declaration that the 1st Defendant does not have the mental capacity or soundness of mind to assume the position of Onogie of Okhuesan.

In a bid to prove this fact, the Claimants relied heavily on the fact that the 1st Defendant failed to testify in this suit and thereby prevented the Court from any opportunity to assess his mental state. I am of the view that the proof of the mental capacity of the 1st Defendant cannot be ascertained by his composure or comportment in the Court while testifying. Such evidence can only be given by medical experts in the field of psychiatry. It is common knowledge that even mentally deranged people also have their moments of lucidity particularly if they take their medications regularly. Thus, the claim for a declaration that the 1st Defendant does not have the mental capacity or soundness of mind to assume the position of Onogie of Okhuesan is bound to fail.

Furthermore, the Claimants are also seeking an order directing the 2nd Defendant to approve the nomination or selection of Lucky Ehi-Douglas Ehidiemen by the Kingmakers of Okhuesan on 26th February 2007 as the Onogie of Okhuesan in accordance with the Okhuesan people's custom codified in Bendel State Legal Notice No. 57 of 1979 and recognize him as the Onogie of Okhuesan.

As I earlier pointed out, in this suit, the law regulating the succession to the stool of Onogie of Okhuesan is the aforesaid Chieftaincy Declaration of 1979. The said declaration contains a proviso that: ***“should an Onogie die without a surviving male issue, succession passes to his eldest surviving brother and his heirs”***.

From the available evidence, I find that the late Onogie died without a surviving male child, so the succession passes to his eldest surviving brother. In his evidence, the 4th Claimant stated that he is the eldest surviving brother of the late Onogie. He said that he had two brothers named Sunday Francis Ehidiemen and Bartholomew Ehidiemen but he has not seen or heard from them in the last thirty years. For the avoidance of doubt, ***section 164(1) of the Evidence Act, 2011*** provides as follows: ***“A person shown not to have been heard of for seven years by those, if any, who, if he had been alive would naturally have heard of him, is presumed to be dead unless the circumstances of the case are such as to account for his not being heard of without assuming his death; but there is no presumption as to the time when he died, and the burden of proving his death at any particular time is upon the person who asserts it.”***

Upon a clear reading of the above provision of the Evidence Act, it is safe for me to hold that the other siblings of the 4th Claimant who have not been seen or heard of

for the past thirty years are presumed to be dead. In the event, the 4th Claimant is the eldest surviving brother of the late Onojie who is entitled to succeed him in the absence of any surviving son in line with the Declaration.

From the foregoing, I hold that the Claimants have proved their claims on the balance of probability to entitle them to the reliefs sought and issue one is therefore resolved in favour of the Claimants.

ISSUE 2:

WHETHER THE 1ST DEFENDANT/COUNTER-CLAIMANT HAS PROVED HIS COUNTER-CLAIM ON THE BALANCE OF PROBABILITY TO ENTITLE HIM TO THE RELIEFS SOUGHT.

In his Counter-Claim, the 1st Defendant is making some claims which are diametrically opposed to the Claimants' Claims.

The position is that since the Claimants have established their case, the Counter-Claims are automatically displaced. It would be a waste of valuable judicial time in considering a counter claim, which has been overtaken by events.

In the event, I hold that the 1st Defendant has not proved his Counter-Claim and issue two is resolved in favour of the Claimants.

Having resolved the two issues in favour of the Claimants, I hold that the 1st Defendant's Counter-Claims are dismissed and the Claimants Claims are granted as follows:

- 1) A declaration that the 1st Defendant is not a biological child of Late H.R.H. Peter Imhandojemu Ehidiamen and as such cannot be the Onogie of Okhuesan;***
- 2) A declaration that the 1st Defendant is not a member of the Royal Family otherwise known as the Ruling House of Okhuesan and as such cannot be the Onogie of Okhuesan;***
- 3) A declaration that H.R.H. Peter Imhandojemu Ehidiamen did not acknowledge the 1st Defendant as a son in his life time;***
- 4) Perpetual injunction restraining the 1st Defendant from parading himself or holding himself out as the child of Late H.R.H. Peter Imhandojemu Ehidiamen;***
- 5) Perpetual injunction restraining 2nd, 4th and 5th Defendants from recognizing the 1st Defendant or treating him as the Onogie of Okhuesan;***

- 6) *Perpetual injunction restraining the 1st Defendant from holding himself out as the Onogie of Okhuesan or performing the functions of the office of the Onogie of Okhuesan;*
- 7) *An order directing the 2nd Defendant to approve the nomination or selection of Lucky Ehi-Douglas Ehidiamen by the Kingmakers of Okhuesan on 26th February 2007 as the Onogie of Okhuesan in accordance with the Okhuesan people's custom codified in Bendel State Legal Notice No. 57 of 1979 and recognize him as the Onogie of Okhuesan; and*
- 8) *An order directing the 2nd Defendant to approve the appointment of the 4th Claimant as the Onojie of Okhuesan with effect from 26th February, 2007 when he was installed as Onojie designate.*

The 1st Defendant shall pay the sum of N200,000.00 (Two Hundred Thousand Naira) as costs to the Claimants.

P.A.AKHIHIERO
JUDGE
30/10/2025

COUNSEL:

1. *K.O. Obamogie SAN, leading Dr. Bola Adekanle-----Claimants*
2. *Chief D.O. Okoh SAN-----1st Defendant*
3. *Dr. S. Erhaze-----2nd to 5th Defendants*