

**SUPREME COURT OF NIGERIA**  
6TH FEBRUARY, 1996. SC.188/1992  
**CORAM:- M. L. UWAIS CJN, A. B. WALI,**  
**S. U. ONU, Y. O. ADIO, A. I. IGUH, JJSC.**

MRS. ALERO JADESIMI ..... APPELLANT  
AND  
MRS. VICTORIA OKOTIE-BOH & 2 OTHERS ..... RESPONDENTS

---

**JUDGMENTS** - *Error in Law - Court of Appeal erred - In deciding that a Will of 1947 was revoked by marriage under the Act - Between couples of subsisting customary marriage.*

**MATRIMONIAL CAUSES** - *Marriage Act - Marriage thereunder by couples of subsisting customary marriage - Whether intended to nullify existing customary marriage.*

**STATUTES** - *Statutes of General Application - Limitations to application thereof - In respect of testator's intention concerning his Will.*

**SUCCESSION** - *Wills - Whether s. 18 of the English Wills Act 1837 - Is applicable in the Nigerian circumstances - To nullify a Will made prior to marriage under our 1961 Marriage Act.*

**SUCCESSION** - *Wills - Validity - Whether a 1947 Will made by the deceased - Is in force and valid.*

**SUCCESSION** - *Wills - Applicable law - Prior customary marriage between a couple - Where subsequent marriage was conducted under the Marriage Act 1961 - Which law is applicable to the Will of the deceased.*

**FACTS**

The Appellant, the 2nd and 3rd Respondents were the children of deceased Chief Okotie Eboh while the first respondent was his wife. Though the deceased was customarily married to the 1st respondent, they later conducted registry marriage under the Marriage Act. Upon the death of the deceased, the parties without knowing that he made a will secured letters of administration with which they have been administering the estate of the deceased. Along the line, it was discovered that the deceased made a will sometime in 1947 (Exhibit p1).

The Plaintiff/Appellant then filed an action before the Lagos high court asking the court be pronounce on the force and validity of the said 1947 will and sought a revocation of the prior letters of administration granted to the parties. The court had to determine whether section 18 of the English Wills Act 1837 is applicable unto nullification of the said Will in view of the registry marriage under the Marriage Act later conducted between the deceased and his said 1st respondent wife. The trial court held that the said Will was valid though he came to this decision on a wrong reasoning. Respondents' appeal to the Court of Appeal was upheld as that court reversed the trial court's decision. Being dissatisfied, Appellant has now appealed to the Supreme Court raising one issue.

### ***ISSUE FOR DETERMINATION***

*"Whether or not the Will of Chief Festus Samuel Okotie-Eboh duly executed by him on 21st August, 1947 has been revoked by operation of law by his subsequent Marriage under the Marriage Act in 1961 to the same woman to whom he had been lawfully and continuously married under customary law since 1942 up to the date he executed the Will and until his death in 1966."*

**HELD** ( Unanimously allowing the appeal per lead judgment of **UWAIS CJN** )

### ***Wills - Applicable law***

1. It is not in dispute that the deceased made his will (Exhibit P1) on the 21st day of August, 1947. That the law applicable to the will is, as at the date of its execution, the Wills Act, 1837 of England, being a statute of general application. It is also not in dispute that the deceased and the 1st respondent who were earlier married under Itsekiri customary law went into another Marriage in Lagos under the provisions of the Marriage Act, Cap. 115 in 1961. Therefore, at the time of the death of the deceased in 1966 the Act, and not the customary law, was the law applicable to his marriage with the 1st respondent. The appellant filed her suit in the High Court of Lagos State on the 3rd day of August, 1984 (as per her Writ of Summons). As at that date the law applicable in Lagos State with regard to the application of statutes of general application was the law (Miscellaneous Provisions) Law, Cap. 65 of the Laws of Lagos State, 1973. (p. 164 B)

### ***Limitations to statutes of general application***

2. It appears to me from the provisions of section 45 of the Interpretation Act, Cap. 89 that although statutes of general application are applicable, nevertheless their applicability is not without limitations. It is clear from the provisions of subsection (2) (supra) that the application of the statutes

could be curtailed by local circumstances as well as local jurisdictions. In the present case the deceased is to be taken to have known all the laws in question referred to above. That is the fallacy of law. If it was his intentions, after contracting the 1961 marriage under the Marriage Act, Cap. 115, that he would vary or change or even revoke Exhibit P1, he would have taken such a step long before he was killed in 1966. However, he did nothing of the sort. It must, therefore, be taken that he had intended that the will should remain in force irrespective of the 1961 marriage. (p. 166 G)

***Marriage under the Act by couples of subsisting customary marriage***

3. It is a matter of common knowledge that most people in Nigeria who contract marriages under the Marriage Act, undergo a form of customary marriage earlier as a matter of practice and adherence to the custom of their forefathers. It is never intended by the practice that the marriage under the Marriage Act should nullify the customary marriage or engagement but rather that it would supplement the practice or custom. The parties are of course aware that by applying the Marriage Act to their relationship, their marriage would become monogamous. (p. 167 A)

***Whether s. 18 of the English Wills Act is applicable***

4. In my opinion, therefore, the circumstances of Nigeria militate against the application of section 18 of the Wills Act, 1837 to nullify a will made prior to contracting a marriage under the Marriage Act. In holding this view I am further strengthened by the fact that section 15 of the Wills Law of Western Nigeria, Cap. 133 of the Laws of Western Nigeria, 1959, which contains the same provisions as those of section 15 of the Wills Law of Delta, Edo, Lagos, Ogun, Ondo, Osun and Oyo States respectively, exempts the revocation provided for by the Wills Act, 1837 from applying to customary law marriages. (p. 167 C)

***Wills - Validity***

5. I, therefore, come to the conclusion that the Court of Appeal erred in its decision that Exhibit P1 was revoked by reason of the 1961 marriage between the deceased and the 1st respondent. Consequently, the appeal succeeds and I allow it. The decision of the Court of Appeal is set aside and I restore the judgment of the trial court, which arrived at the right decision by wrong reasoning. Accordingly, I hereby pronounce for the force and validity of the last Will and Testament dated the 21st day of August, 1947 (Exhibit P1) of Chief Festus Samuel Okotie-Eboh. (p. 167 G)

**NOTABLE POINTS OF INTEREST**

**UWAIS CJN**

*1. Argument of a party at Court of Appeal need not be same at Supreme Court*

It is to be noted that the argument of a party in the Court below need not necessarily be the same with his argument in this Court because the appeal in the Court below is invariably an appeal against the decision of a trial court, while the appeal in this Court is a complaint against the decision of the Court of Appeal. It is not always that the decisions of the trial court and the Court below become the same. They may be diametrically opposed as, indeed, is the case with the present appeal. In such a situation the argument to be presented by a party in this Court may differ from the argument canvassed in the Court of Appeal. This is made clearer by the fact that the premises on which the two decisions below were arrived at may be at variance. Again the appellant here, under that situation, may not be the appellant in the Court of Appeal but respondent and so his argument in the court below as a reply should not be expected to be presented in this Court. I, therefore, see nothing wrong with the presentation of the appellant's appeal before us. (p. 163 B)

**ONU JSC**

*2. S. 18 of Wills Act 1837 applies to people with English domicile*

I will approach this all-important case by first of all pointing out that "Marriage" as defined in section 18 of the Wills Act (ibid) applies to only people with English domicile. I am strengthened in this view in that our Marriage Ordinance (now Act) recognizes in clear and unambiguous terms the validity of customary law marriage. Thus, as is demonstrably hereunder shown, the English law as exemplified in section 18 of the Wills Act, 1837, has not been imported and applied in Nigeria lock, stock and barrel blindly and with unquestionable fervour and adherence. (p. 171 E)

G

**IGUH JSC**

*3. Subsequent reaffirmation of customary marriage did not revoke Will*

It therefore seems to me clear that the Wills Act, 1837 may be applied only in so far and to the extent that our local circumstances, custom and tradition permit. I also accept that had the testator not been lawfully married to the 1st respondent as at the time the Will was made, the Wills Act, 1837 would have had full application and effect as envisaged by the British Parliament which enacted it. In view, however, of the fact that the testator was validly

and lawfully married to the 1st respondent under the prevailing local custom, tradition and laws, ever before the Will in issue was made by him, I cannot accept that the subsequent reaffirmation of his marriage to the 1st respondent under the Marriage Act revoked his said Will. (p. 177 G)

### **REPRESENTATION**

Kehinde Sofola, SAN with A. Idris for the Appellant  
1st Respondent absent and unrepresented  
A. Obe (Mrs.) for the 2nd Respondent  
J. Y. Odebala for the 3rd Respondent

B

C

### **CASES REFERRED TO**

Home Building and Loan Association v. Blaisell (1934) 290 US 398 78 L ED 417  
Ifezue v. Mbadugha & Anor (1984) 1 All N.L.R. 256 at pp. 269 and 279  
A-G v. Lockwood (1942) 9 M & W 378 at p. 398  
Becke v. Smith, (1936) 2 M & W 191 at p. 195  
Mobil v. Federal Board of Inland Revenue (1977) 3 S.C. 53 at p. 74  
Ogbuniyi v. Okudo (1979) 6-9 S.C. 32 at pp. 48-49  
Idehen v. Idehen (1991) 6 N.W.L.R. (Part 198) 382 at p. 416  
Ajide v. Kelani (1985) 3 N.W.L.R. (Part 12) 248 at p. 251  
Shonekan v. Smith (1964) All N.L.R. 168 at p. 173  
Akpen v. Barclays Bank of Nigeria & Anor (1977) 1 S.C. 47

D

E

### **STATUTES AND RULES REFERRED TO**

Wills Act, 1837 of England s. 18  
Wills Law, Cap. 133 of the Laws of Western Nigeria 1959  
Wills Law, Cap. 141 of the Laws of Lagos State 1973 s. 15  
Law of Property Act, 1925 of England s. 177  
Interpretation Act, Cap. 192 LFN 1990 s. 32  
Interpretation Act, Cap. 89 of the Laws of the Federation of Nigeria, 1958 G s. 45  
Interpretation Act, Cap. 192 of the Laws of the Federation of Nigeria, 1990  
Marriage Act, Cap. 115 of the Laws of the Federation of Nigeria 1958 ss. 11, 47, 33, 35  
Constitution of the Federal republic of Nigeria 1979 item 60 pt. 1 2nd Schedule  
Supreme Court Rules, 1985 O. 8, r. 12, O. 6 r. 5 (1)  
Supreme Court Act, Cap. 424 LFN 1990 s. 22.

F

H

**LEAD JUDGMENT BY UWAIS CJN**

By a writ of summons taken out of the High Court of Lagos State holden at Lagos, the appellant, as plaintiff, claimed against the respondents, as defendants, as follows as per her Amended Statement of Claim:-

- "(a) That the Court shall pronounce for the force and validity of the  
 B last will and testament dated the 21st day of August, 1947 of Chief Festus Samuel Okotie-Eboh, formerly known and called Festus Sam Edah) late of Ogorode, Sapele, Bendel State deceased, who died on the 15th day of January, 1966; and  
 C (b) That the Court shall revoke the grant of the said Letter of Administration of the Estate of the said deceased dated the 24th day of June, 1971."

The facts of the case, which are not in dispute, are briefly thus. The deceased, Chief Festus Samuel Okotie-Eboh was a son to an Itsekiri father and an Urhobo mother. In 1942 he got married to the 1st respondent  
 D according to Itsekiri native law and custom. The appellant as well as the 2nd respondent are the children of the marriage. There are of course other offsprings of the deceased, of whom the 3rd respondent is one, who were born by women that were not married to the deceased.

In 1947 the deceased made a will at Sapele (Exhibit P1) which was  
 E signed by Chief Egboro (PW.2) and Mr. Okitikpi (PW. 3) as witnesses. The will was dated the 21st day of August, 1947 and was deposited at the Probate Registry of the High Court of Lagos State since, as at that date, that was the only Probate Registry existing in Nigeria.

In March, 1961, whilst the customary marriage was subsisting the  
 F deceased and the 1st respondent decided to remarry or rather reaffirmed their marriage by going to a Marriage Registry in Lagos where they got married under the Marriage Act, Cap. 115 of the Laws of the Federation of Nigeria, 1958.

On 15th January, 1966, the deceased, who had been a minister of  
 G the Federal Government of Nigeria, was killed during a military coup d'etat which overthrew the Government. Sometime in 1971 the appellant together with the 1st, 2nd and 3rd respondents applied to the High Court of the then Bendel State for the grant of Letters of Administration to enable them administer the proprieties of the deceased in that State. The Letters  
 H of Administration were granted. In order that they might be able to administer the estate of the deceased in Lagos State, they got the Letters of Administration issued by the High Court of Bendel State, resealed sometime in 1972 at the High Court of Lagos State. By agreement between them, the

appellant and the 1st respondent were to administer the estate in Lagos State while the 2nd and 3rd respondents were to administer the estate in Bendel State. All the children of the deceased, who were known to the appellant, were maintained by the administratrixes and administrator from funds received from the estate of the deceased.

At the time of applying for Letters of Administration the parties to this case were not aware that the deceased had made a will. According to the evidence adduced by the appellant and 1st respondent, sometime in 1974 it was discovered that the deceased made a will in 1947 and that the will was deposited at the Probate Registry of the High Court of Lagos State. Whilst accepting that a will was made in 1947 by the deceased, 2nd respondent called evidence to show that there was another will made by the deceased in 1964 and that both the 1947 and 1964 Wills were discovered in a safe kept in the room of the deceased at Sapele. Mr. Lawrence Okotie-Eboh (D.W.4) who was a witness called by the 2nd respondent, testified that both the 1947 and 1964 wills were opened and read in 1970 at a family meeting called for that purpose, and that the 1st respondent gave the assurance that she would continue to look after all the children of the deceased. That as a result of the assurance the two wills were destroyed by being torn to pieces and thrown away. However, the learned trial Judge (Agoro, J., as he then was) found that the issues joined by the parties on the pleadings which were for him to decide were as follows:-

*(i) Whether the High Court of Lagos State has jurisdiction to entertain the action in this suit.*

*(ii) Whether the will, Exhibit P1 dated 21st August, 1947 of Late Chief Festus Samuel Okotie-Eboh formerly known as Chief Festus Sam Edah was duly executed as required by law.*

*(iii) Whether the will, Exhibit P1 dated 21st August 1947 of Late Chief Festus Okotie-Eboh formerly known as Chief Festus Sam Edah could be regarded as revoked by operation of law by reasons of the fact that the previous marriage in 1942 to the first defendant under Native Law and Custom was later on 3rd March, 1961 reaffirmed by another marriage between the same parties under the Marriage Act, Cap. 115, Law of the Federation of Nigeria and Lagos 1958.*

*(iv) Whether the Customary Laws of Urhobo and/or Itsekiri in the Bendel State Nigeria could operate to invalidate and render void the will, Exhibit P1 dated 21st August, 1947 of Late Chief Festus Samuel Okotie-Eboh formerly known as Chief Festus Sam Edah.*

*(v) Whether the action in this Suit was properly constituted by reason of the fact that the plaintiff herein is also the same person shown as*

*the 4th defendant in the Suit."*

The learned trial Judge held that he had jurisdiction to hear the suit and that the 1947 will (Exhibit P) was validly made by the deceased. He further held that Exhibit P1 was not revoked by virtue of "the marriage on 3rd March, 1961 between the same parties (Late Chief Okotie-Eboh and B the first defendant) under the Marriage Act, Cap. 115, 1958" He answered the fourth issue also in the negative. With regard to the fifth issue he held that the action was properly constituted since the appellant was a devisee under the will and an administratrix of the Letters of Administration granted in Bendel State and resealed in Lagos State respectively. The learned trial C Judge concluded his judgment in favour of the appellant as follows:-

*"Finally, in view of the decisions which I have reached on the issues raised on the pleadings filed in this action and for the reasons stated herein, I hereby pronounce for the force and validity in solemn form of law that the will marked Exhibit P1 dated 21st August, 1947 was duly executed by the D Chief Festus Samuel okotie-Eboh formerly known as Chief Festus Sam Edah as required by the Wills Act 1837 of England which was the applicable law. There will be consequential order that the resealing in the Lagos State of the Letters of Administration (Without Will) dated 24th June, 1971 granted by the Probate Registry of the High Court of the then Mid- E Western State now Bendel State, be and is hereby revoked forthwith. In view of the special circumstance of this matter, it is ordered that the parties shall bear their own costs of the present action."*

Dissatisfied with this decision, the 2nd and 3rd respondents appealed to the Court of Appeal. In allowing the appeal, the lower Court (Achike, F Kalgo and Tobi, J.J.C.A.) concluded its judgment, per Achike, J.C.A. who delivered the lead judgment, with which the other Justices concurred, as follows:-

*"However, in view of the conclusion reached earlier in this appeal that the subsequent marriage in 1961 under the Marriage Ordinance, now G Act, between the late Chief Okotie-Eboth and the 2nd respondent (i.e. Mrs. Victoria Okotie-Eboh) revoked the 1947 will of the deceased, Chief Okotie-Eboh, by the operation of section 18 of the Wills Act, 1837, it follows that this appeal succeeds and it is allowed. Accordingly, the judgment of Agoro, J. (as he then was) delivered on 24th May, 1988 is hereby set aside. I make H no order as to costs."* (First parenthesis mine).

In turn, the appellant herein felt aggrieved and brought the present appeal, formulating only one issue for our determination. The issue reads:

*"Whether or not the Will of Chief Festus Samuel Okotie-Eboh duly executed by him on 21st August, 1947 has been revoked by operation of law*

*by his subsequent Marriage under the Marriage Act in 1961 to the same woman to whom he had been lawfully and continuously married under customary law since 1942 up to the date he executed the Will and until his death in 1966."*

The 1st respondent herein Mrs. Victoria Okotie-Eboh is unrepresented and no brief of argument has been filed by her or on her behalf. The 2nd respondent filed her brief of argument adopting the issue for determination formulated by the appellant and complaining that the appellant has shifted ground in this Court from her contention in the Court of Appeal. I will come to this later. The 3rd respondent also formulated a single issue for determination in his brief of argument. The issue is slightly at variance with the one raised by the appellant. It states:-

*"Whether or not the Will of Chief Festus Samuel Okotie-Eboh said to be executed by him in Sapele on the 21st of August, 1947 has been revoked by operation of law by his subsequent marriage under the Marriage Act in 1961 to the 1st defendant/respondent to whom the said Chief Festus Samuel Okotie-Eboh has been married under customary law, 1942."*

Mr. Kehinde Sofola, learned Senior Advocate has conceded in the appellants brief of argument as well as in his oral submissions that the Wills Act, 1837, of England, applies to this case as a Statute of general application. However, his contention is whether it is proper, in the circumstances of this case and indeed Nigeria, that the provisions of section 18 of the Wills Act should apply to Exhibit P1 since the peculiar circumstances of the present case could not have been contemplated by the Parliament in England when it enacted the 1837 Act. He argued that the Court of Appeal (Per Achike, J.C.A.) could not be correct when it held that the Will made by the deceased stood revoked by the application of the provisions of section 18 of the Wills Act 1837. In support of the argument Learned Senior Advocate submitted that three different statutory provisions need to be considered in determining the issues joined in this case. They are, namely, Section 18 of the Wills Act; section 32 of the Interpretation Act, Cap. 192 of the Laws of the Federation of Nigeria, 1990 and sections 11 and 47 of the Marriage Act, Cap. 115, of the Laws of the Federation of Nigeria, 1958. He canvassed that the British Parliament while passing the Wills Act, 1837 could not have contemplated the situation created by the Marriage Act, Cap. 115, for Nigeria. Consequently, he submitted that, the provisions of the Wills Act, 1837 ought to be applied only if the local circumstances so permit. He argued further that had the deceased been lawfully married under the Marriage Act to the 1st respondent at the time of executing Exhibit P1, then, the provisions of the Wills Act, 1837 would have applied

fully and have effect as contemplated by the British Parliament in 1837. Learned Senior Advocate submitted that it was to avoid the type of absurdity created by the provisions of the Wills Act, 1837 that the Nigerian Legislature enacted the provisions of Section 32 of the Interpretation Act, Cap. 192. He argued that the incidents of marriage confer status, so that one cannot be  
B partly married and partly unmarried as the outright application of the provisions of Section 18 of the Wills Act, 1837 would bring about. The status of being married under Islamic Law or Customary Law is well recognized in this country and such marriages should not be accorded any status that is inferior to that of marriage under the Marriage Act, Cap. 115. He submitted that it is a  
C notorious fact in this country that persons who got married under the Marriage Act do choose to go through a customary or Islamic Law Marriage thereafter. He submitted that there is nothing wrong in law with such subsequent marriage. Learned Senior Advocate made reference to the provisions of item 60 of part 1 to the Second Schedule of the Constitution of the Federal  
D Republic of Nigeria, 1979, Cap 62 of the Laws of the Federation of Nigeria, 1990 to buttress his argument. He, therefore, submitted that a marriage according to the Marriage Act, Cap. 115 after going through a customary marriage is simply a surplusage.

Still in further argument, Mr. Sofola, submitted that the interpretation  
E given by the Court of Appeal to the provisions of Section 18 of the Wills Act, 1837 has led to absurdity. By the canon of interpretation of Statutes, such absurdity ought to be avoided because it had the result of holding that the deceased was not lawful married to the 1st Respondent until 1961 when the marriage under the Marriage Act, Cap. 115 took place. To further emphasize  
F the absurdity alleged, learned Senior Advocate submitted that the decision of the Court below had rendered all the acts performed by the deceased and the 1st respondent together as husband and wife since 1942 up to 1961 ineffective, null and void, so that even the appellant and 2nd respondent, who are the product of the association between the deceased and the 1st respondent,  
G would be considered to be bastards. This, he contended, is contrary to Nigerian laws which provide that the relationship between the two persons was lawful and that the children of the relationship have full legal capacities as such.

To further support his contention, Mr. Sofola stated that the Wills Act,  
H 1837 made the provisions under Section 18 thereof in order to protect a woman who married a man after the latter had made a Will. It is in order to avoid any mischief which section 18 might bring about that section 177 of the Law of Property Act, 1925 of England was enacted. He cited the following cases in support of his submissions. Home Building and Loan

*Association v. Blaisdell* (1934) 290 US 398, 78 LED 417; *Ifezue v. Mbadugha & Anor* (1984) 1 SCNLR 427; (1984) 1 ALL NLR 256 at Pp. 269 and 279; *A-G v. Lockwood* (1842) 2 M&W 191 at P. 195; *Mobil v. Federal Board of Inland Revenue* (1977) 3 SC 53 at P. 74 and *Ogbunyinya v. Okudo* (1979) 6-9 SC 32 at Pp. 48-49.

In reply, Mrs. Obe learned counsel for the 2nd respondent argued, in the brief of argument which she filed on behalf of her client, by referring to section 15 of the Wills Law Cap. 141 of the Laws of Lagos State, 1973 which provides in part as follows:-

*“Every will made by a man or woman shall be revoked by his or her marriage (other than a marriage in accordance with customary law) ....”* C and contending that a Marriage contracted under the Marriage Act between two persons who are already lawfully married under customary or religious law, provided that neither of such persons is married to a third party under customary law, is valid. She, therefore, submitted that local circumstances permit the application of section 18 of the Wills Act, 1837, D and that section 32(b)(ii) of the Interpretation Act, does not exclude the application of the Wills Act, 1837.

Learned counsel further referred to sections 11, 33, 35 and 47 of the Marriage Act Cap. 115 of the Laws of the Federation of Nigeria 1958 to submit that it is the Marriage Act that recognizes the validity of Islamic and Customary Marriages and not Item 60 of Part 1 of the Second Schedule to the 1979 Constitution, Cap. 62. She stated that although neither customary nor Islamic nor Act Marriage is superior or inferior to the other different types of Marriage carry different rights and obligations and confer different benefits and have different effects. She disagreed with the argument that going through different marriages is mere surplusage, as contended by the appellant, but that it is an indication that the parties concerned choose to have all the different benefit and obligations attached to such marriages. She argued that no injustice or absurdity or unwholesomeness will or did result from interpreting and applying the provisions of section 18 of the Wills Act, 1837 as was done by the Court of Appeal. Learned counsel submitted that the provisions of section 18 are clear and unambiguous and, therefore, should be taken to have perfectly expressed the intention of the legislature. She finally canvassed that the provisions of section 18 of the Wills Act, 1837 apply in Nigeria notwithstanding that Islamic and Customary Law Marriages and subsequent marriages under Marriage Act might be valid. H

Mr. Odebala learned counsel for the 3rd respondent has argued in

the brief of argument, which he filed on behalf of his client, that the Wills Act, 1837 is a statute of general application as decided by this Court in Idehen v. Idehen (1991) 6 NWLR (Pt. 198) 382 at p. 419. He submitted that section 18 of the Wills Act 1837 is very clear and unambiguous. Similarly the provision of section 32 of the Interpretation Act, Cap. 192 and those of sections 11 and 47 of the Marriage Act are unambiguous. He contended that when all these sections of the Acts are read together they do not create any ambiguity. Learned counsel argued further that a marriage contracted under the Marriage Act is a monogamous marriage. Therefore, the provisions of section 18 of the Wills Act will apply. By virtue of sections 11 and 47 of the Marriage Act, the customary marriage, which by nature is polygamous, becomes monogamous and therefore makes the provisions of section 18 of the Wills Act, 1837 applicable. It follows, therefore, he canvassed, that the subsequent marriage entered in 1961 between the deceased and 1st respondent had the effect of revoking the Will made by the former in 1947.

Although the 3rd respondent did not raise any preliminary objection on whether the appellant can present a case in this Court which is different from the case he presented in the Court below, he argued on the authority of Ajide v. Kelani (1985) 3 NWLR (Pt. 12) 248 at p. 251 that the appellant should not be allowed to present a new case before us.

I now turn to the object raised by the 2nd respondent to which I have earlier referred. As a general rule an appellant will not be allowed to raise a question which was not raised or tried or considered by the trial court or the Court below; but where the question involves substantial points of law, whether substantive or procedural, and it is plain that no further evidence could have been adduced which would affect the decision of the points, then, the Court will allow the question to be raised and the point taken in order to prevent an obvious miscarriage of justice - See: Abinabina v. Kojo Enyimadu (1953) A.C. 207 at p. 215; Shonekan v. Smith (1964) All NLR 168 at p. 173; Akpene v. Barclays Bank of Nigeria & Anor (1977) 1 SC 47 and A-G of Oyo State v. Fairlakes Hotels Ltd. (1988) 5 NWLR (Pt. 92)1 at p. 14.

Furthermore, Order 6 rule 5(1) of the Supreme Court Rules, 1985, as amended provides as relevant thus:-

H “..... if the appellant intends to apply in the course of the hearing for leave to introduce a new point not taken in the court below, this shall be indicated in the brief.”

The first point to be considered is whether the appellant in this case has introduced a new point which was not taken in the Court below.

This is not the point raised by Mrs. Obe. Rather her contention is that the appellant has shifted ground in this Court from his argument in the Court of Appeal where he argued that the provisions of Section 18 of the Wills Act, 1837 were applicable by virtue of Section 177 of the Law of Property Act, 1925. Learned counsel for the 2nd respondent has not cited any authority or rule of court which supports her contention. However, learned counsel for 3rd respondent also identified himself with her submission. I am not myself aware either of such authority or rule. It is to be noted that the argument of a party in the Court below need not necessarily be the same with his argument in this Court because the appeal in the Court below is invariably an appeal against the decision of a trial court, while the appeal in this Court is a complaint against the decision of the Court of Appeal. It is not always that the decisions of the trial court and the Court below become the same. They may be diametrically opposed as, indeed, is the case with the present appeal. In such a situation the argument to be presented by a party in this Court may differ from the argument canvassed in the Court of Appeal. This is made clearer by the fact that the premises on which the two decisions below were arrived at may be at variance. Again the appellant here, under that situation, may not be the appellant in the Court of Appeal but respondent and so his argument in the court below as a reply should not be expected to be presented in this Court. I, therefore, see nothing wrong with the presentation of the appellant's appeal before us. See: Ogunsola v. NICON (1996)1 NWLR (Pt. 423) 126 at p. 136.

Suppose the view which I have taken on this matter is wrong; this court has the inherent and statutory power under Section 22 of the Supreme Court Act, Cap. 424 of the Laws of the Federation of Nigeria, 1990 and Order 8 rule 12 of the Supreme Court Rules, 1985, to allow the appellant to raise the point complained against even if he had not applied for leave to do so under Order 6 rule 5(1)(b) of the Supreme Court Rules, 1985, as amended. This is because the point the appellant has raised in the issue formulated in his brief of argument raises substantial question of law and our failure to consider it is likely to occasion miscarriage of justice:- See Akpene v. Barclays Bank of Nigeria & Anor (supra) and A-G of Oyo State v. Fairlakes Hotel Ltd (supra) at Pp. 32, 49H and 57A.

I think it is necessary and indeed important at this stage to determine the statutory provisions applicable to this case. Counsel for all the parties have jointly and severally referred to and rely on the provisions of the following enactments in both their oral arguments and their briefs of argument - (1) Wills Act, 1837 of England (2) Wills Law, Cap. 133 of the Laws of Western Nigeria, 1959 (3) Wills Law Cap 141 of the Laws of

Lagos State, 1972 (4) Law of Property Act, 1925 of England (5) Interpretation Act, 1964 (6) Interpretation Act, Cap. 89 of the Laws of the Federation of Nigeria, 1958 (7) Interpretation Act, Cap. 192 of the Laws of the Federation of Nigeria, 1990 and (8) Marriage Act Cap. 115 of the laws of the Federation of Nigeria, 1958.

B It is not in dispute that the deceased made his will (Exhibit P1) on the 21st day of August, 1947. That the law applicable to the will is, as at the date of its execution, the Wills Act, 1837 of England, being a statute of general application. It is also not in dispute that the deceased and the 1st respondent who were earlier married under Itsekiri customary law went into another Marriage in Lagos under the provisions of the Marriage Act, Cap. 115 in 1961. Therefore, at the time of the death of the deceased in 1966 the Act, and not the customary law, was the law applicable to his marriage with the 1st respondent. The appellant filed her suit in the High Court of Lagos State on the 3rd day of August, 1984 (as per her Writ of Summons). As at that date the law applicable D in Lagos State with regard to the application of statutes of general application was the law (Miscellaneous Provisions) Law, Cap. 65 of the Laws of Lagos State, 1973. However, Lagos State being part of the erstwhile Western Region of Nigeria, when the Wills Law No. 28 of 1958 was enacted for the Western Region of Nigeria, the Wills Act 1837 ceased to apply to that Region with E effect from 24th July, 1958. Therefore, the provisions of the Law (Miscellaneous Provisions) Law, Cap. 65, which came into force on 20th January, 1964 do not apply to the Wills Act 1837 as a statute of general application in view of the provisions of section 2 subsection (1) of the Law (Miscellaneous Provisions) Law, Cap. 65 which states:

F  
*(1) Subject to the provisions of this section and except in so far as other provision is made by any Federal or State enactment, the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the first day of January, 1990 G shall be in force in the Lagos State.*

It follows that in interpreting the Wills Act, 1837 recourse has to be made to the law in pari materia which preceded the law (miscellaneous Provisions) Law, Cap. 65, and that is the repealed Interpretation Act, Cap. 89 of the Laws of the Federation of Nigeria and Lagos, 1958, (which came into force on the 9th H day of November, 1939). However, this is a distinction without a difference since the Law (Miscellaneous Provisions) Law, Cap. 65, is mutatis, mutandis the same as the Interpretation Act, Cap. 89.

Now section 11 subsection (1) (d) and section 47 of the Marriage Act, Cap. 115 provide:-

*“11(1) The registrar, at any time after the expiration of twenty-one days and before the expiration of three months from the date of the notice, upon payment of the prescribed fee, shall thereupon issue his certificate as in Form C in the First Schedule: Provided always that he shall not issue such certificate until he has been satisfied by affidavit:-*

..... B  
*(d) that neither of the parties to the intended marriage is married by native law and custom to any person other than the person with whom such marriage is proposed to be contracted.”*

*“47. Whoever contracts a marriage under the provisions of this Act, or any modification or reenactment thereof, being at the time married in accordance with customary law to any person other than the person with whom such marriage is contracted, shall be liable to imprisonment for five years.” C*

The foregoing provisions establish that it is lawful for parties married under customary law to contract a marriage under the Marriage Act and that it is an offence punishable with imprisonment for a person married under customary law to get married under the Act to a third party. But section 18 of the Wills Act, 1837 provides:- D

*“18. Every will made by a man or woman shall be revoked by his or her marriage except a will made in exercise of a power of appointment when the real or personal estate thereby appointment would not in default of such appointed pass to his or her heir, executor or administrator or the person entitled as his or her next of kin under any written law relating to the distribution of the estate of persons dying intestate.” E*

The question is: is the will of the deceased made in 1947 revoked following his contracting a valid marriage with the 1st Respondent in 1961 in accordance with the provisions of the Marriage Act, Cap. 115? It is the contention of the Appellant that the will has not been affected by the provisions of section 18 of the Wills Act, 1837. However, the 2nd and 3rd Respondents contend otherwise. The trial court found that the will was valid, but the Court of Appeal F found that the will had become revoked as a result of the 1961 marriage. It held as follows, as per Achike, J.C.A.:- G

*“It seems to me, therefore, that the combined effect of sections 11(i) (d) (sic) and 47 of the Marriage Act is that there is no prohibition of marriage under the said Act between two persons who are already married to each other under customary law ..... H*

*It seems to me therefore that where the same parties have already gone through a form of marriage under customary law and subsequently went through a marriage under the Marriage Act the second marriage is*

*valid as a monogamous marriage predominates. The marriage under the Marriage Act, as it were, converts the customary marriage that was potentially polygamous to a monogamous marriage which, no doubt, is the form of marriage contemplated under section 18 of the Wills Act, 1837."*

So far so good, but the learned Justice of the Court of Appeal concluded B thus:-

*"Applying the unambiguous provisions of section 18 of the Wills Act, 1837, to the circumstance of this case I am satisfied that the will made in August, 1947, Exhibit P1, was revoked by the 1961 Marriage between the late Chief Festus Okotie-Eboh and the 2nd Respondent (now C 1st Respondent)."* (Parenthesis mine).

Although the learned justice adverted to the provisions of section 45 of the Interpretation Act, Cap. 89 of the Laws of the Federation of Nigeria, 1958, he nevertheless arrived at the aforementioned conclusion.

Now section 45, subsections (1), (2) and (3) of the Act in question, D which are the subsection pertinent to this case, state as follows:

*"45(1) Subject to the provisions of this section and except in so far as other provision is made by any Federal Law; the common law of England and the doctrines of equity together with the statutes of general application that were in force in England on the 1st day of January, 1990, shall E be in force in Lagos and, in so far as they relate to any matter within the exclusive legislative competence of the Federal Legislature, shall be in force elsewhere in the Federation*

*(2) Such Imperial laws shall be in force so far only as the limits of the local jurisdiction and local circumstances shall permit and subject to F any Federal law.*

*(3) For the purpose of facilitating the application of the said Imperial laws they shall be read with such formal verbal alterations not affecting the substance as to names, localities, courts, officers, persons, moneys, penalties and otherwise as may be necessary to render the same applicable to G the circumstances."*

It appears to me from the provisions of section 45 of the Interpretation Act, Cap. 89 that although statutes of general application are applicable, nevertheless their applicability is not without limitations. It is clear from the provisions of subsection (2) (supra) that the application of the H statutes could be curtailed by local circumstances as well as local jurisdictions. In the present case the deceased is to be taken to have known all the laws in question referred to above. That is the fallacy of law. If it was his intentions, after contracting the 1961 marriage under the Marriage Act, Cap. 115, that he

would vary or change or even revoke Exhibit P1, he would have taken such a step long before he was killed in 1966. However, he did nothing of the sort. It must, therefore, be taken that he had intended that the will should remain in force irrespective of the 1961 marriage.

It is a matter of common knowledge that most people in Nigeria who contract marriages under the Marriage Act, undergo a form of customary marriage earlier as a matter of practice and adherence to the custom of their forefathers. Some refer to such practice as “traditional engagement” while others simply refer to it as solemnization of customary marriage. It is never intended by the practice that the marriage under the Marriage Act should nullify the customary marriage or engagement but rather that it would supplement the practice or custom. The parties are of course aware that by applying the Marriage Act to their relationship, their marriage would become monogamous. However, it is matter common knowledge that in spite of the punishment provided under section 47 of the Marriage Act against any of the parties entering another customary marriage, the male folk in particular observe the restriction more in breach than obedience with impunity. In my opinion, therefore, the circumstances of Nigeria militate against the application of section 18 of the Will Act, 1837 to nullify a will made prior to contracting a marriage under the Marriage Act. In holding this view I am further strengthened by the fact that section 15 of the Wills Law of Western Nigeria, Cap. 133 of the Laws of Western Nigeria, 1959, which contains the same provisions as those of section 15 of the Wills Law of Delta, Edo, Lagos, Ogun, Ondo, Osun and Oyo States respectively, exempts the revocation provided for by the Wills Act, 1837 from applying to customary law marriages. The section reads:-

*“15. Every will made by a man or woman shall be revoked by his or her marriage (other than a marriage in accordance with customary law) except a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not in default of such appointments pass to his or her heir, executor or any written law relating to the distribution of the estate of persons dying intestate.”*

It is to be observed that but for the exemption of marriages under customary law, section 15 is word for word the same as Section 18 of the Wills Act, 1837.

I, therefore, come to the conclusion that the Court of Appeal erred in its decision that Exhibit P1 was revoked by reason of the 1961 marriage between the deceased and the 1st respondent. Consequently, the appeal succeeds and I allow it. The decision of the Court of Appeal is set aside and I restore the judgment of the trial court, which arrived at the right decision

by wrong reasoning.

Accordingly, I hereby pronounce for the force and validity of the last Will and Testament dated the 21st day of August, 1947 (Exhibit P1) of Chief Festus Samuel Okotie-Eboh (formerly known and called Festus Sam Edah) Late of Ogorode, Sapele, Delta State, who died on 15th day of B January, 1966. Secondly, I hereby revoke the grant of Letters of Administration (Without Will) dated the 24th day of June, 1971 made by the Probate Registry of the High Court of Mid-Western State (which later became the High Court of Bendel State (and resealed in the Probate Registry of the High Court of Lagos State).

C There will be no order as to costs.

### **WALI JSC**

I have had a preview of the lead judgment of my learned brother D Uwais, CJN, and I entirely agree with and adopt the reasons he gave for allowing the appeal and restoring the final orders made by the trial court.

As opined by the learned CJN, that the provisions of the Marriage Act are today in Nigeria being observed more in form than in substance, it will create injustice and absurdity in the law as it applies to the circumstances in this case to endorse the conclusion of the Court of Appeal "That the will made in August, 1947, Exhibit P1 was revoked by the 1961 Marriage between the late Chief Festus Okotie-Eboh and the 2nd respondent [now 1st respondent]."

Late Chief Festus Okotie-Eboh and the 1st respondent were married F under customary Law. The same persons went through another marriage under the Marriage Act. Before the second marriage later Chief Festus Okotie-Eboh had made a Will-Exhibit P1 when he was married to 1st respondent under the customary law. By virtue of subsections (2) and (3) of S. 45 of the Interpretation Act Cap. 89, applied taking into account. Our G customs and tradition as the local circumstances of the Wills Act, 1837 as revoking Exhibit P without taking into consideration the provision of subsection (2) and (3) of S. 45 of the Interpretation Act (supra). If the Court of Appeal had done so, it would have come to a different decision by upholding the validity of Exhibit "P"

H The appeal succeeds for this and the fuller reasons contained in the lead judgment, the consequential orders of which I hereby adopt.

### **ONU JSC**

I had the opportunity of a preview of the judgment of my learned

brother, Uwais, C.J.N. just delivered. I am in entire agreement that for the reason therein ably assigned, the appeal be and is hereby allowed.

By way of emphasis, my answer to the lone issue whose purport is:

*“Whether or not the Will of Chief Festus Samuel Okotie-Eboh duly executed by him on 21st August, 1947, has been revoked by operation of law by his subsequent marriage under Marriage Act in 1961 to the same woman to whom he had been lawfully and continuously married under customary law since 1942 up to the date he executed the will and until his death in 1966.”*

is rendered in the positive in that while the trial court was, in my opinion, correct albeit for the wrong reasons, in holding, inter alia, that it not only had jurisdiction to hear the suit and that the 1947 will (Exhibit P1) was validly made by the deceased but further the Exhibit P1 was not revoked by virtue of “the marriage on 3rd March, 1961 between the same parties, late Chief Okotie-Eboh and the First defendant, under the Marriage Act, Cap. 115, 1958” the Court of Appeal (Coram: Achike, Kalgo and Tobi, JJ.C.A) on the other hand, was wrong when it held as follows:-

*“However, in view of the conclusion reached earlier in this appeal that the subsequent marriage in 1961 under the Marriage Ordinance, now Act, between the late Chief Okotie-Eboh and the 2nd respondent (i.e. Mrs. Victoria Okotie-Eboh) revoked the 1947 will of the deceased, Chief Okotie-Eboh, by the operation of Section 18 of the Will Act, 1937, it follows that this appeal succeeds and it is allowed. Accordingly, the judgment of Agoro, J. (as he then was) delivered on 24th May, 1988, is hereby set aside .....*

And more particular, when it concluded thus:

*“Applying the unambiguous provisions of section 18 of the Wills Act, 1937, to the circumstance of this case I am satisfied that the Will made in August, 1947, Exhibit P1, was revoked by the 1961 Marriage between the late Chief Festus Okotie-Eboh and the 2nd respondent now 1st respondent.” See Balonwu v. Chinyelu (1991) 4 NWLR (Pt. 183)30; Arisa v. State (1988) 3 NWLR (Pt. 83) 386.*

Now Section 18 of the Wills Act, 1837 referred to above provides as follows:-

*“Every will made by a man or a woman shall be revoked by his or her marriage except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor or administrator or the person entitled as his or her next of kin under any written law relating to the distribution of the estate of persons dying intestate,”* (Underlining mine for emphasis)

At the hearing of this appeal on 6th November, 1995 learned Senior Advocate Mr. Kehinde Sofola representing the appellant after indicating that he relied on his written Brief, made oral expatiation thereof to the following effect.

Firstly, that the provisions of section 18 of the Wills Act, 1937 must be applied in so far and only to the extent that our peculiar local circumstances permit. He said that this is because, this court is now faced with the peculiar situation of interpreting a statute made, not in aid and for another country, and at a different time and age, but now meant for application to an independent people with their own set of customs, culture and laws clearly at variance with any situation which were ever in the contemplation of the British Parliament which enacted them. He argued forcefully that the court must avoid any interpretation of section 18 (ibid) which would lead to an absurdity or injustice, adding that in the instant case, to hold that the second marriage contracted between Chief Okotie-Eboh and the 1st respondent revoked the will which he had made in 1947 made with the fullest sense of responsibility, would create absurdity and injustice. He maintained that the words of a statute may be ambiguous, but that the provisions ought not to be interpreted in isolation of other statutory provisions and the factual situation of each case. He therefore further submitted that two other statutes, among other, particularly demand consideration along with Section 18 of the Wills Act, 1837 (ibid), to wit:

(1) The Interpretation Act, Cap. 89 Laws of the Federation of Nigeria, 1958, and

(2) The Marriage Act, Cap. 115, Laws of the Federation of Nigeria 1958.

Secondly the learned Senior Advocate contended that it was for the purpose of avoiding such absurdity as he reared its head in this matter, that the Nigerian Legislature enacted provisions of the Interpretation Act, to take care of local peculiarities etc. He therefore further submitted that it will be absurd to suggest that Chief Festus Samuel Okotie-Eboh's second marriage under the Marriage Act in 1961 in Lagos with the same woman he had previously contracted a subsisting customary marriage since 1942 at Sapele revoked his Will of 1947 by the operation of section 18 of the Wills Act. 1837. He urged us to allow the appeal. Learned counsel for the 2nd respondent, Mrs. Obe, in her Brief as well as her oral elaboration submitted inter alia, that both the 1942 customary marriage and the 1961 marriage under the Marriage Act, Cap. 115 between the deceased and the respondent are valid. She however, contended that what is important for the purpose of this appeal is that the second marriage which was celebrated after the 1947

will was made, revoked that will in accordance with provisions of section 18 of the Will Act (ibid). She argued further that it was clear that the clear intention of the law maker (the British Parliament) was that when a person went through a valid ceremony of marriage, any previous will he or she had made, would remain automatically revoked. She further contended that when the legislature in Nigeria opted to provide that a statute, such as the Will Act, 1837 would as a statute of general application, be in force in this country, it must have had in mind that prevailing Nigerian custom and culture with regard to the "double marriage" situation, whereby two persons can validly marry under both the customary or Islamic as well as the Marriage Act.

Mr. Odebala, learned counsel for the 3rd respondent pointed out how the provisions of section 18 of the Will Acts (ibid) are clear and unambiguous, adding that the provisions apply to only Wills made by any of the parties to monogamous marriage. He submitted that the customary law marriage of 1942 contracted between the late Chief Festus Samuel Okotie-Eboh and the 1st respondent was essentially polygamous but that the same became monogamous once they underwent a second form of marriage in 1961 automatically revoked the 1947 Will Chief Okotie-Eboh made pursuant to the plain provisions of section 18 of the Wills Act, 1937 of England - a statute of general application forming part of the received English laws. See: *Idehen v. Idehen* (1991) 6 NWLR (Pt. 198) 382 at p.416.

I will approach this all-important case by first of all pointing out that "Marriage" as defined in section 18 of the Wills Act (ibid) applies to only people with English domicile. I am strengthened in this view in that our Marriage Ordinance (now Act) recognizes in clear and unambiguous terms the validity of customary law marriage. Thus, as is demonstrably hereunder shown, the English law as exemplified in section 18 of the Wills Act, 1837, has not been imported and applied in Nigeria lock, stock and barrel blindly and with unquestionable fervour and adherence. See section 2(1), (2) and (3) of the Law (Miscellaneous Provisions) Law, Cap 65 of Lagos State of 1973. I need only reproduce subsections (1) and (3) of section 2 of the above Law to exemplify what I am saying as follows:-

*"(1) Subject to the provisions of this section and except in so far as other provision is made by any Federal or State enactment, the common law of England and the doctrines equity, together with the statutes of general application that were in force in England on the first day of January, 1900 shall be in force in Lagos State."*

(3) *For the purpose of facilitating the application of the said Imperial Laws they shall be read with such formal verbal alterations not affecting the substance as to names, localities, courts, offices, persons, moneys penalties and otherwise as may be necessary to render the same applicable to the circumstance."*

B It may be argued that the above Law being a 1973 enactment is not applicable to the case in hand but when it is known that the Interpretation Act, Cap. 89 of 1958 whose provisions apply to the entire Federation of Nigeria and that it has provisions which are in pari materia to the above Law, such an argument cannot be carried to far. See section 45(1), (2) and (3) of the Interpretation Act, C Cap. 89, Laws of the Federation of Nigeria and Lagos, 1958. What it amounts to is that the customary Law marriage of 1942 between late Chief Festus Okotie-Eboh and the 1st respondent was not invalidated and being valid, the Will duly executed by him on 21st August, 1947 before his marriage in 1961 (a period after 1958 when the Interpretation Act was in force) to the same woman D of 1942 i.e. 1st respondent under the Marriage Act, is not thereby revoked. See Warter v. Warter (1888-1890) 13-15 P.D. 35. Indeed, the Wills Act, 1837 contemplates one marriage. See the provisions of section 11 and 47 of the Marriage Act which stipulate that -

*"11(1) The Registrar, at any time after the expiration of twenty-one E days and before the expiration of three months from the date of the notice, upon payment of the prescribed fee, shall thereupon issue her certificate as in Form C in the First Schedule. Provided always that he shall not issue such certificate until he has been satisfied by affidavit -*

.....  
F *(d) that neither of the parties to the intended marriage is married by native law and custom to any person other than the person with whom such marriage is proposed to be contracted."*

*"47. Whoever contracts a marriage under the provisions of this Act, or any modification or reenactment thereof, being at the time married in G accordance with customary law to any person other than the person with whom such marriage is contracted, shall be liable to imprisonment for five years."*

Although the latter provision in section 47 (ibid) is more of a window-dressing in that it is observed more in breach than in conformity and obedience in H Nigeria, its purport is clear and unambiguous. That being so, that part of the judgment of the Court of Appeal upsetting the decision of the trial court, per Achike, J.C.A. to the effect that -

*"Applying the unambiguous provisions of section 18 of the Wills Act, 1837, to the circumstances of this case I am satisfied that the Will*

*made in August, 1947, Exhibit P1, was revoked by the 1961 marriage between the late Chief Festus Okotie-Eboh and the 2nd respondent (now 1st respondent)."*

is palpably wrong and unsustainable. The will was not, with utmost due respect, revoked in a situation which, one may say, was the reaffirmation of an existing and recognized form of union between a man and his wife in the nature of a monogamous but under no guise polygamous or potentially polygamous marriage as by law sanctioned. B

My answer to the lone issue is rendered in the negative.

For these and the fuller reasons set out in the judgment of my learned brother, the Chief Justice of Nigeria I, too, allow this appeal. I abide by the consequential orders made therein inclusive of those regarding costs. C

#### ADIO JSC

I have had the opportunity of reading, in draft, the judgment just read by my learned brother, Uwais, C.J.N., and I agree with his reasoning and conclusion, which I adopt at mine. The appeal succeeds and I allow it. I abide by the consequential orders. D

#### IGUHJSC

I have had the privilege of reading in advance the judgment just delivered by the Honourable Chief Justice of Nigeria and I am in complete agreement with the reasoning and conclusions therein reached. E

The facts of this case are fully set out in the lead judgment and no useful propose will be served by my repeating them all over again. It suffices to state that the sole issue for determination in this appeal is whether or not the last will and Testament of the late Chief Festus Samuel Okotie-Eboh, duly executed by him on the 21st August, 1947 was revoked by operation of law by his subsequent marriage under the Marriage Act in 1961 to the 1st defendant/ respondent, Mrs. Victoria Okotie-Eboh, to whom he was lawful married under customary law since 1942 up to the date he executed the will and until his death in 1966. F

The Court of Appeal, Lagos Division, had on the 18th day of December, 1991 decided that applying the provisions of Section 18 of the Wills Act, 1837, the will in issue executed on the 21st April, Exhibit P1, was revoked by the subsequent marriage between the said Chief Festus Samuel Okotie-Eboh and the 1st defendant/respondent in 1961. G

Section 18 of the Wills Act, 1837 of England provides as follows:- H

*“18. Every Will made by a man or woman shall be revoked by his or her marriage except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment, pass to his or her heir, customary heir, executor or administrator or the person entitled as his or her next of kin under any written law relating to the distribution of the estate of persons dying intestate”*  
 (Italics supplied for emphasis)

It is the submission of Mr. Kehinde Sofola, learned Senior Advocate for the appellant, that the provisions of the said section 18 of the Wills Act, 1837 must be applied in so far and only to the extent that our peculiar local circumstances permit. He explained that this is because, this court is now faced with the peculiar situation of interpreting a statute made, not only in and for another country, and at a different time and age, but now meant for application to a people with their own set of customs, culture and laws clearly at variance with any situations which were ever in the contemplation of the British Parliament which enacted the Act. He contended that the court must avoid any interpretation of section 18 of the Wills Act which would lead to an absurdity or to injustice. He submitted that to hold that the second marriage ceremony between Chief Okotie-Eboh and the 1st respondent revoked the Will which he had previously made with the fullest sense of responsibility would create an absurdity and injustice. He pointed out that the words of a statute may be unambiguous, but that the provisions will nevertheless not be interpreted in isolation of other relevant statutory provisions and the factual situations of each case. He submitted that in the present case, two other statutory provisions demand consideration and integrated interpretation with the provision of section 18 of the Wills Act, 1837. These are:-

(1) Interpretation Act, Cap. 189, Laws of the Federation of Nigeria, 1958.

(2) The Marriage Act, Cap. 115, Laws of the Federation of Nigeria, 1958.

He argued that it was for the purpose of avoiding such absurdity as has presented itself in this case that the Nigerian Legislature enacted the provisions of the Interpretation Act. He submitted that it will be absurd to suggest that Chief Festus Samuel Okotie-Eboh's second marriage under the Marriage Act in 1961 with the same very woman he had previously contracted a subsisting customary law marriage since 1942 revoked his 1947 Will by the operation of section 18 of the Wills Act, 1837. This is so, having regard to the fact that the testator was already validly and lawfully married at all material times with the 1st respondent at the time he made the

Will in question. He pointed out that the subsequent marriage between the same very parties under the Marriage Act can in no way invalidate the Will under consideration.

Learned counsel for the 2nd respondent Mrs. Obe in her brief submitted that both the 1942 customary marriage and the 1961 marriage under the Marriage Act between the deceased and the 1st respondent are valid. She however argued that what is important for the purpose of this appeal is that the second marriage which was celebrated after the 1947 Will in question was made revoked that Will in accordance with the provisions of section 18 of the Wills Act. She contended that it was the clear intention of the British legislature that when a person went through a valid ceremony of marriage, any previous Will he or she had made would remain automatically revoked. She contended that when the legislature of general application, be in force in Nigeria, it must have had in mind the prevailing Nigerian custom and culture with regard to the "double marriage" situation whereby two persons can validly marry under both the customary or, indeed the Islamic law and the Marriage Act.

Mr. J.Y. Odebala, learned counsel for the 3rd respondent in his submission stressed that the provisions of Section 18 of the Wills Act are clear and unambiguous. He contended that these provisions apply only to Wills made by any of the parties to a monogamous marriage. He submitted that the customary law marriage of 1942 contracted between the late Chief Festus Samuel Okotie-Eboh and the 1st respondent was essentially polygamous but that the same became monogamous the moment they underwent a second form of marriage in 1961 under the Marriage Act. He argued that the subsequent marriage under the Act in 1961 automatically revoked the 1947 will Chief Okotie-Eboh made pursuant to the plain provisions of section 18 of the Wills Act, 1837 of England.

The issue that calls for decision in this appeal seems to me to be of considerable importance. This is because it mainly concerns the interpretation and applicability of a category of foreign statutes and laws, some of which, as in the present case, were enacted some one and a half centuries ago, having regard to our recognized and accepted local customary laws and tradition.

In dealing with this matter, the Court of Appeal in the lead judgment of Achike, J.C.A. with which Kalgo and Tobi, JJ.C.A. concurred reasoned thus -

*"It seems to me, therefore, that where the same parties have already gone through a form of marriage under customary law and subsequently went through a marriage under the Marriage Act, the second mar-*

*riage is valid as a monogamous marriage and would be so recognized in countries where monogamous marriages predominate. The marriage under the Marriage Act, as it were, converts the customary marriage that was potentially polygamous to a monogamous marriage which, no doubt, is the form of marriage contemplated under section 18 of the Wills Act, 1837.*

B *Applying the unambiguous provisions of section 18 of the Wills Act, 1837 to the circumstances of this case I am satisfied that the Will made in August 1947 Exhibit P1, was revoked by the 1961 marriage between the late Chief Festus Okotie-Eboh and the 2nd respondent."*

In the first place, it cannot be disputed that pursuant to sections 11  
C and 47 of the Marriage Act, Cap. 115, a man is permitted to marry thereunder a woman to whom he had been legally married under customary law. It is also beyond dispute that where the same parties undergo a form of marriage under customary law and subsequently go through another marriage under the Marriage Act, the second marriage is clearly valid as a monogamous marriage.  
D It is also plain that such second marriage under the Marriage Act, converts, without doubt, the customary law marriage that was "potentially polygamous" to a monogamous marriage which, as stated by the court below, is the form of marriage contemplated under section 18 of the Wills Act, 1837. What, however, is not so plain is whether it is all monogamous marriages that are auto-  
E matically caught by the provisions of section 18 of the Wills Act, 1837 to the extent that all Wills made by either of the parties before the contraction of such monogamous marriages remain revoked or invalidated by dint of such marriages.

With profound respect to the Court of Appeal, I find it difficult to  
F accept that the Will in issue in the present case automatically stood revoked by the application of section 18 of the Wills Act, 1837 "in so far as the testator's subsequent marriage had converted his hitherto polygamous marriage to a monogamous one." In this regard, I am in total agreement with the submission of the learned Senior advocate, Kehinde Sofola Esq to the effect that in arriv-  
G ing at the correct interpretation of the said section 18 of the Wills Act, the court must avoid any interpretation that will be unjust or absurd.

No doubt, under section 18 of the Wills Act, 1837 of England, the marriage which can revoke or invalidate an existing Will of either of the parties, is a marriage within the English concept. This connotes a marriage between a  
H man and a woman each of whom at the time of the marriage was unmarried or free to get married and therefore possessed the legal capacity to contract a lawful marriage. In my view however, the marriage contemplated under section 18 of the Wills Act, 1837 of England cannot conceiv

ably include a subsequent marriage under the Marriage Act, Cap. 155 between a man and a woman who are already validly married under customary law and living together as husband and wife before either of them made his last Will and Testament and after which the subsequent marriage under the Act was performed. In other words, section 18 of the Wills Act, 1837 of England by its tenor does not appear to cover a subsequent marriage under the Marriage Act, Cap. 115 by a man and woman, such as the testator in the present case and his wife, the 1st respondent, who prior to their said subsequent marriage under the Act, had been validly married under customary law and living together as husband and wife even before the will in issue was made. After all, the testator, if he so desired had over 5 years to revoke the said Will and Testament before his death in 1966. B C

In this connection, attention must be drawn to the provisions of section 45(1), (2) and (3) of the interpretation Act, Cap. 89, Laws of the Federation of Nigeria and Lagos, 1958 which would appear relevant in the determination of the above issue. These provide as follows:- D

*“45(1) Subject to the provisions of this section and except in so far as other provisions is made by any Federal Law, the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the 1st day of January, 1990, shall be in force in Lagos and, in so far as they relate to any matter within the exclusive legislative competence of the Federal legislature, shall be in force elsewhere in the Federal. E*

*(2) Such Imperial laws shall be in force so far only as the limits of the local jurisdiction and local circumstances shall permit and subject to any Federal law. F*

*(3) For the purpose of facilitating the application of the said Imperial laws they shall be read with such formal Verbal alterations not affecting the substance as to names, localities, courts, officers, persons, moneys, penalties and otherwise as may be necessary to render the same applicable to the circumstances.” G*

Under section 45(2) of the Interpretation Act, Cap. 89, it is plain that a statute of general application shall be in force so far only as the limits of that local jurisdiction and circumstances shall permit. Section 45(3) then provides that such imperial laws as the Wills Act, 1837, shall be read with such formal verbal alterations not affecting the substance as to names, localities etc as may be necessary to render the same applicable to the circumstances. It therefore seems to me clear that the Wills Act, 1837 may be applied only in so far and to the extent that our local circumstances, custom and tradition permit. H I also accept that had the testator not been lawfully married to the 1st respon-

dent as at the time the Will was made, the Wills Act, 1837 would have had full application and effect as envisaged by the British Parliament which enacted it. In view, however, of the fact that the testator was validly and lawfully married to the 1st respondent under the prevailing local custom, tradition and laws, ever before the Will in issue was made by him, I cannot accept that the subsequent reaffirmation of his marriage to the 1st respondent under the Marriage Act revoked his said Will.

I conclude by stressing that I find it unacceptable that the Will made by the late Chief Festus Samuel Okotie-Eboh in 1947 after he had validly got married with the 1st respondent in 1942 was automatically revoked or invalidated by the provisions of section 18 of the Wills Act, 1837 of England as a result of the subsequent marriage of the same parties in 1961 under the Marriage Act, Cap. 115, Laws of the Federation of Nigeria and Lagos 1958. The Court below, with respect, was in error when it construed the provisions of section 18 of the Wills Act, 1837 as revoking the last Will and Testament of the late Chief Festus Samuel Okotie-Eboh by virtue of his subsequent marriage under the Marriage Act, Cap. 115 to the respondent. The trial court was right when it held that the Will in issue was not thereby revoked although it must be pointed out that it reached this decision through faulty reasoning.

This appeal accordingly succeeds and it is hereby allowed. I hereby pronounce the force and validity of the last Will and Testament of the late Chief Festus Samuel Okotie-Eboh, formerly known and called Festus Sam Edah, late of Ogorode, Sapele in Delta State who died on the 15th January, 1966. I hereby revoke the Letters of Administration dated 24th June, 1971 issues in respect of the estate of the said late Chief Festus Samuel Okotie-Eboh. I, too, will make no order as to the costs of this appeal.

G

H