

SUPREME COURT OF NIGERIA
11TH JULY, 1997. SC. 241/1992
CORAM:- M. L. UWAIS CJN, S. M. A. BELGORE, E. O. OGWUEGBU,
S. U. ONU, Y. O. ADIO, JJSC

MADAM CHRISTIANA UGU APPELLANT
AND
ANDREW EBINNI TABI RESPONDENT

STATUTES - *Ambiguity - Administration of Estate Law 1973 - In view of the definition part - Whether there is any ambiguity in ss. 2,3 and 4 of that statute.*

SUCCESSION - *Administration of estate - Letters of administration obtained in respect of personal estate - Will not cover real property of the intestate.*

SUCCESSION - *Administration of estate - Trespass - Reliance on letters of administration obtained in respect of personal property - In entering real property - Makes the brother of the deceased a trespasser.*

FACTS

The plaintiff/respondent as brother of the deceased husband of the defendant/appellant filed an action against the appellant claiming possession and account in respect of landed property of the deceased in Lagos. The marriage in issue was a customary marriage without any fruit of the womb. The respondent had earlier obtained letters of administration in respect of the deceased person's sum of about sixteen pounds with the Bank. No mention was made of the deceased person's landed property within the said letters of administration.

It is on the strength of this letters of administration that the respondent sought to also administer the deceased person's real property. The trial court and Court of Appeal found in favour of the respondent. The appellant being aggrieved has further appealed to the Supreme Court raising two issues.

ISSUES FOR DETERMINATION

- "(i) *Whether a person granted Letters of Administration limited only to personal property can administer the real property of a deceased person.*
(ii) *Whether the Appellant was not entitled in the circumstance to a declaration order that the Respondent had trespassed upon the property the subject matter of the action and to consequent award of damages."*

HELD (Unanimously allowing the appeal per lead judgment of **BELGORE JSC**)

Statute - Ambiguity

1. The 1958 Act has nothing to do with this case, the applicable law is Cap.2 of the Laws of Lagos State 1973, (supra) whose meaning is very clear. The definition part of the legislation defining "personal representative" as "executor, or administrator" is to connote by implication the words "which-ever applicable". If letters of probate are in issue the word "executor" is applicable, in the case of Letters of Administration the word "Administrator" is applicable. The definition does not in the least allow interchangeability of the words which will obviously defeat the meaning of the statute. So there is no ambiguity in section 2, 3 and 4 of Administration of Estates Law (Laws of Lagos State, Cap 2 of 1973). (p. 1555 C)

Letters of administration obtained in respect of personal estate

2. The respondent obtained the letters of administration simply because he claimed to be a brother of the deceased and this was in respect of the personal estate. He was aware of the house in issue as part of the deceased's estate, he never applied for it. Could it be said that he applied for personal estate of under #20 (twenty pounds) so as to administer the money in the savings account as well as the house, real property, situate at 44 Ijaiye Street, Ajegunle, Apapa? This is not convincing except fraud would be allowed to flourish! I therefore hold that a grant of letters of administration in respect of personal estate does not cover the administration of the real property of the intestate. (p. 1555 F)

Administration of estate - Trespass

3. As for the second issue for determination in the appellant's brief of argument, the respondent arrogation of power to administer the estate now in issue by virtue of Exhibit D, i.e. the letters of administration on personal property of the intestate is false and not supported by law, he was therefore a trespasser ab initio to the property situate at 44 Ijaiye Street, Ajegunle, Apapa, Lagos. The judgment of the Court of Appeal affirming the decision of the trial High Court is hereby set aside. In its stead, a verdict of dismissal of the claim of the respondent, as plaintiff, is entered. (p. 1556 D)

NOTABLE POINT OF INTEREST

OGWUEGBUJSC

1. Letters of administration - Full or limited grant may be obtained

An application for a grant of Letters of Administration may be made either for a limited grant or a full grant and the limited grant may be in respect only of the real estate or of the personal estate of the deceased person. It is therefore unlawful where the grant made is limited to personal estate for the administrator, such as the plaintiff herein, to intermeddle with the real estate of Patrick Bissong Tanyi at No. 44 Ijaiye Street, Ajegunle, Apapa, Lagos. (p. 1560 H)

REPRESENTATION

Kola Awodein, Esqr., for the Appellant
Chief Jide Oki, for the Respondent

CASES REFERRED TO

Shotogun v. Sanni (1972) 11 SC 35
Ajao v. Sonola (1973) NMLR 355
Williams v. Probate Registrar (1971) All NLR 157, 162
Warburton v. Loveland (1831) 5 E.R. 499
Vacher v. London Society of Compositors (1913) A.C.

STATUTES REFERRED TO

Criminal Procedure Law of Lagos State s. 300
Administration of Estate Law Cap. 2 Laws of Lagos State 1973 ss. 2,3,4

LEAD JUDGMENT BY BELGORE JSC

The respondent, Andrew Ebinni Tabi, claiming to be the brother of one Patrick Bissong Tanyi, who died intestate on 12th day of April, 1971, took out a writ against the appellant and claimed as follows:

(1) "A true and full account of all monies, rents and profits received by the defendant as a result of her administering or intermeddling with the Estate of Patrick Bissong Tanyi, (deceased) who died in Lagos on 12th April, 1971 intestate.

(2) Payment over to the plaintiff of what is found due to the plaintiff on the taking of such account.

(3) Possession of a piece of land together with the house therein situate lying and being at 28/44 Ijaiye Street, Layinka, Ajegunle, Apapa in the Lagos State.

(4) N10.000.00 special and general damages.

(5) Perpetual injunction restraining the defendant, her agents, privies and/or servants from further actions or trespass on the said land."

The defendant/appellant was the only wife of Patrick Bissong Tanyi, having married under native law and custom; this much learned trial judge found on

the overwhelming evidence before him. There was no appeal against this finding and therefore it is not an issue in this Court. Patrick Tanyi (hereinafter referred to as "the deceased"), died without any issue and intestate. The plaintiff/respondent, claiming to be a brother of the deceased applied for and was granted Letters of Administration by the probate Registrar, Lagos. The

B Letters of Administration read inter alia as follows:

"BE IT KNOWN that on the 24th day of August, 1971, Letters of Administration of the personal property of Patrick Bissong Tanyi, late of 44 Ijaiye Street, Ajegunle, Apapa, deceased, who died on the 12th day of April, 1971, at the General Hospital, Lagos, Intestate, and who had at the time of
 C *his death his fixed place of abode at 44 Ijaiye Street, Ajegunle within the Jurisdiction of this Court, were granted by this Court to Andrew Ebini Tabi of 44 Ijaiye Street, Ajegunle, Apapa, the brother of the said Intestate, he having been first duly sworn.*

2. Money in Bank

D *Barclays Bank Nigeria Limited, Apapa, Saving Account No. 353049 (Dec. 4) for #16:13:5*

Sworn under #25: 0:0 and that the Intestate died on or about 12th day of April, 1971.

J.A. OJOMO

E *Ag. Probate Registrar."*

The words "personal property" are underlined by me for emphasis. The endorsements at the back of the Letters of Administration concern fees paid for processing in the Registry amounting to #8:17:7, the personal property of the Intestate being under #25:0:0. Armed with this document, the respondent
 F took over the entire estate of the deceased including the real estate, 44 Ijaiye Street, Ajegunle, Apapa. The house at 44 Ijaiye Street belonged to the deceased; he lived there with the appellant as his wife and was his abode at his death. Before and at the deceased's death the appellant lived at 44 Ijaiye Street as his wife. But now, after obtaining Letters of Administration for the
 G personal estate of the deceased, the respondent went on the property claiming the right to administer it; he let out portions to tenants without the consent or authority of the deceased's widow, the appellant. The appellant resisted the steps being taken by the respondent.

As a result of this situation, the appellant ejected the tenants put
 H into the house by the respondent and put her own tenants inside collecting rents from them. It must be pointed out that the appellant remained all along on the property since the death of her husband. As I explained earlier in this judgment, the trial judge held the appellant to be the widow of the deceased and that this has not been in issue. The overwhelming evidence before the

trial Court was reinforced on this point by an alleged donation of part of the land of her husband to her by the Tanyi family represented by the respondent in a document dated 8th June, 1978 which, for purpose of clarity, I quote hereinunder as follows:

"28/44, Ijaiye Street,
Aiyetoro, Apapa.
8th June, 1978.

B

DONATION

I the under signed on and behalf of late P.B. Tanyi Family, of the above address, donated a plot measure 50 x 100 at the adjacent wall by her late husband P.B. Tanyi house to his widow by name Christiana Ugu Tanyi for her meritorious service in the present and past.

The family of her late husband convened a summary meeting and all the members agreed unanimously before resolving to this decision and hereby authorized me as the entire representative to bestow her with this covering note of appreciation with confidence indicated and confirmed. This is an irrevocable note of her strenuous, loyalty and obedience tabulated and concorded by her matrimonial general services indicated to her late Tanyi and the family as a whole.

There is no detested or tainted mind in giving out this plot to her by the family than to show good appreciation so done by her and to develop it quickly and pack in as a Landlady forthwith.

Dated this 8th June 1978.

*for: ON AND BEHALF OF
P.B. TANYI FAMILY*

F

*Sgd
ANDREW TABI."*

As a result of the appellant's take-over of the premises the respondent took a complaint to the Nigeria police and reported the appellant as Christiana Ugwu Tanyi, her married name. She was tried on a five count charge ranging from breaking and entry, wilful damage to doors and keys, removal of louver frames and glasses and stealing; that was in the Magistrate Court, Ajegunle. She was convicted on three of the counts and was sentenced to imprisonment on each of the three counts with option of fine on each. She was also bound over to be of good behaviour for three months under s. 300 of Criminal procedure Law of Lagos State. However in the writ taken out by the respondent in the high Court of Lagos she is named as "Madam Christiana Ugu", her maiden name, as is clearly shown in the Statement of Claim dated 28th day of March, 1989. I have to go to this length to indicate that despite the suit and change

of the appellant's name to her maiden name there was no dispute that the appellant is the widow of Patrick Bissong Tanyi.

At the end of the High Court trial the learned judge found as follows:

"1. The appellant was the wife of the deceased and therefore the deceased's widow.

B 2. The appellant lived during and after the lifetime of Patrick Bissong Tanyi as the wife and later the widow of the deceased.

3. The respondent's only authority was the Letters of Administration, Exhibit d, granted in respect of the personal estate of the deceased, Patrick Bissong Tanyi.

C 4. The appellant got married to Patrick Bissong Tanyi (the deceased) and under native law and custom and that the deceased died intestate.

The learned trial judge, despite all the above findings went on to hold that the respondent, even though in possession of letters of Administration limited to personal property only (in this case the sum of #16: 13: 5d) in the bank, on savings account, had authority by virtue of the same Letters of Administration to administer all the estate of the deceased both personal and real. He relied on the "combined effect of sections 2, 3 and 4 of the Administration of Estate Law Cap.2 [Laws of Lagos State 1973]. It is instructive to set out these sections. Section 2 is the interpretation section and the following definitions are made inter alia therein:

Administrator" means a person to whom administration is granted
"personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person

F "representation" means the probate of a will and Administration, and the expression "taking out representation" refers to the obtaining of the probate of a will or of the grant of administration."

As for section 3, it provides as follows:

G "3. (1) Real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased, in like manner as before the commencement of this Law chattels real devolved on the personal representative from time to time of a deceased person.

H (2) The personal representatives for the time being of a deceased person are deemed in law his heirs and assigns within the meaning of all trusts and powers.

(3) The personal representatives shall be the representative of the deceased in regard to his real estate to which he was entitled for an interest

not ceasing on his death as well as in regard to his personal estate."

As for section 4 it states, it is only relevant to quote subsection 1 thereof reading as follows:

"4(1) Subject to the provisions of this Law, all enactments and rules of law, and all jurisdiction of any court with respect to the appointment of administrators or to probate or letters of administration, or to dealings before probate in the case of chattels real, and with respect to costs and other matters in the administration of personal estate, in force before the commencement of this Law, and all powers, duties, rights, equities, obligations, and liabilities of a personal representative in force at the commencement of this Law with respect to chattels real, shall apply and attach to the personal representative and shall have effect with respect to real estate vested in him, and in particular all such powers of disposition and dealing as were before the commencement of this Law exercisable as respects chattels real by the survivor or survivors of two or more personal representatives, as well as by a single personal representative, or by all the personal representatives together, shall be exercisable by the personal representatives or representative of the deceased with respect to his real estate."

Upon this decision of the trial Court an appeal went to the Court of Appeal which upheld the trial Court and further relied on the case of Shotogun v. Sanni (1972) 11 SC 35 to hold that the respondent even though had Letters of Administration to administer personal property only, he could by virtue of the same grant administer real property. The Learned justices of Court of Appeal in affirming the decision of the trial Court went further and held as follows in dismissing the notion that the grant of Letters of administration to the respondent was limited in scope:

"I have also read Sections 10, 22 and 42 of the Law and I do not see anything in any of them which indicated that the Respondent as a personal representative of the deceased cannot administer real estate of the deceased. Admittedly, Section 22 of the law gives the court wide powers in granting any type of probate or administration in regard to real or personal property of the deceased person".

Upon this decision of the Court of Appeal, this appeal has come to this Court. Based on the grounds of appeal the appellant has formulated the following issues for determination:

"(i) Whether a person granted Letters of Administration limited only to personal property can administer the real property of a deceased person.

(ii) Whether the Appellant was not entitled in the circumstance to a declaration order that the Respondent had trespassed upon the property

the subject matter of the action and to consequent award of damages."

The respondent raised in his brief the same issue I above but for his issues 2, he formulated as follows:

"Whether the appellant had abandoned her counterclaim and that there were no materials upon which the Court can act to sustain the counter-claim".

The respondent concedes that the applicable law is the Administration of Estates Law, Cap 2, Laws of Lagos State 1973 and alludes to s. 2 thereof the definition part of that Law. The submission of the respondent is that Administration of Estates Law of Lagos State 1973 was a result of adoption of a similar Law of former Western State of Nigeria and was so adopted by Lagos State (Applicable Laws) Edict of 1968 and that since then the Administration of estates Law came into force on 23rd April 1958. The contention therefore is that the case of Alhaji Ajao v. Mrs. Sonola & 2 Ors. (1973) NMLR 355 and others like it holding that an administrator can deal with personality and not realty unless with special order of Court, would no more apply to Lagos State. However, in the same breath, learned counsel for respondent posited that s.3 Administration or Estates Law 1973 (supra) gives the administrator to administer real as well as personal estate and went on to cite s.3(1) of the law (supra). In short the respondent's brief was replete with attempt by learned counsel to bring in history of the enactments. To me this is unnecessary. Since it is conceded that the enabling and relevant statute applicable is Administration of Estates Law, 1973 [Laws of Lagos state 1973 Cap 2] and its words and intendments are clear there is no need to revert to history for aid to its construction. Whenever there is ambiguity and the intention of the legislators is unclear as to the mischief the law is supposed to obviate, the Court can look outside the statute for aid to construction. The previous legislation repealed or amended, the mischief in the previous law sought to be cured by legislature or law maker, the history of the social, economic or political changes that the legislature sought to address, will come in handily as aid to construction. But when the words of the statute, looked as a whole are clear, devoid of any ambiguity, the statute must be construed to reflect its clear true meaning and no extrinsic aid to construction will be needed.

It must be pointed out that the facts of this case are very clear and every court below addressed the facts correctly but erroneously applied wrong principles of law to those facts. The Court of Appeal relied greatly on the case of Madam B. O. Shobogun v. Sanni and Ors. (1974) All NLR 816, especially as per Elias CJN (as he then was) at p. 820 where he held:

"We may now consider whether the applicant as an administrator can apply to be registered. While it is true that the letters of administra-

tion relate only to the personal estate of the deceased, we think that the administrator can also deal with the real estate. Section 2 of the Administration (Real Estate) Act, Cap 2, Laws of the Federation and Lagos provides

"When any person shall die intestate after the commencement of this Act leaving any real property of whatsoever nature of which intestate might have disposed by will, such real property shall for the purposes of B administration be deemed to be part of personal estate of the said intestate and shall be administered accordingly"

With greatest respect their lordships were in error and S.2 of Cap 2 Laws of the Federation of Nigeria and Lagos 1958, which they relied upon, is totally at variance with S.3(1), (2) and (3) of the Administration of Estates Law of 1973 C (Laws of Lagos States 1973, Cap 2), already quoted earlier in this judgment. **The 1958 Act has nothing to do with this case, the applicable law is Cap.2 of the Laws of Lagos State 1973, (supra) whose meaning is very clear. The definition part of the legislation defining "personal representative" as D "executor, or administrator" is to connote by implication the words "which- ever applicable". If letters of probate are in issue the word "executor" is applicable, in the case of Letters of Administration the word "Administra- tor" is applicable. The definition does not in the least allow interchangeabil- ity of the words which will obviously defeat the meaning of the statute. So there is no ambiguity in section 2, 3 and 4 of Administration of Estates Law E (Laws of Lagos State, Cap 2 of 1973).**

The present respondent deliberately applied for letters of adminis- tration in respect of personal estate of the intestate and was granted. He paid the appropriate fees. It is clear in evidence at the trial Court that the appelland, who is the widow of the intestate, during his life lived at 44 Ijaiye Street, F Ajegunle, Apapa, and continued to reside there at his death as her matrimonial home. The house belonged to her deceased husband. **The respondent ob- tained the letters of administration simply because he claimed to be a brother of the deceased and this was in respect of the personal estate. He was aware of the house in issue as part of the deceased's estate, he never applied for it. G Could it be said that he applied for personal estate of under #20 (twenty pounds) so as to administer the money in the savings account as well as the house, real property, situate at 44 Ijaiye Street, Ajegunle, Apapa? This is not convincing except fraud would be allowed to flourish! I therefore hold that a grant of letters of administration in respect of personal estate does not cover H the administration in respect of the real property of the intestate.** It is too late in the face of the decision in *Ademola Ejuwumi and Williams v. Probate Regis- trar* (1971) All NLR 157, 162 to resort to classification obtained in English law regarding real property; the situation in this country is not analogous to that.

In English law, classification is not limited to real property and personal property, there is another category known as "chattels real", difficult to explain in our own limited classification but defined in S.5 Administration of Estate Law (supra) as follows:

"5 (1) (i) *Chattels real, and land in possession, remainder, or reversion, and every interest in or over land to which a deceased person was entitled at the of his death*".

But this much I shall hold in this case: the intestate, in all evidence before the trial Court, owned the property at 44 Ijaiye Street, Ajegunle, Apapa, Lagos and that the appellant was his only wife and now widow. What interest the intestate held in the land is not clearly explained as no document of title was exhibited other than a piece of paper from Ojora family that the property was sold to the intestate. The presumption is what the parties based their dispute upon is right; that is to say, the intestate owned the land and the building erected upon it. Thus the land is real property and therefore not covered by the letters of administration granted the respondent. The answer to the first issue in the brief of argument by each party in this appeal is in the negative.

As for the second issue for determination in the appellant's brief of argument, the respondent arrogation of power to administer the estate now in issue by virtue of Exhibit D, i.e. the letters of administration on personal property of the intestate is false and not supported by law, he was therefore a trespasser ab initio to the property situate at 44 Ijaiye Street, Ajegunle, Apapa, Lagos. The judgment of the Court of Appeal affirming the decision of the trial High Court is hereby set aside. In its stead, a verdict of dismissal of the claim of the respondent, as plaintiff, is entered. I award N1,000.00 as costs in this Court, N500.00 as costs in the Court of Appeal and N300.00 as costs in the trial Court. If costs in the Courts below have been paid, the appellant should be refunded the same by the respondents.

The respondent in his brief of argument raised a second issue of counter-claim of the appellant as having been abandoned. The argument forcefully advanced by Jide Oki, Esqr. for the respondent, is that the grant of letters of administration ipso facto conferred on the respondent the right of personal representative under the law with authority to administer both personal property and real property. This point has been exhaustively addressed in the earlier part of this judgment against the respondent and needs not be repeated. It is true that no fraud has been proved but it is clear that the respondent virtually arrogated to himself title rather than administrator de son tort of the disputed property, a situation vigorously challenged by the appellant resulting in the suit ending in this appeal. The case of Shelle v. Asajon (1957) 2 FSC 65 does not apply as the respondent had no personal occupa-

tional right under any law as shown by the evidence before the Court. There is no evidence to impugn the letters of administration granted the respondent, but that document has limited applicability to personal property and cannot by stretching the law in any wise apply to real estate.

The appellant, it can now be asserted, succeeded only in establishing that the letters of administration do not apply to 44 Ijaiye Street, Ajegunle, that the respondent wanted to administer the property and that she resisted all along the assertion of the respondent in administering the property. The case for trespass is fully made out. The two issues for determination in the appellant's brief of argument are limited to her grounds of appeal and the second issue in the respondent's brief of argument does not really call for determination.

This appeal therefore succeeds and order is made as explained hereinbefore.

D

UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother Belgore, JSC. I agree with him that this appeal has merit.

Accordingly I too hereby allow it. I set aside the decisions of the lower courts. In their place I dismiss the Respondent's claim as plaintiff enter judgment for the Appellant as defendant. I adopt the order as to costs as contained in the judgment of my learned brother Belgore, JSC.

F

OGWUEGBU JSC

I have had the advantage of reading in draft the lead judgment of my learned brother Belgore, J.S.C. which has just been delivered and I am in full agreement with him that the appeal be allowed for the reasons given by him.

The main issue in the appeal is whether the respondent who was granted Letters of Administration Limited only to the personal property of the deceased can administer the real property of Patrick Bissong Tanyi (deceased).

In this appeal there is no dispute that Patrick Bissong Tanyi died intestate, that he was the owner of the property situate at 28/44 Ijaiye Street, Ajegunle, Lagos, that he lived with the appellant in the said property as husband and wife and that the appellant has continued to live in the said property since the husband died. The respondent was granted Letters of Administration in respect of the personal property of the deceased.

Armed with the said Letters of Administration, the respondent insti-

tuted an action in the High Court of Lagos State claiming the following reliefs from the appellant:

"1. *A true and full account of all monies, rents and profits received by the defendant as a result of her administering, intermeddling with the estate of Patrick Bissong Tanyi (deceased) who died in lagos on 12th April, B 1971 intestate.*

2. *Payment over to the plaintiff of what is found due to the plaintiff on the taking of such account.*

3. *Possession of a piece of land together with the house thereon situate lying and being at 28/44 Ijaiye Street, Layinka, Ajegunle, Apapa in C the Lagos State.*

4. *N10,000.00 special and general damages.*

5. *Perpetual injunction restraining, the defendant, her agents, privies and/or servants from further actions or trespass on the said land."*

The defendant counter claimed as follows:

D (a) A declaration that the purported Letter of Administration taken out by the plaintiff in respect of the said property of Patrick Tanyi situate at 44 Ijaiye Street, Ajegunle, Apapa, Lagos is illegal, null and void, and of no effect.

(b) A declaration that the defendant is a legitimate person to act as administratrix of the said property of late Mr. Patrick Tanyi situate at 44 Ijaiye E Street, Ajegunle Apapa, Lagos.

(c) A declaration that the plaintiff has been a trespasser to the property of late Mr. Patrick Tanyi the husband of the defendant.

(d) An order restraining the plaintiff from further committing acts of trespass on the said property of late Mr. Patrick Tanyi.

F (e) The defendant claims from the plaintiff N1,000.00 as damages for trespass to the property.

The learned trial Judge granted almost all the reliefs claimed by plaintiff and dismissed the counter claim. The defendant's appeal to the Court of Appeal was dismissed hence the appeal to this court.

G Both the High Court and the Court of Appeal held that the plaintiff who is the respondent in this court was entitled to administer both the real and personal properties of the deceased. The court below relied on sections 2, 3 and 4 of the Administration of Estates Law Cap 2, laws of Lagos State, 1973 in coming to its conclusion.

H Learned counsel for the appellant argued that those provisions of the Administration of Estates Law provide useful guidance to the resolution of the issues for determination and that the Law must be read as a whole in order to effectively resolve the said issues.

He further submitted that sections 2, 3 and 4 of the Administration of

Estates Law which I shall hereafter refer to as "the Estate Law" must not be read in isolation and that all the provisions must be read together and as a whole for a proper interpretation of the said sections. He referred the court to sections 10, 22 and 44 of the Estate Law and the cases of Akaighe v. Idama (1964) All N.L.R. 317 and Balogun v. Salami & Ors. (1963) All N.L.R. 128. It was argued that the court below failed to adhere and give proper effect to the B important canon of statutory interpretation.

It was contended on behalf of the respondent that the combined effect of the provisions of sections 2, 3 and 4 of the Estate Law entitles the respondent to administer both the real and personal estates of the intestate. It was further submitted that when one looks at the legislative history of the C Estate Law, the position becomes clearer. It was submitted that the Estate Law of 1973 was lifted ipssimma verba from the Western Nigeria Laws Cap 1 and was made applicable to Lagos State by the Lagos State (Applicable Edict (Law)) 1968 and since then the proposition that an administrator can only deal D with personal and real property without special order of the court is no more applicable in Lagos State. It was also contended that the Legal Notice LSLN 16/1972 has changed the Law in 1972 and the effect of the change is the present section 3 of the Estate Law which gives the Administrator the right to administer real as well as personal property and that it is no longer mandatory for an Administrator of personal property to apply for a grant of Letters of E Administration in respect of the real estate of the deceased. The case of Ademola v. Probate Registrar (1971) All N.L.R. 155 was cited and that it ceased to have effect in Lagos since the Estate Law of Lagos State of 1973 came into force. We were urged to consider all the sections of the law including the relation of one section to the other sections, the relation of one section to the F general object intended to be secured by the Law, the importance of the section, the whole scope of the Law, the importance of the section, the whole scope of the Law and the real intention of the enacting body. The court was referred to the cases of Warburton v. Loveland (1831) 5 E.R.499, Vacher & Sons Ltd. v. London Society of Compositors (1913) A.C. 107 at 118 and Prince G Ernest Augustus of Hanover v. A. G. (1957) A.C. 436.

The provisions of sections 2, 3 and 4 of the Estate Law will now be considered since both parties placed reliance on them. The following words are relevant in the construction of the provisions of the Law, namely, "administration", "administrator", "personal representative" and "Property". They H have been defined in section 2 of the Administration of Estates Law, 1973 thus:

"administration" means with reference to the real and personal estate of a deceased person, letters of administration, whether general or

limited, or with the will annexed or other wise;

"administrator" means a person to whom administration is granted;

"Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person; and

"Property" includes a thing in action and any interest in real or personal property."

Section 3(1) of the Estate Law provides:

"3(1) Real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased, in like manner as before the commencement of this Law chattels real devolved on the personal representative from time to time of a deceased person."

The Administration of Estates Law recognised a distinction between personal and real properties. In addition to the definition of "personal representative" in section 2 of the Estate Law, the expression is also defined as :executors and administrators, whether acting with regard to personal property or with regard to real property". See The Dictionary of English Law by Earl Jowitt and the case In re Bridgett and Hayes' Contract (1928) 1 Ch. 163 at 168.

Personal representative therefore means the executor or administrator whether acting with regard to personal property or with regard to real property of the deceased.

The contention of the respondent that the Letters of Administration granted to him in respect of the personal property of the deceased entitles him to administer the property at No. 44 Ijaiye Street, Ajegunle, Apapa cannot be right having regard also to section 222 of the Administration of Estates Law of Lagos State, 1973. The section reads:

"22. Probate or administration in respect of real estate of a deceased person or any part thereof, may be granted either separately or together with probate or administration of his personal estate, and may also be granted in respect of real estate only where there is no personal estate, or in respect of real estate only, and a grant of administration to real estate may be limited in any way the court thinks proper." (Underlining is for emphasis)

This provision is in pari materia with the provisions of section 155(1) of the Supreme Court of Judicature (Consolidation) Act, 1923 (England).

An application for a grant of Letters of Administration may be made either for a limited grant or a full grant and the limited grant may be in respect only of the real estate or of the personal estate of the deceased person. It is therefore unlawful where the grant made is limited to personal estate for the

administrator, such as the plaintiff herein, to intermeddle with the real estate of Patrick Bissong Tanyi at No. 44 Ijaiye Street, Ajegunle, Apapa, Lagos. Even though the issue before this court in Ademola & Ors. v. Probate Registrar (supra) was as to assessment and payment of estate fees on leasehold property when the grant applied for and being made was limited to personal estate, the decision illustrates the distinctness of personal and real properties of an intestate where application is made for a limited grant. In the circumstances, the plaintiff is no more than an administrator de son tort in respect of the property at No. 44, Ijaiye Street, Ajegunle, Lagos.

The appeal therefore succeeds and is allowed. The judgments of the High Court and the Court of Appeal are hereby set aside. The plaintiff's claim is dismissed. I subscribe to the order as to costs contained in the lead judgment of My learned brother Belgore, J.S.C.

ONU JSC

I am in full agreement with the judgment that my learned brother Belgore, JSC just read, a preview of which I was privileged to have. I only wish to add thereto by saying as follows:-

Where, as in the instant case there has been no allegation of fraud by the appellant at the instance of the respondent, the respondent had with the assistance of the appellant (the widow of the respondent's deceased brother) obtained Letters of Administration to administer the personal property left behind by the deceased husband of the appellant, it will be stretching the provisions of sections 2, 3 and 4 of the Administration of Estates Law, Cap.2 of 1973 (Laws of Lagos State) beyond their limits to say that that law in those sections empower the respondent to deal with the real estate of the deceased.

It is the above consideration above anything else, irrespective of case law to the contrary vide Madam B.O. Shobogun v. Sanni & ors. (1974) All NLR 816; Alhaji Olorunkenu Ajao v. Mrs. L.E. Sonola & ors. (1973) 1 NMLR 355 that the decision of Court of Appeal sitting in Lagos confirming the judgment of the trial court in the appeal herein, cannot be sustained when the same purports to confer on the respondent the powers to deal in the real estate of the deceased husband of the appellant.

For these and the fuller reasons contained in the lead judgment of my learned brother Belgore, JSC I have no hesitation in also allowing the appeal with similar consequential orders inclusive of costs as set out therein.

PRONOUNCEMENT BY UWAIS CJN

Pursuant to the provisions of Section 258 subsection (2) of the Constitution of the Federal Republic of Nigeria 1979, I make the following pronouncement.

B My learned brother Hon. Justice Yekini Olayiwola Adio, who sat with us on this appeal died on Tuesday 8th day of July, 1997. Before his death he participated in the conference on the case, which we held on Wednesday the 14th day of May, 1997, during which he expressed the opinion that he too would allow this appeal.

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