

SUPREME COURT OF NIGERIA
10TH MARCH, 2000. SC.59/1994
CORAM:- M. L. UWAIS CJN, M. E. OGUNDARE,
U. MOHAMMED, S. ONU, A. I. IGUH, JJSC

MRS. (DR.) ABIMBOLA DEJONWO & ANOR. PLAINTIFFS/
APPELLANTS

AND

MISS BIDEMI DEJONWO & 3 ORS. DEFENDANTS/
RESPONDENTS

ADMINISTRATION OF ESTATES - *Administrators - Letters of Administration - Application for the grant of - Where the Plaintiffs sought an order to enable them obtain grant of letters of administration - The fact that the 1st and 2nd defendants have been added by the court - To join them in the administration of the estate - Would not prejudice the relief they sought.*

ADMINISTRATION OF ESTATES - *Beneficiaries - Pronouncements by the Courts - On who is or is not entitled as beneficiary to the estate - Are of no consequence - Since they are outside the purview of the question before the courts.*

FACTS

The Plaintiffs took out an originating summons for an order "Directing the Probate Registrar to take appropriate step or steps to enable Plaintiffs/Applicants obtain grant of letters of Administration and Proceed to administer the Estate of the above named Otunba Dejonwo (deceased). The plaintiffs are the widow and elder brother respectively of the deceased who died intestate on 13th November, 1989. The defendants opposed the Order sought by the Plaintiffs. The deceased was survived by eight children born of eight different mothers. The 1st and 2nd defendants are two of these eight children. The 1st Plaintiff is the mother of Abayomi Dejonwo, one of the eight children who at all times material to

the proceedings was a minor. The 1st plaintiff was lawfully married to the deceased on 26th October, 1977 but the marriage, following divorce petitions filed by both parties, was dissolved by decree nisi on 16th May, 1986. Of the eight children surviving the deceased only the 1st and 2nd defendants were adults at the commencement of the proceedings in the High Court.

The learned trial judge after a consideration of all the facts placed before him dismissed the originating summons. Being dissatisfied, the plaintiffs appealed to the Court of Appeal, Lagos Division. That Court allowed the appeal in part and made some consequential orders. The Plaintiffs still dissatisfied have further appealed to the Supreme Court raising two issues.

ISSUES FOR DETERMINATION

"1. Whether the Court below was right in law when it held that the seven children born to the deceased by seven different women who were never married to him under any applicable law in Nigeria, have sufficient interest in the estate of the deceased to enable them join in the administration of his estate.

2. Whether the Court below was right when it held that the 1st Appellant could not be, and was not, a beneficiary of the deceased's estate."

HELD (Unanimously dismissing the appeal per lead judgment of **OGUNDARE, JSC**)

Administration of Estates - Administrators

1. The originating summons sought an order directing the probate Registrar to take appropriate step or steps to enable plaintiffs/applicants obtain grant of letters of administration and proceed to administer the estate of the deceased Adebayo Dejonwo. The purpose of the summons was not to determine who was the widow or who were entitled as beneficiaries to a share in the estate. Unfortunately the whole energy appears to have been directed to this latter issue. The order made by the Court below that the plaintiffs and the 1st and the 2nd defendants should submit a fresh application for the grant of letters of administration would in my view

enure to the benefit of the plaintiffs as regards the relief sought by them in the originating summons. The fact that the 1st and 2nd defendants have been added by the Court below to join them in the administration of the estate would not, in my respectful view, prejudice the relief they sought. (p. 616 D)

Administration of Estates - Beneficiaries

2. The pronouncements made by the two courts below on who is or is not entitled as beneficiary to the estate are completely outside the purview of the question before the courts and are, therefore, of no consequence. (p. 616 H)

REPRESENTATION

Kehinde Sofola, SAN (S. Onyejose with him) for the Appellants.

A. Etuk (Miss G.M.R. Ubom with him) for the Respondents

LEAD JUDGMENT BY OGUNDARE JSC

This is an appeal against the decision of the Court of Appeal (Lagos Division) given on 21st July, 1993 whereby the Court below allowed in part the Plaintiff's appeal to it and made some consequential orders which I shall set out later in this judgment. The Plaintiffs, still dissatisfied, have further appealed to this Court.

Following the death intestate of Otunba Adebayo Dejonwo on 13th November, 1989, the Plaintiffs who described themselves as widow and elder brother respectively of the deceased took out an originating summons for an order

"Directing the Probate Registrar to take appropriate step or steps to enable Plaintiffs/Applicants obtain grant of letters of Administration and proceed to administer the Estate of the above named Otunba Dejonwo (deceased)."

The Defendants herein were named as defendants to the summons. The defendants quite expectedly, opposed the order sought by the plaintiffs. In the affidavits and counter affidavits placed before the trial Court, it was disclosed:

(i) that the deceased died survived by eight children born of eight different mothers;

(ii) that the 1st and 2nd defendants are two of these eight children;

B (iii) that the 1st plaintiff is the mother of Abayomi Dejonwo, one of the eight children

(iv) that at all times relevant to these proceedings, Abayomi Dejonwo was a minor;

C (v) that the 1st plaintiff was lawfully married to the deceased on 26th October, 1977 but that the marriage, following divorce petitions filed by both parties, was dissolved by decree nisi on 16th May 1986.

D (vi) that of the eight children surviving the deceased only Bidemi Dejonwo and Tokunbo Dejonwo who are 1st and 2nd defendants respectively in these proceedings were adults at the commencement of these proceedings in the High Court.

The learned trial Judge after a consideration of all the facts placed before him in the affidavits and counter-affidavits sworn to by the parties, dismissed the originating summons. Being dissatisfied with the dismissal the plaintiffs appealed to the Court of Appeal. That Court after a consideration of the argument advanced by both parties allowed the appeal in part. The Court affirmed the findings of the trial court that the 1st plaintiff was not a widow of the deceased; her marriage to the deceased having come to an end before the death of the deceased. This findings notwithstanding, the Court below held that the 1st plaintiff as the mother of Abayomi Dejonwo who was a minor at the time of the proceedings was entitled to be granted letters of administration in respect of the estate of the deceased in order to protect the interest of her child. The Court also found that the 2nd plaintiff as an elder brother was equally entitled to be granted letters of administration. The Court, however found also that these two were not the only ones entitled to letters of administration but H that the 1st and 2nd defendants being adult children of the deceased were equally entitled to letters of administration in respect of the estate of the deceased. Consequently the Court set aside the decision of the trial High Court dismissing the originating summons and in its stead made the fol-

lowing declarations and orders:

"(1) The 1st and 2nd Appellants are entitled to the grant of letters of administration in respect of the estate of the deceased Otunba Bayo Dejonwo, but they are not the only persons so entitled;

(2) The 1st and 2nd Respondents who are 2 of the other 7 children of the deceased are also entitled to the grant representing the interest of all the 7 of them; and

(3) Since the last application for the said grant by the Respondents was stopped by a caveat entered by the 1st Appellant in May 1992 prior to filing the originating Summons there is no other application for the grant before the trial Court. Therefore the 4 persons named above should submit a fresh application to the trial Court for the grant of letters of administration to them accordingly."

It is against this judgment that the plaintiffs have with leave of this Court, further appealed to this Court upon six grounds of appeal.

In this Court the defendants filed a Respondent's Notice. Realizing that this was a wrong procedure, they moved this Court to deem the Notice as amended as cross-appeal. When the application came up for hearing and realizing the futility of it, learned counsel for the defendants withdrew it and it was accordingly struck out.

In the Appellant's brief filed by learned Senior Advocate Kehinde Sofola Esq., on behalf of the plaintiffs, two questions were set out as calling for determination in this appeal to wit:

"1. Whether the Court below was right in law when it held that the seven children born to the deceased by seven different women who were never married to him under any applicable law in Nigeria, have sufficient interest in the estate of the deceased to enable them join in the administration of his estate."

2. Whether the Court below was right when it held that the 1st Appellant could not be, and was not, a beneficiary of the deceased's estate."

The defendants in their own brief settled by their learned counsel Anaelokwu Etuka Esq., a number of issues were set out but as most of these issues are unrelated to the grounds of appeal but more in support of

the futile cross-appeal, they will be ignored by me in the determination of this appeal.

At the oral hearing of the appeal, Mr. Kehinde Sofola SAN argued strenuously to show that on the death of the deceased, the 1st plaintiff was still his wife notwithstanding the decree nisi that was made by the High Court on 16th May, 1986. Learned Senior Advocate referred to section 58(5) of the Matrimonial Causes Act to support his argument. Mr. Etuka for the defendants submitted that there was a decree absolute by operation of law which took effect on 28/3/89 before the death of the deceased and that, therefore, the 1st plaintiff was not his wife on the date of his death.

It would appear that both courts below, with respect and the parties lost sight of the main issue raised by the originating summons by which the plaintiffs originated the proceedings leading to this appeal. **The originating summons sought an order directing the probate Registrar to take appropriate step or steps to enable plaintiffs/applicants obtain grant of letters of administration and proceed to administer the estate of the deceased Adebayo Dejonwo. The purpose of the summons was not to determine who was the widow or who were entitled as beneficiaries to a share in the estate. Unfortunately the whole energy appears to have been directed to this latter issue. The order made by the Court below that the plaintiffs and the 1st and the 2nd defendants should submit a fresh application for the grant of letters of administration would in my view enure to the benefit of the plaintiffs as regards the relief sought by them in the originating summons. The fact that the 1st and 2nd defendants have been added by the Court below to join them in the administration of the estate would not, in my respectful view, prejudice the relief they sought.** It is not disputed that the deceased had seven other children whose interest too have to be protected. Learned Senior Advocate Kehinde Sofola Esqr. did not dispute this when question to that effect was put to him by the Court. The conclusion I arrive at then is that this appeal is completely futile. **The pronouncements made by the two courts below on who is or is not entitled as beneficiary to**

the estate are completely outside the purview of the question before the courts and are, therefore, of no consequence.

The conclusion I finally arrive at is that the Court below by the declarations and order made by it has done complete justice to the parties and has correctly in my respectful view, decided the issue raised by the originating summons. This appeal therefore, is of no merit and I unhesitatingly dismiss it. I however, make no order as to costs.

UWAIS CJN

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I have had the privilege of reading in draft the judgment read by my learned brother Ogundare, J.S.C. I entirely agree with it and have nothing to add.

I too, accordingly, hereby dismiss the appeal with no order as to costs.

MOHAMMED JSC

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I agree that this appeal has failed. The decision of the court below is in my view, unimpeachable and I affirm it. My learned brother, Ogundare JSC, in the lead judgment, just read, has considered the relevant issues for the determination of this appeal and I agree with his conclusion. Consequently I dismiss this appeal and make no order as to costs.

ONU JSC

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I agree.

IGUH JSC

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I have had the privilege of reading in draft the judgment just delivered by my learned brother, Ogundare, J.S.C. and I agree entirely with the reasoning and conclusions therein. I do not think there is any

thing more I can usefully add.

For exactly the same reasons as are therein contained I too, dismiss this appeal as unmeritorious and affirm the decision of the court below.

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